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FEDERAL REGISTER

Vol. 81 Friday,
No. 161 August 19, 2016

Book 1 of 2 Books
Pages 55351–55790

OFFICE OF THE FEDERAL REGISTER

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2015–5758; Special Conditions No. 25–632–SC]

Special Conditions: The Boeing Company, Boeing Model 737–8 Airplane; Non-Rechargeable Lithium Battery Installations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Boeing Company (Boeing) Model 737–8 airplane. This airplane will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport-category airplanes. This design feature is associated with non-rechargeable lithium battery installations. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Effective April 22, 2017.

FOR FURTHER INFORMATION CONTACT: Nazih Khaouly, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98057–3356; telephone 425–227–2432; facsimile 425–227–1149.

SUPPLEMENTARY INFORMATION:

Future Requests for Installation of Non-Rechargeable Lithium Batteries

The FAA anticipates that non-rechargeable lithium batteries will be installed in other makes and models of airplanes. We have determined to require special conditions for all applications requesting non-rechargeable lithium battery installations, except the installations excluded in the Applicability section, until the airworthiness requirements can be revised to address this issue. Applying special conditions to these installations across the range of all transport-airplane makes and models ensures regulatory consistency among applicants.

The FAA issued special conditions no. 25–612–SC to Gulfstream Aerospace Corporation for their GVI airplane. Those are the first special conditions the FAA issued for non-rechargeable lithium battery installations. We explained in that document our determination to make those special conditions effective one year after publication of those special conditions in the **Federal Register**, and our intention for other special conditions for other makes and models to be effective on this same date or 30 days after their publication, whichever is later.

Background

On January 27, 2012, Boeing applied for an amendment to type certificate no. A16WE to include a new Model 737–8 airplane. The Model 737–8 airplane is a twin-engine, transport-category airplane that is a derivative of the Model 737–800 airplane. The Model 737–8 has a maximum passenger capacity of 200 and a maximum takeoff weight of 181,200 lbs.

Type Certification Basis

Under the provisions of title 14, Code of Federal Regulations (14 CFR) 21.101, Boeing must show that the Model 737–8 airplane meets the applicable provisions of the regulations listed in type certificate no. A16WE or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA. The regulations listed in the type certificate are commonly referred to as the "original type certification basis." The regulations listed in type certificate no. A16WE are 14 CFR part 25 effective February 1, 1965 including Amendments 25–1 through 25–77 with exceptions listed in the type certificate. In addition, the certification basis includes other regulations, special conditions, and exemptions that are not relevant to these special conditions. Type certificate no. A16WE will be updated to include a complete description of the certification basis for this airplane model.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 25) do not contain adequate or appropriate safety standards for the Model 737–8 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the airplane model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Model 737–8 airplane must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type-certification basis under § 21.101.

Novel or Unusual Design Features

The Boeing Model 737–8 airplane will incorporate non-rechargeable lithium batteries.

A battery system consists of the battery and any protective, monitoring, and alerting circuitry or hardware inside or outside of the battery. It also includes vents (where necessary) and packaging. For the purpose of these special conditions, a "battery" and "battery system" are referred to as a battery.

Discussion

The FAA derived the current regulations governing installation of batteries in transport-category airplanes from Civil Air Regulations (CAR) 4b.625(d) as part of the re-codification of CAR 4b that established 14 CFR part 25 in February 1965. We basically reworded the battery requirements, which are currently in § 25.1353(b)(1) through (4), from the CAR requirements.

Non-rechargeable lithium batteries are novel and unusual with respect to the state of technology considered when these requirements were codified. These batteries introduce higher energy levels into airplane systems through new chemical compositions in various battery-cell sizes and construction. Interconnection of these cells in battery packs introduces failure modes that require unique design considerations, such as provisions for thermal management.

Recent events involving rechargeable and non-rechargeable lithium batteries prompted the FAA to initiate a broad evaluation of these energy-storage technologies. In January 2013, two independent events involving rechargeable lithium-ion batteries demonstrated unanticipated failure modes. A National Transportation Safety Board (NTSB) letter to the FAA, dated May 22, 2014, which is available at *http://www.ntsb.gov,* filename A–14–032–036.pdf, describes these events.

On July 12, 2013, an event involving a non-rechargeable lithium battery in an emergency-locator-transmitter installation demonstrated unanticipated failure modes. The United Kingdom's Air Accidents Investigation Branch Bulletin S5/2013 describes this event.

Some known uses of rechargeable and non-rechargeable lithium batteries on airplanes include:

• Flight deck and avionics systems such as displays, global positioning systems, cockpit voice recorders, flight data recorders, underwater locator beacons, navigation computers, integrated avionics computers, satellite network and communication systems, communication-management units, and remote-monitor electronic line-replaceable units;

• Cabin safety, entertainment, and communications equipment, including emergency-locator transmitters, life rafts, escape slides, seatbelt air bags, cabin management systems, Ethernet switches, routers and media servers, wireless systems, internet and in-flight entertainment systems, satellite televisions, remotes, and handsets;

• Systems in cargo areas including door controls, sensors, video surveillance equipment, and security systems.

Some known potential hazards and failure modes associated with non-rechargeable lithium batteries are:

• Internal failures: In general, these batteries are significantly more susceptible to internal failures that can result in self-sustaining increases in temperature and pressure (*i.e.,* thermal runaway) than their nickel-cadmium or lead-acid counterparts. The metallic lithium can ignite, resulting in a self-sustaining fire or explosion.

• Fast or imbalanced discharging: Fast discharging or an imbalanced discharge of one cell of a multi-cell battery may create an overheating condition that results in an uncontrollable venting condition, which in turn leads to a thermal event or an explosion.

• Flammability: Unlike nickel-cadmium and lead-acid batteries, lithium batteries use higher energy and current in an electrochemical system that can be configured to maximize energy storage of lithium. They also use liquid electrolytes that can be extremely flammable. The electrolyte, as well as the electrodes, can serve as a source of fuel for an external fire if the battery casing is breached.

Special condition 1 requires that each individual cell within a non-rechargeable lithium battery be designed to maintain safe temperatures and pressures. Special condition 2 addresses these same issues but for the entire battery. Special condition 2 requires that the battery be designed to prevent propagation of a thermal event, such as self-sustained, uncontrolled increases in temperature or pressure from one cell to adjacent cells.

Special conditions 1 and 2 are intended to ensure that the non-rechargeable lithium battery and its cells are designed to eliminate the potential for uncontrolled failures. However, a certain number of failures will occur due to various factors beyond the control of the designer. Therefore, other special conditions are intended to protect the airplane and its occupants if failure occurs.

Special conditions 3, 7, and 8 are self-explanatory, and the FAA does not provide further explanation for them at this time.

Special condition 4 makes it clear that the flammable-fluid fire-protection requirements of § 25.863 apply to non-rechargeable lithium battery installations. Section 25.863 is applicable to areas of the airplane that could be exposed to flammable fluid leakage from airplane systems. Non-rechargeable lithium batteries contain electrolyte that is a flammable fluid.

Special condition 5 requires each non-rechargeable lithium battery installation to not damage surrounding structure or adjacent systems, equipment, or electrical wiring from corrosive fluids or gases that may escape. Special condition 6 requires each non-rechargeable lithium battery installation to have provisions to prevent any hazardous effect on airplane structure or systems caused by the maximum amount of heat it can generate due to any failure of it or its individual cells. The means of meeting these special conditions may be the same, but they are independent requirements addressing different hazards. Special condition 5 addresses corrosive fluids and gases, whereas special condition 6 addresses heat.

These special conditions will apply to all non-rechargeable lithium battery installations in lieu of § 25.1353(b)(1) through (4) at Amendment 25–123. Sections 25.1353(b)(1) through (4) at Amendment 25–123 will remain in effect for other battery installations.

These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Discussion of Comments

Notice of proposed special conditions no. 25–16–02–SC, for the Boeing 737–8 airplane, was published in the **Federal Register** on February 11, 2016 [81 FR 7249]. We received two substantive comments.

The Aerospace Industries Association (AIA) provided several comments that were identical to their comments for special conditions no. 25–612–SC (81 FR 23573), which we issued to Gulfstream Aerospace Corporation for non-rechargeable lithium battery installations on Gulfstream GVI airplanes. The FAA responded to each of these comments in that final special conditions document. We incorporated the same revisions into this Boeing 737–8 special conditions that we incorporated into the Gulfstream GVI special conditions as a result of AIA's comments.

Boeing commented that they fully support AIA's comments.

Boeing requested that the FAA provide adequate time before non-rechargeable lithium battery special conditions become effective to support validation activities by foreign civil airworthiness authorities (FCAA) and to not adversely impact future airplane deliveries by all applicants. The FAA considered this same comment from Boeing for special conditions no. 25–612–SC and provided a detailed response in that document. We determined the effective date for these Boeing 737–8 special conditions based on Boeing's comment and other factors stated in special conditions no. 25–612–SC.

Boeing commented that the FAA needs to clearly define the applicability of these special conditions. The FAA concurs. Boeing's comment is similar to

their comment on special conditions no. 25–612–SC. We provided a detailed response in special conditions no. 25–612–SC and have now clearly defined the applicability for these Boeing 737–8 special conditions. One aspect of Boeing's comment that we did not address in special conditions no. 25–612–SC is that some design changes may not change a lithium battery installation but affect it, which results in these special conditions being applicable. For example, adding a heat source next to a lithium battery can increase its possibility of entering into thermal runaway. Lithium battery installations affected by design changes must meet these special conditions. Some examples of changes that affect lithium battery installations are those that:

- Increase the temperatures or pressures in a battery,
- Increase the electrical load on a battery,
- Increase potential for imbalance between battery cells,
- Modify protective circuitry for a lithium battery,
- Increase the airplane level risk due to the location of an existing lithium battery. An example is installation of a new oxygen line next to an existing part that has a lithium battery. The airplane level risk may increase due to the potential hazard of a lithium battery fire in the proximity of oxygen.

The FAA has determined that "uncontrolled" in special condition 2 should be "uncontrollable" to more accurately describe the concern. This revision does not change the intended meaning of this special condition.

Except as discussed above, the special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to the Model 737–8 airplane. Should the applicant apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well.

These special conditions are only applicable to design changes applied for after the effective date of the special conditions. The existing airplane fleet and follow-on deliveries of airplanes with previously certified non-rechargeable lithium battery installations are not affected.

These special conditions are not applicable to previously certified non-rechargeable lithium battery installations where the only change is either cosmetic or relocating the installation to improve the safety of the airplane and occupants. The FAA determined that this exclusion is in the public interest because the need to meet all of the special conditions might otherwise deter such design changes that involve relocating batteries. A cosmetic change is a change in appearance only, and does not change any function or safety characteristic of the battery installation.

Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

■ The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, the following special conditions are part of the type certification basis for the Boeing Model 737–8 airplane.

Non-Rechargeable Lithium Battery Installations

In lieu of § 25.1353(b)(1) through (b)(4) at Amendment 25–123, each non-rechargeable lithium battery installation must:

1. Maintain safe cell temperatures and pressures under all foreseeable operating conditions to prevent fire and explosion.
2. Prevent the occurrence of self-sustaining, uncontrollable increases in temperature or pressure.
3. Not emit explosive or toxic gases, either in normal operation or as a result of its failure, that may accumulate in hazardous quantities within the airplane.
4. Meet the requirements of § 25.863.
5. Not damage surrounding structure or adjacent systems, equipment, or electrical wiring from corrosive fluids or gases that may escape in such a way as to cause a major or more-severe failure condition.
6. Have provisions to prevent any hazardous effect on airplane structure or systems caused by the maximum amount of heat it can generate due to any failure of it or its individual cells.
7. Have a failure sensing and warning system to alert the flightcrew if its failure affects safe operation of the airplane.
8. Have a means for the flightcrew or maintenance personnel to determine the battery charge state if the battery's function is required for safe operation of the airplane.

Note: A battery system consists of the battery and any protective, monitoring, and alerting circuitry or hardware inside or outside of the battery. It also includes vents (where necessary) and packaging. For the purpose of these special conditions, a "battery" and "battery system" are referred to as a battery.

Issued in Renton, Washington, on August 12, 2016.

Michael Kaszycki,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–19856 Filed 8–18–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–3986; Directorate Identifier 2015–NM–057–AD; Amendment 39–18613; AD 2016–16–15]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Bombardier, Inc. Model DHC–8–400, –401, and –402 airplanes. This AD was prompted by reports of chafing damage due to insufficient clearance on the main landing gear (MLG) stabilizer brace, the nacelle A-frame structure, and the adjacent electrical wiring harnesses. An insufficient fillet radius may also exist on certain airplanes. This AD requires, depending on airplane configuration, an inspection of the nacelle A-frame structure for insufficient fillet radius; an inspection for cracking of affected structure, and rework or repair if necessary, and rework of the nacelle A-frame structure; repetitive inspections of the nacelle A-frame structure and the MLG stabilizer brace for insufficient clearance and damage, and repair if necessary, and rework of the nacelle A-frame structure, which would terminate the repetitive inspections; installation of new stop brackets and a shim on each MLG stabilizer brace assembly; and rework of the electrical wiring harnesses in the nacelle area. We are issuing this AD to

detect and correct chafing damage and subsequent premature cracking and fracture of the nacelle A-frame structure, which could result in failure of the MLG stabilizer brace and loss of the MLG down-lock indication, which could adversely affect the safe landing of the airplane.

DATES: This AD is effective September 23, 2016.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of September 23, 2016.

ADDRESSES: For Bombardier service information identified in this final rule, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.com.* For Goodrich service information identified in this AD, contact Goodrich Corporation, Landing Gear, 1400 South Service Road, West Oakville, ON, Canada L6L 5Y7; phone: 905–825–1568; email: *jean.breed@goodrich.com;* Internet: *http://www.goodrich.com/TechPubs.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–3986.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–3986; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Aziz Ahmed, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7329; fax 516–794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Bombardier, Inc. Model DHC–8–400, –401, and –402 airplanes. The NPRM published in the **Federal Register** on October 19, 2015 (80 FR 63147) ("the NPRM"). The NPRM was prompted by reports of chafing damage due to insufficient clearance on the MLG stabilizer brace, the nacelle A-frame structure, and the adjacent electrical wiring harnesses. An insufficient fillet radius may also exist on certain airplanes. The NPRM proposed to require, depending on airplane configuration, an inspection of the nacelle A-frame structure for insufficient fillet radius; an inspection for cracking of affected structure, and rework or repair if necessary, and rework of the nacelle A-frame structure; repetitive inspections of the nacelle A-frame structure and the MLG stabilizer brace for insufficient clearance and damage, and repair if necessary, and rework of the nacelle A-frame structure, which would terminate the repetitive inspections; installation of new stop brackets and a shim on each MLG stabilizer brace assembly; and rework of the electrical wiring harnesses in the nacelle area. We are issuing this AD to detect and correct chafing damage and subsequent premature cracking and fracture of the nacelle A-frame structure, which could result in failure of the MLG stabilizer brace and loss of the MLG down-lock indication, which could adversely affect the safe landing of the airplane.

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2014–45, dated December 23, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition on certain Bombardier, Inc. Model DHC–8–400, –401, and –402 airplanes. The MCAI states:

> The aeroplane manufacturer has discovered that an insufficient fillet radius may exist on the flange of the nacelle A-frame structure on certain aeroplanes. There have also been several in-service reports of chafing damage on the main landing gear (MLG) stabilizer brace, the nacelle A-frame structure and its adjacent electrical wiring harnesses due to insufficient clearance.
>
> An insufficient fillet radius and chafing damage on the nacelle A-frame structure and MLG stabilizer brace could lead to premature cracking. Fracture of the nacelle A-frame structure or failure of the MLG stabilizer brace could adversely affect the safe landing of the aeroplane. The damage to the electrical wiring harnesses could result in the loss of the MLG downlock indication.
>
> This [Canadian] AD mandates the inspection and rework of the nacelle A-frame structure, and the rework of the forward MLG stabilizer brace assembly and the electrical harnesses in the nacelle area adjacent to the A-frame structure.

The following actions are required, depending on airplane configuration.

- A detailed inspection of the nacelle A-frame structure for insufficient fillet radius, an eddy current or fluorescent dye penetrant inspection for cracking of affected structure, and rework or repair if necessary.
- Rework of the left-hand (LH) side and right-hand (RH) side nacelle A-frame structure, including doing a measurement of the clearance between the fasteners/A-frame structure and MLG stabilizer brace assembly and making sure no fouling condition exists, and repair if necessary.
- Repetitive detailed inspections of the nacelle A-frame structure and the MLG stabilizer brace for insufficient clearance and damage, and repair if necessary.
- Rework of the nacelle A-frame structure, including a measurement of the clearance between the A-frame structure and MLG stabilizer brace assembly, and a fluorescent dye penetrant inspection or high frequency eddy current inspection for cracking and repair if necessary, which would terminate the repetitive inspections.
- Installation of new stop brackets and a shim on each MLG stabilizer brace assembly.
- Rework of the electrical wiring harnesses in the nacelle area. The rework includes a detailed inspection of the conduit assembly for certain conditions and repair if any condition is found, replacement of damaged conduit, a measurement of the clearance between the stabilizer brace and electrical harness on both LH and RH nacelles to make sure there is 0.100 inch (2.54 millimeters (mm)) minimum clearance between the MLG stabilizer brace, and a check for damage on the A-frame structure and MLG stabilizer brace and repair if necessary.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–3986.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM and the FAA's response to each comment.

Request To Incorporate Revised Service Information and Provide Credit

Horizon Air asked that the following revised service information be included in the proposed AD for the applicable actions:

- Bombardier Service Bulletin 84–54–20, Revision C, dated March 5, 2015.
- Bombardier Service Bulletin 84–32–112, Revision C, dated April 2, 2015.
- Bombardier Service Bulletin 84–32–114, Revision B, dated February 3, 2015.
- Goodrich Service Bulletin 46400–32–102 R2, Revision 2, dated February 17, 2015.

Horizon Air pointed out that several of the service documents specified in the proposed AD have been updated, and asserted that the proposed AD should be revised to reference the updated service information. Horizon Air also asked that credit be given for actions done using the previous revisions of the revised service information.

We agree with the commenter's requests. No new work is specified by the revised service information; therefore, we have revised the "Related Service Information under 1 CFR part 51" section and the applicable requirements of this AD to refer to the updated service information. We have also revised paragraph (m) of this AD to provide credit for certain actions required by this AD, if those actions were performed before the effective date of this AD using earlier revisions of the service information identified previously.

Request To Omit Job Set-Up and Close Out Actions

Horizon Air asked that we not mandate the "Job Set-up" and "Close Out" sections of the Accomplishment Instructions of certain service information referenced in the NPRM. Horizon Air stated that these instructions do not directly correct the unsafe condition, but they do restrict an operator's ability to perform other maintenance in conjunction with the instructions that correct the unsafe condition. Horizon Air added that only the section in the Accomplishment Instructions that directly corrects the unsafe condition should be required.

We agree with the commenter's request to exclude the "Job Set-up" and "Close Out" sections of the Accomplishment Instructions of certain service information identified in this AD. Paragraphs (g), (h), (i), and (j) of this AD already identify the specific sections of the Accomplishment Instructions of the applicable service information for doing only the actions that directly address the unsafe condition; therefore, there are no changes necessary in those paragraphs in this regard. However, we have revised paragraph (k) of this AD to specify doing only the actions provided in "Part B—Procedure," of the Accomplishment Instructions of Bombardier Service Bulletin 84–32–114, Revision B, dated February 3, 2015, for the required actions specified in that paragraph.

Request To Clarify a Certain Reference

Horizon Air asked that we revise the paragraph references in paragraph (l)(1) of the proposed AD for clarity. Horizon Air stated that paragraph (l)(1) of the proposed AD refers to Bombardier ModSum IS4Q5450002, Revision B, dated June 22, 2012, as acceptable for compliance with the actions specified in paragraph (g) of the proposed AD. Horizon Air noted that for greater clarity, the reference should be to paragraph (g)(2) of the proposed AD.

We agree with the commenter's request for the reasons provided. We have changed paragraph (l)(1) of this AD to specify that installing specified fasteners on the MLG A-frame, in both LH and RH nacelles, in accordance with Bombardier ModSum IS4Q5450002, Revision B, dated June 22, 2012, is acceptable for compliance with the actions specified in paragraph (g)(2) of this AD.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this AD with the changes described previously and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

We also determined that these changes will not increase the economic burden on any operator or increase the scope of this AD.

Related Service Information Under 1 CFR Part 51

Bombardier has issued the following service information.

- ModSum IS4Q2400028, Revision B, dated December 11, 2012; and ModSum IS4Q2400029, Revision A, dated July 6, 2012. These modsums describe procedures for rerouting certain electrical harnesses and installing grommets.
- ModSum IS4Q5450002, Revision B, dated June 22, 2012. This modsum describes procedures for installing specified fasteners on the MLG A-frame, in both the LH and RH nacelles.
- ModSum IS4Q5450003, Revision C, dated November 29, 2012. This modsum describes procedures for trimming the horizontal and vertical stiffeners on the MLG A frame in both the LH and RH nacelles.
- Service Bulletin 84–32–112, Revision C, dated April 2, 2015. This service information describes procedures for incorporating Bombardier ModSum 4–902416 by installing new stop brackets and new stop shims for all MLG stabilizer brace assemblies.
- Service Bulletin 84–32–114, Revision B, dated February 3, 2015. This service information describes procedures for rework of the electrical wiring harnesses in the nacelle area. The rework includes a detailed inspection of the conduit assembly for certain conditions, and repair, replacement of damaged conduit, a measurement of the clearance to make sure there is 0.100 inch (2.54 mm) minimum clearance between the MLG stabilizer brace, and a check for damage on the A-frame structure and MLG stabilizer brace and repair.
- Service Bulletin 84–54–19, dated April 18, 2013. This service information describes procedures for detailed inspections of the nacelle A-frame structure for insufficient fillet radius, an eddy current or fluorescent dye penetrant inspection for cracking of affected structure, and rework or repair.
- Service Bulletin 84–54–20, Revision C, dated March 5, 2015. This service information describes procedures for detailed inspections of the nacelle A-frame structure and the MLG stabilizer brace for insufficient clearance and damage, and repair. This service information also describes procedures for rework of the nacelle A-frame structure, including a measurement of the clearance between the A-frame structure and MLG stabilizer brace assembly, and a fluorescent dye penetrant inspection or high frequency eddy current inspection for cracking and repair, which would end the inspections.
- Service Bulletin 84–54–21, dated May 9, 2013. This service information describes procedures for rework of the LH side and RH side nacelle A-frame structure, including a measurement of the clearance between the fasteners/A-frame structure and MLG stabilizer brace assembly and to make sure no fouling condition exists, and repair.

Goodrich has issued the following service information.

• Service Bulletin 46400–32–102 R2, Revision 2, dated February 17, 2015. This service information describes procedures for installing new stop brackets and new stop shims for all MLG stabilizer brace assemblies.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 80 airplanes of U.S. registry.

We also estimate that it takes up to 50 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost $8,452 per product. Based on these figures, we estimate the cost of this AD on U.S. operators to be up to $1,016,160, or $12,702 per product.

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this AD.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska; and

4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2016–16–15 Bombardier, Inc.: Amendment 39–18613; Docket No. FAA–2015–3986; Directorate Identifier 2015–NM–057–AD.

(a) Effective Date

This AD is effective September 23, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc. Model DHC–8–400, –401, and –402 airplanes, certificated in any category, serial numbers (S/Ns) 4001 through 4431 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 32, Landing Gear.

(e) Reason

This AD was prompted by reports of chafing damage due to insufficient clearance on the main landing gear (MLG) stabilizer brace, the nacelle A-frame structure, and the adjacent electrical wiring harnesses. An insufficient fillet radius might also exist on certain airplanes. We are issuing this AD to detect and correct chafing damage and subsequent premature cracking and fracture of the nacelle A-frame structure, which could result in failure of the MLG stabilizer brace and loss of the MLG down-lock indication, which could adversely affect the safe landing of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Inspection, Corrective Actions, and Rework

For airplanes having S/Ns 4001 through 4055 inclusive: Do the actions required by paragraphs (g)(1) and (g)(2) of this AD.

(1) Within 600 flight hours or 100 days after the effective date of this AD, whichever occurs first: Do a detailed inspection of the left-hand (LH) side and right-hand (RH) side nacelle A-frame structure for insufficient fillet radius, in accordance with "Part A—Inspection" of the Accomplishment Instructions of Bombardier Service Bulletin 84–54–19, dated April 18, 2013. If an insufficient fillet radius exists, before further flight, do an eddy current or fluorescent dye penetrant inspection for cracking, in accordance with "Part A—Inspection" of the Accomplishment Instructions of Bombardier Service Bulletin 84–54–19, dated April 18, 2013.

(i) If any cracking is found: Before further flight, repair using a method approved by the Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO).

(ii) If no cracking is found: Before further flight, rework the structure, in accordance with "Part B—Rectification" of the Accomplishment Instructions of Bombardier Service Bulletin 84–54–19, dated April 18, 2013.

(2) Within 6,000 flight hours or 36 months after the effective date of this AD, whichever occurs first: Rework the LH side and RH side nacelle A-frame structure, including doing a measurement of the clearance between the fasteners/A-frame structure and MLG stabilizer brace assembly and making sure no fouling condition exists, in accordance with paragraph 3.B., "Procedure," of the Accomplishment Instructions of Bombardier Service Bulletin 84–54–21, dated May 9, 2013. If the clearance is found to be less than 0.100 inch (2.54 millimeters (mm)) between the fasteners/A-frame structure and MLG stabilizer brace assembly after the rework is done, or a fouling condition exists during the extension of the MLG after rework is done, before further flight, repair using a method approved by the Manager, New York ACO, ANE–170, FAA; or TCCA; or Bombardier, Inc.'s TCCA DAO.

(h) Repetitive Inspections and Corrective Actions

For airplanes having S/Ns 4056 through 4426 inclusive: Within 600 flight hours or 100 days after the effective date of this AD, whichever occurs first, do a detailed inspection of the LH side and RH side nacelle A-frame structure and upper surface of the MLG stabilizer brace for insufficient clearance and damage (*e.g.*, cracking), in accordance with "Part A—Inspection" of the Accomplishment Instructions of Bombardier Service Bulletin 84–54–20, Revision C, dated March 5, 2015. If no damage is found and clearance is sufficient: Repeat the inspection thereafter at intervals not to exceed 600 flight hours until the terminating action required by paragraph (i) of this AD has been done.

(1) If a clearance less than 0.100 inch (2.54 mm) exists between the A-frame structure

and the MLG stabilizer brace assembly in the retracted position, after the rework is done, before further flight, repair using a method approved by the Manager, New York ACO, ANE–170, FAA; or TCCA; or Bombardier, Inc.'s TCCA DAO.

(2) If any damage is found: Before further flight, repair using a method approved by the Manager, New York ACO, ANE–170, FAA; or TCCA; or Bombardier, Inc.'s TCCA DAO.

(i) Terminating Action for Certain Airplanes

For airplanes having S/Ns 4056 through 4426 inclusive: Within 6,000 flight hours or 36 months after the effective date of this AD, whichever occurs first, rework the LH side and RH side nacelle A-frame structure, including doing a measurement of the clearance between the A-frame structure and MLG stabilizer brace assembly and doing a fluorescent dye penetrant inspection or high frequency eddy current inspection for cracking, in accordance with "Part B—Rework" of the Accomplishment Instructions of Bombardier Service Bulletin 84–54–20, Revision C, dated March 5, 2015. Accomplishment of the actions required by this paragraph terminates the repetitive inspections required by paragraph (h) of this AD.

(1) If a clearance less than 0.100 inch (2.54 mm) exists between the A-frame structure and the MLG stabilizer brace assembly in the retracted position, after the rework is done, before further flight, repair using a method approved by the Manager, New York ACO, ANE–170, FAA; or TCCA; or Bombardier, Inc.'s TCCA DAO.

(2) If any cracking is found: Before further flight, repair using a method approved by the Manager, New York ACO, ANE–170, FAA; or TCCA; or Bombardier, Inc.'s TCCA DAO.

(j) Modification of MLG Stabilizer Brace Assembly

For airplanes having S/Ns 4001 through 4431 inclusive with a MLG stabilizer brace assembly having part number (P/N) 46400–27 installed: Within 6,000 flight hours or 36 months after the effective date of this AD, whichever occurs first, incorporate Bombardier ModSum 4–902416 by installing new stop brackets and a new shim on each MLG stabilizer brace assembly, in accordance with paragraph 3.B., "Procedure," of the Accomplishment Instructions of Bombardier Service Bulletin 84–32–112, Revision C, dated April 2, 2015; and Goodrich Service Bulletin 46400–32–102 R2, Revision 2, dated February 17, 2015.

(k) Rework of the Electrical Wiring Harnesses

For airplanes having S/Ns 4001 through 4411 inclusive: Within 6,000 flight hours or 36 months after the effective date of this AD, whichever occurs first, rework the LH and RH sides of the electrical wiring harnesses in the nacelle area adjacent to the A-frame structure, including doing the actions specified in paragraphs (k)(1) through (k)(4) of this AD, in accordance with "Part B—Procedure" of the Accomplishment Instructions of Bombardier Service Bulletin 84–32–114, Revision B, dated February 3, 2015. If any damage is found on the A-frame structure or MLG stabilizer brace, before further flight, repair using a method approved by the Manager, New York ACO, ANE–170, FAA; or TCCA; or Bombardier, Inc.'s TCCA DAO.

(1) Doing a detailed inspection of the conduit assembly for the conditions specified in Bombardier Service Bulletin 84–32–114, Revision B, dated February 3, 2015, and, before further flight, repairing if any condition is found.

(2) Replacing damaged conduit.

(3) Measuring the clearance between the stabilizer brace and electrical harness on both LH and RH nacelles to make sure there is 0.100 inch (2.54 mm) minimum clearance between the MLG stabilizer brace.

(4) Checking for damage on the A-frame structure and MLG stabilizer brace.

(l) Optional Installations

(1) Installing specified fasteners on the MLG A-frame, in both LH and RH nacelles, in accordance with Bombardier ModSum IS4Q5450002, Revision B, dated June 22, 2012, is acceptable for compliance with the actions specified in paragraph (g)(2) of this AD, provided the actions specified in Bombardier ModSum IS4Q5450002 are done within the applicable compliance time specified in paragraph (g) of this AD, except where ModSum IS4Q5450002, Revision B, dated June 22, 2012, specifies to contact Bombardier for reduced clearances, before further flight, repair using a method approved by the Manager, New York ACO, ANE–170, FAA; or TCCA; or Bombardier, Inc.'s TCCA DAO.

(2) Trimming the horizontal and vertical stiffeners on the MLG A-frame in both LH and RH nacelles, in accordance with Bombardier ModSum IS4Q5450003, Revision C, dated November 29, 2012, is acceptable for compliance with the actions specified in paragraph (i) of this AD, provided the actions specified in Bombardier ModSum IS4Q5450003 are done within the compliance time specified in paragraph (i) of this AD, except where ModSum IS4Q5450003, Revision C, released November 29, 2012, specifies to contact Bombardier for reduced clearances, before further flight, repair using a method approved by the Manager, New York ACO, ANE–170, FAA; or TCCA; or Bombardier, Inc.'s TCCA DAO.

(3) Rerouting certain electrical harnesses and installing grommets, in accordance with Bombardier ModSum IS4Q2400028, Revision B, dated December 11, 2012 (for S/Ns 4001 through 4098 inclusive); or Bombardier ModSum IS4Q2400029, Revision A, dated July 6, 2012 (for S/Ns 4090 through 4411 inclusive); is acceptable for compliance with the actions specified in paragraph (k) of this AD, provided the actions specified in the applicable modsum are done within the compliance time specified in paragraph (k) of this AD, except where Bombardier ModSum IS4Q2400028, Revision B, dated December 11, 2012; and Bombardier ModSum IS4Q2400029, Revision A, dated July 6, 2012; specify to contact Bombardier to report stabilizer brace or structural damaged findings, before further flight, repair using a method approved by the Manager, New York ACO, ANE–170, FAA; or TCCA; or Bombardier, Inc.'s TCCA DAO.

(m) Credit for Previous Actions

(1) This paragraph provides credit for actions required by paragraph (i) of this AD, if those actions were performed before the effective date of this AD using the applicable service information specified in paragraph (m)(1)(i), (m)(1)(ii), or (m)(1)(iii) of this AD. This service information is not incorporated by reference in this AD.

(i) Bombardier Service Bulletin 84–54–20, dated April 25, 2013.

(ii) Bombardier Service Bulletin 84–54–20, Revision A, dated April 9, 2014.

(iii) Bombardier Service Bulletin 84–54–20, Revision B, dated October 2, 2014.

(2) This paragraph provides credit for actions required by paragraph (j) of this AD, if those actions were performed before the effective date of this AD using the applicable service information specified in paragraph (m)(2)(i), (m)(2)(ii), (m)(2)(iii), or (m)(2)(iv) of this AD. This service information is not incorporated by reference in this AD.

(i) Bombardier Service Bulletin 84–32–112, dated December 20, 2012.

(ii) Bombardier Service Bulletin 84–32–112, Revision A, dated April 16, 2014.

(iii) Bombardier Service Bulletin 84–32–112, Revision B, dated September 12, 2014.

(iv) Goodrich Service Bulletin 46400–32–102 R1, Revision 1, dated June 24, 2013.

(3) This paragraph provides credit for actions required by paragraph (k) of this AD, if those actions were performed before the effective date of this AD using the applicable service information specified in paragraph (m)(3)(i) or (m)(3)(ii) of this AD. This service information is not incorporated by reference in this AD.

(i) Bombardier Service Bulletin 84–32–114, dated June 6, 2013.

(ii) Bombardier Service Bulletin 84–32–114, Revision A, dated September 18, 2013.

(n) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO, ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO, ANE–170, FAA; or TCCA; or Bombardier, Inc.'s TCCA DAO. If approved by the DAO, the approval must include the DAO-authorized signature.

(o) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2014–45, dated December 23, 2014, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–3986.

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (p)(3), (p)(4), and (p)(5) of this AD.

(p) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) Bombardier ModSum IS4Q2400028, Revision B, dated December 11, 2012. (This document has 33 pages; the first page of the modsum indicates that there are 32 pages.)

(ii) Bombardier ModSum IS4Q2400029, Revision A, dated July 6, 2012.

(iii) Bombardier ModSum IS4Q5450002, Revision B, dated June 22, 2012.

(iv) Bombardier ModSum IS4Q5450003, Revision C, dated November 29, 2012.

(v) Bombardier Service Bulletin 84–32–112, Revision C, dated April 2, 2015.

(vi) Bombardier Service Bulletin 84–32–114, Revision B, dated February 3, 2015.

(vii) Bombardier Service Bulletin 84–54–19, dated April 18, 2013.

(viii) Bombardier Service Bulletin 84–54–20, Revision C, dated March 5, 2015.

(ix) Bombardier Service Bulletin 84–54–21, dated May 9, 2013.

(x) Goodrich Service Bulletin 46400–32–102 R2, Revision 2, dated February 17, 2015.

(3) For Bombardier service information identified in this AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.com.*

(4) For Goodrich service information identified in this AD, contact Goodrich Corporation, Landing Gear, 1400 South Service Road, West Oakville, ON, Canada L6L 5Y7; phone: 905–825–1568; email: *jean.breed@goodrich.com;* Internet: *http://www.goodrich.com/TechPubs.*

(5) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(6) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on August 4, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–19480 Filed 8–18–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–4226; Directorate Identifier 2015–NM–095–AD; Amendment 39–18616; AD 2016–17–03]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 2003–25–07 for certain Airbus Model A319 and A320 series airplanes, and AD 2005–13–39 for certain Airbus Model A321 series airplanes. AD 2003–25–07 required a revision to the airplane flight manual (AFM) and replacement of both elevator aileron computers (ELACs) having L80 standards with new ELACs having L81 standards. AD 2005–13–39 required a revision to the AFM, replacement of existing ELACs with ELACs having L83 or L91 standards, as applicable; and a concurrent action. Since we issued AD 2003–25–07 and AD 2005–13–39, we have determined that new ELAC standards must be incorporated. The ELAC standards have been upgraded to version L97+, which implements enhanced angle-of-attack (AOA) monitoring to better detect AOA blockage, including multiple AOA blockages. This AD requires replacing existing ELACs with new ELACs having L97+ standards or revising the software in an existing ELAC to the L97+ standards, as applicable, which terminates the requirements of AD 2003–25–07 and AD 2005–13–39. This AD also expands the applicability to include all Airbus Model A318, A319, A320, and A321 series airplanes. We are issuing this AD to prevent inadvertent activation of the AOA protections. Inadvertent activation of the AOA protections could result in a continuous nose-down pitch rate that could result in reduced controllability of the airplane.

DATES: This AD is effective September 23, 2016.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of September 23, 2016.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of August 9, 2005 (70 FR 38580, July 5, 2005).

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of January 22, 2004 (68 FR 70431, December 18, 2003).

ADDRESSES: For service information identified in this final rule, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–4226.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–4226; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2003–25–07, Amendment 39–13390 (68 FR 70431, December 18, 2003) ("AD 2003–25–07"); and AD 2005–13–39, Amendment

39–14176 (70 FR 38580, July 5, 2005) ("AD 2005–13–39").

AD 2003–25–07 applied to certain Airbus Model A319 and A320 series airplanes, and AD 2005–13–39 applied to certain Airbus Model A321 series airplanes. The NPRM published in the **Federal Register** on March 17, 2016 (81 FR 14404). The NPRM was prompted by a determination that new ELAC standards must be incorporated. The ELAC standards have been upgraded to version L97+, which implements enhanced AOA monitoring to better detect AOA blockage, including multiple AOA blockages.

The NPRM proposed to require replacing existing ELACs with new ELACs having L97+ standards or revising the software in an existing ELAC to the L97+ standards, as applicable, which would terminate the requirements of AD 2003–25–07 and AD 2005–13–39. We are issuing this AD to prevent inadvertent activation of the AOA protections. Inadvertent activation of the AOA protections could result in a continuous nose-down pitch rate that could result in reduced controllability of the airplane.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2015–0088R1, including Appendix 01, dated June 2, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition for all Airbus Model A318, A319, A320, and A321 series airplanes. The MCAI states:

> The latest elevator aileron computer (ELAC) standard, L97+, implements enhanced Angle of Attack (AOA) monitoring in order to better detect cases of AOA blockage, including multiple AOA blockage.
>
> Two ELAC L97+ versions are currently available, Part Number (P/N) 3945129109 with data loading capability, and P/N 3945128215 without the data loading capability. Three existing [EASA] ADs requiring installation of earlier ELAC (software) have been identified and taken into account for cancellation by this new [EASA] AD.
>
> For the reasons described above, EASA issued AD 2015–0088, cancelling DGAC [Direction Générale de l'Aviation Civile] France AD 95–203–072 (no requirements retained) [which corresponds to FAA AD 98–09–18, Amendment 39–10499 (63 FR 23374, April 29, 1998)], and partially retaining the requirements of DGAC France AD 2001–508 [which corresponds to FAA AD 2003–25–07], and [DGAC France] AD F–2004–147 (EASA approval ref. 2004–8601) [which corresponds to FAA AD 2005–13–39], which were superseded, and to require replacement of all ELAC with ELAC L97+ standard.
>
> Since that [EASA] AD was issued, some errors were detected in Appendix 1 of the [EASA] AD, and one P/N ELAC was inadvertently omitted. This [EASA] AD revises EASA AD 2015–0088 to correct these errors and to add clarification to paragraph (7) [of the EASA AD].

The required actions include either replacing existing ELACs with new ELACs having L97+ standards uploaded, or revising the software in the existing ELACs to L97+ standards. This AD also expands the applicability to include all Airbus Model A318, A319, A320, and A321 series airplanes. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–4226.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comment received. The commenter supported the NPRM.

Conclusion

We reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting this AD as proposed except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

Airbus has issued Service Bulletin A320–27–1243, including Appendix 01, dated March 17, 2015. This service information describes procedures for replacing the existing ELACs with new ELACs having L97+ standards, and modifying existing ELACs into units with L97+ standards.

Airbus has also issued Service Bulletin A320–27–1244, dated March 5, 2015. This service information describes procedures for modification of an airplane by replacing any existing ELAC unit with an ELAC 97+ unit having P/N 3945128215.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

We estimate that this AD affects 940 airplanes of U.S. registry.

The actions required by AD 2003–25–07 and retained in this AD take about 1 work-hour per product, at an average labor rate of $85 per work-hour. Based on these figures, the estimated cost of the actions that were required by AD 2003–25–07 is $85 per product.

The actions required by AD 2005–13–39 and retained in this AD take about 1 work-hour per product, at an average labor rate of $85 per work-hour. Based on these figures, the estimated cost of the actions that were required by AD 2005–13–39 is $85 per product.

We also estimate that it will take about 3 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $7,230 per product. Based on these figures, we estimate the cost of this AD on U.S. operators to be $7,035,900, or $7,485 per product.

According to the parts manufacturer, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska; and

4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2003–25–07, Amendment 39–13390 (68 FR 70431, December 18, 2003); and AD 2005–13–39, Amendment 39–14176 (70 FR 38580, July 5, 2005); and

■ b. Adding the following new AD:

2016–17–03 Airbus: Docket No. FAA–2016–4226; Directorate Identifier 2015–NM–095–AD.

(a) Effective Date

This AD is effective September 23, 2016.

(b) Affected ADs

This AD replaces the ADs identified in paragraphs (b)(1) and (b)(2) of this AD.

(1) AD 2003–25–07, Amendment 39–13390 (68 FR 70431, December 18, 2003) ("AD 2003–25–07").

(2) AD 2005–13–39, Amendment 39–14176 (70 FR 38580, July 5, 2005) ("AD 2005–13–39").

(c) Applicability

This AD applies to the airplanes identified in paragraphs (c)(1) through (c)(4) of this AD, certificated in any category, all manufacturer serial numbers.

(1) Airbus Model A318–111, –112, –121, and –122 airplanes.

(2) Airbus Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes.

(3) Airbus Model A320–211, –212, –214, –231, –232, and –233 airplanes.

(4) Airbus Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight Controls.

(e) Reason

This AD was prompted by a determination that new elevator aileron computer (ELAC) standards must be incorporated. The ELAC standards have been upgraded to version L97+, which implements enhanced angle-of-attack (AOA) monitoring to better detect AOA blockage, including multiple AOA blockages. We are issuing this AD to prevent inadvertent activation of the AOA protections. Inadvertent activation of the AOA protections could result in a continuous nose-down pitch rate that could result in reduced controllability of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Retained Replacement of ELAC L80 Units With L81 Units, With No Changes

For Model A319 and A320 series airplanes, equipped with ELAC L80 standards having part numbers listed in Airbus Service Bulletin A320–27–1135, dated June 29, 2001: This paragraph restates the requirements of paragraph (b) of AD 2003–25–07, with no changes. Within 1 year after January 22, 2004 (the effective date of AD 2003–25–07): Replace both ELACs having L80 standards with new ELACs having L81 standards, by doing all the actions per paragraphs A., B., C., and D. of the Accomplishment Instructions of Airbus Service Bulletin A320–27–1135, dated June 29, 2001.

(h) Retained Installation of ELAC L83 or L91 Software, With No Changes

For Model A321–111, –112, –131, –211, and –231 airplanes, except those with Airbus Modification 34043 installed in production: This paragraph restates the requirements of paragraph (g) of AD 2005–13–39, with no changes. Within 16 months after August 9, 2005 (the effective date of AD 2005–13–39): Replace existing ELACs with ELACs having L83 standards, by accomplishing all of the actions specified in the Accomplishment Instructions of Airbus Service Bulletin A320–27–1151, dated March 9, 2004, including Appendix 01, dated March 9, 2004; or with ELACs having L91 standards, by accomplishing all of the actions specified in the Accomplishment Instructions of Airbus Service Bulletin A320–27–1152, dated June 4, 2004, including Appendix 01, dated June 4, 2004; as applicable.

(i) New Requirement of This AD: ELAC Replacement or Modification

At the applicable times specified in table 1 to paragraphs (i) and (m)(3)(ii) of this AD: Replace each ELAC unit with an ELAC L97+ unit having part number (P/N) 3945129100 and software having P/N 3945129109, or modify existing ELAC units into ELAC L97+ units having P/N 3945129100 with L97+ operational software P/N 3945129109 loaded, as applicable, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–27–1243, including Appendix 01, dated March 17, 2015. Accomplishing this replacement terminates the actions required by paragraphs (g) and (h) of this AD.

TABLE 1 TO PARAGRAPHS (i) AND (m)(3)(ii) OF THIS AD—COMPLIANCE TIMES

Airbus airplane models	Compliance time (after the effective date of this AD)
Model A318 series airplanes with UTAS (formerly Goodrich) AOA P/N 0861ED or P/N 0861ED2 installed in all 3 positions (captain, first officer, and standby).	Within 5 months.
Model A319 series airplanes with UTAS (formerly Goodrich) AOA P/N 0861ED or P/N 0861ED2 installed in all 3 positions (captain, first officer, and standby).	Within 10 months.
Model A320 series airplanes with UTAS (formerly Goodrich) AOA P/N 0861ED or P/N 0861ED2 installed in all 3 positions (captain, first officer, and standby).	Within 10 months.
Model A321 series airplanes with UTAS (formerly Goodrich) AOA P/N 0861ED or P/N 0861ED2 installed in all 3 positions (captain, first officer, and standby).	Within 5 months.
Model A318, A319, A320, and A321 series airplanes that do not have UTAS (formerly Goodrich) AOA P/N 0861ED or P/N 0861ED2 installed in all 3 positions (captain, first officer, and standby).	Within 25 months.

(j) Optional Method of Compliance

Modification of an airplane by replacing any existing ELAC unit with an ELAC 97+ unit having P/N 3945128215, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–27–1244, dated March 5, 2015, is an acceptable method of compliance for the requirements of paragraph (i) of this AD, for only that modified airplane. Accomplishing this modification terminates the actions required by paragraphs (g) and (h) of this AD for that modified airplane.

Note 1 to paragraph (j) of this AD: ELAC unit P/N 3945128215 is not data-loadable,

but it is fully interchangeable and mixable with data-loadable ELAC 97+ unit P/N 3945129100 with software P/N 3945129109 loaded.

(k) Airplanes Excluded From Requirements of Paragraphs (g), (h), and (i), and From the Actions in Paragraph (j) of This AD

Airplanes on which Airbus Modification 156546 (installation of ELAC L97+ with software P/N 3945129109) was installed in production are excluded from the requirements of paragraphs (g), (h), and (i) of this AD, and from the actions specified in paragraph (j) of this AD, provided it can be determined that no ELAC having a part number identified in table 2 to paragraphs (k) and (m) of this AD has been installed on that airplane since the date of issuance of the original airworthiness certificate or the date of issuance of the original export certificate of airworthiness.

TABLE 2 TO PARAGRAPHS (k) AND (m) OF THIS AD—PROHIBITED ELAC PART NUMBERS

Part No.	Designation	FIN
3945122202	ELAC A320–111 Type Def.	2 CE 1/2
3945122203	ELAC L50C	2 CE 1/2
3945122303	ELAC L50C	2 CE 1/2
3945122304	ELAC L60	2 CE 1/2
3945122305	ELAC L61B	2 CE 1/2
3945122306	ELAC L61F	2 CE 1/2
3945122307	ELAC L62C	2 CE 1/2
C12370AA01	ELAC L68C	2 CE 1/2
3945122501	ELAC L69	2 CE 1/2
3945122502	ELAC L69J	2 CE 1/2
3945122503	ELAC L77	2 CE 1/2
3945122504	ELAC L78	2 CE 1/2
3945122505	ELAC A L80	2 CE 1/2
3945123505	ELAC A' L80	2 CE 1/2
3945128101	ELAC B L80	2 CE 1/2
3945122506	ELAC A L81	2 CE 1/2
3945123506	ELAC A' L81	2 CE 1/2
3945128102	ELAC B L81	2 CE 1/2
3945122507	ELAC A L82	2 CE 1/2
3945123507	ELAC A' L82	2 CE 1/2
3945128103	ELAC B L82	2 CE 1/2
3945122608	ELAC A L83	2 CE 1/2
3945123608	ELAC A' L83	2 CE 1/2
3945122609	ELAC A L84	2 CE 1/2
3945123609	ELAC A' L84	2 CE 1/2
3945128204	ELAC B L90L	2 CE 1/2
3945128205	ELAC B L90N	2 CE 1/2
3945128206	ELAC B L91	2 CE 1/2
3945129101	ELAC B L91 data loadable	2 CE 1/2 SW1
3945128207	ELAC B L92	2 CE 1/2
3945128208	ELAC B L92L	2 CE 1/2
3945128209	ELAC B L93	2 CE 1/2
3945129103	ELAC B L93 data loadable	2 CE 1/2 SW1
3945128210	ELAC B L94	2 CE 1/2
3945129104	ELAC B L94 data loadable	2 CE 1/2 SW1
3945128212	ELAC B L96	2 CE 1/2
3945129106	ELAC B L96 data loadable	2 CE 1/2 SW1
3945129107	ELAC B L96 H–A data loadable	2 CE 1/2 SW1
3945128214	ELAC B L97	2 CE 1/2
3945129108	ELAC B L97 data loadable	2 CE 1/2 SW1

(l) Later-Approved Parts

Installation of an ELAC version (part number) approved after the effective date of this AD is an approved method of compliance with the requirements of paragraph (i) of this AD, and the actions specified in paragraph (j) of this AD, provided the requirements specified in paragraphs (l)(1) and (l)(2) of this AD are met.

(1) The version (part number) must be approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA).

(2) The installation must be done using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA; or Airbus's EASA DOA.

(m) Parts Installation Limitation

As of the applicable time specified in paragraph (m)(1) or (m)(2) of this AD, do not install on any airplane an ELAC unit having a part number identified in table 2 to paragraphs (k) and (m) of this AD, except as specified in paragraph (m)(3) of this AD.

(1) For an airplane that, as of the effective date of this AD, has any ELAC unit installed having a part number identified in table 2 to paragraphs (k) and (m) of this AD: After modification of that airplane as required by paragraph (i) of this AD, or as specified in paragraph (j) of this AD.

(2) For an airplane that, as of the effective date of this AD, does not have any ELAC unit installed having a part number identified in table 2 to paragraphs (k) and (m) of this AD: As of the effective date of this AD.

(3) As of the effective date of this AD, a data-loadable ELAC B unit having a part number identified in table 2 to paragraphs (k) and (m) of this AD can be installed on an airplane provided that L97+ software P/N 3945129109 is uploaded at the applicable time specified in paragraph (m)(3)(i) or (m)(3)(ii) of this AD.

(i) For all airplanes except those identified in paragraph (m)(3)(ii) of this AD: Before further flight after the ELAC B unit installation.

(ii) For airplanes that have not been modified as required by paragraph (i) of this AD: Within the applicable compliance time

specified in table 1 to paragraphs (i) and (m)(3)(ii) of this AD.

(n) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch send it to ATTN: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.*

(i) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(ii) AMOCs approved previously for AD 2003–25–07 are approved as AMOCs for the corresponding provisions of paragraph (g) of this AD.

(iii) AMOCs approved previously for AD 2005–13–39 are approved as AMOCs for the corresponding provisions of paragraph (h) of this AD.

(2) *Contacting the Manufacturer:* As of the effective date of this AD, for any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA; or Airbus's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* If any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(o) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2015–0088R1, including Appendix 01, dated June 2, 2015, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–4226.

(p) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(3) The following service information was approved for IBR on September 23, 2016.

(i) Airbus Service Bulletin A320–27–1243, including Appendix 01, dated March 17, 2015.

(ii) Airbus Service Bulletin A320–27–1244, dated March 5, 2015.

(4) The following service information was approved for IBR on August 9, 2005 (70 FR 38580, July 5, 2005).

(i) Airbus Service Bulletin A320–27–1151, including Appendix 01, dated March 9, 2004.

(ii) Airbus Service Bulletin A320–27–1152, including Appendix 01, dated June 4, 2004.

(5) The following service information was approved for IBR on January 22, 2004 (68 FR 70431, December 18, 2003).

(i) Airbus Service Bulletin A320–27–1135, dated June 29, 2001.

(ii) Reserved.

(6) For service information identified in this AD, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.*

(7) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(8) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on August 8, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–19486 Filed 8–18–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–8463; Directorate Identifier 2014–NM–226–AD; Amendment 39–18612; AD 2016–16–14]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 2013–20–11, for all Airbus Model A318, A319, A320, and A321 series airplanes. AD 2013–20–11 required modifying the passenger emergency oxygen container assembly. This new AD expands the affected group of oxygen containers to include those labeled "DAe Systems." This AD was prompted by a determination that the unsafe condition also affects oxygen containers labeled "DAe Systems." We are issuing this AD to prevent a high temperature oxygen generator and mask from falling down and possibly resulting in an ignition source in the passenger compartment, injury to passengers, and reduced availability of supplemental oxygen.

DATES: This AD is effective September 23, 2016.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of December 2, 2013 (78 FR 64162, October 28, 2013).

ADDRESSES: For Airbus service information identified in this final rule, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone: +33 5 61 93 36 96; fax: +33 5 61 93 44 51; email: *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.*

You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–8463.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–8463; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116,

Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2013–20–11, Amendment 39–17617 (78 FR 64162, October 28, 2013) ("AD 2013–20–11"). AD 2013–20–11 applied to all Model A318, A319, A320, and A321 series airplanes. The NPRM published in the **Federal Register** on January 20, 2016 (81 FR 3061) ("the NPRM"). The NPRM was prompted by a determination that the unsafe condition also affects oxygen containers labeled "DAe Systems." The NPRM proposed to continue to require modifying the passenger emergency oxygen container assembly. The NPRM also proposed to expand the affected group of oxygen containers to include those labeled "DAe Systems." We are issuing this AD to prevent a high temperature oxygen generator and mask from falling down and possibly resulting in an ignition source in the passenger compartment, injury to passengers, and reduced availability of supplemental oxygen.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2014–0207, dated September 16, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition. The MCAI states:

> It was determined that oxygen generators, installed on a specific batch of Type 1 (22 min) passenger emergency oxygen container assemblies, may become detached by extreme pulling of the mask tube at the end of oxygen supply. Investigations revealed that such detachment can be caused by the increase in temperature towards the end of the generator operation, which may weaken the plastic housing in the attachment area of the bracket.
>
> This condition, if not corrected, could make the rivets slip through the plastic housing, causing a 'hot' oxygen generator and mask to fall down, possibly resulting in injury to passengers.
>
> To address this potential unsafe condition, EASA issued AD 2012–0055 (later revised) [which corresponds to FAA AD 2013–20–11, Amendment 39–17617 (78 FR 64162, October 28, 2013)] to require modification of the affected oxygen container assemblies. That [EASA] AD also prohibited installation of unmodified containers on any aeroplane as replacement parts.
>
> Since that [EASA] AD was issued, it was found that the affected containers have not only been marked with company name B/E Aerospace, as was specified, but also, for a brief period, with the former company name DAe Systems.
>
> For the reason described above, this [EASA] AD retains the requirements of EASA AD 2012–0055R1, which is superseded, and expands the affected group of containers to include those that have the name "DAe Systems" on the identification plate.
>
> This [EASA] AD also clearly separates the serial number (s/n) groups of containers into those manufactured by B/E Aerospace and those manufactured by DAe Systems, for which additional compliance time is provided.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–8463.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting this AD as proposed except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Costs of Compliance

We estimate that this AD affects 4 airplanes of U.S. registry.

The actions required by AD 2013–20–11 and retained in this AD take about 2 work-hours per product, at an average labor rate of $85 per work-hour. Based on these figures, the estimated cost of the actions that are required by AD 2013–20–11 is $170 per product.

We also estimate that it would take about 2 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD on U.S. operators to be $680, or $170 per product.

According to the manufacturer, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all available costs in our cost estimate.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2013–20–11, Amendment 39–17617 (78

FR 64162, October 28, 2013), and adding the following new AD:

2016–16–14 Airbus: Amendment 39–18612; Docket No. FAA–2015–8463; Directorate Identifier 2014–NM–226–AD.

(a) Effective Date

This AD is effective September 23, 2016.

(b) Affected ADs

This AD replaces AD 2013–20–11, Amendment 39–17617 (78 FR 64162, October 28, 2013) ("AD 2013–20–11").

(c) Applicability

This AD applies to the Airbus airplanes, certificated in any category, specified in paragraphs (c)(1) through (c)(4) of this AD, all manufacturer serial numbers.

(1) Airbus Model A318–111, –112, –121, and –122 airplanes.

(2) Airbus Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes.

(3) Airbus Model A320–211, –212, –214, –231, –232, and –233 airplanes.

(4) Airbus Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 35, Oxygen.

(e) Reason

This AD was prompted by a determination that oxygen generators installed on a certain batch of passenger emergency oxygen container assemblies might become detached by extreme pulling of the mask tube at the end of the oxygen supply causing a high temperature oxygen generator and mask to fall down. This AD was also prompted by a determination that the unsafe condition affects oxygen containers labeled "DAe Systems." We are issuing this AD to prevent a high temperature oxygen generator and mask from falling down and possibly resulting in an ignition source in the passenger compartment, injury to passengers, and reduced availability of supplemental oxygen.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Retained Oxygen Container Assembly Modification, With Service Information Referenced in a New Paragraph

This paragraph restates the requirements of paragraph (g) of AD 2013–20–11 with service information referenced in a new paragraph. Except as specified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD, within 5,000 flight cycles, or 7,500 flight hours, or 24 months, whichever occurs first, after December 2, 2013 (the effective date of AD 2013–20–11): Modify each type 1 (22 minute) passenger emergency oxygen container assembly installed on an airplane, having a part number (P/N) listed in paragraph (g)(1)(i) of this AD and a serial number (S/N) listed in paragraph (g)(1)(ii) of this AD, in accordance with the Accomplishment Instructions of the applicable Airbus service information specified in paragraphs (k)(1) through (k)(7) of this AD.

(1) An oxygen container that has a part number listed in paragraph (g)(1)(i) of this AD and a serial number as listed in paragraph (g)(1)(ii) of this AD, and that has been modified using the instructions of B/E Aerospace Service Bulletin 1XC22–0100–35–006, is compliant with the modification requirement of paragraph (g) of this AD.

(i) Oxygen container part numbers listed in paragraphs (g)(1)(i)(A) through (g)(1)(i)(D) of this AD, where xxxxx stands for an alphanumerical value.

(A) 13C22Lxxxxx0100.

(B) 13C22Rxxxxx0100.

(C) 14C22Lxxxxx0100.

(D) 14C22Rxxxxx0100.

(ii) Oxygen container serial numbers listed in paragraphs (g)(1)(ii)(A) through (g)(1)(ii)(H) of this AD.

(A) ARBC–0182 to ARBC–9999, inclusive.

(B) ARBD–0000 to ARBD–9999, inclusive.

(C) ARBE–0000 to ARBE–9999, inclusive.

(D) BEBF–0000 to BEBF–9999, inclusive.

(E) BEBH–0000 to BEBH–9999, inclusive.

(F) BEBK–0000 to BEBK–9999, inclusive.

(G) BEBL–0000 to BEBL–9999, inclusive.

(H) BEBM–0000 to BEBM–0454, inclusive.

(2) Airplanes on which Airbus Modification 150704 has not been embodied in production are excluded from the requirements of paragraph (g) of this AD, unless an oxygen container with a part number listed in paragraph (g)(1)(i) of this AD and a serial number listed in paragraph (g)(1)(ii) of this AD is installed.

(3) Airplanes on which Airbus Modification 150704 has been embodied in production and that are not listed by model and manufacturer serial number in the applicable Airbus service information specified in paragraphs (k)(1) through (k)(7) of this AD; are excluded from the requirements of paragraph (g) of this AD, unless an oxygen container with a part number listed in paragraph (g)(1)(i) of this AD and a serial number listed in paragraph (g)(1)(ii) of this AD is installed.

Note 1 to paragraph (g) of this AD: The oxygen container assemblies listed in paragraph (g)(1)(i) of this AD and paragraph (g)(1)(ii) of this AD are B/E Aerospace products with the mark "B/E AEROSPACE" on the identification plate.

(h) Retained Parts Installation Limitation, With Service Information Referenced in a New Paragraph

This paragraph restates the requirements of paragraph (h) of AD 2013–20–11 with service information referenced in a new paragraph. As of December 2, 2013 (the effective date of AD 2013–20–11), no person may install, on any airplane, an oxygen container with a part number listed in paragraph (g)(1)(i) of this AD, and serial number listed in paragraph (g)(1)(ii) of this AD, unless the oxygen container has been modified according to the applicable Airbus service information specified in paragraphs (k)(1) through (k)(7) of this AD.

(i) New Requirement of This AD: Modification of Additional Oxygen Containers

At the applicable times specified in paragraphs (i)(1) and (i)(2) of this AD: Modify each type 1 (22 minute) passenger emergency oxygen container assembly installed on an airplane, having a part number and a serial number listed in paragraph (j) of this AD, in accordance with the Accomplishment Instructions of the applicable Airbus service information specified in paragraphs (k)(1) through (k)(7) of this AD; except as specified in paragraph (l) of this AD.

(1) For units with "B/E AEROSPACE" on the identification plate and having a part number and a serial number listed in paragraph (j)(1) of this AD: Within 5,000 flight cycles, or 7,500 flight hours, or 24 months, whichever occurs first after the effective date of this AD.

(2) For units with "DAe Systems" on the identification plate and having a part number and a serial number listed in paragraph (j)(2) of this AD: Within 2,500 flight cycles, or 3,750 flight hours, or 12 months, whichever occurs first after the effective date of this AD.

(j) New Part Numbers and Serial Numbers for the Parts Affected by Paragraph (i) of This AD

Affected parts for the actions required by paragraph (i) of this AD are identified in paragraphs (j)(1) and (j)(2) of this AD.

(1) For oxygen containers with "B/E AEROSPACE" on the identification plate: Units having a part number identified in paragraphs (j)(1)(i) through (j)(1)(iv) of this AD, where part number "xxxxx" stands for any alphanumerical value, and a serial number of BEBM–0455 to BEBM–9999, inclusive.

(i) 13C22Lxxxxx0100.

(ii) 13C22Rxxxxx0100.

(iii) 14C22Lxxxxx0100.

(iv) 14C22Rxxxxx0100.

(2) For oxygen containers with "DAe Systems" on the identification plate: Units having a part number identified in paragraphs (j)(1)(i) through (j)(1)(iv) of this AD, where part number "xxxxx" stands for any alphanumerical value, and a serial number identified in paragraphs (j)(2)(i) through (j)(2)(iv) of this AD.

(i) ARBC–0000 to ARBC–9999 inclusive.

(ii) ARBD–0000 to ARBD–9999 inclusive.

(iii) ARBE–0000 to BEBE–9999 inclusive.

(iv) BEBE–0000 to BEBE–9999 inclusive.

(k) Service Information for the Requirements of Paragraphs (g), (h), (i), and (m) of This AD

Accomplish the requirements specified in paragraphs (g), (h), (i), and (m) of this AD in accordance with the Accomplishment Instructions of the applicable Airbus service information identified in paragraphs (k)(1) through (k)(7) of this AD.

(1) Airbus Service Bulletin A320–35–1049, dated June 15, 2011.

(2) Airbus Service Bulletin A320–35–1053, dated June 15, 2011.

(3) Airbus Service Bulletin A320–35–1054, dated June 15, 2011.

(4) Airbus Service Bulletin A320–35–1055, dated June 15, 2011.

(5) Airbus Service Bulletin A320–35–1056, dated June 15, 2011.

(6) Airbus Service Bulletin A320–35–1057, dated June 15, 2011.

(7) Airbus Service Bulletin A320–35–1058, dated June 15, 2011.

(l) New Exceptions to the Requirements of Paragraph (i) of This AD

(1) An oxygen container that has a part number and a serial number listed in paragraph (j) of this AD, and that has been modified as specified in B/E Aerospace Service Bulletin 1XC22–0100–35–006, is compliant with the modification requirement of paragraph (i) of this AD.

(2) Airplanes on which Airbus Modification 150704 has not been embodied in production are excluded from the requirements of paragraph (i) of this AD, unless an oxygen container with a part number and a serial number listed in paragraph (j) of this AD is installed.

(3) Airplanes on which Airbus Modification 150704 has been embodied in production and that are not listed by model and manufacturer serial number in the Airbus service information specified in paragraphs (k)(1) through (k)(7) of this AD, as applicable, are excluded from the requirements of paragraph (i) of this AD, unless an oxygen container with a part and a serial number listed in paragraph (j) of this AD is installed.

(4) Airplanes on which the design of the passenger oxygen container is not Design A, as defined in figure 1 to paragraph (l)(4) of this AD, are excluded from the requirements of paragraph (i) of this AD for that passenger oxygen container.

Note 2 to paragraph (l)(4) of this AD: For "Design A," the placard on the passenger oxygen container test button is as described in "Picture A" in figure 1 to paragraph (l)(4) of this AD. The mask configuration ("ZZ" in "Picture A") is a number, and the test button is as shown in "Picture B."

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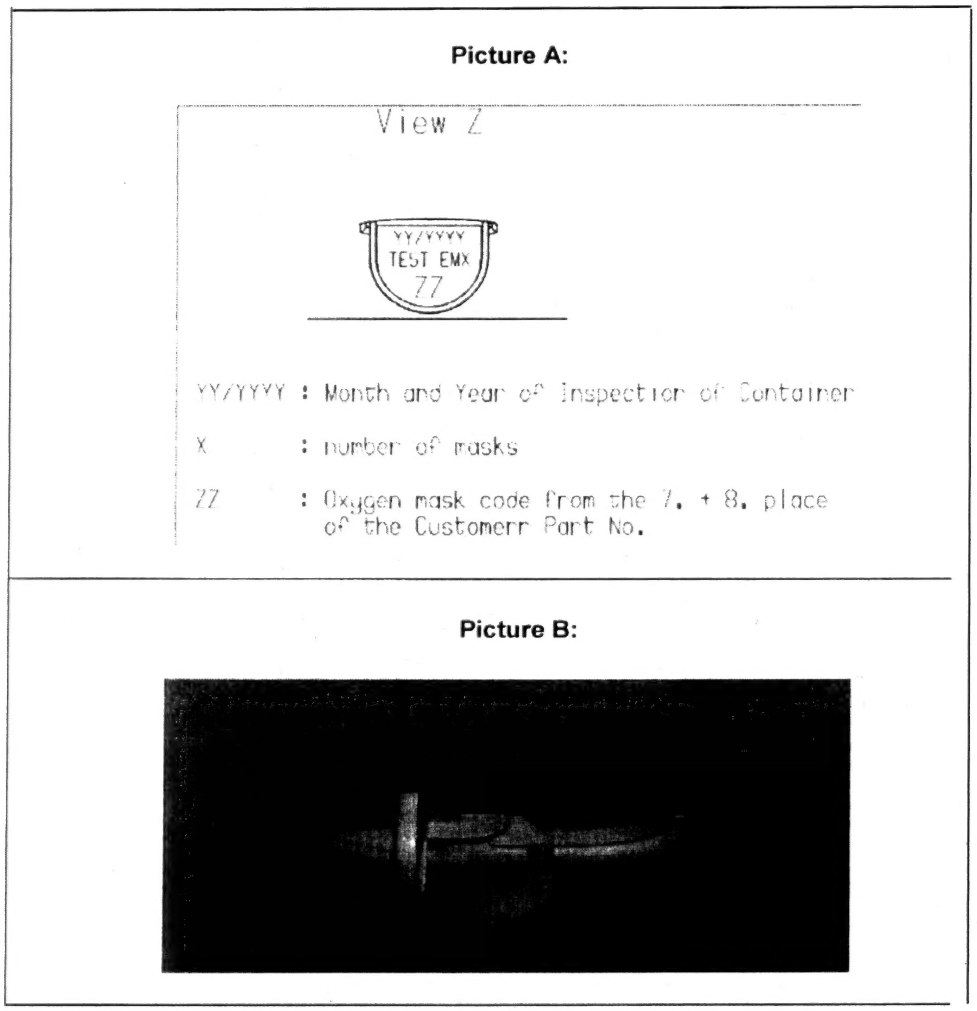
Figure 1 to Paragraph (l)(4) of this AD – Design A of the Passenger Oxygen Containers



BILLING CODE 4910–13–P

(m) New Requirement of This AD: Parts Installation Limitation

As of the effective date of this AD, no person may install, on any airplane, an oxygen container with a part number and a serial number listed in paragraph (j) of this AD, unless the oxygen container has been modified in accordance with the Accomplishment Instructions of the applicable Airbus service information specified in paragraphs (k)(1) through (k)(7) of this AD.

(n) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.*

(i) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(ii) AMOCs approved previously for AD 2013–20–11 are approved as AMOCs for the corresponding provisions of paragraphs (g) and (h) of this AD.

(2) *Contacting the Manufacturer:* As of the effective date of this AD, for any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(o) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2014–0207, dated September 16, 2014, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–8463.

(p) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(3) The following service information was approved for IBR on December 2, 2013 (78 FR 64162, October 28, 2013).

(i) Airbus Service Bulletin A320–35–1049, dated June 15, 2011.

(ii) Airbus Service Bulletin A320–35–1053, dated June 15, 2011.

(iii) Airbus Service Bulletin A320–35–1054, dated June 15, 2011.

(iv) Airbus Service Bulletin A320–35–1055, dated June 15, 2011.

(v) Airbus Service Bulletin A320–35–1056, dated June 15, 2011.

(vi) Airbus Service Bulletin A320–35–1057, dated June 15, 2011.

(vii) Airbus Service Bulletin A320–35–1058, dated June 15, 2011.

(4) For service information identified in this AD, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone: +33 5 61 93 36 96; fax: +33 5 61 93 44 51; email: *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.*

(5) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(6) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on August 3, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–19481 Filed 8–18–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–8843; Directorate Identifier 2016–NM–113–AD; Amendment 39–18615; AD 2016–17–02]

RIN 2120–AA64

Airworthiness Directives; Dassault Aviation Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Dassault Aviation Model FALCON 900EX and FALCON 2000EX airplanes. This AD requires revising the airplane flight manual (AFM) to include procedures to follow when an airplane is operating in icing conditions. This AD also provides optional terminating action for the AFM revision. This AD was prompted by a design review of in-production airplanes that identified a deficiency in certain wing anti-ice system ducting. A deficiency in the wing anti-ice system ducting could lead to undetected, reduced performance of the wing anti-ice system, with potential ice accretion and ingestion, possibly resulting in degraded engine power and degraded handling characteristics of the airplane. We are issuing this AD to ensure the flight crew has procedures for operating an airplane in icing conditions.

DATES: This AD becomes effective September 6, 2016.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of September 6, 2016.

We must receive comments on this AD by October 3, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this final rule, contact Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; Internet *http://www.dassaultfalcon.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–8843.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–8843; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Emergency Airworthiness Directive 2016–0130–E, dated July 5, 2016 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition for certain Dassault Aviation Model FALCON 900EX and FALCON 2000EX airplanes. The MCAI states:

> A design review of in production aeroplanes identified a manufacturing deficiency of some wing anti-ice system ducting.
>
> This condition, if not detected and corrected, could lead to an undetected reduced performance of the wing anti-ice system, with potential ice accretion and ingestion, possibly resulting in degraded engine power and degraded handling characteristics.
>
> The Falcon 900EX EASY and Falcon * * * [2000EX] Aircraft Flight Manuals (AFM) contain a normal procedure 4–200–05A, "Operations in Icing Conditions", addressing minimum fan speed rotation (N1) during combined operation of wing anti-ice and engine anti-ice systems. The subsequent investigation demonstrated that the wing anti-ice system performance for aeroplanes equipped with ducting affected by the manufacturing deficiency can be restored increasing N1 value. In addition, Dassault Aviation published Service Bulletin (SB) F900EX–464 (for Falcon 900EX aeroplanes) and SB F2000EX–393 (for Falcon 2000EX aeroplanes), providing instructions for wing anti-ice system ducting inspection.
>
> For the reasons described above, this [EASA] AD requires an AFM amendment and a one-time inspection of the wing anti-ice system ducting and, depending on findings, re-identification or replacement of the wing anti-ice system ducting.

You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–8843.

Interim Action

We consider this AD interim action. We are currently considering requiring a detailed inspection of the wing anti-icing system ducting for the presence of a diaphragm and, as applicable, re-identification or replacement of the wing anti-icing system ducting (these actions are required by the MCAI). That inspection and applicable corrective actions would terminate the AFM revision required by this AD action. However, the planned compliance time for the detailed inspection would allow enough time to provide notice and opportunity for prior public comment on the merits of the inspection.

Related Service Information Under 1 CFR Part 51

Dassault has issued Service Bulletin F900EX–464, dated June 20, 2016; and Service Bulletin F2000EX–393, dated June 20, 2016. The service information describes procedures for an inspection of the wing anti-ice system ducting and re-identification or replacement of the wing anti-ice system ducting. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of these same type designs.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because a design review of in-production airplanes identified a deficiency in certain wing anti-ice system ducting that could lead to undetected, reduced performance of the wing anti-ice system, with potential ice accretion and ingestion, possibly resulting in degraded engine power and degraded handling characteristics of the airplane. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2016–8843; Directorate Identifier 2016–NM–113–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

Costs of Compliance

We estimate that this AD affects 52 airplanes of U.S. registry.

We also estimate that it will take about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD on U.S. operators to be $4,420, or $85 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska; and

4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2016–17–02 Dassault Aviation: Amendment 39–18615; Docket No. FAA–2016–8843; Directorate Identifier 2016–NM–113–AD.

(a) Effective Date

This AD becomes effective September 6, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the Dassault Aviation airplanes identified in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category.

(1) Model FALCON 900EX airplanes, serial numbers (S/Ns) 270 through 291 inclusive and 294.

(2) Model FALCON 2000EX airplanes, S/Ns 263 through 305 inclusive, 307 through 313 inclusive, 315, 320, and 701 through 734 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 30, Ice and Rain Protection.

(e) Reason

This AD was prompted by a design review of in-production airplanes that identified a deficiency in certain wing anti-ice system ducting. A deficiency in the wing anti-ice system ducting could lead to undetected, reduced performance of the wing anti-ice system, with potential ice accretion and ingestion, possibly resulting in degraded engine power and degraded handling characteristics of the airplane. We are issuing this AD to ensure the flight crew has procedures for operating an airplane in icing conditions.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Revision to Airplane Flight Manual (AFM)

(1) For Model FALCON 900EX airplanes on which the actions specified in Dassault Service Bulletin F900EX–464 have not been accomplished: Within 10 flight cycles after the effective date of this AD, revise Section 4–200–05A, "OPERATION IN ICING CONDITIONS," of the Model FALCON 900EX AFM to include the information in figure 1 to paragraph (g)(1) of this AD, and thereafter operate the airplane accordingly. The AFM revision may be done by inserting a copy of this AD into the AFM.

Figure 1 to Paragraph (g)(1) of this AD – *Operation in Icing Conditions*

Wing Anti-Ice System Operation

During in flight operation of a wing anti-ice system (WING ANTI-ICE) maintain the N1 of all engines equal to or more than the values defined in Table 1, as applicable to atmospheric condition.

Table 1

New Minimum N1 values required during in flight operation of a wing anti-ice system

Three operative engines:

TAT	– 30 to – 20 °C	– 20 to – 10 °C	– 10 to 0 °C	0 to + 10 °C
Above 20,000 ft	79 %	75%	71%	66%
From 20,000 ft to 10,000 ft	76 %	73%	66%	59%
Below 10,000 ft	68 %	66%	61%	58%

These new values include 3% increase compared to former values (4-200-05A page 1/2).

Two operative engines:

TAT	– 30 to – 20 °C	– 20 to – 10 °C	– 10 to 0 °C	0 to + 10 °C
Above 20,000 ft	86 %	82%	78%	73%
From 20,000 ft to 10,000 ft	83 %	80%	73%	66%
Below 10,000 ft	75 %	73%	68%	65%

These new values include 3% increase compared to former values (4-200-05A page 1/2).

TAT – Total Air Temperature

Note 1: Maintaining the N1 above the minimum anti-ice N1 on all engines may lead to exceedance of approach speed. Early approach or landing configuration of an airplane and/or application of airbrakes may be used to control the airspeed. In approach and landing and for a limited duration up to three minutes, selection of N1 speeds below the minimum anti-ice N1 speed is authorized. In this case it is necessary to disengage the autothrottle.

Effectivity: F900EX (LX variant) S/Ns 270 through 291 inclusive and 294, without Dassault SB F900EX-464.

(2) For Model FALCON 2000EX airplanes on which the actions specified in Dassault Service Bulletin F2000EX–393 have not been accomplished: Within 10 flight cycles after the effective date of this AD, revise Section 4–200–05A, "OPERATION IN ICING CONDITIONS," of the Model FALCON 2000EX AFM to include the information in figure 2 to paragraph (g)(2) of this AD, and thereafter operate the airplane accordingly. The AFM revision may be done by inserting a copy of this AD into the AFM.

Figure 2 to Paragraph (g)(2) of this AD – *Operation in Icing Conditions*

Wing Anti-Ice System Operation

During in flight operation of a wing anti-ice system (WING ANTI-ICE) maintain the N1 of both engines equal to or more than the values defined in Table 1, as applicable to atmospheric condition.

Table 1
New Minimum N1 values required during in flight operation of a wing anti-ice system

Two engines operative minimum N1:

Z \ TAT	-30 °C	-15 °C	0 °C	+10 °C
31,000 ft	74.6	67.6	52.8	52.8
22,000 ft	72.4	63.7	52.8	52.1
3,000 ft	57.3	54.9	49.4	48.8
0 ft	54.9	54.9	49.4	48.8

These new values include 2% increase compared to former values (4-200-05A page 1/2).

One engine operative or one bleed inoperative minimum N1:

Z \ TAT	-30 °C	-15 °C	0 °C	+10 °C
31,000 ft	82.4	77.0	64.0	58.0
22,000 ft	79.2	72.0	59.8	56.6
3,000 ft	71.2	66.4	59.8	49.3
0 ft	64.2	63.7	59.8	49.3

These new values include 2% increase compared to former values (4-200-05A page 1/2).

TAT – Total Air Temperature
Z - Altitude

Note 1: Maintaining the N1 above the minimum anti-ice N1 on all engines may lead to exceedance of approach speed. Early approach or landing configuration of an aeroplane and/or application of airbrakes may be used to control the airspeed. In approach and landing and for a limited duration up to three minutes, selection of N1 speeds below the minimum anti-ice N1 speed is authorized. In this case it is necessary to disengage the autothrottle.

Effectivity: F2000EX (LXS/S variants) S/Ns 263 through 305 inclusive, 307 through 313 inclusive, 315, 320, and 701 through 734 inclusive, without Dassault SB F2000EX-393.

(h) Optional Action(s)

A detailed inspection of the wing anti-ice system ducting for the presence of a diaphragm and, as applicable, a check of the part number, and re-identification of the wing anti-ice system ducting or replacement of the wing anti-ice system ducting, in accordance with the Accomplishment Instructions of Dassault Service Bulletin F900EX–464, dated June 20, 2016; or Service Bulletin F2000EX–393, dated June 20, 2016; as applicable; terminates the requirements of paragraph (g) of this AD for that airplane only. After the applicable actions in the service information have been completed, the AFM revision required by paragraph (g) of this AD may be removed from the AFM for that airplane.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your

request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) Contacting the Manufacturer: For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Dassault Aviation's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(j) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) Emergency Airworthiness Directive 2016–0130–E, dated July 5, 2016, for related information. You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–8843.

(k) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) Dassault Service Bulletin F900EX–464, dated June 20, 2016.

(ii) Dassault Service Bulletin F2000EX–393, dated June 20, 2016.

(3) For service information identified in this AD, contact Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; Internet *http://www.dassaultfalcon.com*.

(4) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued in Renton, Washington, on August 5, 2016.

Chris L. Spangenberg,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–19484 Filed 8–18–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2016–8926; Amendment No. 71–48]

RIN 2120–AA66

Airspace Designations; Incorporation by Reference

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 relating to airspace designations to reflect the approval by the Director of the Federal Register of the incorporation by reference of FAA Order 7400.11A, Airspace Designations and Reporting Points. This action also explains the procedures the FAA will use to amend the listings of Class A, B, C, D, and E airspace areas; air traffic service routes; and reporting points incorporated by reference.

DATES: These regulations are effective September 15, 2016, through September 15, 2017. The incorporation by reference of FAA Order 7400.11A is approved by the Director of the Federal Register as of September 15, 2016, through September 15, 2017.

ADDRESSES: FAA Order 7400.11A, Airspace Designations and Reporting Points, and subsequent amendments can be viewed on line at *http://www.faa.gov/air_traffic/publications/*. For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11A at NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html*.

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

FOR FURTHER INFORMATION CONTACT: Sarah A. Combs, Airspace Policy Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

FAA Order 7400.9Z, Airspace Designations and Reporting Points, effective September 15, 2015, listed Class A, B, C, D and E airspace areas; air traffic service routes; and reporting points. Due to the length of these descriptions, the FAA requested approval from the Office of the Federal Register to incorporate the material by reference in the Federal Aviation Regulations section 71.1, effective September 15, 2015, through September 15, 2016. During the incorporation by reference period, the FAA processed all proposed changes of the airspace listings in FAA Order 7400.9Z in full text as proposed rule documents in the **Federal Register**. Likewise, all amendments of these listings were published in full text as final rules in the **Federal Register**. This rule reflects the periodic integration of these final rule amendments into a revised edition of Order 7400.11A, Airspace Designations and Reporting Points. The Director of the Federal Register has approved the incorporation by reference of FAA Order 7400.11A in section 71.1, as of September 15, 2016, through September 15, 2017. This rule also explains the procedures the FAA will use to amend the airspace designations incorporated by reference in part 71. Sections 71.5, 71.15, 71.31, 71.33, 71.41, 71.51, 71.61, 71.71, and 71.901 are also updated to reflect the incorporation by reference of FAA Order 7400.11A.

Availability and Summary of Documents for Incorporation by Reference

This document incorporates by reference FAA Order 7400.11A, airspace Designations and Reporting Points, dated August 3, 2016, and effective September 15, 2016, in section 71.1. FAA Order 7400.11A is publicly available as listed in the **ADDRESSES** section of this final rule. FAA Order 7400.11A lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 to reflect the approval by the Director of the Federal Register of the incorporation by reference of FAA Order 7400.11A,

effective September 15, 2016, through September 15, 2017. During the incorporation by reference period, the FAA will continue to process all proposed changes of the airspace listings in FAA Order 7400.11A in full text as proposed rule documents in the **Federal Register**. Likewise, all amendments of these listings will be published in full text as final rules in the **Federal Register**. The FAA will periodically integrate all final rule amendments into a revised edition of the Order, and submit the revised edition to the Director of the Federal Register for approval for incorporation by reference in section 71.1.

Regulatory Notices and Analyses

The FAA has determined that this action: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. This action neither places any new restrictions or requirements on the public, nor changes the dimensions or operation requirements of the airspace listings incorporated by reference in part 71.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

■ 2. Section 71.1 is revised to read as follows:

§ 71.1 Applicability.

A listing for Class A, B, C, D, and E airspace areas; air traffic service routes; and reporting points can be found in FAA Order 7400.11A, Airspace Designations and Reporting Points, dated August 3, 2016. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552 (a) and 1 CFR part 51. The approval to incorporate by reference FAA Order 7400.11A is effective September 15, 2016, through September 15, 2017. During the incorporation by reference period, proposed changes to the listings of Class A, B, C, D, and E airspace areas; air traffic service routes; and reporting points will be published in full text as proposed rule documents in the **Federal Register**. Amendments to the listings of Class A, B, C, D, and E airspace areas; air traffic service routes; and reporting points will be published in full text as final rules in the **Federal Register**. Periodically, the final rule amendments will be integrated into a revised edition of the Order and submitted to the Director of the Federal Register for approval for incorporation by reference in this section. Copies of FAA Order 7400.11A may be obtained from Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, (202) 267–8783. An electronic version of the Order is available on the FAA Web site at *http://www.faa.gov/air_traffic/publications*. Copies of FAA Order 7400.11A may be inspected in Docket No. FAA–2016–XXXX; Amendment No. 71–48 on *http://www.regulations.gov*. A copy of FAA Order 7400.11A may be inspected at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

§ 71.5 [Amended]

■ 3. Section 71.5 is amended by removing the words "FAA Order 7400.9Z" and adding, in their place, the words "FAA Order 7400.11A."

§ 71.15 [Amended]

■ 4. Section 71.15 is amended by removing the words "FAA Order 7400.9Z" and adding, in their place, the words "FAA Order 7400.11A."

§ 71.31 [Amended]

■ 5. Section 71.31 is amended by removing the words "FAA Order 7400.9Z" and adding, in their place, the words "FAA Order 7400.11A."

§ 71.33 [Amended]

■ 6. Paragraph (c) of section 71.33 is amended by removing the words "FAA Order 7400.9Z" and adding, in their place, the words "FAA Order 7400.11A."

§ 71.41 [Amended]

■ 7. Section 71.41 is amended by removing the words "FAA Order 7400.9Z" and adding, in their place, the words "FAA Order 7400.11A."

§ 71.51 [Amended]

■ 8. Section 71.51 is amended by removing the words "FAA Order 7400.9Z" and adding, in their place, the words "FAA Order 7400.11A."

§ 71.61 [Amended]

■ 9. Section 71.61 is amended by removing the words "FAA Order 7400.9Z" and adding, in their place, the words "FAA Order 7400.11A."

§ 71.71 [Amended]

■ 10. Paragraphs (b), (c), (d), (e), and (f) of section 71.71 are amended by removing the words "FAA Order 7400.9Z" and adding, in their place, the words "FAA Order 7400.11A."

§ 71.901 [Amended]

■ 11. Paragraph (a) of section 71.901 is amended by removing the words "FAA Order 7400.9Z" and adding, in their place, the words "FAA Order 7400.11A.".."

Issued in Washington, DC, on August 11, 2016.

M. Randy Willis,

Acting Manager, Airspace Policy Group.

[FR Doc. 2016–19634 Filed 8–18–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 160106014–6728–04]

RIN 0694–AG82

Temporary General License: Extension of Validity

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: On March 24, 2016, the Bureau of Industry and Security (BIS) published a final rule, Temporary General License. The March 24 final rule created a temporary general license that restored, for a specified time period, the licensing requirements and policies under the Export Administration Regulations (EAR) for exports, reexports, and transfers (in-country) as of March 7, 2016, to two entities (ZTE Corporation and ZTE Kangxun) that were added to the Entity List on March 8, 2016. At this time, the U.S. Government has decided to extend the temporary general license until November 28, 2016. In order to implement this decision, this final rule revises the temporary general license to

remove the expiration date of August 30, 2016, and to substitute the date of November 28, 2016. This final rule makes no other changes to the EAR.

DATES: This rule is effective August 19, 2016 through November 28, 2016. The expiration date of the final rule published on March 24, 2016 (81 FR 15633) is extended until November 28, 2016.

FOR FURTHER INFORMATION CONTACT: Chair, End-User Review Committee, Office of the Assistant Secretary, Export Administration, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482–5991, Email: *ERC@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

On March 24, 2016, the Bureau of Industry and Security (BIS) published a final rule, Temporary General License (81 FR 15633). The March 24 final rule amended the EAR by adding Supplement No. 7 to part 744 to create a Temporary General License that returned, until June 30, 2016, the licensing and other policies of the EAR regarding exports, reexports, and transfers (in-country) to Zhongxing Telecommunications Equipment (ZTE) Corporation and ZTE Kangxun to that which were in effect prior to their addition to the Entity List on March 8, 2016. On June 28, 2016, BIS published a final rule, Temporary General License: Extension of Validity (81 FR 41799), which extended the validity of the Temporary General License until August 30, 2016. Details regarding the scope of the listing are at 81 FR 12004 (Mar. 8, 2016), ("Additions to the Entity List"). Details regarding the Temporary General License can be found in the March 24 final rule and in Supplement No. 7 to Part 744—Temporary General License.

BIS issued the March 24 final rule, and the June 28 final rule, in connection with a request to remove or modify the listing. The March 24 final rule, and the June 28 final rule, specified that the temporary general license was renewable if the U.S. Government determined, in its sole discretion, that ZTE Corporation and ZTE Kangxun were timely performing their undertakings to the U.S. Government and otherwise cooperating with the U.S. Government in resolving the matter which led to the two entities' listing.

At this time, the U.S. Government has decided to extend the temporary general license until November 28, 2016. In order to implement this U.S. Government decision, this final rule revises the temporary general license to remove the date of August 30, 2016, and substitute the date of November 28, 2016. This final rule makes no other changes to the EAR.

Export Administration Act

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013) and as extended by the Notice of August 4, 2016, 81 FR 52587 (August 8, 2016), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222, as amended by Executive Order 13637.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by OMB under control number 0694–0088, Simplified Network Application Processing System, which includes, among other things, license applications and carries a burden estimate of 43.8 minutes for a manual or electronic submission. Total burden hours associated with the PRA and OMB control number 0694–0088 are not expected to increase as a result of this rule. You may send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget (OMB), by email to *Jasmeet_K._Seehra@omb.eop.gov,* or by fax to (202) 395–7285.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment, and a delay in effective date are inapplicable because this regulation involves a military or foreign affairs function of the United States. (*See* 5 U.S.C. 553(a)(1)). If this rule were delayed to allow for notice and comment and a delay in effective date, then the national security and foreign policy objectives of this rule would be harmed. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

List of Subjects in 15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

Accordingly, part 744 of the Export Administration Regulations (15 CFR parts 730 through 774) is amended as follows:

PART 744—[AMENDED]

■ 1. The authority citation for 15 CFR part 744 is revised to read as follows:

Authority: 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of September 18, 2015, 80 FR 57281 (September 22, 2015); Notice of November 12, 2015, 80 FR 70667 (November 13, 2015); Notice of January 20, 2016, 81 FR 3937 (January 22, 2016); Notice of August 4, 2016, 81 FR 52587 (August 8, 2016).

Supplement No. 7 to Part 744—[Amended]

■ 2. In Supplement No. 7 to part 744, remove "August 30, 2016" and add in its place "November 28, 2016".

Dated: August 16, 2016.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2016–19828 Filed 8–18–16; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2016–0700]

Special Local Regulations; S.P.O.R.T. Boat Races, Sabine River, Orange, TX

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce special local regulations for the Southern Professional Outboard Racing Tour (S.P.O.R.T.) boat races to be held on the Sabine River in Orange, TX, September 16–18, 2016, to provide for the safety of life on navigable waterways during high speed boat races. Our regulation for Recurring Marine Events in Sector Houston-Galveston identifies the regulated area for this regatta. During the enforcement periods, no vessel may transit this regulated area without approval from the Captain of the Port or a designated representative.

DATES: The regulations in 33 CFR 100.801, Table 3, Line no. 5, will be enforced from 3:00 p.m. to 6:00 p.m. on September 16, 2016; and from 9:00 a.m. to 6:00 p.m. on September 17 and 18, 2016.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice of enforcement, call or email Mr. Scott Whalen, U.S. Coast Guard Marine Safety Unit, Port Arthur, TX; telephone 409–719–5086, email *scott.k.whalen@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce special local regulations in 33 CFR 100.801, Table 3, Line no. 5 from 3:00 p.m. until 6:00 p.m. on September 16, 2016, and from 9:00 a.m. until 6:00 p.m. on September 17 and 18, 2016, for the Southern Professional Outboard Racing Tour (S.P.O.R.T.) boat races. This action is being taken to provide for the safety of life on navigable waterways during the high speed boat races. Our regulation for Recurring Marine Events in Sector Houston-Galveston, § 100.801, Table 3, Line no. 5, specifies the location of the regulated area for this event. As specified in § 100.801, during the enforcement period, no vessel may transit this regulated area without approval from the Captain of the Port (COTP), Port Arthur or a COTP designated representative.

This notice of enforcement is issued under authority of 33 CFR 100.801 and 5 U.S.C. 552(a). In addition to this notice of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via the Local Notice to Mariners, marine information broadcasts, Marine Safety Information Bulletins and Vessel Traffic Service (VTS) Advisories.

Dated: August 16, 2016.

R.S. Ogrydziak,

Captain, U.S. Coast Guard, Captain of the Port, Port Arthur.

[FR Doc. 2016–19831 Filed 8–18–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2016–0751]

RIN 1625–AA00

Safety Zone; Port Huron Float-Down, St. Clair River, Port Huron, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain waters of the St. Clair River in the vicinity of Port Huron, Michigan. Though this is an unsanctioned, non-permitted marine event, this action is necessary to provide for the safety of life on these navigable waters near Port Huron, MI, during a float down event on August 21, 2016. This regulation prohibits persons and vessels from being in the safety zone unless authorized by the Captain of the Port Detroit or a designated representative.

DATES: This rule is effective from 12 p.m. through 8 p.m. on August 21, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2016–0751 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary final rule, call or email Lieutenant Selena Warnke, Prevention Department, Sector Detroit, Coast Guard; telephone 313–568–9508, email *Selena.M.Warnke@uscg.mil.* If you have questions on viewing the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

DHS Department of Homeland Security
COTP Captain of the Port
NAD 83 North American Datum of 1983
NPRM Notice of Proposed Rulemaking

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable. The final details of this event were not known to the Coast Guard until there was insufficient time remaining before the event to publish an NPRM. Thus, delaying the effective date of this rule to wait for a comment period to run would be impracticable because it would inhibit the Coast Guard's ability to protect participants, mariners, and vessels from the hazards associated with this event. Furthermore, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this temporary rule effective less than 30 days after publication in the **Federal Register** for the same reasons noted above.

During the afternoon of August 21, 2016, a non-sanctioned public event, advertised over various social-media sites, in which a large number of persons float down a segment of the St. Clair River, using inner tubes and other similar floatation devices is scheduled to take place. The 2016 Float-Down event will occur between approximately 12 p.m. and 8 p.m. on August 21, 2016. This event has taken place in the month of August yearly from 2009 through 2015.

While no private or municipal entity has requested a marine event permit from the Coast Guard for this event, and although it has not received state or federal permits over these past years, the event has drawn over 3,000

participants of various ages annually. Despite plans put together by federal, state and local officials, emergency responders and law enforcement officials have been overburdened pursuing safety during this event. Medical emergencies, people drifting across the international border, and people trespassing on residential property when trying to get out of the water before the designated finish line are some of the numerous difficulties encountered during the Float-Down event.

During the 2014 Float-Down event, a 19-year-old participating in the event died. Despite this, promotional information for the event continues to be published, and more than 3,000 people are again anticipated to float down the river this year. However, since no public or private organization holds themselves responsible as the event sponsor, the Coast Guard does not receive full and final details regarding the event or the number of participants until the time of the event.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231, 33 CFR 1.05–1 and 160.5; and Department of Homeland Security Delegation No. 0170.1. The Captain of the Port Detroit (COTP) has determined that the 2016 Float-Down poses significant risks to public safety and property. The likely combination of large numbers of participants, strong river currents, limited rescue resources, and difficult emergency response scenarios could easily result in serious injuries or fatalities to Float-Down participants and spectators.

IV. Discussion of the Rule

This rule establishes a safety zone from 12 p.m. through 8 p.m. on August 21, 2016. The safety zone will begin at Lighthouse Beach and encompass all U.S. waters of the St. Clair River bound by a line starting at a point on land north of Coast Guard Station Port Huron at position 43°00′25″ N.; 082°25′20″ W., extending east to the international boundary to a point at position 43°00′25″ N.; 082°25′02″ W., following south along the international boundary to a point at position 42°54′30″ N.; 082°27′41″ W., extending west to a point on land just north of Stag Island at position 42°54′30″ N.; 082°27′58″ W., and following north along the U.S. shoreline to the point of origin (NAD 83).

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the COTP or a designated representative. Vessel operators must contact the COTP or his on-scene representative to obtain permission to transit through this safety zone. Additionally, no one under the age of 18 will be permitted to enter the safety zone if they are not wearing a Coast Guard-approved Personal Floatation Device (PFD). The COTP or his on-scene representative may be contacted via VHF Channel 16.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes or executive orders.

A. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and enforced for relatively short duration, and it is designed to minimize the impact on navigation. Moreover, under certain conditions, vessels may still transit through the safety zone when permitted by the Captain of the Port.

B. Impact on Small Entities

As per the Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, we have considered the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in this portion of southern Lake Huron and the St. Clair River near Port Huron, MI on August 21, 2016, between the hours of 12 p.m. and 8 p.m.

This safety zone will not have a significant economic impact on a substantial number of small entities for the reasons cited in the *Regulatory Planning and Review* section. Additionally, before the enforcement of the zone, Coast Guard Sector Detroit will issue a local Broadcast Notice to Mariners so vessel owners and operators can plan accordingly.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them. If this rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against entities that question or complain about this rule or any policy or action of the Coast Guard.

D. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

E. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

F. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to

coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

G. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

H. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

I. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

J. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

K. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

L. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

M. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

N. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a safety zone and is therefore categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T09–0751 to read as follows:

§ 165.T09–0751 Safety Zone; Port Huron Float-Down, St. Clair River, Port Huron, MI.

(a) *Location.* The following area is a temporary safety zone: All U.S. navigable waters of southern Lake Huron and the St. Clair River adjacent to Port Huron, MI, beginning at Lighthouse Beach and encompassing all U.S. waters of the St. Clair River bound by a line starting at a point on land north of Coast Guard Station Port Huron at position 43°00′25″ N.; 082°25′20″ W., extending east to the international boundary to a point at position 43°00′25″ N.; 082°25′02″ W., following south along the international boundary to a point at position 42°54′30″ N.; 082°27′41″ W., extending west to a point on land just north of Stag Island at position 42°54′30″ N.; 082°27′58″ W., and following north along the U.S. shoreline to the point of origin (NAD 83).

(b) *Enforcement period.* The safety zone described in paragraph (a) of this section will be enforced from 12:00 p.m. to 8:00 p.m. on August 21, 2016.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23, entry into, transiting or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Detroit (COTP) or his on-scene representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted on a case-by-case basis by the COTP or his on-scene representative.

(3) Additionally, no one under the age of 18 will be permitted to enter the safety zone if they are not wearing a Coast Guard-approved Personal Floatation Device (PFD).

(4) The "on-scene representative" of the COTP is any Coast Guard commissioned, warrant or petty officer or a Federal, State, or local law enforcement officer designated by or assisting the COTP to act on his behalf.

(5) Vessel operators desiring to enter or operate within the safety zone shall contact the COTP or his on-scene representative to request permission to do so. The COTP or a designated representative may be contacted via VHF Channel 16 or at 313–568–9464. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or his on-scene representative.

Dated: August 16, 2016.

Scott B. Lemasters,

Captain, U.S. Coast Guard, Captain of the Port Detroit.

[FR Doc. 2016–19846 Filed 8–18–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 150817722–6703–02]

RIN 0648–BF10

Atlantic Highly Migratory Species; Archival Tag Management Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: This final rule revises the regulations that currently require persons surgically implanting or externally affixing archival tags on Atlantic highly migratory species (HMS) to obtain written authorization from NMFS, and that require fishermen to report their catches of Atlantic HMS with such tags to NMFS. Archival tags are tags that record scientific information about the movement and behavior of a fish and include tags that are surgically implanted in a fish, as well as tags that are externally affixed, such as pop-up satellite archival tags (PSAT) and smart position and temperature tags (SPOT). Specifically, this final rule removes the requirement for researchers to obtain written authorization from NMFS to implant or affix an archival tag but would continue to allow persons who catch a fish with a surgically implanted archival tag to retain the fish only if they return the tag to the person indicated on the tag or to NMFS. Persons retaining such fish would no longer be required to submit to NMFS an archival tag landing report or make the fish available for inspection and tag recovery by a NMFS scientist, enforcement agent, or other person designated in writing by NMFS. Any persons who land an Atlantic HMS with an externally-affixed archival tag would be encouraged, but not required, to follow the instructions on the tag to return the tag to the appropriate research entity or to NMFS. This action will affect any researchers wishing to place archival tags on Atlantic HMS and any fishermen who might catch such a tagged fish.

DATES: Effective on September 19, 2016.

ADDRESSES: NMFS Highly Migratory Species Management Division, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Larry Redd, Craig Cockrell, Tobey Curtis or Karyl Brewster-Geisz by phone at 301–427–8503.

SUPPLEMENTARY INFORMATION:

Background

Atlantic HMS are managed under the 2006 Consolidated HMS Fishery Management Plan (FMP) and its amendments. Implementing regulations at 50 CFR part 635 are issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.*, and Atlantic Tunas Convention Act (ATCA), 16 U.S.C. 971 *et seq.* ATCA authorizes the Secretary of Commerce (Secretary) to promulgate regulations as necessary and appropriate to implement ICCAT recommendations.

On April 14, 2016 (81 FR 22044), NMFS published a proposed rule regarding the regulatory requirements for the placement of "archival tags." An "archival tag" is defined at § 635.2 as "a device that is implanted or affixed to a fish to electronically record scientific information about the migratory behavior of that fish." The comment period on the proposed rule ended on May 16, 2016.

Researchers use archival tags because they are a powerful tool for tracking the movements, geolocation, and behavior of individual tunas, sharks, swordfish, and billfishes. Data recovery from some archival tags, particularly those that are surgically implanted into the fish, requires that fish be re-caught. Other archival tags, such as PSAT and SPOT, which are externally affixed to the fish, are able to transmit the information remotely and do not require the fish to be re-caught nor do researchers expect the tags to be returned, as generally no additional data are gained from their return. Data from archival tags are used to ascertain HMS life-history information, such as migratory patterns and spawning site fidelity.

In addition to archival tags, researchers may place conventional tags, such as spaghetti or roto tags, acoustic tags, or passive integrated transponder (PIT) tags on HMS. These types of tags do not record or store any information, and thus are not "archival" tags. Furthermore, there are some tags, such as some SPOTs, that may be archival or may be more acoustic in nature, depending on the needs of the researcher. For Atlantic HMS, NMFS does not regulate the placement or the collection of these non-archival tags, and this final rule does not affect any tags other than archival tags.

This final rule removes the requirement for researchers to obtain written authorization from NMFS to implant or affix an archival tag. Additionally, this final rule maintains the regulatory requirement that Atlantic HMS caught with a surgically implanted archival tag may be retained only on the condition that the surgically implanted tag is returned to either the originating researcher or to NMFS. Maintaining this regulatory provision creates an incentive to return the surgical tags, which need to be physically retrieved to retrieve the data. This would afford some assurance to researchers that they would be able to retrieve the surgically implanted tags and would not lose their investment due to discarded tags, and that the tags would continue to contribute to the collection of Atlantic HMS life history and biological data. In all other cases (*i.e.*, the fisherman catches an HMS with an externally placed archival tag, a conventional tag, an acoustic tag, or a PIT tag), NMFS encourages, but does not require, the fisherman to return the tag and any information requested directly to the researcher or entity noted on the tag itself. All other reporting requirements for HMS would still apply. Finally, under this final rule, the person retaining an HMS with either an externally affixed or surgically implanted archival tag would no longer be required to submit an archival tag landing report to NMFS or make the fish available for inspection and tag recovery by a NMFS scientist, enforcement agent, or other person designated in writing by NMFS.

This final rule maintains appropriate management and conservation requirements, such as requiring the return of the surgically implanted archival tag if the fish is retained, for HMS while making the archival tagging process more efficient by reducing any time and delay cost to researchers associated with the applying for a permit to place archival tags on Atlantic HMS. This final rule would reduce the regulatory burden for researchers, and allow researchers the opportunity to place archival tags on Atlantic HMS during periods of time in which they usually would be waiting for NMFS to process their annual permits, typically in January or February. NMFS does not expect this action to result in increased fishing mortality or increased interactions with listed species.

Response to Comments

During the proposed rule stage, NMFS received 31 written comments. The comments received on the proposed rule during the public comment period can be found at *http://www.regulations.gov/* by searching for NOAA–NMFS–2016–0017. A summary of the relevant comments on the proposed rule are shown below with NMFS' response.

Comment 1: NMFS received some comments in support of removing the requirement for researchers to obtain written authorization from NMFS to implant or affix archival tags. Commenters supporting the removal of the written authorization requirement stated that the authorization was unnecessary for the application of archival tags on HMS because advancements in tagging techniques have resulted in low mortality rates and that removing the requirement would maximize opportunities to deploy archival tags.

Response: NMFS agrees that researchers no longer need written

authorization to implant or affix archival tags. The requirement to receive written authorization for placement of archival tags was implemented in the 1990s to monitor fish mortality, at a time when archival tag technology was fairly new, and most of the archival tags had to be surgically implanted into the fish. The mortality rates associated with surgically implanting such tags into fish was unknown at that time. Currently, researchers primarily use externally affixed archival tags because the data collected from those tags are received via satellite (in other words, you do not need to re-catch the fish in order to collect the data). Furthermore, research has shown negligible mortality rates as a result of implanting or affixing archival tags. Additionally, NMFS believes that allowing researchers the opportunity to place archival tags without written authorization should maximize tagging opportunities for researchers, allowing them to fish at times of the year when NMFS is processing permit applications the months of January and February, and minimize any administrative burden associated with applying for such authorization.

Comment 2: Some commenters opposed removal of the written authorization requirement, stating that the change would increase fishing pressure on HMS, protected, and endangered species. Those individuals felt that the proposed rule would remove the current fishing regulations for protected and endangered species, allowing fishermen the opportunity to target these species. Some commenters expressed concern that removing the requirement for written authorization would remove accountability for researchers, fishermen, and both state and Federal officials to follow standard scientific and regulatory practices. Commenters also expressed a belief that reducing the administrative burden on NMFS staff was not an appropriate reason to remove the requirement. Commenters further noted that requiring written authorization ensures that the party taking part in the research is qualified or could be given instructional education on handling and tagging techniques.

Response: As described in the proposed rule, after 20 years of use, the mortality rate as a result of placement of archival tags is negligible and most research projects are of relatively limited scope both in terms of the number of individual fish affected and the number of species involved. As such, given the low mortality from placing archival or other tags, the large number of alternative tags available for use by researchers, and the high cost of obtaining an archival tag (approximately $5,000 per tag), NMFS does not agree that removal of the requirement to obtain written authorization for archival tags would increase fishing pressure on HMS or cause additional mortality. The removal of the requirement to obtain written authorization to place a tag on HMS in itself is not expected to have any impact on protected resources. If researchers are interacting with listed species, they are responsible for obtaining appropriate permit coverage under the Endangered Species Act (ESA) to ensure that any incidental take during research operations is authorized. Additionally, while removal of the requirement to obtain written authorization to place archival tags on HMS would reduce some administrative burden on NMFS staff, the main reduction of administrative burden will be with researchers who would no longer need to apply and wait for written authorization before tagging fish with archival tags. This is a desirable outcome because researchers would have more flexibility to tag in different areas and on a greater variety of species during the times they otherwise would be waiting for NMFS to issue a permit.

In regard to continuing to ensure accountability of scientists and other researchers, most HMS research activities would likely still require authorization under an exempted fishing permit (EFP) or scientific research permit (SRP) because other research activities, such as sampling gear or possession of HMS, continue to require authorization (see 50 CFR 635.32). While researchers could place archival tags without written authorization, other research activities would likely still need written authorization. Furthermore, there is no evidence or apparent incentive for researchers or fishermen to circumvent established scientific or regulatory practices when tagging HMS or reporting recaptures.

Comment 3: Several commenters expressed concern that the proposed rule could potentially be abused by any fisherman who wishes to apply tags, and that the level of enforcement on the responsible application of tags would be reduced.

Response: This final rule is designed to reduce regulatory burdens on researchers and is not expected to have impacts on fishermen beyond the requirement to return the archival tag. To our knowledge, no Atlantic HMS fishermen have ever applied archival tags without collaboration with researchers, nor are they likely to do so because archival tags are costly and the data they provide require scientific expertise and infrastructure to analyze and interpret. Neither commercial fishermen nor recreational fishermen are likely to realize benefits from buying and then applying archival tags and releasing HMS. Both recreational and commercial fishermen have been assisting scientists for years by placing conventional tags on HMS that are released, and returning tags and providing information on tagged HMS that are landed.

Comment 4: Commenters stated that NMFS should continue to encourage but not require the return of archival tags to researchers or NMFS and that the regulations requiring tag returns are not needed since the fishermen understand the importance and value of archival tags.

Response: NMFS will continue to encourage the return of any archival or other tags to researchers or NMFS by noting the importance of tag return in the compliance guides and other outreach materials. Furthermore, researchers note in their comments that many fishermen already voluntarily return archival tags to researchers. Monetary rewards are often offered by researchers for the return of their tags, but many fishermen also acknowledge the scientific value of the data provided by archival tags, and are generally supportive of fish-tagging research. While NMFS is removing the non-surgically implanted archival tag landing report requirement under this final rule, the regulations will still require fishermen to return surgically implanted archival tags from recaptured HMS to the appropriate research entity or NMFS.

Comment 5: NMFS should not remove the archival tag landing report requirement, as it would reduce fishermen accountability allowing them to capture HMS without documentation and could have a negative impact on scientific data. Removing the landing report could potentially result in illegal fishing practices under the blanket of "scientific research."

Response: Removing the requirement to report landing a tagged HMS to NMFS is not expected to impact reporting rates of these tags between fishermen and scientists. Fishermen often voluntarily return tags and related information about the recaptured HMS directly to the researchers identified on a tag, and researchers have not raised any concerns that they may be losing scientific data due to non-reporting by fishermen. While NMFS will continue to encourage reporting and returns of archival tags from fishermen to

researchers by noting the importance of tag return in the compliance guides and other outreach materials, there is no need to maintain a separate archival tag landing report requirement.

Comment 6: NMFS requested and received various comments regarding whether fishermen who catch an HMS with an externally affixed archival tag should be required to release the fish if it is otherwise legal to land. Some scientists noted that the return of archival tags from recaptured HMS can be very valuable to researchers because the physical recovery of such tags can provide much more data than non-returned tags, and these tags can often be redeployed on other fish. Other commenters stated that fish that are tagged with an archival tag should be allowed to be landed regardless of the regulations; fish should be allowed to be landed if they are legal species within retention sizes; fish that have an internally implanted archival tag should be allowed to be landed as long as the tag is returned to the researcher or NMFS; sharks with externally affixed tags should be released; and all tagged fish which are caught should be released.

Response: After reviewing these comments, NMFS has determined that a requirement for fishermen to release any HMS with an externally affixed archival tag is not warranted at this time. Under this final rule, fishermen may continue to retain any otherwise legal HMS, including those with externally affixed archival tags. Fishermen may also continue to retain HMS with an internally implanted archival tag regardless of any regulatory prohibition, as long as the tag is returned to the appropriate research entity or NMFS. If fishermen were prohibited from retaining an HMS because it had an externally affixed archival tag, it could negatively affect tag return rates and cooperation with researchers. In most cases, researchers state that they attach greater value to the potential for returned tags than to the mandatory release of tagged fish and the continued collection of information from having the tagged fish in the water. This is particularly true since many externally affixed archival tags only collect data for a limited period of time (*e.g.*, 1 week, 1 month, 6 months, etc.), which is set by the researcher before placing the tag.

Comment 7: Several commenters requested a public hearing for clarification of the proposed rule and to allow the scientific and environmental community the chance to provide information and suggest alternatives to the proposed rule.

Response: The purpose and scope of this final rule, which is largely administrative in nature, was fully described in the proposed rule. NMFS announced the proposed rule via email notification and posting on the Atlantic HMS Web site when it published in the **Federal Register**, and provided a 30-day public comment period. The majority of the commenters who requested a public hearing were concerned about the impact of the removal of a written authorization on the tagging of protected or endangered species. As described above, however, this final rule does not address the tagging of protected or endangered species nor would it affect associated regulations and requirements applicable to listed species or increase interactions with such species. As such, because their concerns were so far outside the scope of the rulemaking, we determined that a public hearing was not necessary and that a written response to comments would be adequate and appropriate.

Comment 8: NMFS received a public comment regarding the effects of tagging on HMS (specifically sharks). The commenter highlighted issues surrounding infection and tag biofouling, and argued that NMFS should not implement the proposed measures because they would result in more harmful tagging of HMS.

Response: While available research indicates that any kind of fish tagging, including the application of archival tags, could result in physiological stress, injury, infection, and other sublethal impacts, the majority of scientific evidence indicates that tag-induced mortality of HMS is negligible and is not a threat to HMS populations. An archival tag is one type of tag placed on HMS, and is a scientific tool that has been used to vastly improve understanding of HMS movements, habitat use, exposure to anthropogenic impacts, post-release mortality rates, and other aspects of biology. Archival tagging studies have improved NMFS' ability to conserve and sustainably manage HMS populations, and NMFS encourages the responsible continued use of all tags, including archival tags.

Classification

The NMFS Assistant Administrator has determined that the final rule is consistent with the 2006 Consolidated HMS FMP and its amendments, the Magnuson-Stevens Act, and other applicable laws.

This final action is not significant for the purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: August 15, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends 50 CFR part 635 as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

■ 1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.;* 16 U.S.C. 1801 *et seq.*

■ 2. Revise § 635.33 to read as follows:

§ 635.33 Archival tags.

(a) *Landing an HMS with a surgically implanted archival tag.* Notwithstanding other provisions of this part, persons may catch, possess, retain, and land an Atlantic HMS in which an archival tag has been surgically implanted, provided such persons return the tag to the research entity indicated on the tag or to NMFS at an address designated by NMFS and report the fish as required in § 635.5.

(b) *Quota monitoring.* If an Atlantic HMS landed under the authority of paragraph (a) of this section is subject to a quota, the fish will be counted against the applicable quota for the species consistent with the fishing gear and activity which resulted in the catch. In the event such fishing gear or activity is otherwise prohibited under applicable provisions of this part, the fish shall be counted against the reserve or research quota established for that species, as appropriate.

■ 3. In § 635.71, revise paragraph (a)(20) to read as follows:

§ 635.71 Prohibitions.

* * * * *

(a) * * *

(20) Fail to return a surgically implanted archival tag of a retained

Atlantic HMS to NMFS or the research entity, as specified in § 635.33, or fail to report the fish, as specified in § 635.5.

* * * * *

[FR Doc. 2016–19796 Filed 8–18–16; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 81, No. 161
Friday, August 19, 2016

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 3, 47 and 50

[Docket ID OCC–2016–0009]

RIN 1557–AE05

Mandatory Contractual Stay Requirements for Qualified Financial Contracts

AGENCY: Office of the Comptroller of the Currency, Treasury (OCC).

ACTION: Notice of proposed rulemaking.

SUMMARY: The OCC is proposing to add a new part to its rules to enhance the resilience and the safety and soundness of federally chartered and licensed financial institutions by addressing concerns relating to the exercise of default rights of certain financial contracts that could interfere with the orderly resolution of certain systemically important financial firms. Under this proposed rule, a covered bank would be required to ensure that a covered qualified financial contract (1) contains a contractual stay-and-transfer provision analogous to the statutory stay-and-transfer provision imposed under Title II of the Dodd-Frank Act and in the Federal Deposit Insurance Act, and (2) limits the exercise of default rights based on the insolvency of an affiliate of the covered bank. In addition, this proposed rule would make conforming amendments to the OCC's Capital Adequacy Standards and the Liquidity Risk Measurement Standards in its regulations. The requirements of this proposed rule are substantively identical to those contained in a notice of proposed rulemaking issued by the Board of Governors of the Federal Reserve System on May 3, 2016.

DATES: Comments must be received by October 18, 2016.

ADDRESSES: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments through the Federal eRulemaking Portal or email, if possible. Please use the title "Mandatory Contractual Stay Requirements for Qualified Financial Contracts" to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal—"Regulations.gov":* Go to *www.regulations.gov.* Enter "Docket ID OCC–2016–0009" in the Search Box and click "Search." Click on "Comment Now" to submit public comments.
- Click on the "Help" tab on the *Regulations.gov* home page to get information on using *Regulations.gov,* including instructions for submitting public comments.
- *Email: regs.comments@occ.treas.gov.*
- *Mail:* Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.
- *Fax:* (571) 465–4326.

Instructions: You must include "OCC" as the agency name and "Docket ID OCC–2016–0009" in your comment. In general, OCC will enter all comments received into the docket and publish them on the *Regulations.gov* Web site without change, including any business or personal information that you provide such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this rulemaking action by any of the following methods:

- *Viewing Comments Electronically:* Go to *www.regulations.gov.* Enter "Docket ID OCC–2016–0009" in the Search box and click "Search." Click on "Open Docket Folder" on the right side of the screen and then "Comments." Comments can be filtered by clicking on "View All" and then using the filtering tools on the left side of the screen.
- Click on the "Help" tab on the *Regulations.gov* home page to get information on using *Regulations.gov.* Supporting materials may be viewed by clicking on "Open Docket Folder" and then clicking on "Supporting Documents." The docket may be viewed after the close of the comment period in the same manner as during the comment period.
- *Viewing Comments Personally:* You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

FOR FURTHER INFORMATION CONTACT: Valerie Song, Assistant Director, or Scott Burnett, Attorney, Bank Activities and Structure Division, (202) 649–5500; Rima Kundnani, Attorney, or Ron Shimabukuro, Senior Counsel, Legislative and Regulatory Activities Division, (202) 649–6282, 400 7th Street SW., Washington, DC 20219.

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I. Introduction

In the wake of the financial crisis of 2007–08, U.S. and international financial regulators have placed increased focus on improving the resolvability of large, complex financial institutions that operate in multiple jurisdictions, often called global systemically important banking organizations (GSIBs).

In connection with these ongoing efforts, on May 3, 2016, the Board of Governors of the Federal Reserve System (FRB or Board) issued a notice of proposed rulemaking (NPRM) pursuant to section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) as part of its ongoing efforts to improve the resolvability of U.S. GSIBs and foreign GSIBs that operate in the United States (collectively, "covered entities" [1]).[2] The OCC is issuing this parallel proposed rule applicable to OCC-regulated institutions that are part of a covered entity under the FRB NPRM. The OCC intends this proposed rule to complement and work in tandem with the FRB NPRM.

The purpose of the Board's NPRM is to improve the resolvability of covered entities by "limiting disruptions to a failed GSIB through its financial contracts with other companies." [3] Specifically, the Board's NPRM addresses a threat to financial stability posed by the potential disorderly exercise of default rights contained in several important categories of financial contracts collectively known as "qualified financial contracts" (QFCs).[4]

As described more fully in the Board's NPRM and in the Background section of this preamble, this threat to financial stability arises because GSIBs are interconnected with other financial firms, including other GSIBs, through large volumes of QFCs. The failure of one entity within a GSIB can trigger disruptive terminations of these contracts if the counterparties of both the failed entity and its affiliates exercise their contractual rights to terminate the contracts and liquidate collateral.[5] These terminations, especially if counterparties lose confidence in the GSIB quickly, and in large numbers, can destabilize the financial system and potentially spark a financial crisis through several channels. For example, they can destabilize the failed entity's otherwise solvent affiliates, causing them to weaken or fail with adverse consequences to their counterparties that can result in a chain reaction that ripples through the financial system. They also may result in "fire sales" of large volumes of financial assets, in particular, the collateral that secures the contracts, which can in turn weaken and cause stress for other firms by depressing the value of similar assets that they hold.

As discussed in detail in the Section I.B., the OCC, as the primary regulator for national banks, Federal savings associations (FSAs), and Federal branches and agencies, has a strong safety and soundness interest in preventing such a disorderly termination of QFCs upon a GSIB's entry into resolution proceedings. QFCs are typically entered into by various operating entities in the GSIB group, which will often include a large depository institution that is subject to the OCC's supervision. These OCC-supervised entities are some of the largest entities by asset size in the GSIB group, and often a party to large volumes of QFCs, making these entities highly interconnected with other large financial firms.[6] The exercise of default rights against an otherwise healthy national bank, FSA, or Federal branch or agency resulting from the failure of its affiliate, for example its top-tier U.S. holding company, may cause it to weaken or fail, and in turn spread contagion throughout the financial system, including among the system of federally chartered and licensed institutions that the OCC supervises, by causing a chain of failures by other financial institutions—including other national banks, FSAs, or Federal branches or agencies—that are its QFC counterparties. Furthermore, if an OCC-supervised entity itself were to fail, it is imperative that the default rights triggered by such an event are exercised in an orderly manner, both by domestic and foreign counterparties, to ensure that contagion does not spread to other federally chartered and licensed institutions and beyond throughout the Federal banking system.[7]

Accordingly, OCC-supervised affiliates or branches of U.S. or foreign GSIBs are exposed, through the interconnectedness of their QFCs and their affiliates' QFCs, to destabilizing effects if their counterparties or the counterparties of their affiliates exercise default rights upon the entry into resolution of the covered bank itself or its GSIB affiliate. These potential destabilizing effects are best addressed by requiring all GSIB entities to amend their QFCs to include contractual provisions aimed at avoiding such destabilization. As the primary supervisor of covered banks, the OCC has a significant interest in preventing or mitigating these destabilizing effects; otherwise, the result will be adverse to safety and soundness of covered banks individually and collectively, with the potential for spill-over beyond GSIB-affiliated banks and Federal branches and agencies to the Federal banking system.

As described in the Board's NPRM, measures aimed at improving financial stability and the probability of a successful resolution of GSIBs likely will affect the operations of GSIB subsidiaries. In most cases, the largest GSIB subsidiary by asset size is a national bank supervised by the OCC. While the ultimate aim of the Board's NPRM and this proposed rule is focused on the resolution of a GSIB, the proposed preventative measures would be required to be implemented by GSIBs while they are going concerns. The OCC has an inherent supervisory interest in ensuring that measures aimed at improving resolvability in the event of a GSIB's failure are also consistent with

[1] The FRB NPRM applies to "covered entities." The term "covered entity" includes: any U.S. top-tier bank holding company identified as a GSIB under the Board's NPRM establishing risk-based capital surcharges for GSIBs, set forth at 12 CFR 217.402; any subsidiary of such bank holding company (other than a "covered bank"); and any U.S. subsidiary, U.S. branch, or U.S. agency of a foreign GSIB (other than a "covered bank"). *See* FRB NPRM § 252.82. The term "covered entity" does not include "covered banks," which are instead covered by the provisions of this proposed rule.

[2] "Restrictions on Qualified Financial Contracts of Systemically Important U.S. Banking Organizations and the U.S. Operations of Systemically Important Foreign Banking Organizations; Revisions to the Definition of Qualifying Master Netting Agreement and Related Definitions," 81 FR 29691, 29170 (May 11, 2016) (FRB Proposal, FRB NPRM, Board's Proposal, or Board's NPRM).

[3] *Id.* at 29170.

[4] *Id.* The Board's Proposal adopts the definition of "qualified financial contract" set out in section 210(c)(8)(D) of the Dodd-Frank Act, 12 U.S.C. 5390(c)(8)(D). *See* Board's Proposal § 252.81. This definition includes, among other things, derivatives, repurchase agreements (also known as "repos") and reverse repos, and securities lending and borrowing agreements.

[5] As used in this proposed rule, the term "GSIB" can refer to any entity in the GSIB group, including the top-tier parent entity or any subsidiary thereof. The term "GSIB entity" is sometimes used to refer to an individual component of the GSIB group.

[6] 81 FR 29619, 29172 ("From the standpoint of financial stability, the most important of these operating subsidiaries are generally a U.S. insured depository institution, a U.S. broker-dealer, and similar entities organized in other countries.").

[7] As used in this proposed rule, the term "Federal banking system" refers to all OCC-supervised entities, including national banks, Federal savings associations, and Federal branches and agencies. Accordingly, references to impacts on the Federal banking system refer to how destabilization can adversely affect all such entities, not just covered banks.

the safe and sound operation of the OCC-supervised subsidiary as a going concern. Accordingly, to ensure that the QFCs entered into by such entities do not threaten the stability or safety and soundness of covered banks individually or collectively, the OCC is issuing this proposed rule, which imposes substantively identical requirements contained in the FRB NPRM on national banks, FSAs, and Federal branches and agencies (covered banks). The OCC worked closely with the FRB to develop this proposed rule.[8] In addition, the OCC plans to work with the FRB to coordinate the development of the final rule and may share comments received in response to the proposed rule, as appropriate.

II. Background

The following background discussion describes in detail the financial contracts that are the subject of this proposed rule, the default rights often contained in such contracts, and impacts on financial stability resulting from the exercise of such default rights. This section also provides background information on the resolution strategies for GSIBs and how they fit within the resolution frameworks in the United States.[9]

A. Qualified Financial Contracts, Default Rights, and Financial Stability

The proposed rule covers QFCs, which include swaps, other derivative contracts, repurchase agreements (repos) and reverse repos, and securities lending and borrowing agreements. GSIB entities enter into QFCs to borrow money to finance their investments, to lend money, to manage risk, to attempt to profit from market movements, and to enable their clients and counterparties to perform these financial activities.

QFCs play a role in economically valuable financial intermediation when markets are functioning normally. But they are also a major source of financial interconnectedness, which may pose a threat to financial stability in times of stress. This proposed rule, along with the FRB NPRM, focuses on one of the most serious threats to both a global systemically important bank holding company (BHC) and its covered banks subsidiaries—the failure of a GSIB that is party to large volumes of QFCs, which are likely to involve QFCs with counterparties that are themselves systemically important.

By contract, a party to a QFC generally has the right to take certain actions if its counterparty defaults on the QFC (that is, if it fails to meet certain contractual obligations). Common default rights include the right to suspend performance of the non-defaulting party's obligations, the right to terminate or accelerate the contract, the right to set off amounts owed between the parties, the right to seize and liquidate the defaulting party's collateral. In general, default rights allow a party to a QFC to reduce the credit risk associated with the QFC by granting it the right to exit the QFC and thereby reduce its exposure to its counterparty upon the occurrence of a specified condition, such as its counterparty's entry into resolution proceedings.

This proposed rule focuses on two distinct scenarios in which a non-defaulting party to a QFC is commonly able to exercise default rights. These two scenarios involve a default that occurs when either the defaulting party to the QFC or an affiliate of that party enters a resolution proceeding.[10]

The first scenario occurs when a legal entity that is itself a party to the QFC enters a resolution proceeding. This proposed rule refers to such a scenario as a "direct default" and refers to the contractual default rights that arise from a direct default as "direct default rights."[11]

The second scenario occurs when an affiliate of the legal entity that is a direct party to the QFC (such as the direct party's parent holding company) enters a resolution proceeding. This proposed rule refers to such a scenario as a "cross-default" and refers to contractual default rights that arise from a cross-default as "cross-default rights." For example, a GSIB parent entity might guarantee the derivatives transactions of its subsidiaries and those derivatives contracts could contain cross-default rights against a subsidiary of the GSIB that would be triggered by the bankruptcy filing of the GSIB parent entity even though the subsidiary continues to meet all of its financial obligations.

Direct default rights and cross-default rights are referred to collectively in this proposed rule as "default rights."

As noted in the FRB NPRM, if a significant number of QFC counterparties exercise their default rights precipitously and in a manner that would impede an orderly resolution of a GSIB, all QFC counterparties and the broader financial system, including institutions supervised by the OCC, may potentially be worse off and less stable.

The destabilization can occur in several ways. First, counterparties' exercise of default rights may drain liquidity from the troubled GSIB, forcing it to sell off assets at depressed prices, both because the sales must be done on a short timeframe and because the elevated supply will push prices down. These asset "fire sales" may cause or deepen balance-sheet insolvency at the GSIB, reducing the amount that its other creditors can recover and thereby imposing losses on those creditors and threatening their solvency (and, indirectly, the solvency of their own creditors, and so on). The GSIB may also respond by withdrawing liquidity that it had offered to other firms, forcing them to engage in asset fire sales. Alternatively, if the GSIB's QFC counterparty itself liquidates the QFC collateral at fire sale prices, the effect will again be to weaken the GSIB's balance sheet, because the debt satisfied by the liquidation would be less than what the value of the collateral would have been outside the fire sale context. The counterparty's setoff rights may allow it to further drain the GSIB's capital and liquidity by withholding payments owed to the GSIB. The GSIB may also have rehypothecated collateral that it received from QFC counterparties, for instance in back-to-back repo or securities lending transactions, in which case demands from those counterparties for the early return of their rehypothecated collateral could be especially disruptive.

The asset fire sales can also spread contagion throughout the financial system by increasing volatility and by lowering the value of similar assets held by other financial institutions, potentially causing them to suffer

[8] 12 U.S.C. 5365(b)(4) (requiring the Board to consult with each Financial Stability Oversight Council (FSOC) member that primarily supervises any subsidiary when any prudential standard is likely to have a "significant impact" on such subsidiary).

[9] See 81 FR 29169, 29170–73 (May 11, 2016), from which this discussion is adapted.

[10] This preamble uses phrases such as "entering a resolution proceeding" and "going into resolution" to refer to the concept of "becoming subject to a receivership, insolvency, liquidation, resolution, or similar proceeding." These phrases refer to proceedings established by law to deal with a failed legal entity. In the context of the failure of a global systemically important bank holding company, the most relevant types of resolution proceeding include: (1) For most U.S.-based legal entities, the bankruptcy process established by the U.S. Bankruptcy Code (Title 11, United States Code); (2) for U.S. insured depository institutions, a receivership administered by the Federal Deposit Insurance Corporation (FDIC) under the Federal Deposit Insurance Act (12 U.S.C. 1821); (3) for companies whose "resolution under otherwise applicable Federal or State law would have serious adverse effects on the financial stability of the United States," the Dodd-Frank Act's Orderly Liquidation Authority (12 U.S.C. 5383(b)(2)); and, (4) for entities based outside the United States, resolution proceedings created by foreign law.

[11] For convenience, this preamble uses the general term "default" to refer specifically to a default that occurs when a QFC party or its affiliate enters a resolution proceeding.

diminished market confidence in their own solvency, mark-to-market losses, margin calls, and creditor runs (which could lead to further fire sales, worsening the contagion). Finally, the early terminations of derivatives that the defaulting GSIB relied on to hedge its risks could leave major risks unhedged, increasing the GSIB's probable losses going forward.

Where there are significant simultaneous terminations and these effects occur contemporaneously, such as upon the failure of a GSIB that is party to a large volume of QFCs, they may pose a substantial risk to financial stability. In short, QFC continuity is important for the orderly resolution of a GSIB so that the instability caused by asset fire sales can be avoided.[12]

As will be discussed further, the proposed rule is primarily concerned only with default rights that run *against* a GSIB—that is, direct default rights and cross-default rights that arise from the entry into resolution of a GSIB. The proposed rule would not affect contractual default rights that a GSIB (or any other entity) may have against a counterparty that is not a GSIB. The OCC believes that this limited scope is appropriate because the risk posed to financial stability by the exercise of QFC default rights is greatest when the defaulting counterparty is a GSIB.

B. QFC Default Rights and GSIB Resolution Strategies

Under the Dodd-Frank Act, many complex GSIBs are required to submit resolution plans to the Board and the Federal Deposit Insurance Corporation (FDIC), detailing how the company can be resolved in a rapid and orderly manner in the event of material financial distress or failure of the company. In response to these requirements, these firms have developed resolution strategies that, broadly speaking, fall into two categories: The single-point-of-entry (SPOE) strategy and the multiple-point-of-entry (MPOE) strategy. As noted in the Board's Proposal, cross-default rights in QFCs pose a potential obstacle to the implementation of either of these strategies.

In an SPOE resolution, only a single legal entity—the GSIB's top-tier BHC—would enter a resolution proceeding. The losses that led to the GSIB's failure would be passed up from the operating subsidiaries that incurred the losses to the holding company and would then be imposed on the equity holders and unsecured creditors of the holding company through the resolution process. This strategy is designed to help ensure that the GSIB's subsidiaries remain adequately capitalized. An SPOE resolution could thereby prevent those operating subsidiaries from failing or entering resolution themselves and allow them to instead continue normal operations. The expectation that the holding company's equity holders and unsecured creditors would absorb the GSIB's losses in the event of failure would help to maintain the confidence of the operating subsidiaries' creditors and counterparties (including QFC counterparties), reducing their incentive to engage in potentially destabilizing funding runs or margin calls and thus lowering the risk of asset fire sales.

An SPOE proceeding can avoid the need for covered banks to be placed into receivership or similar proceedings, as they would continue to operate as going concerns, only if the parent's entry into resolution proceedings does not trigger the exercise of cross-default rights. Accordingly, this proposed rule, by limiting such cross-default rights based on an affiliate's entry into resolution proceedings, enables the SPOE strategy, and in turn, would assist in stabilizing both the covered bank and the Federal banking system.

This proposed rule would also yield benefits for resolution under the MPOE strategy. Unlike the SPOE strategy, an MPOE strategy involves several entities in the GSIB group entering proceedings. For example, an MPOE strategy might involve a foreign GSIB's U.S. intermediate holding company going into resolution or a GSIB's U.S. insured depository institution entering resolution under the Federal Deposit Insurance Act. Similar to the benefits associated with the SPOE strategy, this proposed rule would help support the continued operation of affiliates of an entity experiencing resolution to the extent the affiliate continues to perform on its QFCs.

C. Default Rights and Relevant Resolution Laws

In order to understand the connection between direct defaults, cross-defaults, the SPOE and MPOE resolution strategies, and the threats to financial stability discussed previously, it is necessary to understand how QFCs, and the default rights contained therein, are treated when an entity enters resolution. The following sections discuss the treatment of QFCs in greater detail under three U.S. resolution laws: the Bankruptcy Code, the Orderly Liquidation Authority, and the Federal Deposit Insurance Act. As discussed in these sections, each of these resolution laws has special provisions detailing the treatment of QFCs upon an entity's entry into such proceedings.

U.S. Bankruptcy Code. While covered banks themselves are not subject to resolution under the Bankruptcy Code, in general, if a BHC were to fail, it would be resolved under the Bankruptcy Code. When an entity goes into resolution under the Bankruptcy Code, attempts by the creditors of the debtor to enforce their debts through any means other than participation in the bankruptcy proceeding (for instance, by suing in another court, seeking enforcement of a preexisting judgment, or seizing and liquidating collateral) are generally blocked by the imposition of an automatic stay, which generally persists throughout the bankruptcy proceeding.[13] A key purpose of the automatic stay, and of bankruptcy law in general, is to maximize the value of the bankruptcy estate and the creditors' ultimate recoveries by facilitating an orderly liquidation or restructuring of the debtor. As a result, the automatic stay addresses the collective action problem, in which the creditors' individual incentives to race to recover as much from the debtor as possible, before other creditors can do so, collectively cause a value-destroying disorderly liquidation of the debtor.[14]

The Bankruptcy Code, however, largely exempts QFC counterparties from the automatic stay through special "safe harbor" provisions.[15] Under these provisions, any contractual rights that a QFC counterparty has to terminate the contract, set off obligations, and liquidate collateral in response to a direct default or cross-default are not

[12] The Board and the FDIC identified the exercise of default rights in financial contracts as a potential obstacle to orderly resolution in the context of resolution plans filed pursuant to section 165(d) of the Dodd-Frank Act and, accordingly, instructed the most systemically important firms to demonstrate that they are "amending, on an industry-wide and firm-specific basis, financial contracts to provide for a stay of certain early termination rights of external counterparties triggered by insolvency proceedings." FRB and FDIC, "Agencies Provide Feedback on Second Round Resolution Plans of 'First-Wave' Filers" (August 5, 2014), available at *http://www.federalreserve.gov/newsevents/press/bcreg/20140805a.htm. See also* FRB and FDIC, "Agencies Provide Feedback on Resolution Plans of Three Foreign Banking Organizations" (March 23, 2015), available at *http://www.federalreserve.gov/newsevents/press/bcreg/20150323a.htm;* FRB and FDIC, "Guidance for 2013 165(d) Annual Resolution Plan Submissions by Domestic Covered Companies that Submitted Initial Resolution Plans in 2012" 5–6 (April 15, 2013), available at *http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20130415c2.pdf.*

[13] *See* 11 U.S.C. 362.

[14] *See, e.g., Aiello* v. *Providian Financial Corp.*, 239 F.3d 876, 879 (7th Cir. 2001).

[15] 11 U.S.C. 362(b)(6), (7), (17), (27), 362(o), 555, 556, 559, 560, 561.

subject to the stay and may be exercised at any time.[16]

Where the failed firm is a GSIB's holding company with covered banks that are going concerns and are party to large volumes of QFCs, the mass exercise of default rights under the QFCs based on the affiliate default represents a significant impediment to the SPOE resolution strategy.[17] This is because the failure of a covered bank's affiliate will trigger the mass exercise of cross-default rights against the covered bank, which will not be stayed by the affiliate's entry into bankruptcy proceedings. This will in turn lead to fire sales that will threaten the ongoing viability of the covered bank and the successful resolution of the particular GSIB—and thus will also pose a threat to the federal banking system and broader financial system.

Special Resolution Regimes Under U.S. Law. For purposes of this proposed rule, there are two special resolution regimes under U.S. law: Title II of the Dodd-Frank Act and the Orderly Liquidation Authority (OLA); and the Federal Deposit Insurance Act (FDIA). While these regimes both impose certain limitations on the ability of counterparties to exercise default rights—thus mitigating the potential for disorderly resolution due to the exercise by counterparties of such default rights—these limitations may not be applicable or clearly enforceable in certain contexts.

Title II of the Dodd-Frank Act and the Orderly Resolution Authority. Title II of the Dodd-Frank Act establishes an alternative resolution framework intended "to provide the necessary authority to liquidate failing financial companies that pose a significant risk to the financial stability of the United States in a manner that mitigates such risk and minimizes moral hazard." [18]

As noted, although a failed BHC would generally be resolved under the Bankruptcy Code, Congress recognized that a U.S. financial company might fail under extraordinary circumstances, in which an attempt to resolve it through the bankruptcy process would have serious adverse effects on financial stability in the United States. Title II therefore authorizes the Secretary of the Treasury, upon the recommendation of other government agencies and a determination that several preconditions are met, to place a U.S. financial company into a receivership conducted by the FDIC as an alternative to bankruptcy.

Title II empowers the FDIC, when it acts as receiver in an OLA resolution, to protect financial stability against the QFC-related threats discussed previously. Title II addresses direct default rights in a number of ways. First, Title II empowers the FDIC to transfer the QFCs to some other financial company that is not in a resolution proceeding.[19] To give the FDIC time to effect this transfer, Title II temporarily stays QFC counterparties of the failed entity from exercising termination, netting, and collateral liquidation rights "solely by reason of or incidental to" the failed entity's entry into OLA resolution, its insolvency, or its financial condition.[20] Second, once the QFCs are transferred in accord with the statute, Title II permanently stays the exercise of those direct default rights based on the prior event of default and receivership.[21]

Title II addresses cross-default rights through a similar procedure. It empowers the FDIC "to enforce contracts of subsidiaries or affiliates" of the failed company that are guaranteed or otherwise supported by or linked to the covered financial company, notwithstanding any contractual right to cause the termination, liquidation, or acceleration of such contracts based solely on the insolvency, financial condition, or receivership of the failed company, so long as the FDIC takes certain steps to protect the QFC counterparty's interests by the end of the business day following the company's entry into OLA resolution.[22]

These stay-and-transfer provisions of the Dodd-Frank Act go far to mitigate the threat posed by QFC default rights by preventing mass closeouts against the entity that has entered into OLA proceedings or its going concern affiliates. At the same time, they allow for appropriate protections for QFC counterparties of the failed financial company. They only stay the exercise of default rights based on the failed company's entry into resolution, the fact of its insolvency, or its financial condition. And the stay period is brief, unless the FDIC transfers the QFCs to another financial company that is not in resolution and should therefore be capable of performing under the QFCs.

Federal Deposit Insurance Act. Under the FDIA, a failing insured depository institution would generally enter a receivership administered by the FDIC.[23] The FDIA addresses direct default rights in the failed bank's QFCs with stay-and-transfer provisions that are substantially similar to the provisions of Title II of the Dodd-Frank Act as discussed.[24] However, the FDIA does not address cross-default rights, leaving the QFC counterparties of the failed depository institution's affiliates free to exercise any contractual rights they may have to terminate, net, and liquidate collateral based on the depository institution's entry into resolution.

III. Description of the Proposal

A. Overview, Purpose, and Authority

As discussed previously, and in the Board's Proposal, the exercise of default rights by counterparties of a failed GSIB can have a significant impact on financial stability. This financial stability concern is necessarily intertwined with the safety and soundness of covered banks and the federal banking system—the disorderly exercise of default rights can produce a sudden, contemporaneous threat to the safety and soundness of individual institutions throughout the system, which in turn threatens the system as a whole.A Accordingly, national banks, FSAs, and Federal branches and agencies are affected by financial instability—even if such instability is precipitated outside the Federal banking system—and can themselves also be sources of financial destabilization due to the interconnectedness of these institutions to each other and to other entities within the financial system. Thus, safety and soundness of individual national banks, FSAs, and Federal branches and agencies, the federal banking system, and financial stability of the system as a whole are interconnected.

[16] The Bankruptcy Code does not itself confer any default rights upon QFC counterparties; it merely permits QFC counterparties to exercise certain contractual rights that they have under the terms of the QFC. This proposed rule does not propose to restrict the exercise of any default rights that fall within the Bankruptcy Code's safe harbor provisions, which are described here to provide context.

[17] As noted previously, the MPOE strategy will similarly benefit from the override of cross-defaults. The SPOE strategy is used here for illustrative purposes only.

[18] 12 U.S.C. 5384(a) (Section 204(a) of the Dodd-Frank Act).

[19] 12 U.S.C. 5390(c)(9).

[20] 12 U.S.C. 5390(c)(10)(B)(i)(I). This temporary stay generally lasts until 5:00 p.m. eastern time on the business day following the appointment of the FDIC as receiver.

[21] If the QFCs are transferred to a solvent third party before the stay expires, the counterparty is permanently enjoined from exercising such rights based upon the appointment of the FDIC as receiver of the financial company (or the insolvency or financial condition of the financial company), but is not stayed from exercising such rights based upon other events of default. 12 U.S.C. 5390(c)(10)(B)(i)(II).

[22] 12 U.S.C. 5390(c)(16); 12 CFR 380.12.

[23] 12 U.S.C. 1821(c).

[24] *See* 12 U.S.C. 1821(e)(8)–(10).

The purpose of this proposed rule is to enhance the safety and soundness of covered banks and the federal banking system, thereby also bolstering financial stability generally, by addressing the two main issues raised by covered QFCs with the orderly resolution of these covered banks as generally described in the Board's Proposal.

While Title II and the FDIA empower the use of the QFC stay-and-transfer provisions, a court in a foreign jurisdiction may decline to enforce these important provisions. The proposed rule directly improves the safety and soundness of covered banks by clarifying the applicability of U.S. special resolution regimes to all counterparties, whether they are foreign or domestic. Although domestic entities are clearly subject to the temporary stay provisions of OLA and the FDIA, these stays may be difficult to enforce in a cross-border context. As a result, domestic counterparties of a failed U.S. financial institution may be disadvantaged relative to foreign counterparties, as the domestic counterparties would be subject to the stay, and accompanying potential market volatility, while if the stay was not enforced by foreign authorities, foreign counterparties could close out immediately. Furthermore, a mass close out by such foreign counterparties would likely exacerbate market volatility, which in turn would likely magnify harm to the stayed U.S. counterparties' positions, which are likely to include other national banks and FSAs. This proposed rule would eliminate the potential for these adverse consequences by requiring covered banks to condition the exercise of default rights in covered contracts on the stay provisions of OLA and the FDIA.

In spite of the QFC stay-and-transfer provisions in Title II and the FDIA, the affiliates of a global systemically important BHC that goes into resolution under the Bankruptcy Code may face disruptions to their QFCs as their counterparties exercise cross-default rights. Thus, a healthy covered bank whose parent BHC entered resolution proceedings could fail due to its counterparties exercising cross-default rights. This is clearly both a safety and soundness concern for the otherwise healthy covered bank, but it also has the additional negative effect of defeating the orderly resolution of the GSIB, since a key element of SPOE resolution in the United States is ensuring that critical operating subsidiaries—such as covered banks—continue to operate on a going concern basis. This proposed rule would address this issue by generally restricting the exercise of cross-default rights by counterparties against a covered bank.

Moreover, a disorderly resolution like that described previously could jeopardize not just the covered bank and the orderly resolution of its failed parent BHC, but all surviving counterparties, many of which are likely to be other national banks and other FSAs, regardless of size or interconnectedness, by harming the overall condition of the Federal banking system and the financial system as a whole. A disorderly resolution could result in additional defaults, fire sales of collateral, and other consequences likely to amplify the systemic fallout of the resolution of a covered bank.

The proposed rule is designed to minimize such disorder, and therefore enhance the safety and soundness of all individual national banks, FSAs, and Federal branches and agencies, the Federal banking system, and the broader financial system. This is particularly important because financial institutions are more sensitive than other firms to the overall health of the financial system.[25]

The proposed rule covers the OCC-supervised operations of foreign banking organizations (FBOs) designated as systemically important, including national bank and FSA subsidiaries, as well as Federal branches and agencies, of these FBOs. As with a national bank or FSA subsidiary of a U.S. global systemically important BHC, the OCC believes that this proposed rule should apply to a national bank or FSA subsidiary of a global systematically important FBO for essentially the same reasons. While the national bank or FSA may not be considered systemically important itself, as part of a GSIB, the disorderly resolution of the covered national banks and FSAs could have a significant negative impact on the Federal banking system and on the U.S. financial system, in general.

Specifically, the proposed rule is designed to prevent the failure of a global systemically important FBO from disrupting the ongoing operations or orderly resolution of the covered bank by protecting the healthy national bank or FSA from the mass triggering of default rights by the QFC counterparties. Additionally, the application of this proposed rule to the QFCs of these national bank and FSA subsidiaries should avoid creating what may otherwise be an incentive for counterparties to concentrate QFCs in these firms because they are subject to fewer counterparty restrictions.

Similarly, it is important to cover any Federal branch or agency of a global systemically important FBO in order to ensure the orderly resolution of these entities if the parent FBO were to be placed into resolution in its home jurisdiction. However, to avoid unduly broad application of the proposed rule and imposing unnecessary restrictions on the QFCs of global systemically important FBOs, the proposed rule would exclude certain QFCs that do not have a clear nexus to its U.S. operations. Specifically, the proposed rule would exclude covered QFCs under multi-branch arrangements that either are not booked at the Federal branch or agency or do not provide for payment or delivery at the Federal branch or agency. The OCC believes that this provides a reasonable limitation on the scope of the proposed rule to those QFCs of covered Federal branches and agencies that have a direct effect on the Federal banking system and the general financial stability of the United States.

The OCC is issuing this proposed rule under its authorities under the National Bank Act (12 U.S.C. 1 *et seq.*), the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*), and the International Banking Act of 1978 (12 U.S.C. 3101 *et seq.*), including its general rulemaking authorities.[26] As discussed in detail in Section I. B., the OCC views the proposed rule as consistent with its overall statutory mandate of assuring the safety and soundness of entities subject to its supervision, including national banks, FSAs, and Federal branches and agencies.[27]

B. Covered Banks (Section 47.3(a), (b), (c))

The proposed rule would apply to all "covered banks." The term "covered bank" would be defined to include (i) any national bank or FSA that is a subsidiary of a global systemically important BHC that has been designated pursuant to subpart I of 12 CFR part 252 of this title (FRB Regulation YY); or (ii) is a national bank or FSA subsidiary, or Federal branch or agency of a global systemically important FBO that has

[25] The OCC, along with the FDIC and FRB, recently made this point in the swap margin NPRM. 79 FR 57348, 57361 (September 24, 2014) ("Financial firms present a higher level of risk than other types of counterparties because the profitability and viability of financial firms is more tightly linked to the health of the financial system than other types of counterparties. Because financial counterparties are more likely to default during a period of financial stress, they pose greater systemic risk and risk to the safety and soundness of the covered swap entity.").

[26] *See* 12 U.S.C. 93a, 1463(a)(2), and 3108(a).

[27] *See* 12 U.S.C. 1. This primary responsibility is also defined in various provisions throughout the OCC's express statutory authorities with respect to each institution type under their respective statutes.

been designated pursuant to FRB Regulation YY.

The proposed rule defines global systemically important BHC and global systemically important FBO by cross-reference to newly added subpart I of 12 CFR part 252 of the Board's Proposal. The list of banking organizations that meet the methodology proposed in the FRB NPRM is currently the same set of banking organizations that meet the Basel Committee on Banking Supervision (BCBS) definition of a GSIB.[28]

This proposed rule covers national bank and FSA subsidiaries of global systemically important BHCs and FBOs, and Federal branches and agencies of global systemically important FBOs. In the United States, covered QFCs typically are entered into at the subsidiary level, which would include through the national bank, FSA or Federal branch or agency, rather than through the U.S. intermediate holding company.[29]

The OCC believes if the orderly resolution of a covered entity as defined under the FRB's Proposal is to be successful, then it is necessary that all national banks, FSAs, and Federal branches and agencies of systemically important global systemically important BHCs and FBOs be subject to the mandatory contractual requirements in this proposed rule. Moreover, this proposed rule would make clear that the mandatory contractual stay requirements apply to the subsidiaries of any national bank, FSA, or Federal branch or agency that is a covered bank. Under the proposed rule, the term covered bank also includes any subsidiary of a national bank, FSA, or Federal branch or agency. The definition of "subsidiary of covered bank" in the proposed rule mirrors the definition of subsidiary in the FRB's Regulation YY (12 CFR 252.2), and it is intended to be substantially the same as the FRB's definition with respect to a subsidiary of a covered bank. Essentially, for the same reasons that it is necessary to cover all national banks, FSAs, and Federal branches and agencies of global systemically important BHCs and FBOs under the proposed rule, the OCC believes that it is necessary that all subsidiaries of those covered banks also be subject to the mandatory contractual stay requirements. As mentioned, unless all entities that are part of a GSIB are covered, counterparties might have incentives to migrate their covered QFCs to uncovered entities.

Question 1: While the exercise of mass closeout rights against any individual national bank, FSA or Federal branch or agency would raise concerns, the OCC is especially concerned about the potential spill-over effect such mass closeouts would have, either individually or collectively, on the Federal banking system if the entity itself is systemically important or part of a larger banking group that is systemically important. Are there alternative approaches for determining which national banks, FSAs and Federal branches and agencies should be considered systemically important?

Question 2: While the primary focus of this rule is on, covered banks—*i.e.*, those that are subsidiaries or branches of U.S. or foreign GSIBS—there is some concern that given the interconnected nature of QFCs, a market disruption could significantly impact all national banks, FSAs and Federal branches and agencies. Should this proposed rule be expanded to cover more OCC-regulated entities, for example, those national banks, FSAs or Federal branches and agencies with material levels of QFC activities? How could material levels of QFC activities be defined and measured?

Question 3: Conversely, is the scope of this proposed rule too broad? The proposed rule would apply to all covered QFCs of covered banks as well as all of their subsidiaries, regardless of size or volume of transactions. A key policy concern is that unless all subsidiaries of a covered bank are subject to the direct and cross-default restrictions of the proposed rule, covered banks and their counterparties would have the incentive to transfer their QFCs to unprotected subsidiaries of the covered bank. Could the scope of entities covered by the proposed rule be narrowed while still achieving its policy objectives? If so, what criteria could be used? For example, should a subsidiary of covered banks that only engages in some de minimis level of covered QFCs be safely excluded from the scope of this proposed rule? Are there alternative ways to define what will be considered subsidiaries for purposes of this rule?

Question 4: Some of the subsidiaries of covered banks under the proposed rule could be subject to additional supervision by another U.S. agency, such as the case of a broker-dealer subsidiary of a national bank. Does the issue of potentially conflicting jurisdiction need to be addressed? If so, how? For example, should the rule provide a carve out for a subsidiary of a covered bank that is subject to comparable requirements under the regulations of another agency?

Question 5: The scope of this proposed rule is designed to cover any national bank or FSA that is a subsidiary of a global systemically important BHC or FBO under the FRB NPRM. While this scope of coverage ensures that all national banks or FSAs under a global systemically important BHC or FBO would be subject to the same substantive contractual mandatory stay under the FRB NPRM, the proposed rule does not take into account the potential situation of a standalone national bank or FSA, not under a BHC, that might itself be considered systemically important. Although no such entity exists currently, the OCC is considering whether to amend the definition of covered bank to include any national bank or FSB that meets a certain asset threshold test. In this case, the OCC is considering using the $700 billion in total consolidated assets that is used in the Enhanced Supplementary Leverage Ratio.[30] Should the OCC decide to address standalone national banks and FSBs, what methodology and factors should the OCC consider in deciding which institutions to include?

C. Covered QFCs (Sections 47.4(a), 47.5(a), 47.7, 47.8)

General requirement. The proposed rule would require covered banks to ensure that each "covered QFC" conforms to the requirements of sections 47.4 and 47.5. These sections require that a covered QFC (1) contain contractual stay-and-transfer provisions similar to those imposed under Title II of the Dodd-Frank Act and the FDIA, and (2) limit the exercise of default rights based on the insolvency of an affiliate of the covered bank. A "covered QFC" is generally defined as any QFC that a covered bank enters, executes, or otherwise becomes party to. A party to a QFC includes a party acting as agent under the QFC. "Qualified financial contract" or "QFC" would be defined to have the same meaning as in section 210(c)(8)(D) of Title II of the Dodd-Frank

[28] In November 2015, the Financial Stability Board and BCBS published a list of banks that meet the BCBS definition of a global systemically important bank (BCBS G–SIB) based on year-end 2014 data. A list based on year-end 2014 data was published November 3, 2015 (available at *http://www.fsb.org/wp-content/uploads/2015-update-of-list-of-global-systemically-important-banks-G-SIBs.pdf*). The U.S. top-tier BHCs that are currently identified as a BCBS G–SIBs are Bank of America Corporation, Bank of New York Mellon Corporation, Citigroup Inc., Goldman Sachs Group, Inc., JP Morgan Chase & Co., Morgan Stanley, State Street Corporation, and Wells Fargo & Company.

[29] Under the clean holding company component of the FRB's recent Total Loss-Absorbing Capacity (TLAC) proposal, the U.S. intermediate holding companies of foreign GSIB entities would be prohibited from entering into QFCs with third parties. *See* 80 FR 74926 (November 30, 2015).

[30] See 79 FR 24528 (May 1, 2014).

Act and would include derivatives, swaps, repurchase, reverse repurchase, and securities lending and borrowing transactions.

Except for certain QFCs under multi-branch master agreements, the definition of QFC would include a single QFC, but also all QFCs under a master agreement. Master agreements are contracts that contain general terms that the parties wish to apply to multiple transactions between them; having executed the master agreement, the parties can then include those terms in future contracts through reference to the master agreement. The proposed rule defines master agreement as defined by Title II of the Dodd-Frank Act or any master agreement designated by regulation by the FDIC. Under the definition, master agreements for QFCs, together with all supplements to the master agreement (including underlying transactions), would be treated as a single QFC.[31]

The proposed definition of "QFC" is intended to cover those financial transactions whose disorderly unwind has substantial potential to frustrate, directly or indirectly, the orderly resolution of the covered bank or any affiliate of such covered bank. The Dodd-Frank Act uses its definition of "qualified financial contract" to determine the scope of the stay-and-transfer provisions that it applies to direct default and cross-default rights in an OLA resolution. By adopting the Dodd-Frank Act's definition, the proposed rule would track Congress's judgment as to which financial transactions could, if not subject to appropriate restrictions, pose an obstacle to the orderly resolution of a systemically important financial company.

Question 6: With regard to the proposed definitions of "QFC" and "covered QFC" are there other types of financial contracts or transactions that should be included in the definition of a "covered QFC" in the proposed rule because they could pose a similar risk to the safety and soundness of the covered national banks, FSAs, and Federal branches and agencies and to the Federal banking system? Conversely, is the definition of covered QFC too broad? Are there types of financial contracts that fall within the definition of covered QFC that could be excluded without compromising the policy objectives of the proposed rule?

Question 7: Should this proposed rule include a reservation of authority provision that would maintain OCC's supervisory flexibility, on a case-by-case basis, to include or exclude from the proposed rule (1) specific OCC-supervised entities (and their subsidiaries) and (2) financial contracts or transactions, if consistent with the purposes of the proposed rule?

Exclusion of cleared QFCs. The proposed rule would exclude from the definition of "covered QFC" all QFCs that are cleared through a central counterparty (CCP). The OCC continues to consider the appropriate treatment of centrally cleared QFCs, in light of differences between cleared and uncleared QFCs with respect to contractual arrangements, counterparty credit risk, default management, and supervision.

Question 8: Should the QFCs between a CCP (or other financial market utility) and a member covered bank be subject to the requirements of this proposed rule? What additional risks do such cleared QFCs pose to the orderly resolution of covered banks and the Federal banking system? What other factors should be considered?

Exclusion of certain QFCs under foreign bank multi-branch master agreements. Under the proposed rule, the definition of a "QFC" would include a master agreement that covers other QFCs. In addition, under this definition those QFCs covered by the master agreement would be treated as a single QFC. By design, this definition of QFC is intended to ensure that the proposed rule would apply to all of the relevant QFCs entered into by a covered bank. However, as applied to the QFCs of Federal branches and agencies under a multi-branch master agreement, this definition may be too broad in its scope.

Foreign banks have multi-branch master agreements that permit transactions to be entered into both at a U.S. branch or agency of the foreign bank and at a foreign branch (located outside of the United States) of the foreign bank. Under this proposed rule, a QFC of a Federal branch or agency, as well as all of the QFCs entered into by foreign branches under the same multi-branch master agreement would be treated as a single QFC of the Federal branch or agency, and would therefore be subject to the requirements of this proposed rule. Where the QFC of the foreign branch has some U.S. nexus, such as permitting payment or delivery in the United States, the OCC believes that subjecting those QFCs to this proposed rule is reasonable and consistent with protecting the safety and soundness of the Federal banking system. However, where the QFC of the foreign branch does not permit any payment or delivery in the United States, the OCC believes that applying this proposed rule to such QFCs lacks a sufficient connection to the U.S. operations of the Federal branch or agency and may be unduly broad.

Absent the possibility under the QFC of payment or delivery in the United States, the OCC believes that the impact of such QFCs on the Federal branch or agency covered by this proposed rule, or on the Federal banking system and the United States as a whole, is indirect and relatively immaterial. For this reason, the proposed rule would exclude QFCs under such a "multi-branch master agreement" that are not booked at a Federal branch or agency covered by this proposed rule, and for which no payment or delivery may be made at the Federal branch or agency. Conversely, the multi-branch master agreement would be a covered QFC with respect to QFC transactions that are booked and permits payment and delivery at a Federal branch or agency covered by this proposed rule.

Question 9: Should the scope of the proposed rule be limited to only those transactions that are booked, or provide for payment and delivery, at the Federal branch or agency?

D. Definition of "Default Right"

As discussed previously, a party to a QFC generally has a number of rights that it can exercise if its counterparty defaults on the QFC by failing to meet certain contractual obligations. These rights are generally, but not always, contractual in nature. One common default right is a setoff right which is the right to reduce the total amount that the non-defaulting party must pay by the amount that its defaulting counterparty owes. A second common default right is the right to liquidate pledged collateral and use the proceeds to pay the defaulting party's net obligation to the non-defaulting party. Other common rights include the ability to suspend or delay the non-defaulting party's performance under the contract or to accelerate the obligations of the defaulting party.

Finally, the non-defaulting party typically has the right to terminate the QFC, meaning that the parties would not make payments that would have been required under the QFC in the future. The phrase "default right" in the proposed rule text at § 47.2 is broadly defined to include these common rights as well as "any similar rights." Additionally, the definition includes all

[31] 12 U.S.C. 5390(c)(8)(D)(viii); *see also* 12 U.S.C. 1821(e)(8)(D)(vii); 109 H. Rpt. 31, Part 1 (April 8, 2005) (explaining that a "master agreement for one or more securities contracts, commodity contracts, forward contracts, repurchase agreements or swap agreements will be treated as a single QFC under the FDIA or the FCUA (but only with respect to the underlying agreements are themselves QFCs)").

such rights regardless of source, including rights existing under contract, statute, or common law.

However, the proposed definition excludes two rights that are typically associated with the business-as-usual functioning of a QFC. First, same-day netting that occurs during the life of the QFC in order to reduce the number and amount of payments each party owes the other is excluded from the definition of "default right." [32] Second, contractual margin requirements that arise solely from the change in the value of the collateral or the amount of an economic exposure are also excluded from the definition.[33] The effect of these exclusions is to leave such rights unaffected by the proposed rule. The exclusions are appropriate because the proposed rule is intended to improve resolvability by addressing default rights that could disrupt an orderly resolution, and not to interrupt the parties' business-as-usual dealings under a QFC.

However, certain QFCs are also commonly subject to rights that would increase the amount of collateral or margin that the defaulting party (or a guarantor) must provide upon an event of default. The financial impact of such default rights on a covered bank could be similar to the impact of the liquidation and acceleration rights discussed previously. Therefore, the proposed definition of "default right" includes such rights (with the exception discussed in the previous paragraph for margin requirements that depend solely on the value of collateral or the amount of an economic exposure).[34]

Finally, contractual rights to terminate without the need to show cause, including rights to terminate on demand and rights to terminate at contractually specified intervals, are excluded from the definition of "default right" for purposes the proposed rule's restrictions on cross-default rights (section 47.5 of the proposed rule).[35] This is consistent with the proposed rule's objective of restricting only default rights that are related, directly or indirectly, to the entry into resolution of an affiliate of the covered bank, while leaving other default rights unrestricted.

Question 10: The OCC invites comment on all aspects of the proposed definition of "default right" In particular, are the proposed exclusions appropriate in light of the objectives of the proposal? To what extent does the exclusion of rights that allow a party to terminate the contract "on demand or at its option at a specified time, or from time to time, without the need to show cause" create an incentive for firms to include these rights in future contracts to evade the proposed restrictions? To what extent should other regulatory requirements (e.g., liquidity coverage ratio or the short-term wholesale funding components of the GSIB surcharge rule) be revised to create a counterincentive? Would additional exclusions be appropriate? To what extent should it be clarified that the "need to show cause" includes the need to negotiate alternative terms with the other party prior to termination or similar requirements (e.g., Master Securities Loan Agreement, Annex III—Term Loans)?

E. Required Contractual Provisions Related to U.S. Special Resolution Regimes (Section 47.4)

Under the proposed rule, a covered QFC would be required to explicitly provide both (a) that the transfer of the QFC (and any interest or obligation in or under it and any property collateralizing it) from the covered bank to a transferee would be effective to the same extent as it would be under the U.S. special resolution regimes if the covered QFC were governed by the laws of the United States or of a state of the United States and (b) that default rights with respect to the covered QFC that could be exercised against a covered bank could be exercised to no greater extent than they could be exercised under the U.S. special resolution regimes if the covered QFC were governed by the laws of the United States or of a state of the United States.[36] The proposed rule would define the term "U.S. Special Resolution Regimes" to mean the FDIA [37] and Title II of the Dodd-Frank Act,[38] along with regulations issued under those statutes.[39]

The proposed requirements are not intended to imply that a given covered QFC is not governed by the laws of the United States or of a state of the United States, or that the statutory stay-and-transfer provisions would not in fact apply to a given covered QFC. This section of the proposed rule would not have any substantive impact on those covered QFCs that are already subject to the U.S. special resolution regimes. Rather, the requirements are intended to provide certainty that all covered QFCs would be treated the same way in the context of a receivership of a covered bank under the Dodd-Frank Act or the FDIA. Thus, the purpose of this provision is to ensure that if a national bank or FSA covered by this proposed rule is placed into receivership under any U.S. special resolution regime, the stay-and-transfer provisions would extend to all foreign counterparties as a matter of contract law.

The stay-and-transfer provisions of the U.S. special resolution regimes should be enforced with respect to all contracts of any U.S. GSIB entity that enters resolution under a U.S. special resolution regime as well as all transactions of the subsidiaries of such an entity. Nonetheless, it is possible that a court in a foreign jurisdiction would decline to enforce those provisions in cases brought before it (such as a case regarding a covered QFC between a covered bank and a non-U.S. entity that is governed by non-U.S. law and secured by collateral located outside the United States). By requiring that the effect of the statutory stay-and-transfer provisions be incorporated directly into the QFC contractually, the proposed requirement would help ensure that a court in a foreign jurisdiction would enforce the effect of those provisions, regardless of whether the court would otherwise have decided to enforce the U.S. statutory provisions themselves.[40] For example, the proposed provisions should prevent a U.K. counterparty of a U.S. GSIB from persuading a U.K. court that it should be permitted to seize and liquidate collateral located in the United Kingdom in response to the U.S. GSIB's entry into OLA resolution. And the knowledge that a court in a foreign jurisdiction would reject the purported exercise of default rights in violation of the required provisions would deter covered banks' counterparties from attempting to exercise such rights.

The OCC believes that this proposed rule directly addresses a major QFC-related obstacle to the orderly resolution of covered banks. As discussed previously, restrictions on the exercise of QFC default rights are an important prerequisite for an orderly GSIB resolution. Congress recognized the importance of such restrictions when it enacted the stay-and-transfer provisions of the U.S. special resolution regimes. As demonstrated by the 2007–2009 financial crisis, the modern financial system is global in scope, and covered banks are party to large volumes of

[32] *See* Proposed Rule § 47.2.

[33] *See id.*

[34] *See id.*

[35] See Proposed Rule §§ 47.2 and 47.5.

[36] See Proposed Rule § 47.4.

[37] 12 U.S.C. 1811–1835a.

[38] 12 U.S.C. 5381–5394.

[39] See Proposed Rule § 47.2.

[40] *See generally* Financial Stability Board, "Principles for Cross-border Effectiveness of Resolution Actions" (November 3, 2015), available at *http://www.fsb.org/wp-content/uploads/Principles-for-Cross-border-Effectiveness-of-Resolution-Actions.pdf.*

QFCs with connections to foreign jurisdictions. The stay-and-transfer provisions of the U.S. special resolution regimes would not achieve their purpose of facilitating orderly resolution in the context of the failure of a GSIB with large volumes of such QFCs if QFCs could escape the effect of those provisions. As discussed in detail in Section I of this proposed rule, the OCC has a supervisory interest in preventing or mitigating the destabilizing effects of a disorderly GSIB resolution; otherwise, the result will be adverse to safety and soundness of covered banks individually and collectively, as well as the broader Federal banking system. To remove any doubt about the scope of coverage of these provisions, the proposed requirement would ensure that the stay-and-transfer provisions apply as a matter of contract to all covered QFCs, wherever the transaction. This will advance the resolvability goals of the Dodd-Frank Act and the FDIA.[41]

Question 11: While the direct default requirements are proposed to apply broadly to all covered QFCs of covered banks, the primary focus of this requirements is with QFCs with foreign counterparties not directly subject to the U.S. special resolution regimes. U.S. counterparties are less of a concern because these counterparties would already be subject to the stay-and-transfer requirements under statutory requirements of the U.S. special resolution regimes. With respect to the direct default requirements, the proposed rule does not distinguish between U.S. and foreign counterparties because the OCC believes that the broad application of this proposed rule would be simpler to implement and less burdensome given the standardized nature of QFCs and their associated master netting agreements. Should the direct default requirements of the proposed rule apply only to covered QFCs with foreign counterparties not subject to U.S. special resolution regimes? What would be the costs and regulatory burden associated with identifying and maintaining separate versions of covered QFCs for U.S. and foreign counterparties?

F. Prohibited Cross-Default Rights (Section 47.5)

Definitions. Section 47.5 of the proposed rule pertains to cross-default rights in QFCs between covered banks and their counterparties, many of which are subject to credit enhancements (such as guarantees) provided by an affiliate of the covered bank. Because credit enhancements on QFCs are themselves "qualified financial contracts" under the Dodd-Frank Act's definition of that term (which this proposed rule would adopt), the proposed rule includes the following additional definitions in order to precisely describe the relationships to which this section applies.

First, the proposed rule distinguishes between a credit enhancement and a "direct QFC," which is defined as any QFC that is not a credit enhancement. The proposed rule also defines "direct party" to mean a covered bank that itself is a party to the direct QFC, as distinct from an entity that provide a credit enhancement. In addition, the proposed rule defines "affiliate credit enhancement" to mean "a credit enhancement that is provided by an affiliate of the party to the direct QFC that the credit enhancement supports," as distinct from a credit enhancement provided by either the direct party itself or by an unaffiliated party. Moreover, the proposed rule defines "covered affiliate credit enhancement" to mean an affiliate credit enhancement provided by a covered bank, or a covered entity under the Board's proposal, and defines "covered affiliate support provider to mean the covered bank that provides the covered affiliate credit enhancement. Finally, the proposed rule defines the term "supported party" to mean any party that is the beneficiary of a covered affiliate credit enhancement (that is, the QFC counterparty of a direct party, assuming that the direct QFC is subject to a covered affiliate credit enhancement).

General Prohibition. Subject to the substantial exceptions to be discussed, the proposed rule would prohibit a covered bank from being a party to a covered QFC that allows for the exercise of any default right that is related, directly or indirectly, to the entry into resolution of an affiliate of the covered bank. The proposed rule also would generally prohibit a covered bank from being party to a covered QFC that would prohibit the transfer of any credit enhancement applicable to the QFC (such as another entity's guarantee of the covered bank's obligations under the QFC), along with associated obligations or collateral, upon the entry into resolution of an affiliate of the covered bank.[42]

A primary purpose of the proposed restrictions is to facilitate the resolution of a GSIB outside of Title II, including under the Bankruptcy Code. As discussed in the background section, the potential for the mass exercise of QFC default rights is a major reason why the failure of a global systemically important BHC could have a severe negative impact on financial stability and on the Federal banking system. In the context of an SPOE resolution, if the global systemically important BHC's entry into resolution triggers the mass exercise of cross-default rights by the subsidiaries' QFC counterparties of the covered QFCs against the national bank or FSA subsidiary, then the national bank or FSA could themselves experience financial distress or failure. Moreover, the mass exercise of covered QFC default rights would entail asset fire sales, which could affect other U.S. financial companies and undermine financial stability of the U.S. financial system. Similar disruptive results can occur with an MPOE resolution of an affiliate of an otherwise performing entity triggers default rights on QFCs involving the performing covered bank.

In an SPOE resolution, this damage can be avoided if actions of the following two types are prevented: The exercise of direct default rights against the top-tier holding company that has entered resolution, and the exercise of cross-default rights against the national bank and FSA subsidiaries and other operating subsidiaries based on their parent's entry into resolution. Direct default rights against the national bank or FSA subsidiary would not be exercisable, because that subsidiary would continue normal operations and would not enter resolution. In an MPOE resolution, this damage occurs from the exercise of default rights against a performing entity based on the failure of an affiliate.

Under the OLA, the Dodd-Frank Act's stay-and-transfer provisions would address both direct default rights and cross-default rights. But, as explained in the Background section, no similar

[41] As noted in the Board's Proposal, this proposed rule is consistent with efforts by regulators in other jurisdictions to address similar risks by requiring that financial firms within their jurisdictions ensure that the effect of the similar provisions under these foreign jurisdictions' respective special resolution regimes would be enforced by courts in other jurisdictions, including the United States. *See e.g.,* PRA Rulebook: CRR Firms and Non-Authorised Persons: Stay in Resolution Instrument 2015, available at *http://www.bankofengland.co.uk/pra/Documents/publications/ps/2015/ps2515app1.pdf; see also* Bank of England, Prudential Regulation Authority, "Contractual stays in financial contracts governed by third-country law" (PS25/15).

[42] This prohibition would be subject to an exception that would allow supported parties to exercise default rights with respect to a QFC if the supported party would be prohibited from being the beneficiary of a credit enhancement provided by the transferee under any applicable law, including the Employee Retirement Income Security Act of 1974 and the Investment Company Act of 1940. This exception is substantially similar to an exception to the transfer restrictions in section 2(f) of the ISDA 2014 Resolution Stay Protocol (2014 Protocol) and the ISDA 2015 Universal Resolution Stay Protocol, which was added to address the concerns expressed by asset managers during the drafting of the 2014 Protocol.

statutory provisions would apply to a resolution under the Bankruptcy Code. This proposed rule attempts to address these obstacles to orderly resolution under the Bankruptcy Code by extending the stay-and transfer-provisions to any type of resolution. Similarly, the proposed rule would facilitate a transfer of the GSIB parent's interests in its subsidiaries, along with any credit enhancements it provides for those subsidiaries, to a solvent financial company by prohibiting covered banks from having QFCs that would allow the QFC counterparty to prevent such a transfer or to use it as a ground for exercising default rights. Accordingly, the proposed rule would broadly prevent the unanticipated failure of any one GSIB entity from bringing about the disorderly failures of its affiliates by preventing the affiliates' QFC counterparties from using the first entity's failure as a ground for exercising default rights against those affiliates that continue meet to their obligations.[43]

The proposed rule is intended to enhance the potential for orderly resolution of a GSIB under the Bankruptcy Code, the FDIA, or similar resolution proceedings. In doing so, the proposed rule would advance the Dodd-Frank Act's goal of making orderly resolution of a workable covered bank under the Bankruptcy Code.[44]

The proposed rule could also prevent the disorderly failure of the national bank or FSA subsidiary and allow it to continue normal operations. In addition, while it may be in the individual interest of any given counterparty to exercise any available contractual rights to run on the national bank or FSA subsidiary, the mass exercise of such rights could harm the collective interest of all the counterparties by causing the subsidiary to fail. Therefore, like the automatic stay in bankruptcy, which also serves to maximize creditors' ultimate recoveries by preventing a disorderly liquidation of the debtor, the proposed rule would mitigate this collective action problem to the benefit of the creditors and counterparties of covered banks by preventing a disorderly resolution. And because many of these counterparties and creditors are themselves covered banks, or other systemically important financial firms, improving outcomes for these creditors and counterparties would further protect the safety and soundness of the Federal banking system and financial stability of the United States.

General creditor protections. While the proposed restrictions would facilitate orderly resolution, they would also have the effect of diminishing the ability of the counterparties of the covered banks to include protections for themselves in covered QFCs. In order to reduce this effect, the proposed rule includes several significant exceptions to the proposed restrictions. These permitted creditor protections are intended to allow creditors to exercise cross-default rights outside of an orderly resolution of a GSIB (as described previously and in the Board's Proposal) and therefore would not be expected to undermine such a resolution.

First, to ensure that the proposed prohibitions would apply only to cross-default rights (and not direct default rights), the proposed rule would provide that a covered QFC may permit the exercise of default rights based on the direct party's entry into a resolution proceeding, other than a proceeding under a U.S. or foreign special resolution regime.[45] This provision would help ensure that, if the direct party to a QFC were to enter bankruptcy, its QFC counterparties could exercise any relevant direct default rights. Thus, a covered bank's direct QFC counterparties would not risk the delay and expense associated with becoming involved in a bankruptcy proceeding, and would be able to take advantage of default rights that would fall within the Bankruptcy Code's safe harbor provisions.

The proposed rule would also allow covered QFCs to permit the exercise of default rights based on the failure of (1) the direct party, (2) a covered affiliate support provider, or (3) a transferee that assumes a credit enhancement to satisfy its payment or delivery obligations under the direct QFC or credit enhancement. Moreover, the proposed rule would allow covered QFCs to permit the exercise of a default right in one QFC that is triggered by the direct party's failure to satisfy its payment or delivery obligations under another contract between the same parties. This exception takes appropriate account of the interdependence that exists among the contracts in effect between the same counterparties.

The proposed exceptions for the creditor protections described are intended to help ensure that the proposed rule permits a covered bank's QFC counterparties to protect themselves from imminent financial loss and does not create a risk of delivery gridlocks or daisy-chain effects, in which a covered bank's failure to make a payment or delivery when due leaves its counterparty unable to meet its own payment and delivery obligations (the daisy-chain effect would be prevented because the covered bank's counterparty would be permitted to exercise its default rights, such as by liquidating collateral). These exceptions are generally consistent with the treatment of payment and delivery obligations under the U.S. special resolution regimes.[46]

These exceptions also help to ensure that a covered entity's QFC counterparty would not risk the delay and expense associated with becoming involved in a bankruptcy proceeding, since, unlike a typical creditor of an entity that enters bankruptcy, the QFC counterparty would retain its ability under the Bankruptcy Code's safe harbors to exercise direct default rights. This should further reduce the counterparty's incentive to run. Reducing incentives to run in the lead up to resolution promotes orderly resolution because a QFC creditor run (such as a mass withdrawal of repo funding) could lead to a disorderly resolution and pose a threat to financial stability.

Additional creditor protections for supported QFCs. The proposed rule would allow additional creditor protections for a non-defaulting counterparty that is the beneficiary of a credit enhancement from an affiliate of the covered bank that is also a covered bank under the proposed rule. The proposed rule would allow these creditor protections in recognition of the supported party's interest in receiving the benefit of its credit enhancement. The Board has concluded that these creditor protections would not undermine an SPOE resolution of a GSIB.[47]

Where a covered QFC is supported by a covered affiliate credit enhancement,[48] the covered QFC and

[43] As noted in the Board's Proposal, this proposed rule will also facilitate many approaches to GSIB resolution, including where the U.S. intermediate holding company of a foreign GSIB enters proceedings as part of a broader MPOE resolution.

[44] *See* 12 U.S.C. 5365(d).

[45] Special resolution regimes typically stay direct default rights, but may not stay cross-default rights. For example, as discussed previously, the FDIA stays direct default rights, see 12 U.S.C. 1821(e)(10)(B), but does not stay cross-default rights, whereas the Dodd-Frank Act's OLA stays direct default rights and cross-defaults arising from a parent's receivership, see 12 U.S.C. 5390(c)(10)(B), 5390(c)(16).

[46] *See* 12 U.S.C. 1821(e)(8)(G)(ii), 5390(c)(8)(F)(ii) (suspending payment and delivery obligations for one business day or less).

[47] See 81 FR 29169 (May 11, 2016).

[48] Note that the proposed rule would not apply with respect to credit enhancements that are not covered affiliate credit enhancements. In particular, it would not apply with respect to a credit

Continued

the credit enhancement would be permitted to allow the exercise of default rights under the circumstances after the expiration of a stay period. Under the proposed rule, the applicable stay period would begin when the credit support provider enters resolution and would end at the later of 5:00 p.m. (eastern time) on the next business day and 48 hours after the entry into resolution. This portion of the proposed rule is similar to the stay treatment provided in a resolution under the OLA or the FDIA.[49]

Under the proposed rule, default rights could be exercised at the end of the stay period if the covered affiliate credit enhancement has not been transferred away from the covered affiliate support provider and that support provider becomes subject to a resolution proceeding other than a proceeding under Chapter 11 of the Bankruptcy Code.[50] Default rights could also be exercised at the end of the stay period if the transferee (if any) of the credit enhancement enters a resolution proceeding, protecting the supported party from a transfer of the credit enhancement to a transferee that is unable to meet its financial obligations.

Default rights could also be exercised at the end of the stay period if the original credit support provider does not remain, and no transferee becomes, obligated to the same (or substantially similar) extent as the original credit support provider was obligated immediately prior to entering a resolution proceeding (including a Chapter 11 proceeding) with respect to (a) the credit enhancement applicable to the covered QFC, (b) all other credit enhancements provided by the credit support provider on any other QFCs between the same parties, and (c) all credit enhancements provided by the credit support provider between the direct party and affiliates of the direct party's QFC counterparty. Such creditor protections would be permitted to prevent the support provider or the transferee from "cherry picking" by assuming only those QFCs of a given counterparty that are favorable to the support provider or transferee. Title II of the Dodd-Frank Act and the FDIA contain similar provisions to prevent cherry picking.

Finally, if the covered affiliate credit enhancement is transferred to a transferee, then the non-defaulting counterparty could exercise default rights at the end of the stay period unless either (a) all of the support provider's ownership interests in the direct party are also transferred to the transferee or (b) reasonable assurance is provided that substantially all of the support provider's assets (or the net proceeds from the sale of those assets) will be transferred to the transferee in a timely manner. These conditions would help to assure the supported party that the transferee would be at least roughly as financially capable of providing the credit enhancement as the covered affiliate support provider.

Creditor protections related to FDIA proceedings. Moreover, in the case of a covered QFC that is supported by a covered affiliate credit enhancement, both the covered QFC and the credit enhancement would be permitted to allow the exercise of default rights related to the credit support provider's entry into resolution proceedings under the FDIA[51] under the following circumstances: (a) After the FDIA stay period,[52] if the credit enhancement is not transferred under the relevant provisions of the FDIA[53] and associated regulations, and (b) during the FDIA stay period, to the extent that the default right permits the supported party to suspend performance under the covered QFC to the same extent as that party would be entitled to do if the covered QFC were with the credit support provider itself and were treated in the same manner as the credit enhancement. This provision is intended to ensure that a QFC counterparty of a subsidiary of a covered bank that goes into FDIA receivership can receive the same level of protection that the FDIA provides to QFC counterparties of the covered bank itself.

Prohibited terminations. In case of a legal dispute as to a party's right to exercise a default right under a covered QFC, the proposed rule would require that a covered QFC must provide that, after an affiliate of the direct party has entered a resolution proceeding, (a) the party seeking to exercise the default right shall bear the burden of proof that the exercise of that right is indeed permitted by the covered QFC and (b) the party seeking to exercise the default right must meet a "clear and convincing evidence" standard,[54] a similar standard, or a more demanding standard.

The purpose of this proposed requirement is to prevent QFC counterparties from circumventing the limitations on resolution-related default rights in this proposal by exercising other contractual default rights in instances where such QFC counterparty cannot demonstrate that the exercise of such other contractual default rights is unrelated to the affiliate's entry into resolution.

Agency transactions. In addition to entering into QFCs as principal, GSIBs may engage in QFCs as agent for other principals. For example, a GSIB subsidiary may enter into a master securities lending arrangement with a foreign bank as agent for a U.S.-based pension fund. The GSIB would document its role as agent for the pension fund, often through an annex to the master agreement, and would generally provide to its customer (the principal party) a securities replacement guarantee or indemnification for any shortfall in collateral in the event of the default of the foreign bank.[55] A covered bank may also enter into a QFC as principal where there is an agent acting on its behalf or on behalf of its counterparty.

This proposed rule would apply to a covered QFC regardless of whether the covered bank or the covered bank's direct counterparty is acting as a principal or as an agent. This proposed rule does not distinguish between agents and principals with respect to default rights or transfer restrictions applicable to covered QFCs. The proposed rule would limit default rights and transfer restrictions that the principal and its agent may have against a covered bank consistent with the U.S. special resolution regimes. This proposed rule would ensure that, subject to the enumerated creditor protections, neither the agent nor the

enhancement provided by a non-U.S. entity of a foreign GSIB, which would not be a covered bank under the proposed rule.

[49] *See* U.S.C. 1821(e)(10)(B)(I), 5390(c)(10)(B)(i), 5390(c)(16)(A). While the proposed stay period is similar to the stay periods that would be imposed by the U.S. special resolution regimes, it could run longer than those stay periods under some circumstances.

[50] Chapter 11 (11 U.S.C. 1101–1174) is the portion of the Bankruptcy Code that provides for the reorganization of the failed company, as opposed to its liquidation, and, relative to special resolution regimes, is generally well-understood by market participants.

[51] As discussed, the FDIA stays direct default rights against the failed depository institution but does not stay the exercise of cross-default rights against its affiliates.

[52] Under the FDIA, the relevant stay period runs until 5:00 p.m. (eastern time) on the business day following the appointment of the FDIC as receiver. 12 U.S.C. 1821(e)(10)(B)(I).

[53] 12 U.S.C. 1821(e)(9)–(10).

[54] The reference to a "similar" burden of proof is intended to allow covered QFCs to provide for the application of a standard that is analogous to clear and convincing evidence in jurisdictions that do not recognize that particular standard. A covered QFC would not be permitted to provide for a lower standard.

[55] The definition of QFC under Title II of the Dodd-Frank Act includes security agreements and other credit enhancements as well as master agreements (including supplements). 12 U.S.C. 5390(c)(8)(D).

principal could exercise cross-default rights under the covered QFC against the covered bank based on the resolution of an affiliate of the covered bank.[56]

Question 12: With respect to the proposed restrictions on cross-default rights in covered banks' QFCs, is the proposed rule sufficiently clear, such that parties to a conforming QFC will understand what default rights are, and are not exercisable, in the context of a GSIB resolution? How could the proposed restrictions be further clarified?

Question 13: Section 47.5(e)(2) of the proposed rule, addressing general creditor protections, would permit the exercise of default rights based on the failure of the direct party to satisfy its payment or delivery obligations under the covered QFC or "another contract between the same parties" that give rise to a default right in the covered QFC. This exception is not limited to covered QFCs but is intended to reflect the interdependence among all contracts between the same counterparties. Does the scope of the terms "contract" and "same parties" need to be clarified? Should the term "same parties" be clarified to include affiliate credit support providers as well as counterparties?

Question 14: Are the proposed restrictions on cross-default rights under-inclusive, such that the proposed terms would permit default rights that would have the same or similar potential to undermine an orderly SPOE resolution and should therefore be subjected to similar restrictions?

Question 15: Would it be appropriate for the prohibition to explicitly cover default rights that are based on or related to the "financial condition" of an affiliate of the direct party (for example, rights based on an affiliate's credit rating, stock price, or regulatory capital levels)?

Question 16: Should the proposed restrictions be expanded to cover contractual rights that a QFC counterparty may have to exit the termination at will or without cause, including rights that arise on a periodic basis? Could such rights be used to circumvent the proposed restrictions on cross-default rights? If so, how, if at all, should the proposed rule regulate such contractual rights?

Question 17: With respect to the proposed provisions permitting specific creditor protections in a covered QFC, does the proposed rule draw an appropriate balance between protecting financial stability from risks associated with QFC unwinds and maintaining important creditor protections? Should the proposed set of permitted creditor protections be expanded to allow for other creditor protections that would fall within the proposed restrictions? Is the proposed set of permitted creditor protections sufficiently clear?

Question 18: With respect to the proposed requirement for burden-of-proof provisions in a covered QFC, is the standard clear? Would the proposed requirement advance the goals of this proposed rule? Would those goals be better advanced by alternative or complementary provisions?

Question 19: Should the proposed rule require periodic legal review of the legal enforceability of the required provisions in relevant jurisdictions? If periodic legal review is not required, should covered banks be required to monitor the applicable law in the relevant jurisdiction for material changes in law?

Question 20: The OCC invites comment on all aspects of the proposed treatment of agency transactions, including whether credit protections should apply to QFCs where the direct party is acting as agent under the QFC.

G. Process for Approval of Enhanced Creditor Protections (Section 47.6)

As discussed previously, the proposed restrictions would leave many creditor protections that are commonly included in QFCs unaffected. The proposed rule would also allow any covered bank to submit to the OCC a request to approve as compliant with the proposed rule one or more QFCs that contain additional creditor protections—that is, creditor protections that would be impermissible under the proposed restrictions set forth previously. A covered bank making such a request would be required to explain how its request is consistent with the purposes of this proposed rule, including an analysis of the contractual terms for which approval is requested in light of a range of factors that are laid out by the proposed rule and intended to facilitate the OCC's consideration of whether permitting the contractual terms would be consistent with the proposed restrictions. The OCC expects to consult with the FDIC and Board during its consideration of a request under this section.

The first two factors concern the potential impact of the requested creditor protections on GSIB resilience and resolvability. The next four concern the potential scope of the covered bank's request: Adoption on an industry-wide basis, coverage of existing and future transactions, coverage of one or multiple QFCs, and coverage of some or all covered banks. Creditor protections that may be applied on an industry-wide basis may help to ensure that impediments to resolution are addressed on a uniform basis, which could increase market certainty, transparency, and equitable treatment. Creditor protections that apply broadly to a range of QFCs and covered banks would increase the chance that all of a GSIB's QFC counterparties would be treated the same way during a resolution of that GSIB and may improve the prospects for an orderly resolution of that GSIB. By contrast, covered bank requests that would expand counterparties' rights beyond those afforded under existing QFCs would conflict with the proposed rule's goal of reducing the risk of mass unwinds of GSIB QFCs. The proposed rule also includes three factors that focus on the creditor protections specific to supported parties. The OCC may weigh the appropriateness of additional protections for supported QFCs against the potential impact of such provisions on the orderly resolution of a GSIB.

In addition to analyzing the request under the enumerated factors, a covered bank requesting that the OCC approve enhanced creditor protections would be required to submit a legal opinion stating that the requested terms would be valid and enforceable under the applicable law of the relevant jurisdictions, along with any additional relevant information requested by the OCC.

Under the proposed rule, the OCC could approve a request for an alternative set of creditor protections if the terms of that QFC, as compared to a covered QFC containing only the limited exceptions discussed previously, would promote the orderly resolution of federally chartered or licensed institutions or their affiliates, prevent or mitigate risks to the financial stability of the United States or the Federal banking system that could arise from the failure of a global systemically important BHC or global systemically important FBO, and protect the safety and soundness of covered banks to at least the same extent. The proposed request-and-approval process would improve flexibility by allowing for an industry-proposed alternative to the set of creditor protections permitted by the proposed rule while ensuring that any

[56] If a covered bank (acting as agent) is a direct party to a covered QFC, then the general prohibitions of section 47.5(d) would only affect the substantive rights of the agent's principal(s) to the extent that the covered QFC provides default rights based directly or indirectly on the entry into resolution of an affiliate of the covered bank (acting as agent).

approved alternative would serve the proposed rule's policy goals to at least the same extent.

Compliance with the International Swaps and Derivatives Association (ISDA) 2015 Universal Resolution Stay Protocol. In lieu of the process for the approval of enhanced creditor protections that are described previously, a covered bank would be permitted to comply with the proposed rule by amending a covered QFC through adherence to the ISDA 2015 Universal Resolution Stay Protocol (including immaterial amendments to the Protocol).[57] The Protocol "enables parties to amend the terms of their financial contracts to contractually recognize the cross-border application of special resolution regimes applicable to certain financial companies and support the resolution of certain financial companies under the U.S. Bankruptcy Code." [58] The Protocol amends ISDA Master Agreements, which are used for derivatives transactions. Market participants also may amend their master agreements for securities financing transactions by adhering to the Securities Financing Transaction Annex [59] to the Protocol and may amend all other QFCs by adhering to the Other Agreements Annex. Thus, a covered bank would be able to comply with the proposed rule with respect to all of its covered QFCs through adherence to the Protocol and the annexes.

The Protocol has the same general objective as the proposed rule, which is to make GSIB entities more resolvable by amending their contracts to, in effect, contractually recognize the applicability of special resolution regimes (including the OLA and the FDIA) and to restrict cross-default provisions to facilitate orderly resolution under the U.S. Bankruptcy Code. The provisions of the Protocol largely track the requirements of the proposed rule.[60] However, the Protocol does have a narrower scope than the proposed rule,[61] and it allows for somewhat stronger creditor protections than would otherwise be permitted under the proposed rule.[62]

The Protocol also includes a feature, not included in the proposed rule, that compensates for the Protocol's narrower scope and allowance for stronger creditor protections: When an entity (whether or not it is a covered bank) adheres to the Protocol, it necessarily adheres to the Protocol with respect to all covered entities that have also adhered to the Protocol.[63] Thus, if all covered banks adhere to the Protocol, any other entity that chooses to adhere will simultaneously adhere with respect to all covered entities and covered banks. By allowing for all covered QFCs to be modified by the same contractual terms, this "all-or-none" feature would promote transparency, predictability, and equal treatment with respect to counterparties' default rights during the resolution of a GSIB entity and thereby advance the proposed rule's objective of increasing the likelihood that such a resolution could be carried out in an orderly manner.

Like section 47.5 of the proposed rule, section 2 of the Protocol was developed to increase GSIB resolvability under the Bankruptcy Code and other U.S. insolvency regimes. The Protocol does allow for somewhat broader creditor protections than would otherwise be permitted under the proposed rule, but, consistent with the Protocol's purpose, those additional creditor protections would not materially diminish the prospects for the orderly resolution of a GSIB. And the Protocol carries the desirable all-or-none feature, which would further increase a GSIB entity's resolvability and which the proposed rule otherwise lacks. For these reasons, and consistent with the broad policy objective of enhancing the stability of the U.S. financial system by increasing the resolvability of systemically important financial companies in the United States, the proposed rule would allow a covered bank to bring its covered QFCs into compliance by amending them through adherence to the Protocol (and, as relevant, the annexes to the Protocol).

Question 21: Are the proposed considerations for the approval of enhanced credit protections the appropriate factors for the OCC to take into account in deciding whether to grant a request for approval? What other considerations are potentially relevant to such a decision?

Question 22: Should the OCC provide greater specificity for the process and procedures for the submission and approval of requests for alternative enhanced credit protections? If so, what processes and procedures could be adopted without imposing undue regulatory burden?

Question 23: The OCC invites comment on its proposal to treat as compliant with section 47.6 of the proposal any covered QFC that has been amended by the Protocol. Does adherence to the Protocol suffice to meet the goals of this proposed rule, appropriately protect the Federal banking system and safeguard U.S. financial stability? Should additional

[57] International Swaps and Derivatives Association, Inc., "ISDA 2015 Universal Resolution Stay Protocol" (November 4, 2015), available at *http://assets.isda.org/media/ac6b533f-3/5a7c32f8-pdf/*. The Protocol was developed by a working group of member institutions of the ISDA, in coordination with the FRB, the FDIC, the OCC, and foreign financial supervisory agencies. ISDA is expected to supplement the Protocol with ISDA Resolution Stay Jurisdictional Modular Protocols for the United States and other jurisdictions. A U.S. module that is the same in all respects to the Protocol aside from exempting QFCs between adherents that are not covered banks would be consistent with the current proposed rule.

[58] Protocol Press Release at *http://www2.isda.org/functional-areas/protocol-management/protocol/22*.

[59] The Securities Financing Transaction Annex was developed by the International Capital Markets Association, the International Securities Lending Association, and the Securities Industry and Financial Markets Association, in coordination with the ISDA.

[60] For example, sections 2(a) and 2(b) of the Protocol impose general prohibitions on cross-default rights based on the entry of an affiliate of the direct party into the most common U.S. resolution proceedings, including resolution under the Bankruptcy Code. By allowing the exercise of "Performance Default Rights" and "Unrelated Default Rights," as those terms are defined in section 6 of the Protocol, sections 2(a) and 2(b) also generally permit the creditor protections that would be allowed under the proposed rule. Section 2(f) of the Protocol overrides certain contractual provisions that would block the transfer of a credit enhancement to a transferee entity. Section 2(i), complemented by the Protocol's definition of the term "Unrelated Default Rights," provides that a party seeking to exercise permitted default rights must bear the burden of establishing by clear and convincing evidence that those rights may indeed be exercised.

[61] The restrictions on default rights imposed by section 2 of the Protocol apply only when an affiliate of the direct party enters "U.S. Insolvency Proceedings," which is defined to include proceedings under Chapters 7 and 11 of the Bankruptcy Code, the FDIA, and the Securities Investor Protection Act. By contrast, section 47.4 of the proposed rule would apply broadly to default rights related to affiliates of the direct party "becoming subject to a receivership, insolvency, liquidation, resolution, or similar proceeding," which encompasses proceedings under State and foreign law.

[62] For example, the Protocol allows a non-defaulting party to exercise cross-default rights based on the entry of an affiliate of the direct party into certain resolution proceedings if the direct party's U.S. parent has not gone into resolution. *See* paragraph (b) of the Protocol's definition of "Unrelated Default Rights"; *see also* sections 1 and 3(b) of the Protocol. As another example, if the affiliate credit support provider that has entered bankruptcy remains obligated under the credit enhancement, rather than transferring it to a transferee, then the Protocol's restrictions on the exercise of default rights continue to apply beyond the stay period only if the Bankruptcy Court issues a "Creditor Protection Order." Such an order would, among other things, grant administrative expense status to the non-defaulting party's claims under the credit enhancement. *See* sections 2(b)(i)(B) and 2(b)(iii)(B) of the Protocol and the Protocol's definitions of "Creditor Protection Order" and "DIP Stay Conditions."

[63] Under section 4(a) of the Protocol, the Protocol is generally effective as between any two adhering parties, once the relevant effective date has arrived. Under section 4(b)(ii), an adhering party that is not a covered bank may choose to opt out of section 2 of the Protocol with respect to its contracts with any other adhering party that is also not a covered bank. However, the Protocol will apply to relationships between any covered bank that adheres and any other adhering party.

guidance be provided that would clarify the consultation process with the FRB or any other relevant supervisory agency?

H. Transition Periods (Sections 47.4 and 47.5)

Under this proposed rule, the final rule would take effect on the first day of the first calendar quarter that begins at least one year after the issuance of the final rule (effective date).[64] National banks, FSAs, and Federal branches and agencies that are covered banks when the final rule is issued would be required to comply with the proposed requirements beginning on the effective date. Thus, a covered bank would be required to ensure that covered QFCs entered into on or after the effective date comply with the rule's requirements. Moreover, a covered bank would be required to bring preexisting covered QFCs entered into prior to the effective date into compliance with the rule no later than the first date on or after the effective date on which the covered bank enters into a new covered QFC with the counterparty to the preexisting covered QFC or with an affiliate of that counterparty. Thus, a covered bank would not be required to conform a preexisting QFC if that covered bank does not enter into any new QFCs with the same counterparty or an affiliate of that counterparty on or after the effective date. Finally, a national bank, FSA, or Federal branch or agency that becomes a covered bank after the final rule is issued would be required to comply by the first day of the first calendar quarter that begins at least one year after it becomes a covered bank.

By permitting a covered bank to remain party to nonconforming QFCs entered into before the effective date unless the covered bank enters into new QFCs with the same counterparty or its affiliate, the proposed rule draws a balance between ensuring QFC continuity if a global systemically important BHC or FBO were to fail and ensuring that covered banks and their existing counterparties can avoid any compliance costs associated with conforming existing QFCs by refraining from entering into new QFCs and avoiding unnecessary disruption to existing QFCs. The requirement that a covered bank ensure that all existing QFCs are compliant before entering into a new QFC with the same counterparty or its affiliate will provide covered banks with an incentive to seek the modifications necessary to ensure that their QFCs with the most significant counterparties are compliant.

A covered bank would be required to bring a preexisting covered QFC entered into prior to the effective date into compliance with the rule no later than the first date on or after the effective date on which the covered bank or an affiliate (that is also a covered entity or covered bank) enters into a new covered QFC with the counterparty to the preexisting covered QFC or an affiliate of the counterparty. The OCC believes such an approach is warranted to ensure that adoption of the contractual provisions required by the proposed rule are consistent between a given counterparty, any affiliate of the counterparty, and the covered bank and all of the affiliates of the covered bank (which would essentially be all of the entities under a global systemically important BHC or FBO). The OCC is concerned that to allow counterparties to adopt the required contractual provisions with affiliated covered entities, but not the covered bank, poses a risk to the safety and soundness of the covered bank and would frustrate the goal of facilitating the orderly resolution of the covered bank (and its affiliate covered entities). Furthermore, the OCC expects that, as a practical matter, the decision of how to comply with this proposed rule and the FRB Proposal with respect to a given counterparty, and its affiliates, will be made in close coordination between the covered bank and its affiliated covered entities.

The OCC believes that adoption of the modifications required by the proposed rule should be consistent between a given counterparty and all entities under a global systemically important BHC or FBO, which necessitates allowing a trade by either a covered bank or a covered entity to trigger adoption of the required provisions. Moreover, the volume of nonconforming covered QFCs outstanding can be expected to decrease over time and eventually to reach zero. In light of these considerations, and to avoid creating potentially inappropriate compliance costs with respect to existing QFCs (which a covered bank would generally be unable to modify without its counterparty's consent), it may be appropriate to permit a limited number of nonconforming QFCs to remain outstanding, in keeping with the terms described previously. The OCC will monitor covered banks' levels of nonconforming QFCs and evaluate the risk, if any, that they pose to the safety and soundness of the covered banks or to the Federal banking system and to U.S. financial stability.

Question 24: With respect to the proposed transaction periods, would there be a reasonable basis for adopting different compliance deadlines with respect to different classes of QFCs? If so, how should those classes be distinguished, and what would be a reasonable time frame for compliance?

Question 25: Is it necessary for a covered bank to bring preexisting covered QFCs entered into prior to the effective date into compliance with the rule based on a covered bank's affiliate's (that is also a covered entity or covered bank) transaction with a counterparty or its affiliates? Is it appropriate to ensure consistent treatment across all affiliated covered banks, covered entities, and affiliated counterparties?

I. Amendments to Capital Rules

The Basel III Capital Framework, as implemented by the OCC and the other banking agencies, permits a bank to measure exposure from certain types of financial contracts on a net basis and recognize the risk-mitigating effect of financial collateral for other types of exposures, provided that the contracts are subject to a "qualifying master netting agreement," a collateral agreement, eligible margin loan, or repo-style transaction (collectively referred to as netting agreements) that provides for certain rights upon a counterparty default. With limited exception, to qualify for netting treatment, a qualifying netting agreement must permit a bank to terminate, apply close-out netting, and promptly liquidate or set-off collateral upon an event of default of the counterparty (default rights), thereby reducing its counterparty exposure and market risks.[65] Measuring the amount of exposure of these contracts on a net basis, rather than a gross basis, results in a lower measure of exposure, and thus, a lower capital requirement.

An exception to the immediate close-out requirement is made for the stay of default rights if the financial company is in receivership, conservatorship, or resolution under Title II of the Dodd-Frank Act,[66] or the FDIA.[67] Accordingly, transactions conducted under netting agreements where default rights may be stayed under Title II of the

[64] Under section 302(b) of the Riegle Community Development and Regulatory Improvement Act of 1994, new regulations that impose requirements on insured depository institutions generally must "take effect on the first day of a calendar quarter which begins on or after the date on which the regulations are published in final form." 12 U.S.C. 4802(b).

[65] *See* 12 CFR 3.2 definition of collateral agreement, eligible margin loan, repo-style transaction, and qualifying master netting agreement.

[66] *See* 12 U.S.C. 5390(c)(8)–(16).

[67] *See* 12 U.S.C. 1821(e)(8)–(13).

Dodd-Frank Act or the FDIA would not be disqualified from netting treatment.

On December 30, 2014, the OCC and the FRB issued an interim final rule (effective January 1, 2015) that amended the definitions of "qualifying master netting agreement," "collateral agreement," "eligible margin loan," and "repo-style transaction," in the OCC and FRB regulatory capital rules, and "qualifying master netting agreement" in the OCC and FRB liquidity coverage ratio (LCR) rules to expand the exception to the immediate close-out requirement to ensure that the current netting treatment under the regulatory capital, liquidity, and lending limits rules for over-the-counter (OTC) derivatives, repo-style transactions, eligible margin loans, and other collateralized transactions would be unaffected by the adoption of various foreign special resolution regimes through the ISDA Protocol.[68] In particular, the interim final rule amended these definitions to provide that a relevant netting agreement or collateral agreement may provide for a limited stay or avoidance of rights where the agreement is subject by its terms to, or incorporates, certain resolution regimes applicable to financial companies, including Title II of the Dodd-Frank Act, the FDIA, or any similar foreign resolution regime that provides for limited stays substantially similar to the stay for qualified financial contracts provided in Title II of the Dodd-Frank Act or the FDIA.

Section 47.4 of the proposed rule essentially limits the default rights exercisable against a covered bank to the same stay and transfer restrictions imposed under the U.S. special resolution regime against a direct counterparty. Section 47.4 of the proposed rule mirrors the contractual stay and transfer restrictions reflected in the ISDA Protocol with one notable difference. While adoption of the ISDA Protocol is voluntary, covered banks subject to the proposed rule must conform their covered QFCs to the stay and transfer restrictions in section 47.4.

With respect to limitations on cross-default rights in proposed section 47.5, the OCC is proposing amendments in order to maintain the existing netting treatment for covered QFCs for purposes of the regulatory capital, liquidity, and lending limits rules. Specifically, the OCC is proposing to amend the definition of "qualifying master netting agreement," as well as to make conforming amendments to "collateral agreement, "eligible margin loan," and "repo-style transaction," in the regulatory capital rules in part 3, and "qualifying master netting agreement" in the LCR rules in part 50 to ensure that the regulatory capital, liquidity, and lending limits treatment of OTC derivatives, repo-style transactions, eligible margin loans, and other collateralized transactions would be unaffected by the adoption of proposed section 47.5. Without these proposed amendments, covered banks that amend their covered QFCs to comply with this proposed rule would no longer be permitted to recognize covered QFCs as subject to a qualifying master netting agreement or satisfying the criteria necessary for the current regulatory capital, liquidity, and lending limits treatment, and would be required to measure exposure from these contracts on a gross, rather than net, basis. This result would undermine the proposed requirements in section 47.5. The OCC does not believe that the disqualification of covered QFCs from master netting agreements would accurately reflect the risk posed by these OTC derivative transactions.

Although the proposed rule reformats some of the definitions in parts 3 and 50 to include the text from the interim final rule, the proposed amendments do not alter the substance or effect of the prior amendment adopted by the interim final rule.

The rule establishing margin and capital requirements for covered swap entities (swap margin rule) defines the term "eligible master netting agreement" in a manner similar to the definition of "qualifying master netting agreement." [69] Thus, it may also be appropriate to amend the definition of "eligible master netting agreement" to account for the proposed restrictions on covered entities' QFCs.

Question 26: As noted, the requirements of this proposed rule are mandatory for all covered banks with respect to their covered QFCs. Under the proposed rule failure by a covered bank to conform its covered QFCs to the mandatory requirements would be a violation of the rule. In light of the important policy objectives of this proposed rule, should the regulatory capital and LCR rules require that nonconforming covered QFCs that violate the requirements of the proposed rule be disqualified from netting treatment?

Question 27. In order to qualify for netting treatment under the regulatory capital rules, eligible margin loans, qualifying master netting agreements, and repo-style transactions require national banks and FSAs to conduct sufficient legal review to ensure that the provisions of these financial contracts would be enforceable in all relevant jurisdictions. Should the scope of the legal review requirement be expanded to explicitly include the enforceability of the direct default and cross-default provisions required by the proposed rule?

IV. Request for Comments

In addition to the specifically enumerated questions in the preamble, the OCC requests comment on all aspects of this proposed rule. The OCC requests that, for the specifically enumerated questions, commenters include the number of the question in their response to make review of the comments more efficient.

V. Regulatory Analysis

A. Paperwork Reduction Act

In accordance with section 3512 of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521) (as amended), the OCC may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

Certain provisions of the proposed rule contain "collection of information" requirements within the meaning of the PRA. In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently-valid OMB control number. The information collection requirements contained in this proposed rulemaking have been submitted to OMB for review and approval under section 3507(d) of the PRA (44 U.S.C. 3507(d)) and section 1320.11 of the OMB's implementing regulations (5 CFR 1320).

Comments are invited on:

(a) Whether the collections of information are necessary for the proper performance of the OCC's functions, including whether the information has practical utility;

(b) The accuracy of the estimates of the burden of the information collections, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the information collections on respondents, including through the use

[68] The FDIC issued a NPRM on January 30, 2015 to propose these conforming amendments. *See* 80 FR 5063 (January 30, 2015).

[69] 80 FR 74840, 74861–74862 (November 30, 2015).

of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

All comments will become a matter of public record. Comments on aspects of this notice that may affect reporting, recordkeeping, or disclosure requirements and burden estimates should be sent to the addresses listed in the **ADDRESSES** section of this document. A copy of the comments may also be submitted to the OMB desk officer for the agencies: by mail to U.S. Office of Management and Budget, 725 17th Street NW., #10235, Washington, DC 20503; by facsimile to (202) 395–5806; or by email to: *oira_submission@omb.eop.gov,* Attention, Federal Banking Agency Desk Officer.

Title of Information Collection: Mandatory Contractual Stay Requirements for Qualified Financial Contracts.

Affected Public: Businesses or other for-profit.

Respondents: Banks or FSAs (including any subsidiary of a bank or FSA) that are subsidiaries of a global systemically important BHC that has been designated pursuant to 252.82(a)(1) of the Federal Reserve Board's Regulation YY; Banks or FSAs (including any subsidiary of a bank or FSA) that are subsidiaries of a global systemically important FBO designated pursuant to section 252.87 of the Federal Reserve Board's Regulation YY; and Federal branches and agencies (including any U.S. subsidiary of a Federal branch or agency), of a global systemically important FBO that has been designated pursuant to section 252.87 of the Federal Reserve Board's Regulation YY.

Abstract: Section 47.6 provides that a covered bank may request that the OCC approve as compliant with the requirements of section 47.5, regarding insolvency proceedings, provisions of one or more forms of covered QFCs, or amendments to one or more forms of covered QFCs, with enhanced creditor protection conditions. The request must include: (1) an analysis of the proposal under each consideration of the relevance of creditor protection provisions; (2) a written legal opinion verifying that proposed provisions or amendments would be valid and enforceable under applicable law of the relevant jurisdictions, including, in the case of proposed amendments, the validity and enforceability of the proposal to amend the covered QFCs; and (3) any additional information relevant to its approval that the OCC requests.

Burden Estimates:

Estimated Number of Respondents: 42.

Estimated Burden per Respondent: Reporting (§ 47.7): 40 hours.

Total Estimated Burden: 1,680 hours.

B. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* ("RFA"), generally requires that, in connection with a NPRM, an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities.[70] The Small Business Administration has defined "small entities" for banking purposes to include a bank or savings association with $175 million or less in assets.[71]

The OCC currently supervises approximately 1,032 small entities. The scope of the proposal is limited to large banks and their affiliates. Therefore, the proposed rule will not impact any OCC-supervised small entities. Accordingly, the proposal will not have a significant economic impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act of 1995

The OCC has analyzed the proposed rule under the factors in the Unfunded Mandates Reform Act of 1995 (UMRA).[72] Under this analysis, the OCC considered whether the proposed rule includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (adjusted annually for inflation). The UMRA does not apply to regulations that incorporate requirements specifically set forth in law.

The OCC's estimated UMRA cost is less than $2 million. Therefore, the OCC finds that the proposed rule does not trigger the UMRA cost threshold. Accordingly, the OCC has not prepared the written statement described in section 202 of the UMRA.

D. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRI Act),[73] in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, the OCC will consider, consistent with the principles of safety and soundness and the public interest: (1) Any administrative burdens that the proposed rule would place on depository institutions, including small depository institutions and customers of depository institutions, and (2) the benefits of the proposed rule. The OCC requests comment on any administrative burdens that the proposed rule would place on depository institutions, including small depository institutions, and their customers, and the benefits of the proposed rule that the OCC should consider in determining the effective date and administrative compliance requirements for a final rule.

List of Subjects

12 CFR Part 3

Administrative practice and procedure; Capital; Federal savings associations; National banks; Reporting and recordkeeping requirements; Risk.

12 CFR Part 47

Administrative practice and procedure; Banks and banking; Bank resolution; Default rights; Federal savings associations, National banks, Qualified financial contracts; Reporting and recordkeeping requirements; Securities.

12 CFR Part 50

Administrative practice and procedure; Banks and banking; Liquidity; Reporting and recordkeeping requirements; Savings associations.

Authority and Issuance

For the reasons stated in the Supplementary Information, the Office of the Comptroller of the Currency proposes to amend part 3, add a new part 47, and amend part 50 as follows:

PART 3—CAPITAL ADEQUACY STANDARDS

■ 1. The authority citation for part 3 continues to read as follows:

Authority: 12 U.S.C. 93a, 161, 1462, 1462a, 1463, 1464, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, 3909, and 5412(b)(2)(B).

■ 2. Section 3.2 is amended by:

■ a. Revising the definition of "collateral agreement" by:

■ i. Removing the word "or" at the end of paragraph (1);

■ ii. Removing the period at the end of paragraph (2) and adding in its place "; or"; and

■ iii. Adding a new paragraph (3).

[70] *See* 5 U.S.C. 603(a).

[71] *See* 13 CFR 121.201.

[72] 2 U.S.C. 1531 *et seq.*

[73] 12 U.S.C. 4802(a).

■ b. Revising paragraph (1)(iii) of the definition of "eligible margin loan"; and
■ c. Revising the definition of "qualifying master netting agreement" by:
■ i. Removing the word "or" at the end of paragraph (2)(i);
■ ii. Removing the ";" at the end of paragraph (2)(ii) and adding in its place "; or"; and
■ iii. Adding a new paragraph (2)(iii).
■ d. Revising paragraph (3)(ii)(A) of the definition of "repo-style transaction".

The revisions are set forth below:

§ 3.2 Definitions.

* * * * *

Collateral agreement means * * *

* * * * *

(3) Where the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default of the counterparty is limited only to the extent necessary to comply with the requirements of part 47 of this title 12 or any similar requirements of another U.S. Federal banking agency, as applicable.

* * * * *

Eligible margin loan means: (1) * * *

* * * * *

(iii) The extension of credit is conducted under an agreement that provides the national bank or Federal savings association the right to accelerate and terminate the extension of credit and to liquidate or set-off collateral promptly upon an event of default, including upon an event of receivership, insolvency, liquidation, conservatorship, or similar proceeding, of the counterparty, provided that, in any such case, any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than:

(A) In receivership, conservatorship, or resolution under the Federal Deposit Insurance Act, Title II of the Dodd-Frank Act, or under any similar insolvency law applicable to GSEs,[5] or laws of foreign jurisdictions that are substantially similar[6] to the U.S. laws referenced in this paragraph in order to facilitate the orderly resolution of the defaulting counterparty; or

(B) Where the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default of the counterparty is limited only to the extent necessary to comply with the requirements of part 47 of this title 12 or any similar requirements of another U.S. Federal banking agency, as applicable;

or

* * * * *

Qualifying master netting agreement means a written, legally enforceable agreement provided that:

* * * * *

(2) * * *

* * * * *

(iii) Where the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default of the counterparty is limited only to the extent necessary to comply with the requirements of part 47 of this title 12 or any similar requirements of another U.S. Federal banking agency, as applicable.

* * * * *

Repo-style transaction means a repurchase or reverse repurchase transaction, or a securities borrowing or securities lending transaction, including a transaction in which the national bank or Federal savings association acts as agent for a customer and indemnifies the customer against loss, provided that:

* * * * *

(3) * * *

(ii) * * *

(A) The transaction is executed under an agreement that provides the national bank or Federal savings association the right to accelerate, terminate, and close-out the transaction on a net basis and to liquidate or set-off collateral promptly upon an event of default, including upon an event of receivership, insolvency, liquidation, or similar proceeding, of the counterparty, provided that, in any such case, any exercise of rights under the agreement will not be stayed or avoided under applicable law in the relevant jurisdictions, other than:

(*1*) In receivership, conservatorship, or resolution under the Federal Deposit Insurance Act, Title II of the Dodd-Frank Act, or under any similar insolvency law applicable to GSEs, or laws of foreign jurisdictions that are substantially similar[8] to the U.S. laws referenced in this paragraph (3)(ii)(a) in order to facilitate the orderly resolution of the defaulting counterparty; or

(*2*) Where the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default of the counterparty is limited only to the extent necessary to comply with the requirements of part 47 of this title 12 or any similar requirements of another U.S. Federal banking agency, as applicable; or

* * * * *

PART 47—MANDATORY CONTRACTUAL STAY REQUIREMENTS FOR QUALIFIED FINANCIAL CONTRACTS

■ 3. The authority citation for Part 47 shall read as follows:

Authority: 12 U.S.C. 1, 93a, 481, 1462a, 1463, 1464, 1467a, 1818, 1828, 1831n, 1831o, 1831p–1, 1831w, 1835, 3102(b), 3108(a), 5412(b)(2)(B), (D)–(F).

■ 4. Add new Part 47 to read as follows:

PART 47—MANDATORY CONTRACTUAL STAY REQUIREMENTS FOR QUALIFIED FINANCIAL CONTRACTS

Sec.
47.1 Authority and Purpose.
47.2 Definitions.
47.3 Applicability.
47.4 U.S. Special Resolution Regimes.
47.5 Insolvency Proceedings.
47.6 Approval of Enhanced Creditor Protection Conditions.
47.7 Exclusion of Certain QFCs.
47.8 Foreign Bank Multi-Branch Master Agreements.

PART 47—MANDATORY CONTRACTUAL STAY REQUIREMENTS FOR QUALIFIED FINANCIAL CONTRACTS

§ 47.1 Authority and Purpose.

(a) *Authority.* 12 U.S.C. 1, 93a, 1462a, 1463, 1464, 1467a, 1818, 1828, 1831n, 1831p-1, 1831w, 1835, 3102(b), 3108(a), 5412(b)(2)(B), (D)–(F).

(b) *Purpose.* The purpose of this part is to promote the safety and soundness of federally chartered or licensed institutions by mitigating the potential destabilizing effects of the resolution of a global significantly important banking entity on an affiliate that is a covered bank (as defined by this part) by requiring covered banks to include in financial contracts covered by this part certain mandatory contractual

[5] This requirement is met where all transactions under the agreement are (i) executed under U.S. law and (ii) constitute "securities contracts" under section 555 of the Bankruptcy Code (11 U.S.C. 555), qualified financial contracts under section 11(e)(8) of the Federal Deposit Insurance Act, or netting contracts between or among financial institutions under sections 401–407 of the Federal Deposit Insurance Corporation Improvement Act or the FRB's Regulation EE (12 CFR part 231).

[6] The OCC expects to evaluate jointly with the FRB and FDIC whether foreign special resolution regimes meet the requirements of this paragraph.

[8] The OCC expects to evaluate jointly with the FRB and FDIC whether foreign special resolution regimes meet the requirements of this paragraph.

provisions relating to stays on acceleration and close out rights and transfer rights.

§ 47.2 Definitions.

Central counterparty or CCP has the same meaning as in section 252.81 of the Federal Reserve Board's Regulation YY (12 CFR 252.81).

Chapter 11 proceeding means a proceeding under the provisions of Chapter 11 of the bankruptcy laws of the United States at 11 U.S.C. 1101–74 (Chapter 11 of Title 11, United States Code).

Covered entity has the same meaning as in section 252.82(a) of the Federal Reserve Board's Regulation YY (12 CFR 252.82).

Covered QFC means a QFC as defined in sections 47.4(a) and 47.5(a) of this part.

Credit enhancement means a QFC of the type set forth in Title II of the Dodd-Frank Act at section 210(c)(8)(D)(ii)(XII), (iii)(X), (iv)(V), (v)(VI), or (vi)(VI), 12 U.S.C. 5390(c)(8)(D)(ii)(XII), (iii)(X), (iv)(V), (v)(VI), or (vi)(VI); or a credit enhancement that the Federal Deposit Insurance Corporation determines by regulation is a QFC pursuant to section 210(c)(8)(D)(i), 12 U.S.C. 5390(c)(8)(D)(i), of the Dodd-Frank Act.

Default right (1) Means, with respect to a QFC, any:

(i) Right of a party, whether contractual or otherwise (including, without limitation, rights incorporated by reference to any other contract, agreement, or document, and rights afforded by statute, civil code, regulation, and common law), to liquidate, terminate, cancel, rescind, or accelerate such agreement or transactions thereunder, set off or net amounts owing in respect thereto (except rights related to same-day payment netting), exercise remedies in respect of collateral or other credit support or property related thereto (including the purchase and sale of property), demand payment or delivery thereunder or in respect thereof (other than a right or operation of a contractual provision arising solely from a change in the value of collateral or margin or a change in the amount of an economic exposure), suspend, delay, or defer payment or performance thereunder, or modify the obligations of a party thereunder, or any similar rights; and

(ii) Right or contractual provision that alters the amount of collateral or margin that must be provided with respect to an exposure thereunder, including by altering any initial amount, threshold amount, variation margin, minimum transfer amount, the margin value of collateral, or any similar amount, that entitles a party to demand the return of any collateral or margin transferred by it to the other party or a custodian or that modifies a transferee's right to reuse collateral or margin (if such right previously existed), or any similar rights, in each case, other than a right or operation of a contractual provision arising solely from a change in the value of collateral or margin or a change in the amount of an economic exposure;

(2) With respect to section 47.5 of this part, does not include any right under a contract that allows a party to terminate the contract on demand, or at its option at a specified time, or from time to time, without the need to show cause.

Dodd-Frank Act means the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (July 21, 2010).

FDIA proceeding means a proceeding in which the Federal Deposit Insurance Corporation is appointed as conservator or receiver under section 11 of the Federal Deposit Insurance Act, 12 U.S.C. 1821.

FDIA stay period means, in connection with an FDIA proceeding, the period of time during which a party to a QFC whose counterparty is subject to an FDIA proceeding may not exercise any right that the counterparty has to terminate, liquidate, or net such QFC, in accordance with section 11(e) of the Federal Deposit Insurance Act, 12 U.S.C. 1821(e), and any implementing regulations.

Master agreement means a QFC of the type set forth in Title II of the Dodd-Frank Act at section 210(c)(8)(D)(ii)(XI), (iii)(IX), (iv)(IV), (v)(V), or (vi)(V), 12 U.S.C. 5390(c)(8)(D)(ii)(XI), (iii)(IX), (iv)(IV), (v)(V), or (vi)(V); or a master agreement that the Federal Deposit Insurance Corporation determines by regulation is a QFC pursuant to section 210(c)(8)(D)(i) of the Dodd-Frank Act, 12 U.S.C. 5390(c)(8)(D)(i).

QFC or qualified financial contract has the same meaning as in section 210(c)(8)(D) of Title II of the Dodd-Frank Act, 12 U.S.C. 5390(c)(8)(D).

Subsidiary of covered bank means any operating subsidiary of a national bank, Federal savings association, or Federal branch or agency as defined in 12 CFR 5.34 (national banks) or 12 CFR 5.38 (FSAs), or any other subsidiary of a covered bank as defined in section 252.82(a)(2) and (3) of the Federal Reserve Board's Regulation YY (12 CFR 252.82(a)(2) and (3)).

U.S. special resolution regimes means the Federal Deposit Insurance Act at 12 U.S.C. 1811–1835a and regulations promulgated thereunder and Title II of the Dodd-Frank Act, 12 U.S.C. 5381–5394, and regulations promulgated thereunder.

§ 47.3 Applicability.

(a) *Scope of applicability.* This part applies to a "covered bank," which includes:

(i) A national bank or Federal savings association (including any subsidiary of a national bank or a Federal savings association) that is a subsidiary of a global systemically important bank holding company that has been designated pursuant to section 252.82(a)(1) of the Federal Reserve Board's Regulation YY (12 CFR 252.82(a)(1)); or

(ii) A national bank or Federal savings association (including any subsidiary of a national bank or a Federal savings association) that is a subsidiary of a global systemically important foreign banking organization that has been designated pursuant to section 252.87 of the Federal Reserve Board's Regulation YY (12 CFR 252.87); or

(iii) A Federal branch or agency, as defined in the Subpart B of Part 28 of this Chapter (governing Federal branches and agencies), and any U.S. subsidiary of the Federal branch or agency, of a global systemically important foreign banking organization that has been designated pursuant to section 252.87 of the Federal Reserve Board's Regulation YY (12 CFR 252.87).

(b) *Subsidiary of a covered bank.* This part generally applies to the subsidiary of any national bank, Federal savings association, or Federal branch or agency that is a covered bank under paragraph (a)(1) of this section. Specifically, the covered bank is required to ensure that a covered QFC to which the subsidiary is a party (as a direct counterparty or a support provider) satisfies the requirements of sections 47.4 and 47.5 of this part in the same manner and to the same extent applicable to the covered bank.

(c) *Initial applicability of requirements for covered QFCs.* A covered bank must comply with the requirements of sections 47.4 and 47.5 beginning on the later of

(1) The first day of the calendar quarter immediately following 365 days (1 year) after becoming a covered bank; or

(2) The date this subpart first becomes effective.

(d) *Rule of construction.* For purposes of this subpart, the exercise of a default right with respect to a covered QFC includes the automatic or deemed exercise of the default right pursuant to the terms of the QFC or other arrangement.

§ 47.4 U.S. Special Resolution Regimes.

(a) *QFCs required to be conformed.* (1) A covered bank must ensure that each of its covered QFCs conforms to the requirements of this section 47.4.

(2) For purposes of this section 47.4, a covered QFC means a QFC that the covered bank:

(i) Enters, executes, or otherwise becomes a party to; or

(ii) Entered, executed, or otherwise became a party to before the date this subpart first becomes effective, if the covered bank or any affiliate that is a covered bank or covered entity also enters, executes, or otherwise becomes a party to a QFC with the same person or affiliate of the same person on or after the date this subpart first becomes effective.

(3) To the extent that the covered bank is acting as agent with respect to a QFC, the requirements of this section apply to the extent the transfer of the QFC relates to the covered bank or the default rights relate to the covered bank or an affiliate of the covered bank.

(b) *Provisions required.* A covered QFC must explicitly provide that:

(1) The transfer of the covered QFC (and any interest and obligation in or under, and any property securing, the covered QFC) from the covered bank will be effective to the same extent as the transfer would be effective under the U.S. special resolution regimes if the covered QFC (and any interest and obligation in or under, and any property securing, the covered QFC) were governed by the laws of the United States or a state of the United States and the covered bank were under the U.S. special resolution regime; and

(2) Default rights with respect to the covered QFC that may be exercised against the covered bank are permitted to be exercised to no greater extent than the default rights could be exercised under the U.S. special resolution regimes if the covered QFC was governed by the laws of the United States or a state of the United States and the covered bank were under the U.S. special resolution regime.

(c) *Relevance of creditor protection provisions.* The requirements of this section apply notwithstanding paragraphs (e), (g), and (i) of section 47.5.

§ 47.5 Insolvency Proceedings.

(a) *QFCs required to be conformed.* (1) A covered bank must ensure that each covered QFC conforms to the requirements of this section 47.5.

(2) For purposes of this section 47.5, a covered QFC has the same definition as in paragraph (a)(2) of section 47.4.

(3) To the extent that the covered bank is acting as agent with respect to a QFC, the requirements of this section apply to the extent the transfer of the QFC relates to the covered bank or the default rights relate to an affiliate of the covered bank.

(b) *General Prohibitions.* (1) A covered QFC may not permit the exercise of any default right with respect to the covered QFC that is related, directly or indirectly, to an affiliate of the direct party becoming subject to a receivership, insolvency, liquidation, resolution, or similar proceeding.

(2) A covered QFC may not prohibit the transfer of a covered affiliate credit enhancement, any interest or obligation in or under the covered affiliate credit enhancement, or any property securing the covered affiliate credit enhancement to a transferee upon an affiliate of the direct party becoming subject to a receivership, insolvency, liquidation, resolution, or similar proceeding unless the transfer would result in the supported party being the beneficiary of the credit enhancement in violation of any law applicable to the supported party.

(c) *Definitions relevant to the general prohibitions and this part.* (1) *Direct party.* Direct party means covered bank, or covered entity referenced in section 47.2, that is a party to the direct QFC.

(2) *Direct QFC.* Direct QFC means a QFC that is not a credit enhancement, *provided that,* for a QFC that is a master agreement that includes an affiliate credit enhancement as a supplement to the master agreement, the direct QFC does not include the affiliate credit enhancement.

(3) *Affiliate credit enhancement.* Affiliate credit enhancement means a credit enhancement that is provided by an affiliate of a party to the direct QFC that the credit enhancement supports.

(d) *Treatment of agent transactions.* With respect to a QFC that is a covered QFC for a covered bank solely because the covered bank is acting as agent under the QFC, the covered bank is the direct party.

(e) *General creditor protections.* Notwithstanding paragraph (b) of this section, a covered direct QFC and covered affiliate credit enhancement that supports the covered direct QFC may permit the exercise of a default right with respect to the covered QFC that arises as a result of:

(1) The direct party becoming subject to a receivership, insolvency, liquidation, resolution, or similar proceeding other than a receivership, conservatorship, or resolution under the Federal Deposit Insurance Act, Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act, or laws of foreign jurisdictions that are substantially similar to the U.S. laws referenced in this paragraph (e)(1) in order to facilitate the orderly resolution of the direct party;

(2) The direct party not satisfying a payment or delivery obligation pursuant to the covered QFC or another contract between the same parties that gives rise to a default right in the covered QFC; or

(3) The covered affiliate support provider or transferee not satisfying a payment or delivery obligation pursuant to a covered affiliate credit enhancement that supports the covered direct QFC.

(f) *Definitions relevant to the general creditor protections and this part.* (1) *Covered direct QFC.* Covered direct QFC means a direct QFC to which a covered bank, or a covered entity referenced in section 47.2, is a party.

(2) *Covered affiliate credit enhancement.* Covered affiliate credit enhancement means an affiliate credit enhancement in which a covered bank, or a covered entity referenced in section 47.2, is the obligor of the credit enhancement.

(3) *Covered affiliate support provider.* Covered affiliate support provider means, with respect to a covered affiliate credit enhancement, the affiliate of the direct party that is obligated under the covered affiliate credit enhancement and is not a transferee.

(4) *Supported party.* Supported party means, with respect to a covered affiliate credit enhancement and the direct QFC that the covered affiliate credit enhancement supports, a party that is a beneficiary of the covered affiliate support provider's obligation under the covered affiliate credit enhancement.

(g) *Additional creditor protections for supported QFCs.* Notwithstanding paragraph (b) of this section, with respect to a covered direct QFC that is supported by a covered affiliate credit enhancement, the covered direct QFC and the covered affiliate credit enhancement may permit the exercise of a default right that is related, directly or indirectly, to the covered affiliate support provider after the stay period if:

(1) The covered affiliate support provider that remains obligated under the covered affiliate credit enhancement becomes subject to a receivership, insolvency, liquidation, resolution, or similar proceeding other than a Chapter 11 proceeding;

(2) Subject to paragraph (i) of this section, the transferee, if any, becomes subject to a receivership, insolvency,

liquidation, resolution, or similar proceeding;

(3) The covered affiliate support provider does not remain, and a transferee does not become, obligated to the same, or substantially similar, extent as the covered affiliate support provider was obligated immediately prior to entering the receivership, insolvency, liquidation, resolution, or similar proceeding with respect to:

(i) The covered affiliate credit enhancement,

(ii) All other covered affiliate credit enhancements provided by the covered affiliate support provider in support of other covered direct QFCs between the direct party and the supported party under the covered affiliate credit enhancement referenced in paragraph 47(g)(3)(i), and

(iii) All covered affiliate credit enhancements provided by the covered affiliate support provider in support of covered direct QFCs between the direct party and affiliates of the supported party referenced in paragraph 47.5(g)(3)(ii); or

(4) In the case of a transfer of the covered affiliate credit enhancement to a transferee:

(i) All of the ownership interests of the direct party directly or indirectly held by the covered affiliate support provider are not transferred to the transferee; or

(ii) Reasonable assurance has not been provided that all or substantially all of the assets of the covered affiliate support provider (or net proceeds therefrom), excluding any assets reserved for the payment of costs and expenses of administration in the receivership, insolvency, liquidation, resolution, or similar proceeding, will be transferred or sold to the transferee in a timely manner.

(h) *Definitions relevant to the additional creditor protections for supported QFCs and this part.* (1) *Stay period.* Stay period means, with respect to a receivership, insolvency, liquidation, resolution, or similar proceeding, the period of time beginning on the commencement of the proceeding and ending at the later of 5:00 p.m. (eastern time) on the business day following the date of the commencement of the proceeding and 48 hours after the commencement of the proceeding.

(2) *Business day.* Business day means a day on which commercial banks in the jurisdiction the proceeding is commenced are open for general business (including dealings in foreign exchange and foreign currency deposits).

(3) *Transferee.* Transferee means a person to whom a covered affiliate credit enhancement is transferred upon the covered affiliate support provider entering a receivership, insolvency, liquidation, resolution, or similar proceeding or thereafter as part of the restructuring or reorganization involving the covered affiliate support provider.

(i) *Creditor protections related to FDIA proceedings.* Notwithstanding paragraph (b) of this section, with respect to a covered direct QFC that is supported by a covered affiliate credit enhancement, the covered direct QFC and the covered affiliate credit enhancement may permit the exercise of a default right that is related, directly or indirectly, to the covered affiliate support provider becoming subject to FDIA proceedings:

(1) After the FDIA stay period, if the covered affiliate credit enhancement is not transferred pursuant to 12 U.S.C. 1821(e)(9)–(e)(10) and any regulations promulgated thereunder; or

(2) During the FDIA stay period, if the default right may only be exercised so as to permit the supported party under the covered affiliate credit enhancement to suspend performance with respect to the supported party's obligations under the covered direct QFC to the same extent as the supported party would be entitled to do if the covered direct QFC were with the covered affiliate support provider and were treated in the same manner as the covered affiliate credit enhancement.

(j) *Prohibited terminations.* A covered QFC must require, after an affiliate of the direct party has become subject to a receivership, insolvency, liquidation, resolution, or similar proceeding:

(1) The party seeking to exercise a default right to bear the burden of proof that the exercise is permitted under the covered QFC; and

(2) Clear and convincing evidence or a similar or higher burden of proof to exercise a default right.

§ 47.6 Approval of Enhanced Creditor Protection Conditions.

(a) *Protocol compliance.* A covered QFC may permit the exercise of a default right with respect to the covered QFC if the covered QFC has been amended by the ISDA 2015 Universal Resolution Stay Protocol, including the Securities Financing Transaction Annex and Other Agreements Annex published by the International Swaps and Derivatives Association, Inc., as of May 3, 2016, and minor or technical amendments thereto.

(b) *Proposal of enhanced creditor protection conditions.* (1) A covered bank may request that the OCC approve as compliant with the requirements of section 47.5 of this part provisions of one or more forms of covered QFCs, or amendments to one or more forms of covered QFCs, with enhanced creditor protection conditions.

(2) Enhanced creditor protection conditions means a set of limited exemptions to the requirements of section 47.5(b) of this part that are different than that of paragraphs (e), (g), and (i) of section 46.5 of this part.

(3) A covered bank making a request under paragraph (b)(1) of this section must provide:

(i) An analysis of the proposal that addresses each consideration in paragraph (d) of this section;

(ii) A written legal opinion verifying that proposed provisions or amendments would be valid and enforceable under applicable law of the relevant jurisdictions, including, in the case of proposed amendments, the validity and enforceability of the proposal to amend the covered QFCs; and

(iii) Any other relevant information that the OCC requests.

(c) *OCC approval.* The OCC may approve, subject to any conditions or commitments the OCC may impose, a proposal by a covered bank under paragraph (b) of this section if the proposal, as compared to a covered QFC that contains only the limited exemptions in paragraphs of (e), (g), and (i) of section 47.5 of this part, would promote the safety and soundness of federally chartered or licensed institutions by mitigating the potential destabilizing effects of the resolution of a global significantly important banking entity that is an affiliate of the covered bank, at least to the same extent.

(d) *Considerations.* In reviewing a proposal under this section, the OCC may consider all facts and circumstances related to the proposal, including:

(1) Whether, and the extent to which, the proposal would reduce the resiliency of such covered banks during distress or increase the impact of the failure of one or more of the covered banks;

(2) Whether, and the extent to which, the proposal would materially decrease the ability of a covered bank, or an affiliate of a covered bank, to be resolved in a rapid and orderly manner in the event of the financial distress or failure of the entity that is required to submit a resolution plan pursuant to Section 165(d) of the Dodd-Frank Act, 12 U.S.C. 5635(d), and the implementing regulations in 12 CFR

part 243 (FRB) and 12 CFR part 381 (FDIC);

(3) Whether, and the extent to which, the set of conditions or the mechanism in which they are applied facilitates, on an industry-wide basis, contractual modifications to remove impediments to resolution and increase market certainty, transparency, and equitable treatment with respect to the default rights of non-defaulting parties to a covered QFC;

(4) Whether, and the extent to which, the proposal applies to existing and future transactions;

(5) Whether, and the extent to which, the proposal would apply to multiple forms of QFCs or multiple covered banks;

(6) Whether the proposal would permit a party to a covered QFC that is within the scope of the proposal to adhere to the proposal with respect to only one or a subset of covered banks;

(7) With respect to a supported party, the degree of assurance the proposal provides to the supported party that the material payment and delivery obligations of the covered affiliate credit enhancement and the covered direct QFC it supports will continue to be performed after the covered affiliate support provider enters a receivership, insolvency, liquidation, resolution, or similar proceeding;

(8) The presence, nature, and extent of any provisions that require a covered affiliate support provider or transferee to meet conditions other than material payment or delivery obligations to its creditors;

(9) The extent to which the supported party's overall credit risk to the direct party may increase if the enhanced creditor protection conditions are not met and the likelihood that the supported party's credit risk to the direct party would decrease or remain the same if the enhanced creditor protection conditions are met; and

(10) Whether the proposal provides the counterparty with additional default rights or other rights.

§ 47.7 Exclusion of Certain QFCs.

(a) Exclusion of CCP-cleared QFCs. A covered bank is not required to conform a covered QFC to which a CCP is a party to the requirements of sections 47.4 and 47.5.

(b) Exclusion of covered entity QFCs. A covered bank is not required to conform a covered QFC to the requirements of sections 47.4 and 47.5 to the extent that a covered entity is required to conform the covered QFC to similar requirements of the Federal Reserve Board if the QFC is either a direct QFC to which a covered entity is a direct party or an affiliate credit enhancement to which a covered entity is the obligor.

§ 47.8 Foreign Bank Multi-branch Master Agreements.

(a) *Treatment of foreign bank multi-branch master agreements.* With respect to a Federal branch or agency of a globally significant foreign banking organization, a foreign bank multi-branch master agreement that is a covered QFC solely because the master agreement permits agreements or transactions that are QFCs to be entered into at one or more Federal branches or agencies of the globally significant foreign banking organization will be considered a covered QFC for purposes of this subpart only with respect to such agreements or transactions booked at such Federal branches or agencies or for which a payment or delivery may be made at such Federal branches or agencies.

(b) *Definition of foreign bank multi-branch master agreements.* A foreign bank multi-branch master agreement means a master agreement that permits a Federal branch or agency and another place of business of a foreign bank that is outside the United States to enter transactions under the agreement.

PART 50—LIQUIDITY RISK MEASUREMENT STANDARDS

■ 5. The authority citation for part 50 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 93a, 481, 1818, and 1462 *et seq.*

■ 6. Section 50.3 is amended by revising the definition of "qualifying master netting agreement" by:

■ i. Removing the word "or" at the end of paragraph (2)(i);

■ ii. Removing the ";" at the end of paragraph (2)(ii) and adding in its place "; or"; and

■ iii. Adding a new paragraph (2)(iii).

The revisions are set forth below:

§ 50.3 Definitions.

* * * * *

Qualifying master netting agreement means a written, legally enforceable agreement provided that:

* * * * *

(2) * * *

* * * * *

(iii) Where the right to accelerate, terminate, and close-out on a net basis all transactions under the agreement and to liquidate or set-off collateral promptly upon an event of default of the counterparty is limited only to the extent necessary to comply with the requirements of part 47 of this title 12 or any similar requirements of another U.S. Federal banking agency, as applicable.

* * * * *

Dated: August 10, 2016.

Thomas J. Curry,

Comptroller of the Currency.

[FR Doc. 2016–19671 Filed 8–18–16; 8:45 am]

BILLING CODE 4810–33–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2016–0322; FRL–9950–95–Region 9]

Approval and Limited Approval and Limited Disapproval of California State Implementation Plan Revisions; Butte County Air Quality Management District; Stationary Source Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing a limited approval and limited disapproval of revisions to the Butte County Air Quality Management District (BCAQMD) portion of the California State Implementation Plan (SIP). These revisions concern the District's New Source Review (NSR) permitting program for new and modified sources of air pollution. We are proposing action on these local rules under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by September 19, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. [EPA–R09–OAR–2016–0332] at *http://www.regulations.gov,* or via email to *R9AirPermits@epa.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be removed or edited from *Regulations.gov.* For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not

consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Laura Yannayon, EPA Region IX, (415) 972–3534, *yannayon.laura@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to the EPA.

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Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The word or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The initials *CARB* mean or refer to the California Air Resources Board.

(iii) The initials *CFR* mean or refer to Code of Federal Regulations.

(iv) The initials or words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(v) The initials *FR* mean or refer to **Federal Register**.

(vi) The word or initials BCAQMD or *District* mean or refer to the Butte County Air Quality Management District.

(vii) The initials *NAAQS* mean or refer to National Ambient Air Quality Standards.

(viii) The initials *NSR* mean or refer to New Source Review.

(ix) The initials PM_{10} mean or refer to particulate matter with an aerodynamic diameter of less than or equal to 10 micrometers (coarse particulate matter).

(x) The initials $PM_{2.5}$ mean or refer to particulate matter with an aerodynamic diameter of less than or equal to 2.5 micrometers (fine particulate matter).

(xi) The initials *SIP* mean or refer to State Implementation Plan.

(xii) The initials *TSD* mean or refer to the technical support document for this action.

I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules addressed by this proposal, including the dates they were adopted by BCAQMD and submitted by CARB, which is the governor's designee for California SIP submittals.

TABLE 1—SUBMITTED RULES

Rule No.	Rule title	Adopted date	Submitted date
400	Permit Requirements	04/24/14	11/06/14
401	Permit Exemptions	04/24/14	11/06/14
432	Federal New Source Review	04/24/14	11/06/14

On December 18, 2014, EPA determined that the submittal of these rules met the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of these rules?

There is no previous version of Rule 432 in the SIP; EPA approved previous versions of the rules to be replaced by Rules 400 and 401 into the SIP as indicated in Table 2.

TABLE 2—SIP APPROVED RULES

Rule No.	Rule title	SIP approval date	Federal Register Citation
4–4	Exemptions from Permit Requirement	05/31/72	37 FR 10856
401	General Requirements	02/03/87	52 FR 3226
402	Authority to Construct	02/03/87	52 FR 3226
403	Permit to Operate	5/2/01	66 FR 21875
405	Permit Conditions	05/31/72	37 FR 10856
406	Emission Calculations	02/03/87	52 FR 3226
407	Anniversary Date	02/03/87	52 FR 3226
420	Standards for Granting Applications	02/03/87	52 FR 3226
421	Conditional Approval	02/03/87	52 FR 3226
424	State Implementation Plan	5/2/01	66 FR 21875

EPA's approval of Rule 401 would have the effect of entirely superseding our prior approval of Rule 4–4 in the SIP. Likewise, approval of Rules 400 and 432 will have the effect of entirely superseding our prior SIP approval of Rules 401, 402, 403, 405, 406, 407, 420, 421 and 424.

C. What is the purpose of the submitted rules?

Section 110(a) of the CAA requires states to submit regulations that include a pre-construction permit program for certain new or modified stationary sources of pollutants, including a permit program as required by Part D of Title I of the CAA.

The purpose of District Rule 400 (Permit Requirements), Rule 401 (Permit Exemptions) and Rule 432 (Federal New Source Review) is to implement a federal preconstruction permit program for all new and modified minor sources,

and new and modified major sources of NAAQS pollutants for which the area is designated nonattainment. BCAQMD is currently designated as a nonattainment area for the 2008 8-hr ozone and 2006 24-hr $PM_{2.5}$ NAAQS. We present our evaluation under the CAA and EPA's regulations of the amended NSR rules submitted by CARB, as identified in Table 1, and provide our reasoning in general terms below and in more detail in our TSD, which is available in the docket for this proposed rulemaking.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rules?

The submitted rules must meet the CAA's general requirements for SIPs and SIP revisions in CAA sections 110(a)(2), 110(l), and 193, as well as the applicable requirements contained in part D of title I of the Act (sections 172, 173, 182(a) and 189(e)) for a nonattainment NSR permit program. In addition, the submitted rules must contain the applicable regulatory provisions required by 40 CFR 51.160–51.165 and 40 CFR 51.307.

Among other things, section 110 of the Act requires that SIP rules be enforceable and provides that EPA may not approve a SIP revision if it would interfere with any applicable requirements concerning attainment and reasonable further progress or any other requirement of the CAA. In addition, section 110(a)(2) and section 110(l) of the Act require that each SIP or revision to a SIP submitted by a State must be adopted after reasonable notice and public hearing.

Section 110(a)(2)(C) of the Act requires each SIP to include a permit program to regulate the modification and construction of any stationary source within the areas covered by the SIP as necessary to assure attainment and maintenance of the NAAQS. EPA's regulations at 40 CFR 51.160–51.164 provide general programmatic requirements to implement this statutory mandate commonly referred to as the "minor NSR" or "general NSR" permit program. These NSR program regulations impose requirements for SIP approval of State and local programs that are more general in nature as compared to the specific statutory and regulatory requirements for nonattainment NSR permitting programs under Part D of title I of the Act.

Part D of title I of the Act contains the general requirements for areas designated nonattainment for a NAAQS (section 172), including preconstruction permit requirements for new major sources and major modifications proposing to construct in nonattainment areas (section 173). Part D of title I of the Act also includes section 182(a), which contains the additional requirements for areas designated as a marginal ozone nonattainment area, and section 189(e), which requires the control of major stationary source of PM_{10} precursors (and hence $PM_{2.5}$ precursors) "except where the Administrator determines that such sources do not contribute significantly to PM_{10} [and $PM_{2.5}$] levels which exceed the standard in the area." Additionally, 40 CFR 51.165 sets forth EPA's regulatory requirements for SIP-approval of a nonattainment NSR permit program and 40 CFR 51.165(a)(13) contains specific requirements for regulating sources emitting $PM_{2.5}$.

The protection of visibility requirements that apply to NSR programs are contained in 40 CFR 51.307. This provision requires that certain actions be taken in consultation with the local Federal Land Manager if a new major source or major modification may have an impact on visibility in any mandatory Class I Federal Area.

Section 110(l) of the Act prohibits EPA from approving any SIP revisions that would interfere with any applicable requirement concerning attainment and reasonable further progress (RFP) or any other applicable requirement of the CAA. Section 193 of the Act, which only applies in nonattainment areas, prohibits the modification of a SIP-approved control requirement in effect before November 15, 1990, in any manner unless the modification insures equivalent or greater emission reductions of such air pollutant.

Our TSD, which can be found in the docket for this rule, contains a more detailed discussion of the approval criteria.

B. Do the rules meet the evaluation criteria?

EPA has reviewed the submitted rules in accordance with the rule evaluation criteria described above. With respect to procedures, based on our review of the public process documentation included in the November 6, 2014 submittal, we are proposing to approve the submitted rules in part because we have determined that BCAQMD has provided sufficient evidence of public notice and opportunity for comment and public hearings prior to adoption and submittal of these rules, in accordance with the requirements of CAA sections 110(a)(2) and 110(l).

With respect to substantive requirements, we have reviewed the submitted rules in accordance with the evaluation criteria discussed above. We are proposing to approve Rules 400 and 401 as part of BCAQMD's general NSR permitting program because we have determined that these rules satisfy the substantive statutory and regulatory requirements for a general NSR permit program as contained in CAA section 110(a)(2)(C) and 40 CFR 51.160–51.164.

In addition, we are proposing a limited approval of Rule 432 because we have determined that Rule 432 satisfies all of the statutory and regulatory requirements for a nonattainment NSR permit program as set forth in the applicable provisions of part D of title I of the Act (sections 172, 173 and 182(a)) and in 40 CFR 51.165 and 40 CFR 51.307.

We are also proposing a limited disapproval of Rule 432 because we have determined that the rule does not fully satisfy CAA section 189(e) requirements for regulation of $PM_{2.5}$ precursors. The rule does not specify ammonia as a $PM_{2.5}$ precursor and the demonstration provided by Butte County as part of their NSR program submittal is not adequate to allow the Administrator to determine whether potential new major sources and major modifications of ammonia emissions will not contribute significantly to $PM_{2.5}$ levels that exceed the standard in the area. Our TSD for this action contains additional information regarding our proposed limited disapproval.

EPA is also proposing to find that it is acceptable for BCAQMD to not incorporate the NSR Reform provisions of 40 CFR 51.165 into its NSR permit program because BCAQMD's permitting program will not be any less stringent than the federal permitting program. In addition, EPA is proposing to find that Rules 400, 401 and 432 meet the statutory requirements for SIP revisions as specified in sections 110(l) and 193 of the CAA.

Please see our TSD for more information regarding our evaluation of Rules 400, 401 and 432.

C. Proposed Action and Public Comment

As authorized by CAA section 110(k)(3) and 301(a), we are proposing approval of Rule 400 (Permit Requirements) and Rule 401 (Permit Exemptions), and we are proposing limited approval and limited disapproval of Rule 432 (Federal New Source Review) into the BCAQMD portion of the California SIP. If finalized, this action will incorporate the submitted rules into the SIP, including those provisions identified as

deficient.[1] The approval of Rule 432 is limited because EPA is simultaneously proposing a limited disapproval of Rule 432 under section 110(k)(3). If this limited disapproval is finalized, it will trigger sanctions under CAA section 179 and 40 CFR 52.31 unless the EPA approves subsequent SIP revisions that correct the rule deficiencies within 18 months of the effective date of the final action.

Note that Rule 432 has been adopted by the BCAQMD, and the EPA's final limited disapproval would not prevent the local agency from enforcing it. The limited disapproval also would not prevent any portion of the rule from being incorporated by reference into the federally enforceable SIP as discussed in a July 9, 1992 EPA memo found at: *http://www.epa.gov/nsr/ttnnsr01/gen/pdf/memo-s.pdf.*

We will accept comments from the public on the proposed limited approval and limited disapproval for the next 30 days.

III. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to finalize the incorporation by reference the BCAQMD rules described in Table 1 of this preamble. The EPA has made, and will continue to make, these materials available electronically through *www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *http://www2.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA because this action does not impose additional requirements beyond those imposed by state law.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities beyond those imposed by state law.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, will result from this action.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not impose additional requirements beyond those imposed by state law.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Population

The EPA lacks the discretionary authority to address environmental justice in this rulemaking.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, New Source Review, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: August 9, 2016.

Alexis Strauss,

Acting Regional Administrator, Region IX.

[FR Doc. 2016–19766 Filed 8–18–16; 8:45 am]

BILLING CODE 6560–50–P

[1] If this proposed rule is finalized, Butte County Rules 400, 401 and 432, will supersede the existing SIP approved rules listed in Table 2.

AGENCY FOR INTERNATIONAL DEVELOPMENT

48 CFR Parts 701, 722 and Appendix J

RIN 0412–AA80

Agency for International Development Acquisition Regulation (AIDAR): Agency Warrant Program for Individual Cooperating Country National Personal Services Contractors (CCNPSCs)

AGENCY: U.S. Agency for International Development.

ACTION: Proposed rule.

SUMMARY: The U.S. Agency for International Development (USAID) proposes to amend the Agency for International Development Acquisition Regulation (AIDAR) to incorporate a warrant program for cooperating

country national personal service contractors (CCN PSCs) into the regulation. The purpose of the CCN PSC warrant program is not only to address a shortage of U.S. direct-hire contracting officers by delegating limited contracting officer authorities to a select number of Cooperating Country National personal services contractors, but also to bolster the Agency to succeed in terms of building long-term, host country technical capacity to materially assist the Missions with procurement responsibility. In addition, USAID is proposing to clarify that third country nationals (TCNs) and cooperating country nationals (CCNs) employment requirements, contained in section 722.170, do not apply to consultants.

DATES: Comments must be received no later than October 18, 2016.

ADDRESSES: Address all comments concerning this notice to Lyudmila Bond, Bureau for Management, Office of Acquisition and Assistance, Policy Division (M/OAA/P), Room 867, SA–44, Washington, DC 20523–2052. Submit comments, identified by title of the action and Regulatory Information Number (RIN) by any of the following methods:

1. Through the Federal eRulemaking Portal at *http://www.regulations.gov* by following the instructions for submitting comments.

2. *By Mail addressed to:* USAID, Bureau for Management, Office of Acquisition & Assistance, Policy Division, Room 867J, SA–44, 1300 Pennsylvania Ave. NW., Washington, DC 20523–2052.

FOR FURTHER INFORMATION CONTACT: Lyudmila Bond, Telephone: 202–567–4753 or Email: *lbond@usaid.gov.*

SUPPLEMENTARY INFORMATION:

A. Instructions

All comments must be in writing and submitted through one of the methods specified in the Addresses section above. All submissions must include the title of the action and RIN for this rulemaking. Please include your name, title, organization, postal address, telephone number, and email address in the text of the message.

Please note that USAID recommends sending all comments to the Federal eRulemaking Portal because security screening precautions have slowed the delivery and dependability of surface mail to USAID/Washington.

After receipt of a comment and until finalization of the action, all comments will be made available at *http://www.regulations.gov* for public review without change, including any personal information provided. We recommend you do not submit information that you consider Confidential Business Information (CBI) or any information that is otherwise protected from disclosure by statute. USAID will only address substantive comments on the rule. Comments that are insubstantial or outside the scope of the rule may not be considered.

B. Background

USAID is seeking comments on the proposed rule as described below:

(1) 722.170 Employment of Third Country Nationals (TCN's) and Cooperating Country Nationals (CCN's)

In response to numerous inquiries, USAID is proposing a revision of this section of the AIDAR to clarify that employment requirements for TCN and CCN employees of a contractor do not apply to consultants. It is the responsibility of a contractor to determine whether an individual being hired is an employee or a consultant.

(2) Cooperating Country National (CCN) Warrant Program

Background

In 2011, the U.S. Agency for International Development (USAID) approved a two-year Worldwide CCN Administrative Contracting and Agreement Officer (ACO/AAO) Pilot Warrant Program. The purpose of this program was to address the shortage of USAID contracting officers and build long-term, host country technical capacity to materially assist the Missions with procurement responsibility.

USAID is located in offices in over 80 countries with programs in over 100 nations. USAID operates in a fluid environment responding to a myriad of crises such as war, natural disasters, epidemics, as well as its long term mission of ending extreme poverty, promoting resilient, democratic societies while advancing our security and prosperity. The warranted contracting force to manage this effort consists of 150 US direct hire foreign service contracting officers overseas, 105 direct hire civil service contract officers, 83 warranted foreign service executive officers, 3 warranted US personal service contractors managing mission's acquisition portfolio, and 4 warranted US personal service contractors serving as executive officers. In addition to, and perhaps partially because of having such a relatively small warranted work force to manage a portfolio that is large and varied with a global footprint, the foreign service contracting staff has one of the highest attrition rates in USAID's work force.

USAID made a strategic decision to create a cadre of highly qualified Cooperating Country Nationals, who have demonstrated high potential for assuming responsibilities to serve as administrative contracting officers within designated Missions. The purpose was to alleviate some of the workload of our contracting officer staff. During the two phases of the program, USAID added 6 warranted CCN administrative contracting officers. Currently, by the end of fiscal year 2016, we anticipate that there will be approximately 12 warranted CCN contracting officers. While a seemingly small number, that would represent an 8 percent increase of our overseas US direct hire warranted contracting officer staff.

When designing the CCN Pilot Warrant Program, USAID consulted with the Senior Procurement Executive at the State Department and the unions. The State Department's SPE advised that State conducted a similar pilot several years ago, to great success. They now have a permanent program that extends limited authority to their locally-employed staff in selected countries. The vice president of the American Foreign Service Association concurred with the Pilot, and was pleased by several of its protections.

Based on that two-year pilot program, revisions were made to the program structure to better suit the Agency's needs before the permanent program was launched in September 2014. USAID eliminated the portion of the program that allowed for third country nationals to receive warrants. A comprehensive review of the CCN Pilot Warrant Program underscored a need to broaden participation through among other things, revision of qualifications and inclusion of full obligation warrant authority up to $150,000 per transaction and an annual cumulative amount of $1 million at the CCN Grade 13 Level to assist the Missions' procurement function. A better understanding of CCN grades and the grading process allowed for better clarity of expectations for Missions and warrant applicants. To help mitigate CCN inexperience from leading to mistakes or malfeasance, the revised CCN Warrant Program includes several levels of obligation authority and non-monetary administrative responsibility correlating to CCN grade/experience within the acquisition backstop. Increasing degrees of responsibility and/or obligation authority, as applicable, are granted.

The permanent CCN Warrant Program currently establishes three levels of

contracting officer responsibilities that can be designated to a CCN personal services contractor depending on the needs of each mission, complexity and dollar value of the acquisitions, and the individual's experience, training, education, business acumen, judgment, reputation and grade level.

At the first level, a CCN PSC may be delegated authority for select contract administration functions listed in (48 CFR) FAR 42.302(a), including, for example, conducting post-award orientation conferences, approving contractors' requests for payments under the progress payments or performance-based payments clauses.

At the second level, in addition to performing the administrative functions discussed above, a CCN PSC contracting officer may be delegated authority to obligate incremental funding of any amount within the scope and total estimated cost of a contract (to include task orders and purchase orders).

At the third and highest participating grade level, in addition to the incremental funding obligation authority and post-award administration duties described in levels one and two above, a CCN PSC contracting officer may be delegated authority to execute new awards for a total award amount not to exceed one hundred fifty thousand dollars ($150,000). This authority is further subject to a new award cumulative obligation limit of one million dollars ($1 million) per Fiscal Year. No deviation from these limitations is authorized.

Regulatory Authorities and Limitations

(48 CFR) FAR part 1 establishes the authority for Agency heads to select and appoint contracting officers and it does not specify that contracting officers must be U.S. citizen direct-hire employees of the Federal government. (48 CFR) FAR part 7.5 includes contracting officer duties in the list of inherently governmental functions or functions that must be treated as such, but does not exclude personal services contractors hired under a statutory authority from performing such functions.

(48 CFR) AIDAR 701.603–70 currently limits delegations of contracting officer authorities to U.S. citizen direct-hire employees of the U.S. Government as a matter of Agency policy. However, section 4(b)(3) of (48 CFR) AIDAR Appendix D and the corresponding section of Appendix J contain an exception for PSCs to be delegated contracting officer authority with approval from the Assistant Administrator for the Bureau of Management.

In September 2014, USAID issued a two-year class deviation from 48 CFR) AIDAR 701.603–70 to establish the permanent CCN PSC warrant program to allow a limited number of selected and qualified CCN PSCs to be delegated contracting officer authorities. In conjunction with the approval of the class deviation described above, the Assistant Administrator for the Bureau for Management approved a class exception to the limitations in (48 CFR) AIDAR Appendix J 4(b)(3). By this rule USAID is proposing to revise (48 CFR) AIDAR to permanently authorize delegation of contracting officer authorities to a limited number of selected and qualified CCN PSCs.

Discussion

Prior to establishing the permanent CCN warrant program, the Agency reviewed the risks associated with issuing CO warrants to Non-U.S. citizens who are not direct-hire employees of USAID. In particular, such factors as proper accountability, adequate security considerations, conflicts of interest, and appropriate legal jurisdiction over the employee were considered. Adequate management controls and warrant limitations established under the CCN PSC warrant program, as discussed below, were established to mitigate such risks.

To address the risks associated with adequate accountability and conflict of interest, the warrant program requires candidates for the CCN PSC warrant program to show commitment to the profession by meeting stringent acquisition competencies, education and training requirements. In addition to meeting these requirements, potential candidates must have extensive experience in Direct U.S. Federal Government Contracting and clearly demonstrate professional and ethical behavior. When reviewing applications for a CCN PSC warrant, the agency contacts past performance references (typically, the candidate's last three Supervisory Contracting Officers) and any other sources deemed appropriate for signs of potential risks or cautions that may be detrimental to the responsibilities inherent in this Program. The candidate's supervisor must also attest to the candidate's education, training, experience, business acumen, judgment, character, reputation and ethical behavior.

Additionally, the Program requires the CCN contracting officer's supervisor to closely and frequently monitor the CCN PSC's work and review performance and progress every six months. This review is followed by periodic reviews conducted by the Bureau for Management, Office of Acquisition and Assistance, Evaluation Division, which is responsible for the program implementation.

CCN PSC contracting officers will support the functions of the overseas Mission's Office of Acquisition & Assistance (A&A), which typically include acquisition and assistance awards implementing the Agency's foreign assistance programs and activities. CCN PSC contracting officers are currently not delegated authority to award any personal services contracts. The program also limits delegated authority for select contract administration functions listed in (48 CFR) FAR 42.302(a), specifically, the contracting officer functions in which disputes or possible legal challenges may arise due to decisions of the contracting officer, functions related to novation and contractor name changes, which may be a result of changes in a contractor's business structure as governed under applicable U.S. state law and other functions based on U.S. state laws, functions related to small business contracting matters and those requiring extensive knowledge of specific U.S. laws and government-wide policies not specifically related to contracting. Accordingly, the functions specified in items 5–7, 9–12, 18, 21–26, 29, 32,50, 52–55, 62–63, 66 and 68–71 of (48 CFR) FAR 42.302(a) will not be redelegated to CCN PSC contracting officers.

To address conflict of interest concerns, the program relies on the standard clause entitled "Compliance with Laws and Regulations Applicable Abroad", included in all personal services contracts with CCNs, that mandates compliance with the Standards of Conduct for Executive Branch Employees. These standards, available at *https://www2.oge.gov/web/oge.nsf/All%20Documents/5D633072D0B2DB5085257E96006A90E7?opendocument,* contain two provisions addressing financial interests that conflict with an individual's official duties. The first provision, entitled "Disqualifying financial interests," prohibits an employee from participating in an official government capacity in a matter in which he has a financial interest or in which his spouse, minor child, employer, or any one of several other specified persons has a financial interest. The second provision, entitled "Prohibited financial interests," contains authority by which agencies may prohibit employee from acquiring or retaining certain financial interests. To address the security concerns, the Program uses the current process, in which the USAID Office of

Security and Department of State, Office of Security conduct background checks on potential personal service contractors. Recognizing the fact that some countries may not have adequate legal systems or may be unwilling to provide assistance in prosecuting their citizens for U.S. procurement infractions, the CCN PSC Warrant Program established the following management controls designed to minimize the risk that such legal actions might be necessary:

—Stringent eligibility criteria,
—Reasonable single purchase and cumulative annual limits for new awards.
—CCN participation in this program is limited to one candidate per contracting officer warrant level per overseas mission. This limitation may be expanded only if it is deemed by the Senior Procurement Executive to be in the best interest of the Agency.
—Ongoing risk assessments are performed throughout the Program implementation to assure compliance with the program requirements.

USAID is seeking public comments on the proposed changes to the AIDAR to implement the agency CCN PSC Warrant Program.

C. Impact Assessment

(1) Regulatory Planning and Review. Under E.O. 12866, USAID must determine whether a regulatory action is "significant" and therefore subject to the requirements of the E.O. and subject to review by the Office of Management and Budget (OMB). USAID has determined that this Rule is not an "economically significant regulatory action" under Section 3(f)(1) of E.O. 12866. This proposed rule is not a major rule under 5 U.S.C. 804.

(2) Regulatory Flexibility Act. The rule will not have an impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Therefore, an Initial Regulatory Flexibility Analysis has not been performed.

(3) Paperwork Reduction Act. The proposed rule does not establish a new collection of information that requires the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Chapter 7 Parts 701, 722 and Appendix J

Government procurement.

For the reasons discussed in the preamble, USAID amends 48 CFR Chapter 7 as set forth below:

■ 1. The authority citation for 48 CFR Chapter 7 parts 701, 722 and Appendix J continues to read as follows:

Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; and 3 CFR 1979 Comp., p. 435.

PART 701—FEDERAL ACQUISITION REGULATION SYSTEM

Subpart 701.6—Career Development, Contracting Authority, And Responsibilities

■ 2. Amend 701.603–70 by adding two sentences to the end to read as follows:

701.603–70 Designation of contracting officers.

* * * However, upon approval of an exception by the Assistant Administrator for the Bureau for Management (AA/M), in accordance with the limitations in AIDAR Appendix D, the Senior Procurement Executive may designate a USPSC as a Contracting Officer or delegate the USPSC authority to sign obligating and subobligating documents. The Senior Procurement Executive may also delegate limited contracting officer authority to Cooperating Country National personal service contractors (CCN PSCs) who meet the requirements in the Agency's warrant program for CCN PSCs, as specified in Appendix J.

PART 722—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITION

Subpart 722.1—Basic Labor Policies

■ 3. Amend 722.170 by adding two sentences at the end of paragraph(a) to read as follows:

722.170 Employment of third country nationals (TCN's) and cooperating country nationals (CCN's).

(a) * * * This policy does not apply to consultants, as defined in AIDAR Clause 752.202–1(e), who are engaged to advise the contractor on a temporary or intermittent basis and do not receive standard benefits available to the contractor's employees. It is the contractor's responsibility to identify if the individual being hired is an employee or a consultant.

* * * * *

■ 4. Revise paragraphs (b)(3)b. and (b)(4) to read as follows:

Appendix J to Chapter 7—Direct USAID Contracts With a Cooperating Country National and With a Third Country National for Personal Services Abroad

4—Policy

* * * * *

(b) Limitations on Personal Services Contracts.

(3) * * *

b. They may not be designated as Contracting Officers or delegated authority to sign obligating or subobligating documents, unless specifically delegated limited contracting officer authority by the Senior Procurement Executive. In order to be delegated limited contracting officer authority, Cooperating Country National PSCs (CCN PSCs) must meet the requirements in the Agency's warrant program for CCN PSCs.

* * * * *

(4) Exceptions. Exceptions to the limitations in (b)(3)(a), (c), (d) and (e) must be approved by the Assistant Administrator for Management (AA/M).

* * * * *

Dated: July 27, 2016.

Roy Plucknett,

Chief Acquisition Officer.

[FR Doc. 2016–19709 Filed 8–18–16; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 300 and 679

[Docket No. 151001910–6690–01]

RIN 0648–BF42

Fisheries of the Exclusive Economic Zone Off Alaska; Allow the Use of Longline Pot Gear in the Gulf of Alaska Sablefish Individual Fishing Quota Fishery; Amendment 101

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues a proposed rule to implement Amendment 101 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA FMP) for the sablefish individual fishing quota (IFQ) fisheries in the Gulf of Alaska (GOA). This proposed rule would authorize the use of longline pot gear in the GOA sablefish IFQ fishery. This proposed rule would establish management measures to minimize potential conflicts between hook-and-line and longline pot gear used in the sablefish IFQ fisheries in the GOA. This proposed rule also includes proposed regulations developed under the Northern Pacific Halibut Act of 1982 (Halibut Act) to authorize harvest of halibut IFQ caught incidentally in longline pot gear used in the GOA

sablefish IFQ fishery. This proposed rule is necessary to improve efficiency and provide economic benefits for the sablefish IFQ fleet and minimize potential fishery interactions with whales and seabirds. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the Halibut Act, the GOA FMP, and other applicable laws.

DATES: Submit comments on or before September 19, 2016.

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2015-0126, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0126,* click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Electronic copies of Amendment 101 to the GOA FMP, the Environmental Assessment, Regulatory Impact Review (RIR), and the Initial Regulatory Flexibility Analysis (IRFA) (collectively, Analysis) prepared for this action are available from *www.regulations.gov* or from the NMFS Alaska Region Web site at *alaskafisheries.noaa.gov.*

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted by mail to NMFS at the above address; by email to *OIRA_Submission@omb.eop.gov;* or by fax to 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Rachel Baker, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Authority for Action

NMFS manages U.S. groundfish fisheries of the GOA under the GOA FMP. The North Pacific Fishery Management Council (Council) prepared, and the Secretary of Commerce (Secretary) approved, the GOA FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the GOA FMP appear at 50 CFR parts 600 and 679. Sablefish (*Anoplopoma fimbria*) is managed as a groundfish species under the GOA FMP. The Council is authorized to prepare an FMP amendment for conservation and management of a fishery managed under the FMP. NMFS conducts rulemaking to implement FMP and regulatory amendments.

The International Pacific Halibut Commission (IPHC) and NMFS manage fishing for Pacific halibut (*Hippoglossus stenolepis*) through regulations at 50 CFR part 300, subpart E, established under authority of the Northern Pacific Halibut Act of 1982 (Halibut Act), 16 U.S.C. 773–773k. The IPHC adopts annual management measures governing fishing for halibut under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea (Convention), signed at Ottawa, Ontario, on March 2, 1953, as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979). The IPHC regulations are subject to acceptance by the Secretary of State with concurrence from the Secretary. After acceptance by the Secretary of State and the Secretary, NMFS publishes the annual management measures in the **Federal Register** pursuant to 50 CFR 300.62. The final rule implementing the 2016 annual management measures published March 16, 2016 (81 FR 14000). The Halibut Act, at section 773c(c), also authorizes the Council to develop halibut fishery regulations, including limited access regulations, that are in addition to, and not in conflict with, approved IPHC regulations.

Under the authority of the GOA FMP and the Halibut Act, the Council has recommended and NMFS has established regulations that implement the IFQ Program. The IFQ Program allocates sablefish and halibut harvesting privileges among U.S. fishermen. NMFS manages the IFQ Program pursuant to regulations at 50 CFR part 679 and 50 CFR part 300 under the authority of section 773c of the Halibut Act and section 303(b) of the Magnuson-Stevens Act. The Council has recommended Amendment 101 to the GOA FMP (Amendment 101) to amend provisions of the GOA FMP applicable to the sablefish IFQ fishery and implementing regulations applicable to the sablefish IFQ fisheries. FMP amendments and regulations developed by the Council may be implemented by NMFS only after approval by the Secretary. This proposed rule also includes regulations developed by the Council under the Halibut Act to authorize harvest of halibut IFQ caught incidentally in longline pot gear used in the GOA sablefish IFQ fishery. Halibut fishery regulations developed by the Council may by implemented by NMFS only after approval of the Secretary in consultation with the United States Coast Guard.

A notice of availability for Amendment 101 was published in the **Federal Register** on August 8, 2016 (81 FR 52394). Comment on Amendment 101 is invited through October 7, 2016. Written comments may address Amendment 101, this proposed rule, or both, but must be received by October 7, 2016, to be considered in the decision to approve or disapprove Amendment 101.

Background

NMFS proposes regulations to implement Amendment 101 for the sablefish IFQ fisheries in the GOA and regulations to authorize harvest of halibut IFQ caught incidentally in longline pot gear used in the GOA sablefish IFQ fishery. This proposed rule would make three types of changes to the sablefish and halibut IFQ Program. First, this proposed rule would authorize longline pot gear to harvest sablefish IFQ in the GOA. Under current regulations, only longline gear is authorized for the GOA sablefish IFQ fishery. Longline gear includes hook-and-line, jig, troll, and handline gear. Participants have used longline hook-and-line gear (hook-and-line gear) to harvest sablefish IFQ in the GOA because it is more efficient than jig, troll, or handline gear. However, various species of whales can remove or damage sablefish caught on hook-and-line gear (depredation). Depredation occurs with hook-and-line gear because sablefish are captured on hooks that lie on the ocean floor. Whales can completely remove or damage sablefish captured on these hooks before the gear is retrieved. Longline pot is an efficient gear and prevents depredation because whales cannot remove or damage sablefish enclosed in a pot. This proposed rule would authorize, but not require, vessel

operators to use longline pot gear in the GOA sablefish IFQ fishery.

Second, this proposed rule would implement several regulations to minimize potential interactions between hook-and-line gear and longline pot gear. These provisions include a pot limit, requirements for vessel operators to use pot tags issued by NMFS, requirements that longline pot gear be redeployed within a certain amount of time after being deployed, requirements that longline pot gear be removed from the fishing grounds when making a sablefish landing, and requirements to mark longline pot gear deployed on the fishing grounds.

Third, to minimize halibut discards in the GOA sablefish IFQ fishery, this proposed rule would implement a requirement for halibut IFQ harvesters to retain halibut IFQ caught incidentally in longline pots.

This proposed rule would improve efficiency in harvesting sablefish IFQ and reduce adverse economic impacts on harvesters that occur from depredation. This proposed rule would mitigate impacts on sablefish IFQ harvesters using hook-and-line gear by minimizing the potential for interactions between hook-and-line gear and longline pot gear. Finally, this proposed rule would reduce whale and seabird interactions with fishing gear in the GOA sablefish IFQ fishery.

The following sections of this preamble describe 1) the sablefish fishery in the GOA, 2), the need for Amendment 101 and this proposed rule, 3) the impacts of Amendment 101 and this proposed rule, and 4) the specific provisions that would be implemented by this proposed rule.

Sablefish Fishery in the GOA

IFQ Program

The commercial sablefish fisheries in the GOA and the Bering Sea and Aleutian Islands management area (BSAI) are managed primarily under the IFQ Program. The Council and NMFS designed the IFQ Program to allocate harvest privileges among participants in the hook-and-line fishery to reduce fishing capacity that had led to an unsafe "race for fish" as vessels raced to harvest their allocation of the annual total allowable catch (TAC) of sablefish as quickly as possible before the TAC was reached. The IFQ Program design and subsequent amendments were intended to support the social and economic character of the fisheries and the coastal fishing communities where many of these fisheries are based. NMFS also allocates a small portion of the annual sablefish TAC to vessels using trawl gear. The trawl sablefish fishery is not managed under the IFQ Program, and this proposed rule does not modify regulations applicable to the trawl sablefish fishery.

The commercial halibut fisheries in the GOA and the BSAI are also managed under the IFQ Program. The halibut fisheries experienced overcapacity and short fishing seasons similar to the sablefish fisheries. In addition, many fishermen participate in both fisheries because the species overlap in some fishing areas and are harvested with the same type of fishing gear.

The IFQ Program was implemented in 1995 (58 FR 59375, November 9, 1993). Under the IFQ Program, access to the non-trawl sablefish and halibut fisheries is limited to those persons holding quota share. NMFS issued separate quota share for sablefish and halibut to qualified applicants based on their historical participation during a set of qualifying years in the sablefish and halibut fisheries. Quota share is an exclusive, revocable privilege that allows the holder to harvest a specific percentage of either the TAC in the sablefish fishery or the annual commercial catch limit in the halibut fishery. In addition to being specific to sablefish or halibut, quota share are designated for specific geographic areas of harvest, a specific vessel operation type (catcher vessel or catcher/processor), and for a specific range of vessel sizes that may be used to harvest the sablefish or halibut (vessel category).

Quota share allocation is given effect on an annual basis through the issuance of an IFQ permit. An annual IFQ permit authorizes the permit holder to harvest a specified amount of the IFQ species in a regulatory area from a specific operation type and vessel category. IFQ is expressed in pounds and is based on the amount of quota share held in relation to the total quota share pool for each regulatory area with an assigned catch limit.

Implementation of the IFQ Program ended the race for fish by providing IFQ permit holders with an exclusive portion of the sablefish TAC or annual commercial catch limit in the halibut fishery. This provided fishermen with flexibility to determine when and where they would fish sablefish and halibut IFQ. The fishing season for sablefish and halibut was expanded from a few days to nine months following implementation of the IFQ Program. Sections 3.1 and 4.5 of the Analysis (see **ADDRESSES**) provide additional information on the IFQ Program and the GOA sablefish IFQ fishery.

IFQ Regulatory Areas

The IFQ fisheries are prosecuted in accordance with catch limits established by regulatory area. The sablefish IFQ regulatory areas defined for sablefish in the GOA are the Southeast Outside District of the GOA (SEO), West Yakutat District of the GOA (WY), Central GOA (CGOA), and Western GOA (WGOA). The sablefish regulatory areas are defined and shown in Figure 14 to part 679. This proposed rule preamble refers to these areas collectively as sablefish areas.

This proposed rule would implement provisions that affect halibut IFQ fisheries in the GOA. The halibut regulatory areas (halibut areas) are defined by the IPHC, described in Section 6 of the annual management measures (81 FR 14000, March 16, 2016), and shown in Figure 15 to part 679. The halibut areas are not separated into GOA or BSAI management areas like sablefish areas. The halibut areas encompass different geographic areas than the sablefish areas, and the boundary lines do not coincide except at the border between the United States and Canada.

The halibut areas in the GOA include Areas 2C, 3A, 3B, and part of Area 4A. All of these areas except Area 4A are completely contained in the GOA. The portion of Area 4A in waters south of the Aleutian Islands, west of Area 3B and east of 170° W. longitude, is included in the WGOA sablefish area. This affected area includes the western part of the WGOA sablefish area and a small strip along the eastern border (east of 170° W. longitude) of the Aleutian Islands sablefish area in the BSAI. Figure 1 and Figure 11 in the Analysis show the boundaries of the sablefish and halibut areas.

Retention of Halibut

Sablefish IFQ fishermen who also hold halibut IFQ are required to retain halibut that are 32 inches or greater in length (legal size) harvested in the sablefish IFQ fishery, provided they have remaining halibut IFQ. This regulation was implemented with the IFQ Program in 1995 and is intended to promote full utilization of halibut by reducing discards of halibut caught incidentally in the sablefish IFQ fishery. Section 4.5 of the Analysis states that many IFQ fishermen hold sablefish and halibut IFQ, and the species can overlap in some fishing areas (58 FR 59375, November 9, 1993).

Authorized Gear

This proposed rule would revise regulations to add a new authorized gear

for catcher vessels and catcher/processors participating in the GOA sablefish IFQ fishery. Under § 679.2, vessels in the GOA sablefish IFQ fishery are authorized to use only longline gear (*e.g.,* hook-and-line gear). Catcher vessels and catcher/processors in the BSAI sablefish IFQ fishery are authorized to use longline gear and pot gear. Pot gear includes pot-and-line gear and longline pot gear. Pot-and-line gear is pot gear with a stationary, buoyed line with a single pot attached. Longline pot gear is pot gear with a stationary, buoyed, and anchored line with two or more pots attached. Longline pot gear is often deployed as a series of many pots attached together in a "string" of gear. For additional information on longline gear, pot-and-line, and longline pot gear see the definition of Authorized Fishing Gear in § 679.2.

Longline pot gear was historically used to harvest sablefish in the GOA. However, under the open access management program that existed prior to the implementation of the IFQ Program, vessel operators sometimes deployed hook-and-line and pot gear in the same fishing areas. This resulted in gear conflicts and the loss of gear on the fishing grounds. The longline pot groundline (*i.e.,* the line attaching the pots together) is heavier and stronger than the groundline used to attach the series of hooks on hook-and-line gear. If longline pot gear is set over previously deployed hook-and-line gear, the weaker hook-and-line gear can be damaged or lost as it is being retrieved. The Council and NMFS have not received reports of gear conflicts between hook-and-line gear.

Deployment of hook-and-line and pot gear in the same fishing areas also resulted in grounds preemption under the race for fish. Fishing grounds preemption occurs when a fisherman sets marked gear in an area and prevents other fishery participants from setting gear in the same area. Pot gear is generally soaked for multiple days so that smaller, less valuable fish are able to swim out of the pots. This optimizes fishing effort by allowing fishermen to use their knowledge of catch rates and fish size in a particular area to choose the amount of soak time that selects for larger fish, but allows them to keep rotating and re-baiting their pot longline gear. Fishing grounds can be preempted for an extended period of time by pot gear, for example, when a vessel hauls, re-baits, and redeploys the gear in the same area while they return to port to make a landing. Fishing grounds preemption has not occurred between hook-and-line gear because the gear is deployed for less than 24 hours before hauling. Section 2.1.1 of the Analysis provides additional information on interactions between hook-and-line and pot gear prior to implementation of the IFQ Program, and a brief summary follows.

In 1986, NMFS implemented a phased-in prohibition of pot gear in the GOA sablefish fishery (50 FR 43193, October 24, 1985) to eliminate gear conflicts between hook-and-line and pot gear. In 1992, the Council recommended, and NMFS approved, a prohibition on the use of longline pot gear in the sablefish fishery in the Bering Sea subarea (57 FR 37906, August 21, 1992). The Council recommended a prohibition against longline pot gear in the Bering Sea subarea to prevent longline pot gear from preempting access to fishing grounds by hook-and-line gear. The Council did not recommend a prohibition on longline pot gear in the Aleutian Islands subarea because the Council did not receive reports of gear conflicts in that sablefish area.

During the same period in the early 1990s, the Council developed and recommended the IFQ Program for a hook-and-line gear fishery for sablefish and halibut in the GOA and BSAI. Fishing under the IFQ Program began in 1995 (58 FR 59375, November 9, 1993). The IFQ Program extended the fishing season and allowed the sablefish and halibut fleets to spread out fishing operations over time. The IFQ Program reduced the possibility of gear conflicts and preemption of common fishing grounds that had previously affected the fisheries (73 FR 28733, May 19, 2008).

During the first IFQ season in 1995, fishing industry representatives reported to the Council that the Bering Sea sablefish TAC had not been fully harvested due, in part, to depredation on hook-and-line gear. Depredation negatively impacts the sablefish IFQ fleet through reduced catch rates and increased operating costs. Depredation also has negative consequences for whales through increased risk of vessel strike, gear entanglement, and altered foraging strategies. Based on this information, the Council determined that authorizing longline pot gear in the Bering Sea sablefish IFQ fishery could reduce depredation. The Council also determined that implementation of the IFQ Program had substantially reduced the possibility of gear conflicts and a complete prohibition on longline pot gear was not necessary. The Council and NMFS recognized that the reintroduction of longline pot gear into the Bering Sea sablefish IFQ fishery posed less of a concern for fishing grounds preemption in 1996 than in 1992, when longline pot gear originally was prohibited. Authorizing the use of longline pot gear in the Bering Sea sablefish IFQ fishery allowed fishermen to use fishing gear that would reduce interactions with whales.

On September 18, 1996, NMFS published a final rule to replace the year-round longline pot gear prohibition with a regulation that allowed the use of longline pot gear except during the month of June (61 FR 49076). The Council and NMFS decided to retain the prohibition on longline pot gear in June because it generally has fair weather, and small vessels using hook-and-line gear that would otherwise be subject to pre-emption tend to operate primarily during June.

In October 2004, a representative for longline pot fishermen in the Bering Sea proposed that gear competition between the sablefish longline pot fleet and the hook-and-line fleet had not occurred in June, and asserted that the regulatory prohibition on the use of longline pot gear during June was unnecessary and burdensome. After review of an analysis and public testimony, the Council recommended, and NMFS implemented, a regulation to remove the prohibition on the use of longline pot gear during June in the Bering Sea sablefish IFQ fishery (73 FR 28733, May 19, 2008). Currently, both longline pot and hook-and-line gear is authorized during the entire year in both the Bering Sea and Aleutian Islands sablefish fisheries.

Need for Amendment 101 and This Proposed Rule

Beginning in 2009, the Council and NMFS received reports from fishermen in the GOA that there have been numerous sperm whale and killer whale interactions with the sablefish fleet in the GOA. Sperm whale depredation is most common in the CGOA, WY, and SEO sablefish areas and killer whale depredation is most common in the WGOA and BSAI. Section 3.4.1.1 of the Analysis provides the most recent information on depredation in the sablefish IFQ fishery, and Figure 17 in the Analysis shows a map of observed depredation on sablefish longline surveys. While depredation events are difficult to observe because depredation occurs on the ocean floor in deep water, fishery participants have testified to the Council that depredation continues to be a major cost to the sablefish IFQ fishery, and appears to be occurring more frequently.

Depredation can result in lost catch, additional time waiting for whales to leave fishing grounds before hauling gear, and additional time and fuel spent

relocating to avoid whales. Depredation can reduce fishing efficiency by increasing operating costs (*e.g.*, fuel, labor) and the opportunity cost of time lost that would have been available for additional fishing effort or dedicated to other fishing and non-fishing activities. Section 3.4.1.1 of the Analysis notes that depredation can reduce harvesting efficiency and impose substantial costs on fishermen using hook-and-line gear, thereby reducing revenue in the sablefish IFQ fishery.

Industry groups have tested a variety of methods to deter whales from preying on fish caught on hook-and-line gear, such as gear modifications and acoustic decoys, but these methods have not substantially reduced the problem of depredation in the GOA sablefish IFQ fishery. A summary of efforts to mitigate whale depredation in Alaska and elsewhere is provided in Section 4.7 of the Analysis.

Participants in the GOA sablefish IFQ fishery indicated to the Council and NMFS that authorizing longline pot gear in the GOA sablefish IFQ fishery would reduce the adverse impacts of depredation for those vessel operators who choose to switch from hook-and-line gear. The Council and NMFS agree that interactions with whales throughout the GOA could affect the ability of sablefish IFQ permit holders to harvest sablefish by reducing catch per unit of effort and decreasing fishing costs. Section 1.2 of the Analysis provides additional information on the Council's development and recommendation of Amendment 101 and this proposed rule.

The following section describes the impacts of Amendment 101 and this proposed rule on affected fishery participants and on the environment.

Impacts of Amendment 101 and This Proposed Rule

Impacts on the Sablefish IFQ Fishery

Section 4.9.2 of the Analysis notes that vessel operators using longline pot gear would benefit from this proposed rule from reduced operating costs and reduced fishing time needed to harvest sablefish IFQ. This proposed rule would provide vessel operators with the option to use longline pot gear if they determine it is appropriate for their fishing operation.

The Analysis states that it is not possible to estimate how many vessel operators would switch to longline pot gear from hook-and-line gear under this proposed rule. The total number of vessels using longline pot gear likely would be limited by the costs of longline pot gear and vessel reconfiguration. The Analysis estimates that the cost to purchase longline pot gear and reconfigure a vessel could be $100,000 or more depending on the configuration of the vessel. For some vessel operators, the costs of reconfiguration likely would be prohibitive. The Analysis suggests that vessel operators who already use pot gear in other fisheries (*e.g.*, Pacific cod) could be the most likely operators to use longline pot gear in the GOA sablefish IFQ fishery because their conversion costs likely would be lower relative to participants who use only hook-and-line gear. Of the 404 catcher vessels harvesting sablefish IFQ in the GOA between 2009 and 2013, 40 vessels deployed pot gear in another fishery.

As described in Section 3.4.1.2 of the Analysis, no temporal or seasonal shift in sablefish IFQ fishing is expected to occur under this proposed rule. Harvest of sablefish IFQ would be authorized only during the sablefish fishing period specified at § 679.23(g)(1) and established by the Council and NMFS through the annual harvest specifications (81 FR 14740, March 18, 2016). Harvest of sablefish IFQ would be limited to the TAC for the GOA sablefish IFQ fishery established by the Council and NMFS through the annual harvest specifications (81 FR 14740, March 18, 2016).

If some portion of the sablefish IFQ fleet switches to longline pot gear, there would likely be decreased interactions between killer whales and sperm whales and the sablefish fishery. Unaccounted sablefish mortality due to depredation would be expected to decline as sablefish IFQ fishermen voluntarily switch from hook-and-line gear to longline pot gear. Because the amount of depredation is not known with certainty, the potential effects of reduced depredation from this proposed rule cannot be quantified. Section 3.1.1 of the Analysis notes that although hook-and-line and longline pot gear may catch slightly different sizes of sablefish, the best available information indicates that the use of pot longline gear would not have a significant impact on the sablefish resource.

During the development of this proposed rule, the Council and NMFS received public testimony from IFQ fishery participants who did not support the use of longline pot gear in the sablefish IFQ fishery. These fishermen indicated that use of longline pot gear could result in conflicts between hook-and-line and longline pot gear similar to those that occurred prior to implementation of the IFQ Program. These fishermen testified that longline pot gear is typically left unattended on the fishing grounds for several days before the pots are retrieved. The testimony expressed concerns that longline pot gear left on the sablefish fishing grounds could preempt the use of these fishing grounds by fishermen using hook-and-line gear as had occurred prior to implementation of the IFQ Program.

In recommending Amendment 101 and this proposed rule, the Council and NMFS recognize that longline pot gear had previously been authorized in the GOA sablefish fishery, but its use was prohibited prior to implementation of the IFQ Program. The Council and NMFS also recognize that the prohibition on pot gear was based on fishery data and scientific information on depredation that is not reflective of the present fishery. The Council determined, and NMFS agrees, that authorizing longline pot gear in the GOA sablefish IFQ fishery under Amendment 101 and this proposed rule is appropriate because the IFQ Program provides fishermen with substantially more flexibility on when and where to harvest sablefish. The IFQ Program makes it much less likely that hook-and-line and longline pot gear conflicts would occur or that fishing grounds would be preempted for extended periods in the same manner previously analyzed by the Council and NMFS.

The Council and NMFS analyzed the extent to which this proposed rule, which would allow hook-and-line gear and pot gear to be used in the same areas, could result in gear conflicts and grounds preemption. Section 4.9.2 of the Analysis explains gear conflict and grounds preemption impose costs on fishermen that are unable to, or choose not to, deploy hook-and-line gear in an area because longline pot gear is used in that area. In the case of the sablefish IFQ fishery, the Council and NMFS received public testimony that vessel operators using hook-and-line gear could incur increased operating costs if their vessels would have to travel farther or to less productive fishing grounds to find an area unoccupied by longline pot gear. The testimony suggested that these costs could potentially be greater for participants in the SEO and WY sablefish areas. In these sablefish areas, fishing grounds are constrained to a narrow area on the edge of the continental shelf and fishing gear is concentrated into a relatively smaller area compared to the CGOA and WGOA sablefish areas. Section 4.9.4 of the Analysis notes that fishery data is not available at a sufficiently fine spatial scale to identify particular areas where competition for fishing grounds may

occur in the SEO and WY sablefish areas.

The Analysis explains that it is not possible to determine with certainty the extent to which gear conflicts and grounds preemption might occur under this proposed rule because it is unknown how many vessel operators will use longline pot gear in the GOA sablefish IFQ fishery. After reviewing the Analysis and receiving public testimony, the Council and NMFS determined the likelihood of gear conflicts and grounds preemption was low. However, the likelihood of gear conflicts and grounds preemption is not possible to determine with certainty. The Council received testimony from several stakeholders noting this uncertainty and expressing concern that this proposed rule would negatively impact fishermen who continue to use hook-and-line gear. These stakeholders requested specific measures to further minimize the likelihood of gear conflicts and grounds preemption. Therefore, this proposed rule addresses these stakeholder concerns by recommending a number of management measures that are intended to minimize the potential for gear conflicts and grounds preemption. These measures include (1) authorizing only the use of longline pot gear, (2) limiting the number of pots that may be deployed by a vessel in each sablefish area, (3) requiring all pots to be identified with a tag assigned to the vessel, (4) requiring a vessel operator to redeploy longline pot gear from the fishing grounds within a specified time period, (5) requiring a vessel operator to remove longline pot gear when leaving certain fishing grounds to make a landing, (6) requiring a vessel operator to mark longline pot gear to make it more visible on the fishing grounds, and (7) recordkeeping and reporting requirements to monitor and enforce provisions of this rule. The Council determined, and NMFS agrees, that these management measures would likely further reduce the likelihood of gear conflicts and grounds preemption in the GOA sablefish IFQ fishery under this proposed rule.

Longline Pot Gear

Amendment 101 and this proposed rule would authorize the use of longline pot gear in the GOA sablefish IFQ fishery. Vessel operators would be prohibited from using pot-and-line gear (*i.e.,* single pot gear) to harvest sablefish in the GOA. Section 2.4 of the Analysis notes that the Council considered authorizing longline pot gear and pot-and-line gear in the GOA sablefish IFQ fishery for this action. The Council determined, and NMFS agrees, that pot-and-line gear may have a greater potential for conflict with hook-and-line gear because it has a larger number of anchor lines and buoys than longline pot gear. In addition, single pots that are deployed in a pot-and-line format are larger and heavier than pots deployed in a longline pot format because a single pot is more likely to drift than pots deployed in a longline format. Single pots deployed in a pot-and-line format could result in greater gear entanglement and conflicts because they are likely to drift into other areas from the deployed location than pots deployed in a longline pot format. Section 2.4 of the Analysis also states that compared to pot-and-line gear, longline pot gear would be expected to enhance crew safety and may make it feasible for smaller vessels that could not use pot-and-line gear in the sablefish IFQ fishery to use longline pot gear.

Pot Limits

This proposed rule would implement different pot limits for different GOA sablefish areas. Section 4.9.3 of the Analysis notes that a pot limit would control vessel fishing effort and limit the total amount of fishing grounds that any single vessel could use at a given time. A vessel operator would be limited to deploying a specific amount of pots in each area in which they hold IFQ: 120 pots in the SEO and WY sablefish areas and 300 pots in the CGOA and WGOA sablefish areas.

The Council considered area-specific pot limits to account for the physical nature of the sablefish fishing grounds and the composition of the IFQ sablefish fleet in each sablefish area. The Council also considered testimony on the number of pots that vessels in the GOA could feasibly deploy in the sablefish IFQ fishery. The Council determined, and NMFS agrees, that smaller pot limits are appropriate in the SEO and WY fisheries because these sablefish areas have more spatially concentrated fishing grounds than the CGOA and WGOA sablefish areas.

Pot Tags

This proposed rule would implement a requirement that all pots deployed in GOA sablefish areas have a pot tag that is (1) issued by NMFS and (2) assigned by NMFS to a vessel that is licensed by the State of Alaska. This proposed rule would require a vessel owner to request and receive pot tags by submitting an application to NMFS. NMFS would require a vessel owner to specify on the application for pot tags the vessel name and Alaska Department of Fish and Game (ADF&G) vessel registration number. The State of Alaska requires the owner of a fishing vessel used in waters of the state to register with the State of Alaska and receive an ADF&G vessel registration number (AS 16.05.475). If the ADF&G vessel registration number is current at the time the application for pot tags is submitted, NMFS would consider the vessel eligible to participate in the GOA sablefish IFQ fishery using longline pot gear and assign pot tags to that vessel. NMFS would assign the number of tags requested for each GOA sablefish area, not to exceed the pot limits for each sablefish area, to the vessel and issue the tags to the vessel owner. Vessel owners should allow up to 10 days from receipt of a pot tag application by NMFS for NMFS to issue pot tags. Each pot tag would have a unique number and be a color specific to the GOA sablefish area in which it may be deployed. This proposed rule would require the operator of the vessel to attach a pot tag that is assigned to the vessel to each pot before deploying the gear. Because the proposed pot tag requirements are intended to facilitate monitoring of the proposed pot limits on the fishing grounds, this proposed rule would make the vessel operator responsible for complying with the pot tag requirements and the pot limits in each GOA sablefish area.

Section 4.9.3.2 of the Analysis states that in instances where the vessel is leased by the owner, each vessel operator would need to obtain the pot tags from the vessel owner to ensure the proper use of the pot tags in the GOA sablefish IFQ fishery. In cases where multiple sablefish IFQ permit holders fish from the same vessel, the vessel operator would be responsible for ensuring that no more pots are deployed from a vessel than the pot limit for a specific sablefish area.

The Council and NMFS recognized that pot tags may be lost on the fishing grounds if a tag becomes unattached from the pot or if a pot becomes unattached from the longline and cannot be retrieved. Under this proposed rule, the vessel owner could request replacement pot tags from NMFS if pot tags are lost. The vessel owner would be required to provide NMFS with the pot tag numbers that were lost and provide a description of the circumstances under which the pot tags were lost. NMFS would issue the appropriate number of replacement tags, up to the pot limit specified for the sablefish area. Vessel owners should allow up to 10 days from receipt of a pot tag application by NMFS for NMFS to issue replacement pot tags.

The Council and NMFS anticipated that some vessel operators may want to share longline pot gear during the fishing season to help reduce operating costs. To minimize the potential for grounds preemption by multiple vessels using the same longline pot gear, this proposed rule would allow multiple vessels to use the same longline pot gear during one fishing season but would prohibit use of the same longline pot gear simultaneously. In order for more than one vessel to use the same longline pot gear, this proposed rule would require a vessel operator to remove longline pot gear from the fishing grounds, return the gear to port and remove the pot tags assigned to the vessel before pot tags assigned to another vessel could be attached to the pots and used on another vessel in the GOA sablefish IFQ fishery.

Gear Redeployment and Removal

This proposed rule would require vessels using longline pot gear in the GOA sablefish IFQ fishery to redeploy or remove their gear within a specified time period after deployment or when leaving the fishing grounds to make a landing. The Council recommended area-specific requirements because vessel operations and fishing grounds vary by management areas. Section 4.9.4 and Section 4.10 of the Analysis note that this provision is intended to minimize the potential for vessels using longline pot gear to preempt fishing grounds for extended periods. These provisions were supported by sablefish IFQ holders who intend to use longline pot gear and sablefish IFQ holders who intend to continue to use hook-and-line gear under this proposed rule.

The Council based its recommendations on information on the use of pot gear in the BSAI sablefish IFQ fishery and on testimony from sablefish IFQ holders. Section 4.9.2 of the Analysis notes that pot gear typically remains deployed ("soaked") on the fishing grounds for longer periods of time than hook-and-line gear. As described above in this preamble, pot gear is generally soaked for multiple days. Figure 8 in Section 3.1.1.2 of the Analysis shows that sablefish pot gear deployed by catcher vessels and catcher/processors in the BSAI was typically "soaked" for two to four days from 1995 through 2005, and 90 percent of the observed pot sets were soaked for seven or fewer days. Section 3.1.2.2 of the Analysis notes that hook-and-line fishermen tend to soak their gear for less than 24 hours before hauling, and are less apt to leave their gear on the grounds when returning to port.

In addition to the information on pot soak times in the BSAI sablefish fishery presented in Section 4.9.2 of the Analysis, the Council considered testimony from vessel operators. This testimony suggested it was unlikely that vessels using pot gear would preempt fishing grounds in the GOA by leaving pot gear deployed for extended periods of time because (1) longline pot gear likely would be deployed in the GOA sablefish IFQ fishery from two to four days, similar to operations in the BSAI fisheries, (2) gear conflicts and grounds preemption has not occurred in the BSAI sablefish IFQ fishery, and (3) vessel operators have an incentive to optimize their pot gear fishing effort to maximize their sablefish IFQ harvest in the minimum amount of time.

Nevertheless, these vessel operators acknowledged to the Council that the likelihood of gear conflicts and grounds preemption cannot be determined with certainty. These vessel operators also noted that many GOA sablefish IFQ holders intending to continue to use hook-and-line gear were concerned about the potential for gear conflicts and grounds preemption under this proposed rule. These operators noted that these concerns likely were greater for the GOA sablefish IFQ fishery than the BSAI sablefish IFQ fishery because some GOA sablefish areas have more constrained fishing grounds due to a smaller overall area and a larger number of participating vessels than in the BSAI. To address this concern, several sablefish IFQ holders recommended that the Council establish area-specific requirements for catcher vessels and catcher/processors to redeploy or remove gear from the grounds in order to further reduce the likelihood that longline pot gear would be deployed on the GOA fishing grounds for extended periods of time and result in gear conflicts and grounds preemption.

The Council determined that establishing these gear redeployment or removal limits would provide an additional incentive for operators using longline pot gear to closely monitor the amount of time their gear is left on the grounds and further minimize potential for gear conflicts or grounds preemption. The Council recommended these provisions to balance its objective to provide economic benefits to fishermen using longline pot gear with its objective to minimize potential negative impacts on fishermen continuing to use hook-and-line gear.

In recommending Amendment 101 and this proposed rule, the Council indicated its intent to monitor interactions between longline pot and hook-and-line gear in the GOA sablefish IFQ fishery. The Council recommended that if Amendment 101 and this proposed rule are approved, NMFS would annually report to the Council the amount of longline pot gear effort in the GOA sablefish IFQ fishery in addition to any reported gear conflicts or instances of grounds preemption. The Council also indicated its intent to conduct a review of Amendment 101 and this action three years following implementation of the final rule, if approved. The Council specified its intent to consider the impact of Amendment 101 and this proposed rule on GOA sablefish IFQ holders that continue to use hook-and-line gear in determining whether changes to regulatory provisions are needed in the future.

The Council determined, and NMFS agrees, that the following provisions of this proposed rule would minimize the potential for gear conflicts and grounds preemption. For each area of the GOA, this proposed rule would specify a maximum time limit for which longline pot gear could be left unattended on the fishing grounds. The Council determined, and NMFS agrees, that requiring vessel operators to tend the gear within a specified time period reduces the likelihood that longline pot gear will be left on the grounds unattended for an extended period of time.

In the SEO sablefish area, a catcher vessel operator would be required to remove longline pot gear from the fishing grounds when the vessel leaves the fishing grounds to make a landing. This would prohibit the vessel operator from preempting fishing grounds by retrieving pots and redeploying the gear in the same fishing location while the vessel made a landing. This restriction responds to concerns expressed by fishermen holding sablefish IFQ in the SEO sablefish area. These fishermen testified that a substantial portion of sablefish IFQ fishermen in SEO likely would continue to use hook-and-line gear under this proposed rule because the vessels are too small to feasibly use longline pot gear.

Section 4.9.8.1 in the Analysis notes that vessels ranging from between 55 feet (16.7 m) and 95 feet (28.9 m) length overall (LOA) participate in sablefish pot fisheries in Canada. The Analysis shows that the majority of the vessels that participate in sablefish fisheries in the GOA are greater than 50 feet (15.2 m) LOA, indicating that these vessels may be able to feasibly use longline pot gear. The Analysis also shows that approximately 30 percent of sablefish IFQ fishermen in SEO use vessels 50 feet (15.2 m) or less LOA. This is a

higher percentage of smaller vessels compared to the other GOA sablefish areas. Therefore, the Council determined, and NMFS agrees, that requiring a vessel in the SEO sablefish area to remove longline pot gear from the fishing grounds when the vessel leaves the fishing grounds to make a landing would minimize the potential for grounds preemption while providing fishermen using longline pot gear with an opportunity to efficiently harvest sablefish.

The Council did not recommend a specific redeployment or removal provision for catcher/processors in the SEO sablefish area because relatively few catcher/processors operate in the area and the Council did not receive testimony suggesting specific limitations for these vessels. However, NMFS has determined that this proposed rule should require operators of catcher/processors in SEO to haul and reset (redeploy) in the same location or remove longline pot gear from that location within a specified time period. This provision would be consistent with requirements for sablefish IFQ vessels in other GOA areas in order to minimize the potential for catcher/processors using longline pot gear in SEO to preempt fishing grounds for extended periods. The Council and NMFS determined that redeploying or removing longline pot gear from a specific location would meet the requirements to tend gear in this proposed rule (see Section 2.2 of the Analysis). This would provide sablefish IFQ permit holders with flexibility to harvest sablefish IFQ while still requiring vessel operators to tend gear within a maximum time period in order to minimize the potential for gear to be left unattended on the fishing grounds for an extended period of time. NMFS proposes to require a catcher/processor in the SEO sablefish area to redeploy or remove from the fishing grounds all longline pot gear that is assigned to the vessel and deployed to fish sablefish IFQ within five days after deploying the gear. This proposed regulation would mirror the effect of the provision applicable to vessels in the WY and CGOA sablefish areas.

The Council and NMFS determined that five days was an appropriate period of time because the Council heard testimony from operators intending to use longline pot gear that this would accommodate sablefish vessel fishing plans to soak pots for two to four days, while allowing additional time to redeploy or remove gear in the event of poor weather or operational delays. The Council and NMFS determined that this requirement to redeploy or remove gear at least every five days would minimize the likelihood that one vessel would preempt the same fishing grounds for an extended period of time.

In the WY and CGOA sablefish areas, a catcher vessel and a catcher/processor operator would be required to redeploy or remove longline pot gear from the fishing grounds within five days after deploying the gear. The Council and NMFS received testimony that this would be an appropriate time period because it is unlikely that a vessel operator would leave fishing gear unattended for longer than five days in the WY and CGOA sablefish areas. The Council and NMFS determined that five days was an appropriate period of time because the Council heard testimony from operators intending to use longline pot gear that this would accommodate sablefish vessel fishing plans to soak pots for two to four days while allowing additional time to redeploy or remove gear in the event of poor weather or operational delays.

The Council and NMFS considered testimony indicating that, although the fishing grounds in WY are spatially constrained, similar to SEO, the likelihood of grounds preemption in WY is lower because there are fewer IFQ permit holders in that area than in SEO. Therefore, the Council and NMFS determined that it would not be necessary to require a vessel operator to remove longline pot gear from WY area grounds when the vessel made a landing. The Council and NMFS received testimony that fishing grounds are not as limited in the WY and CGOA sablefish areas, and grounds preemption likely would not occur under this proposed rule.

In the WGOA sablefish area, a catcher vessel and a catcher/processor operator would be required to redeploy or remove longline pot gear from the fishing grounds within seven days after deploying the gear. The Council and NMFS received testimony that this would be an appropriate time period because while it was unlikely that a vessel operator would leave fishing gear unattended for longer than seven days in the WGOA, this proposed rule would provide a maximum time limit for which longline pot gear could be left unattended on the fishing grounds. The Council provided a longer time period in the WGOA for operators to redeploy or remove longline pot gear relative to the other sablefish areas because the WGOA is the largest GOA sablefish area and there are substantially fewer sablefish IFQ holders in the WGOA than in SEO and the CGOA. The Council and NMFS received testimony that fishing grounds are not constrained in the WGOA and grounds preemption likely would not occur under this proposed rule.

Gear Marking

This proposed rule would implement additional gear marking requirements for vessels using longline pot gear in the GOA. Current regulations at § 679.24(a) require all vessel operators using hook-and-line and pot gear to mark buoys carried on board or used by the vessel to be marked with the vessel's Federal fisheries permit number or ADF&G vessel registration number. This regulation also specifies that the markings must be a specified size, shall be visible above the water line, and shall be maintained so the markings are clearly visible.

Section 4.9.5 and Section 4.10 of the Analysis describe the impacts of the additional gear marking requirements that would be implemented by this proposed rule for a vessel operator using longline pot gear in the GOA sablefish IFQ fishery. In addition to the current requirements at § 679.24(a), each vessel operator would be required to attach a cluster of four or more marker buoys, a flag mounted on a pole, and a radar reflector to each end of a longline pot set. The Council and NMFS received testimony that these marking requirements would enhance the visibility of the ends of a longline pot gear set to other vessels that are on the fishing grounds and would not impose a substantial cost on vessel operators using longline pot gear. The testimony indicated that these marking tools are commonly used by vessel operators that deploy pot gear in fisheries in Alaska.

This proposed rule would require a vessel operator to use four or more buoys to mark each end of a longline pot gear set. The Council and NMFS anticipate that multiple buoys would keep the gear marking above the water line in stronger currents and facilitate visibility from greater distances. Current regulations require any vessel fishing in the sablefish or halibut IFQ fisheries to mark all buoys carried on board or used with the vessel's Federal Fisheries Permit (FFP) number or Alaska Department of Fish & Game (ADF&G) vessel registration number. This provides enforcement agents and other fishermen on the grounds with information that identifies the vessel or the IFQ permit holder associated with that vessel. This proposed rule would require a vessel operator to add the initials "LP" for "Longline Pot" to one hard buoy in the buoy cluster in addition to the FFP number or ADF&G vessel registration number. This would

distinguish buoys for hook-and-line gear from buoys for longline pot gear.

This proposed rule would require a vessel operator to use a flag mounted on a pole to mark each end of a longline pot gear set. Section 4.9.5 of the Analysis explains that flags are commonly used by vessel operators to mark pot gear in fisheries in Alaska.

This proposed rule would require a vessel operator to use a radar reflector to mark each end of a longline pot gear set. Fishing vessels use radar reflectors to help make the vessel or other objects identifiable by other vessels that use radar to scan for vessels and other obstructions. A radar reflector reflects a radar signal directly back to the radar antenna so that the object with the radar reflector is identifiable on the radar of the vessel deploying the radar. The Council and NMFS received public testimony that radar reflectors are commonly used by vessel operators to mark pot gear in fisheries in Alaska. This public testimony indicated that the requirement to mark longline pot gear with a radar reflector under this proposed rule would not impose a substantial cost on vessel operators.

Monitoring and Enforcement

This proposed rule would implement three additional recordkeeping and reporting requirements to monitor and enforce provisions that are intended to minimize gear conflicts and grounds preemption. First, NMFS would require all vessel operators using longline pot gear in the GOA sablefish IFQ fishery to report specific information in logbooks about fishing gear used and catch for all sablefish IFQ fishing trips. Most vessel operators in the GOA sablefish IFQ fishery are currently required to complete logbooks for sablefish IFQ fishing trips. Second, NMFS would require all vessel operators using longline pot gear in the GOA sablefish IFQ fishery to have an operating Vessel Monitoring System (VMS) while fishing for sablefish IFQ. Third, NMFS would add additional required fields to the Prior Notice of Landing (PNOL) for vessel operators using longline pot gear in the GOA sablefish IFQ fishery.

Section 4.9 of the Analysis notes that this proposed rule would require all vessel operators using longline pot gear in the GOA sablefish IFQ fishery to complete NMFS logbooks. NMFS uses logbooks to collect detailed information from vessel operators participating in the IFQ fisheries. Under current regulations, the operator of a catcher vessel 60 feet or greater (18.3 m) LOA using hook-and-line gear in the sablefish or halibut IFQ fisheries is required to maintain a Daily Fishing Logbook (DFL). The operator of a catcher/processor using hook-and-line gear in the sablefish or halibut IFQ fisheries must use a combination of a Daily Cumulative Production Logbook (DCPL) and the NMFS electronic reporting system for landings (eLandings). For each day during a fishing trip, vessel operators are required to record in a DFL or DCPL information on deployed, retrieved, and lost gear and catch information per unit of gear deployed.

This proposed rule would add a requirement for all operators of a vessel using longline pot gear in the GOA sablefish IFQ fishery to report in a DFL (for catcher vessels) or DCPL (for catcher/processors) the number of pots and location of longline pot sets deployed on a fishing trip. Under current regulations, the operator of a vessel less than 60 feet (18.3 m) LOA is exempt from logbook reporting requirements. This proposed rule would remove this exemption for the operator of a vessel using longline pot gear in the GOA sablefish IFQ fishery. While this would be a new regulatory requirement for these vessels, Section 4.9.3.2 of the Analysis explains that many operators of vessels less than 60 feet (18.3 m) in the sablefish IFQ fishery voluntarily complete and submit logbooks. Therefore, the Council and NMFS anticipate this additional reporting requirement would not negatively impact operators of vessels less than 60 feet (18.3 m) that choose to use longline pot gear.

Current regulations allow the operator of a vessel required to complete a DFL or a DCPL to use a NMFS-approved electronic logbook (ELB) instead of a DFL or DCPL. While NMFS does not currently have an approved ELB for vessels using longline pot gear in the GOA, NMFS anticipates that an ELB would be available for use by these vessel operators in the future. Under this proposed rule, vessel operators using longline pot gear in the GOA sablefish IFQ fishery would be required to complete a DFL or a DCPL and eLandings to record and report sablefish information until a NMFS-approved ELB is available.

Section 4.10 of the Analysis notes that this proposed rule would require all vessel operators using longline pot gear in the GOA sablefish IFQ fishery to use VMS to track vessel activity in the GOA sablefish areas. VMS is used to monitor the location and movement of commercial fishing vessels in Federal fisheries in Alaska. NMFS would use the VMS to aid in determining compliance with requirements to redeploy or remove fishing gear from the grounds within a specified time period under this proposed rule.

Section 5.7 of the Analysis states that this proposed rule would add a requirement for vessel operators using longline pot gear in the GOA sablefish IFQ fishery to report the number of pots deployed, the number of pots lost, and the number of pots left deployed on the fishing grounds on the PNOL. NMFS requires vessel operators in the IFQ fisheries to submit a PNOL at least three hours before a landing occurs to alert enforcement personnel of the upcoming landing. The PNOL would be a declaration from the vessel operator that enforcement agents could compare with the gear on board while the vessel is making a landing.

Sections 4.9.3.2, 4.9.4.1, 4.9.5.1, and 4.9.6.1 of the Analysis describe enforcement considerations for the provisions of this proposed rule that are intended to minimize gear conflicts and grounds preemption. The Council and NMFS considered the methods that would be used to enforce the proposed restrictions on use of longline pot gear in the GOA sablefish IFQ fishery. The Council and NMFS determined that the requirements in this proposed rule would provide sufficient monitoring and enforcement information to meet the Council's objectives for Amendment 101 and this proposed rule.

Impacts on Whale Interactions in the Sablefish IFQ Fishery

Depredation by killer whales and sperm whales is common in the sablefish IFQ fisheries in the GOA and BSAI. Section 3.4.1 of the Analysis provides available information on the interactions of the GOA sablefish IFQ fishery with killer whales and sperm whales. The Analysis examined data from the commercial fisheries and sablefish survey data and concluded that the use of longline pot gear would support the objective of this proposed rule to reduce sablefish IFQ fishery interactions with whales in the GOA. Use of longline pot gear is expected to reduce fishing gear interactions with whales and have a positive effect on killer whales and sperm whales compared to the status quo.

Section 3.4.2 of the Analysis notes that this proposed rule could reduce the risk of whale entanglements in fishing gear. Although the likelihood of whale entanglements in hook-and-line gear is very low in Alaska fisheries, the Analysis states that neither killer whales nor sperm whales are known to depredate on pot fishing gear. Therefore, this proposed rule could reduce the risk of whale entanglements in fishing gear.

Impacts on Seabird Interactions in the GOA Sablefish IFQ Fishery

Many seabird species are attracted to fishing vessels to forage on bait, offal, discards, and other prey made available by fishing operations. These interactions can result in direct mortality for seabirds if they become entangled in fishing gear or strike the vessel or fishing gear while flying. In addition, seabirds are attracted to sinking baited hooks and can be hooked and drowned. Hook-and-line gear has the greatest impact on seabirds relative to other fishing gear. Since 1998, seabird avoidance measures have been required on vessels greater than or equal to 27 ft (7.9 m) LOA using hook-and-line gear in the groundfish and halibut fisheries in the GOA and BSAI (March 6, 1998, 63 FR 11161). Additional seabird avoidance measures have been adopted for the hook-and-line fishery since 1998 (72 FR 71601, December 18, 2007). These measures were intended to reduce seabird incidental catch and mortality and mitigate interactions with short-tailed albatross.

Section 3.5.1 of the Analysis examines the effect of hook-and-line gear on seabirds. Data from 1993 through 2012 indicate the annual incidental catch of seabirds in all hook-and-line fisheries constitutes about 91 percent of fisheries-related seabird mortality in Alaska. The GOA typically accounts for 10 percent to 20 percent of overall incidental seabird catch.

Section 3.5.1.2 of the Analysis compared the number of seabird mortalities by hook-and-line and pot gear in the GOA Pacific cod fishery and the BSAI sablefish IFQ fishery and determined that a higher level of seabird mortality occurred with hook-and-line gear. The Analysis compared seabird mortality by hook-and-line and pot gear in the GOA Pacific cod fishery because pot gear is not authorized for the GOA sablefish IFQ fishery. The estimated seabird mortality in the GOA Pacific cod fishery from vessels using hook-and-line gear was 1,802 seabirds and the estimated mortality from vessels using pot gear was 458 seabirds. This comprises a very small portion of total estimated seabird mortality from fisheries in Alaska. This proposed rule would likely reduce the already small incidental catch of seabirds in the sablefish IFQ fishery because it would provide vessel operators with the opportunity to use longline pot gear, which has a lower rate of incidental catch of seabirds than hook-and-line gear.

Impacts on the Halibut IFQ Fishery

The Council and NMFS also considered the impacts of this proposed rule on the halibut IFQ fishery. Section 3.2.1 of the Analysis notes that the overall impact of this proposed rule on the halibut IFQ fishery is likely to be small. This proposed rule would revise current regulations to authorize retention of halibut IFQ caught when using longline pot gear in the GOA sablefish IFQ fishery, provided a person on the vessel holds sufficient IFQ pounds to cover the retained halibut.

In developing this proposed rule, the Council recognized that the IPHC authorizes fishing gear for halibut in the GOA through its annual management measures. The IPHC meets annually to approve the regulations that apply to persons and vessels fishing for and retaining halibut IFQ. At its January 2016 Annual Meeting, the IPHC approved longline pot gear, as defined by the Council, as legal gear to retain halibut in Alaska if NMFS implements regulations that authorize longline pot gear in the sablefish IFQ fishery (81 FR 14000, March 16, 2016).

Section 19(1) of the 2016 annual management measures allows a person to retain and possess halibut IFQ taken with hook-and-line or longline pot gear in the sablefish IFQ fishery provided retention and possession is authorized by NMFS regulations published at 50 CFR part 679. Current NMFS regulations require vessel operators using hook-and-line gear and holding sufficient halibut IFQ to retain legal size halibut (32 inches or greater) caught incidentally in the GOA sablefish IFQ fishery. If the Secretary approves a final rule to implement Amendment 101, NMFS would implement a requirement in regulations for vessel operators using longline pot gear and holding sufficient halibut IFQ to retain legal size halibut in the GOA sablefish IFQ fishery as recommended by the Council and the IPHC. The Council developed this regulation pursuant to section 773c(c) of the Halibut Act. The Secretary is publishing this regulation for public comment in this notice of proposed rulemaking.

Requiring the retention of incidentally caught halibut IFQ is intended to avoid the discard and associated discard mortality of halibut in the GOA sablefish IFQ fishery. The sablefish and halibut hook-and-line gear fisheries are prosecuted simultaneously. Vessels that fish sablefish IFQ typically also fish halibut IFQ. Section 4.5.6 of the Analysis notes that the majority of sablefish IFQ permit holders also hold a halibut IFQ permit. Section 4.9.6 of the Analysis concludes that replacing some amount of hook-and-line effort with longline pot gear effort could benefit permit holders in the halibut IFQ fishery because many of the sablefish IFQ fishery participants are also halibut IFQ fishery participants. This proposed rule would create efficiencies in the harvest of halibut and sablefish for these participants.

This proposed rule would require vessel operators that catch halibut in longline pot gear to comply with current retention requirements under the IFQ Program and the provisions recommended by the Council. Currently, halibut caught with hook-and-line gear must be retained if the halibut are of legal size and a person on the vessel holds a halibut IFQ permit with sufficient halibut IFQ pounds to cover the retained halibut. The Council recommended, and NMFS agrees, that a sablefish IFQ permit holder on board a vessel that catches halibut with longline pot gear in the GOA would be required to retain the halibut provided they hold a halibut IFQ permit with sufficient halibut IFQ pounds to cover the retained halibut. Regulations at § 679.7(f)(4) prohibit an IFQ holder from retaining legal size halibut if no person on board the vessel holds sufficient IFQ pounds to cover the retained halibut. In these instances, fishermen are required to discard the halibut with a minimum of injury consistent with regulations at § 679.7(a)(13) and Section 14 of the IPHC annual management measures (81 FR 14000, March 16, 2016).

This Proposed Rule

This proposed rule would revise regulations at 50 CFR part 300 and 50 CFR part 679 to: (1) Authorize longline pot gear in the GOA sablefish IFQ fishery, (2) minimize the potential for gear conflicts and fishing grounds preemption, and (3) require retention of halibut IFQ caught in longline pot gear used in the GOA sablefish IFQ fishery. NMFS also proposes additional regulatory revisions to facilitate the administration, monitoring, and enforcement of this proposed rule. This section describes the proposed changes to current regulations.

Authorize Longline Pot Gear

This proposed rule would revise §§ 300.61, 679.2, and 679.24 to authorize longline pot gear for use in the GOA sablefish IFQ fishery.

This proposed rule would revise regulations at § 300.61 that supplement the annual management measures adopted by the IPHC. These proposed revisions are necessary to implement the Council's recommendation to

require halibut IFQ permit holders to retain legal sized halibut IFQ caught incidentally in longline pots deployed in the GOA sablefish IFQ fishery, provided the halibut IFQ holders have sufficient remaining IFQ pounds to cover the retained halibut. To implement this recommendation, this proposed rule would revise the definition of "Fishing" at § 300.61 to specify that the use of longline pot gear in any halibut area in the GOA to harvest halibut IFQ would be subject to halibut regulations at part 300. This proposed rule would revise the definition of "IFQ halibut" at § 300.61 to specify that halibut IFQ may be harvested with longline pot gear while commercial fishing in any halibut area in the GOA.

This proposed rule would revise the definition of "Fixed gear" under the definition of "Authorized fishing gear" at § 679.2(4)(i) to include longline pot gear as an authorized gear in the GOA sablefish IFQ fishery. Fixed gear is a general term that describes the multiple gear types allowed to fish sablefish IFQ and halibut IFQ under the IFQ Program and is referred to throughout 50 CFR part 679.

This proposed rule would add § 679.2(4)(iv) to the definition of "Fixed gear" under the definition of "Authorized fishing gear" to include longline pot gear as an authorized gear for halibut IFQ harvested in halibut areas in the GOA.

This proposed rule would revise the definition of "IFQ halibut" in § 679.2 to specify that halibut IFQ may be harvested with longline pot gear while commercial fishing in any halibut area in the GOA.

This proposed rule would revise § 679.24(b) and (c) to authorize the use of longline pot gear to harvest sablefish in GOA sablefish areas.

This proposed rule would revise § 679.42(b)(1) to specify that authorized fishing gear for sablefish and halibut IFQ is defined in § 679.2. NMFS proposes to add § 679.42(b)(1)(i) to further clarify that trawl gear is not authorized for use in the sablefish and halibut IFQ fisheries in the GOA and the BSAI. NMFS proposes to add § 679.42(b)(1)(ii) to clarify that pot-and-line gear is not authorized for use in the GOA sablefish IFQ fishery.

Minimize Potential Gear Conflicts and Grounds Preemption

This proposed rule would add provisions at § 679.42(l) to minimize the potential for gear conflicts and grounds preemption. This proposed rule would add § 679.42(l)(1) and (2) to establish the general requirements for using longline pot gear in the GOA sablefish IFQ fishery.

This proposed rule would add § 679.42(l)(3) to specify the requirements for vessel operators to request pot tags. This proposed rule would describe the process NMFS would use to issue pot tags and to annually register a vessel and assign pot tags for the GOA sablefish IFQ fishery. Section 679.42(l)(3)(i) would require a vessel operator to request pot tags from NMFS by submitting a complete IFQ Sablefish Longline Pot Gear: Vessel Registration and Request for Pot Gear Tags form that would be available on the NMFS Alaska Region Web site. NMFS would issue the number of requested tags up to the pot limit authorized in a sablefish area. The vessel owner requesting pot tags must specify the vessel to which NFMS would assign the pot tags. Under proposed § 679.42(l)(3)(ii), NMFS would assign pot tags to the registered vessel and issue them to the vessel owner upon receipt of a complete request for pot tags. Section 679.42(l)(3)(iii) would specify the process a vessel owner would use to submit a request for pot tag replacement to NMFS if one or more of the originally issued pot tags is lost or damaged such that the unique pot tag number is not legible.

Section 679.42(l)(3)(iv) would specify the process for annual vessel registration and assignment of pot tags. The vessel owner must annually register with NMFS the vessel that will be used to fish IFQ sablefish in the GOA. The vessel owner also must specify whether he or she is requesting assignment of pot tags previously issued to the vessel owner or is requesting new pot tags to be assigned to the vessel. Pot tags must be assigned to only one vessel each year. To assign pot tags, the vessel owner must submit a complete IFQ Sablefish Longline Pot Gear Vessel Registration and Request for Pot Gear Tags form and indicate the vessel to which NMFS will assign the pot tags for the current year. The vessel owner must indicate whether he or she is assigning pot tags that were previously assigned to the vessel or requesting new pot tags.

This proposed rule would add § 679.42(l)(4) to specify the requirements for a vessel operator to use pot tags in the GOA sablefish IFQ fishery. This proposed rule would require a valid pot tag that is assigned to the vessel be attached to each pot on board the vessel before the vessel departs port to fish in the GOA sablefish IFQ fishery.

This proposed rule would add § 679.42(l)(5) to specify restrictions on longline pot gear deployment and retrieval. Section 679.42(l)(5)(i)(A) would require a vessel operator to mark longline pot gear as specified in § 679.24(a). Section 679.24(a) would be revised to require a vessel operator to mark each end of a set of longline pot gear with a cluster of four or more marker buoys including one hard buoy marked with the capital letters "LP," a flag mounted on a pole, and a radar reflector. These requirements would be in addition to current requirements at § 679.24(a) that require all hook-and-line, longline pot, and pot-and-line marker buoys to be marked with the vessel's FFP number or ADF&G vessel registration number.

This proposed rule would add § 679.42(l)(5)(i)(B) to require a vessel operator to deploy longline pot gear in the GOA sablefish IFQ fishery only during the sablefish fishing period specified in § 679.23(g)(1). NMFS annually establishes the sablefish fishing period to correspond with the halibut fishing period established by the IPHC.

Current regulations at § 679.23(g)(2) authorize an IFQ permit holder to retain sablefish outside of the established fishing period if the permit holder has unused IFQ for the specified sablefish area. This proposed rule would revise § 679.23(g)(2) to specify that IFQ permit holders using longline pot gear in the GOA would not be authorized to retain sablefish outside of the established fishing period even if the IFQ permit holder has unused IFQ.

This proposed rule would add § 679.42(l)(5)(ii) to establish pot limits in each GOA sablefish area. This proposed rule would add § 679.42(l)(5)(iii) to establish gear redeployment and removal requirements for longline pot gear in each GOA sablefish area. As described in the section titled Impacts of Amendment 101 and this Proposed Rule, this proposed rule would require a vessel operator using longline pot gear to redeploy the gear within a certain amount of time after being deployed, or remove the gear from the fishing grounds when making a sablefish landing.

This proposed rule would allow multiple vessels to use the same longline pot gear during one fishing season but would prevent use of the same longline pot gear simultaneously. To prevent use of the same longline pot gear simultaneously, this proposed rule would add § 679.42(l)(5)(iv) to require a vessel operator to (1) remove longline pot gear assigned to the vessel and deployed to fish sablefish IFQ from the fishing grounds, (2) return the gear to port, and (3) remove the pot tags that are

assigned to that vessel from each pot before the gear could be used on another vessel. The operator of the second vessel would be required to attach pot tags assigned to his or her vessel to each pot before deploying the gear to fish for GOA sablefish IFQ. This proposed rule would require that only one set of the appropriate vessel-specific pot tags may be attached to the pots.

This proposed rule would add § 679.42(l)(6) to require a vessel operator using longline pot gear in the GOA sablefish IFQ fishery to retain legal sized halibut caught incidentally if any IFQ permit holder on board has sufficient halibut IFQ pounds for the retained halibut for that halibut area.

This proposed rule would add § 679.42(l)(7) to require a vessel operator using longline pot gear in the GOA sablefish IFQ fishery to comply with logbook reporting requirements at § 679.5(c) and VMS requirements at § 679.42(k).

Recordkeeping and Reporting

This proposed rule would revise § 679.5 to implement this proposed rule and clarify current logbook reporting requirements.

The following table describes the proposed revisions to § 679.5.

Paragraph in § 679.5	Proposed revision
(a)(4)(i)	Require the operator of a vessel less than 60 feet (18.3 m) LOA using longline pot gear in the GOA sablefish IFQ fishery to complete a logbook.
(c)(1)(vi)(B)	Clarify table footnote.
(c)(2)(iii)(A)	Add missing word.
(c)(3)(i)(B)	Revise paragraphs (*1*) and (*2*) and add paragraphs (*3*) through (*5*) to specify logbook reporting requirements for vessels in the GOA and BSAI.
(c)(3)(ii)(A) and (B)	Clarify tables describing current logbook reporting requirements.
(c)(3)(iv)(A)(*2*) and (B)(*2*)	Require the operator of a vessel using longline pot gear to record specific information in a DFL or DCPL each day the vessel is active in the GOA sablefish IFQ fishery.
(c)(3)(v)(G)	• Require the operator of a vessel using longline pot gear in the GOA or the BSAI fishery to record the length of a longline pot set, the size of the pot, and spacing of pots. • Clarify logbook reporting requirements for gear information for all vessels using longline and pot gear.
(l)(1)(iii)	Add paragraphs (H) and (I) to require the operator of a vessel using longline pot gear in the GOA sablefish IFQ fishery to record in the PNOL the gear type used, number of pots set, number of pots lost, and number of pots left on the fishing grounds still fishing in addition to the other information required under current regulations.

Monitoring and Enforcement

This proposed rule would revise and add provisions to § 679.7 that would be necessary to monitor and enforce this proposed rule.

This proposed rule would revise the prohibition on deployment of gear at § 679.7(a)(6) to include longline pot gear. This revision is necessary to prohibit deployment of longline pot gear in the GOA outside of the sablefish fishing period. This proposed rule would revise § 679.7(a)(6)(i) to clarify that vessels in the halibut IFQ fishery are subject to gear deployment requirements specified by the IPHC in the annual management measures pursuant to § 300.62.

This proposed rule would revise § 679.7(a)(13). Under current regulations, vessel operators in groundfish fisheries are required to discard halibut if the halibut is less than legal size and/or there are no IFQ permit holders on board with sufficient IFQ pounds for the retained halibut for that halibut area. If halibut must be discarded, current regulations at § 679.7(a)(13) specify handling and release requirements for halibut caught with hook-and-line gear in the sablefish fishery. This proposed rule would revise § 679.7(a)(13) to specify the current regulations describing handling and release methods that would apply to vessels using longline pot gear in the GOA sablefish IFQ fishery.

This proposed rule would add § 679.7(f)(17) through (24) to enforce compliance with proposed regulations at §§ 679.23, 679.24, and 679.42 to minimize gear conflicts and grounds preemption.

This proposed rule would add § 679.7(f)(25) to prohibit a vessel operator in the GOA from using longline pot gear to harvest sablefish IFQ or halibut IFQ in the GOA sablefish areas without having an operating VMS on board the vessel. This proposed rule would revise § 679.42(k)(1) and (2) to require a vessel operator using longline pot gear to possess a transmitting VMS transmitter on board the vessel while fishing for sablefish IFQ in the GOA. NMFS does not propose to change the VMS reporting requirements for vessels fishing for sablefish IFQ in the BSAI. This proposed rule would revise § 679.42(k)(2)(ii) to require a vessel operator fishing for sablefish IFQ in the GOA to comply with VMS requirements at § 679.28(f)(3) through (5), which explain the vessel owner's responsibilities to ensure a VMS is operating and transmitting. This proposed rule would revise § 679.42(k)(2)(ii) to require a vessel operator using longline pot gear to fish sablefish IFQ in the GOA to contact NMFS to confirm that VMS transmissions are being received from the vessel. The vessel operator would be required to receive a VMS confirmation number from NMFS before fishing in the sablefish IFQ fishery.

Other Proposed Revisions

This proposed rule would revise § 679.20(a)(4) to replace the reference to the sablefish TAC allocation to hook-and-line gear with a reference to fixed gear, as defined at § 679.2, which would include hook-and-line and longline pot gear. This proposed rule would not change the percent of the TAC allocated to the sablefish IFQ fishery in the GOA. NMFS would continue to allocate 95 percent of the sablefish TAC in the EGOA sablefish area to vessels using fixed gear and allocate 80 percent of the sablefish TACs in each of the CGOA and WGOA sablefish areas to vessels using fixed gear.

This proposed rule would revise § 679.42(b)(2) to specify that an operator of a vessel using hook-and-line gear to harvest sablefish IFQ, halibut IFQ, or halibut Community Development Quota (CDQ) must comply with seabird avoidance measures set forth in § 679.24(e). Vessel operators using longline pot gear in the GOA sablefish IFQ fishery would not be required to comply with seabird avoidance measures under this proposed rule.

This proposed rule would revise § 679.51(a), which contains requirements for vessels in the partial observer coverage category, to remove specific reference to hook-and-line gear

for vessels fishing for halibut. This revision is needed because this proposed rule would authorize the retention of halibut IFQ by vessels using longline pot gear in the GOA. It is not necessary to specify authorized gear for halibut IFQ in § 679.51(a) because § 679.50(a)(3) currently states that, for purposes of subpart E, when the term halibut is used it refers to both halibut IFQ and halibut CDQ, and the authorized gear for halibut is specified in § 679.2.

Table 15 to 50 CFR Part 679, Gear Codes, Descriptions, and Use

This proposed rule would revise Table 15 to part 679 to identify longline pot gear as authorized gear in the GOA sablefish IFQ fishery. NMFS would revise the table to specify that authorized gear for sablefish IFQ harvested from any GOA reporting area would include longline pot gear in addition to all longline gear (*i.e.*, hook-and-line, jig, troll, and handline). NMFS would revise the table to specify that authorized gear for halibut harvest in the GOA would be fishing gear comprised of lines with hooks attached and longline pot gear. No change would be made in the table to authorized gear for sablefish or halibut IFQ in the BSAI.

Classification

Pursuant to section 304(b)(1)(A) and 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the GOA FMP, other provisions of the Magnuson-Stevens Act, the Halibut Act, and other applicable law, subject to further consideration of comments received during the public comment period.

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866.

Regulatory Impact Review (RIR)

An RIR was prepared to assess all costs and benefits of available regulatory alternatives. The RIR considers all quantitative and qualitative measures. A copy of this analysis is available from NMFS (see **ADDRESSES**). The Council recommended and NMFS proposes Amendment 101 and these regulations based on those measures that maximized net benefits to the Nation. Specific aspects of the economic analysis are discussed below in the Initial Regulatory Flexibility Analysis section.

Initial Regulatory Flexibility Analysis

An Initial Regulatory Flexibility Analysis (IRFA) was prepared for this action, as required by Section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. The IRFA describes the action; the reasons why this action is proposed; the objectives and legal basis for this proposed rule; the number and description of directly regulated small entities to which this proposed rule would apply; the recordkeeping, reporting, and other compliance requirements of this proposed rule; and the relevant Federal rules that may duplicate, overlap, or conflict with this proposed rule. The IRFA also describes significant alternatives to this proposed rule that would accomplish the stated objectives of the Magnuson-Stevens Act, and any other applicable statutes, and that would minimize any significant economic impact of this proposed rule on small entities. The description of the proposed action, its purpose, and the legal basis are explained in the preamble and are not repeated here. A summary of the IRFA follows. A copy of the IRFA is available from NMFS (see **ADDRESSES**).

For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $11 million for all its affiliated operations worldwide.

Number and Description of Small Entities Regulated by This Proposed Rule

NMFS estimates that there are a total of 310 small catcher vessels and 1 small catcher/processor that participate in the GOA sablefish IFQ fishery using hook-and-line gear. These entities would be directly regulated by this proposed rule because they would be subject to the proposed requirements for using longline pot gear if they choose to use pot longline gear in the GOA sablefish IFQ fishery. Thus, NMFS estimates that 311 small entities would be directly regulated by this proposed rule.

Description of Significant Alternatives That Minimize Adverse Impacts on Small Entities

Several aspects of this rule directly regulate small entities. Small entities would be required to comply with the requirements for using longline pot gear in the GOA sablefish IFQ fishery, which include using only longline pot gear, pot limits, and gear retrieval and gear marking requirements. Authorizing longline pot gear in this proposed rule would provide an opportunity for small entities to choose whether to use longline pot gear to increase harvesting efficiencies and reduce operating costs in the sablefish IFQ fishery.

Based on public testimony to the Council and NMFS, and Section 4.9 of the Analysis, the proposed requirements for using pot gear are not expected to adversely impact small entities because each entity could choose to use longline pot gear or continue to use hook-and-line gear. In addition, the requirements for using longline pot gear would not be expected to unduly restrict sablefish harvesting operations. The Council and NMFS considered requirements that would impose larger costs on directly regulated small entities. These included requiring all vessels to remove gear from the fishing grounds each time the vessel made a landing and requiring more sophisticated and costly satellite-based gear marking systems. The Council and NMFS determined that these additional requirements were not necessary to meet the objectives of the action. This proposed rule would meet the objectives of the action while minimizing adverse impacts on fishery participants.

Small entities would be required to comply with additional recordkeeping and reporting requirements under this proposed rule if they choose to use longline pot gear in the GOA sablefish IFQ fishery. Section 4.9 of the Analysis notes that directly regulated small entities using longline pot gear would be required to request pot tags from NMFS, maintain and submit logbooks to NMFS, have an operating VMS on board the vessel, and report additional information in a PNOL. The Analysis notes that these additional recordkeeping and reporting requirements would not be expected to adversely impact directly regulated small entities because the costs of complying with these requirements is de minimus relative to total gross fishing revenue. In addition, NMFS anticipates that many of the vessels that choose to use longline pot gear under this proposed rule currently comply with the logbook and VMS reporting requirements when participating in the sablefish IFQ fishery and in other fisheries. The Council and NMFS considered alternatives to implement additional requirements to report locations of deployed and lost gear in an electronic database. The Council and NMFS determined that these additional requirements were not necessary to meet the objectives of the action. This

proposed rule would meet the objectives of the action while minimizing the reporting burden for fishery participants.

Thus, there are no significant alternatives to this proposed rule that would accomplish the objectives to authorize longline pot gear in the GOA sablefish IFQ fishery and minimize adverse economic impacts on small entities.

Duplicate, Overlapping, or Conflicting Federal Rules

NMFS has not identified any duplication, overlap, or conflict between this proposed action and existing Federal rules.

Recordkeeping, Reporting, and Other Compliance Requirements

The recordkeeping, reporting, and other compliance requirements would be increased slightly under this proposed rule. This proposed rule contains new requirements for vessels participating in the proposed longline pot fishery for sablefish IFQ in the GOA.

Presently, NMFS requires catcher vessel operators, catcher/processor operators, buying station operators, mothership operators, shoreside processor managers, and stationary floating processor managers to record and report all FMP species in logbooks, forms, eLandings, and eLogbooks. This proposed rule would revise regulations to require all vessels using longline pot gear in the GOA sablefish IFQ fishery to report information on fishery participation in logbooks, forms, and eLandings.

NMFS currently requires vessels in the BSAI to have an operating VMS on board the vessel while participating in the sablefish IFQ fishery. This proposed rule would revise regulations to extend this requirement to vessels using longline pot gear in the GOA sablefish IFQ fishery.

NMFS currently requires all vessels in the sablefish and halibut IFQ fisheries to submit a PNOL to NMFS. This proposed rule would revise regulations to require vessels using longline pot gear in the GOA sablefish IFQ fishery to report the number of pots deployed, the number of pots lost, and the number of pots left deployed on the fishing grounds on the PNOL, in addition to other required information.

Collection-of-Information Requirements

This proposed rule contains collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). These requirements have been submitted to OMB for approval. The collections are listed below by OMB control number.

OMB Control Number 0648–0213

Public reporting burden is estimated to average 35 minutes per individual response for Catcher Vessel Longline and Pot Gear Daily Fishing Logbook; and 50 minutes for Catcher/processor Longline and Pot Gear Daily Cumulative Production Logbook.

OMB Control Number 0648–0272

Public reporting burden is estimated to average 15 minutes per individual response for Prior Notice of Landing.

OMB Control Number 0648–0353

Public reporting burden is estimated to average 15 minutes per individual response to mark longline pot gear; 15 minutes for IFQ Sablefish Longline Pot Gear: Vessel Registration and Request for Pot Gear Tags; and 15 minutes for IFQ Sablefish Longline Pot Gear: Request for Replacement of Longline Pot Gear Tags.

OMB Control Number 0648–0445

Public reporting burden is estimated to average 2 hours per individual response for VMS operation; and 12 minutes for VMS check-in report.

OMB Control Number 0648–0711

The cost recovery program is mentioned in this rule. The cost to implement and manage the sablefish IFQ longline pot gear fishery, including the cost of the pot tags, will be included in the annual calculation of NMFS' recoverable costs. These costs will be part of the total management and enforcement costs used in the calculation of the annual fee percentage. For example, when the pot gear tags are ordered, the payment of those tags is charged 100 percent to the IFQ Program for cost recovery purposes. This rule would not change the process that harvesters use to pay cost recovery fees.

The public reporting burden includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden statements; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS (see **ADDRESSES**), and by email to *OIRA_Submission@omb.eop.gov* or fax to 202–395–5806.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number. All currently approved NOAA collections of information may be viewed at: *http://www.cio.noaa.gov/services_programs/prasubs.html.*

List of Subjects

50 CFR Part 300

Administrative practice and procedure, Antarctica, Canada, Exports, Fish, Fisheries, Fishing, Imports, Indians, Labeling, Marine resources, Reporting and recordkeeping requirements, Russian Federation, Transportation, Treaties, Wildlife.

50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: August 15, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 300 and 679 are proposed to be amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart E—Pacific Halibut Fisheries

■ 1. The authority citation for part 300, subpart E, continues to read as follows:

Authority: 16 U.S.C. 773–773k.

■ 2. In § 300.61, revise the definitions of "Fishing" and "IFQ halibut" to read as follows:

§ 300.61 Definitions.

* * * * *

Fishing means the taking, harvesting, or catching of fish, or any activity that can reasonably be expected to result in the taking, harvesting, or catching of fish, including:

(1) The deployment of any amount or component part of setline gear anywhere in the maritime area; or

(2) The deployment of longline pot gear as defined in § 679.2 of this title, or component part of that gear in

Commission regulatory areas 2C, 3A, 3B, and that portion of Area 4A in the Gulf of Alaska west of Area 3B and east of 170°00′ W. long.

* * * * *

IFQ halibut means any halibut that is harvested with setline gear as defined in this section or fixed gear as defined in § 679.2 of this title while commercial fishing in any IFQ regulatory area defined in § 679.2 of this title.

* * * * *

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 3. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Pub. L. 108–447; Pub. L. 111–281.

■ 4. In § 679.2,

■ a. In the definition of "Authorized fishing gear," revise paragraphs (4)(i) and (iii), and add paragraph (4)(iv); and

■ b. Revise the definition of "IFQ halibut".

The additions and revisions read as follows:

§ 679.2 Definitions.

* * * * *

Authorized fishing gear * * *

(4) * * *

(i) For sablefish harvested from any GOA reporting area, all longline gear, longline pot gear, and, for purposes of determining initial IFQ allocation, all pot gear used to make a legal landing.

* * * * *

(iii) For halibut harvested from any IFQ regulatory area, all fishing gear composed of lines with hooks attached, including one or more stationary, buoyed, and anchored lines with hooks attached.

(iv) For halibut harvested from IFQ regulatory areas 2C, 3A, 3B, and that portion of Area 4A in the Gulf of Alaska west of Area 3B and east of 170°00′ W. long., all longline pot gear.

* * * * *

IFQ halibut means any halibut that is harvested with setline gear as defined in § 300.61 of this title or fixed gear as defined in this section while commercial fishing in any IFQ regulatory area defined in this section.

* * * * *

■ 5. In § 679.5,

■ a. Revise paragraph (a)(4)(i);

■ b. Revise note to the table at paragraph (c)(1)(vi)(B); paragraphs (c)(2)(iii)(A); (c)(3)(i)(B); (c)(3)(ii)(A)(*1*) and (B)(*1*); (c)(3)(iv)(A)(*2*); (c)(3)(iv)(B)(*2*); and (c)(3)(v)(G);

■ c. Revise paragraphs (l)(1)(iii)(F) and (G); and

■ d. Add (l)(1)(iii)(H) and (I).

The additions and revisions read as follows:

§ 679.5 Recordkeeping and reporting (R&R).

(a) * * *

(4) * * *

(i) *Catcher vessels less than 60 ft (18.3 m) LOA.* Except for vessels using longline pot gear as described in paragraph (c)(3)(i)(B)(*1*) of this section and the vessel activity report described at paragraph (k) of this section, the owner or operator of a catcher vessel less than 60 ft (18.3 m) LOA is not required to comply with the R&R requirements of this section.

* * * * *

(c) * * *

(1) * * *

(vi) * * *

(B) * * *

* * * * *

Note: CP = catcher/processor; CV = catcher vessel; pot = longline pot or pot-and-line; lgl = longline; trw = trawl; MS = mothership.

* * * * *

(2) * * *

(iii) * * *

(A) If a catcher vessel, record vessel name, ADF&G vessel registration number, FFP number or Federal crab vessel permit number, operator printed name, operator signature, and page number.

* * * * *

(3) * * *

(i) * * *

(B) *IFQ halibut, CDQ halibut, and IFQ sablefish fisheries.* (*1*) The operator of a catcher vessel less than 60 ft (18.3 m) LOA, using longline pot gear to harvest IFQ sablefish or IFQ halibut in the GOA must maintain a longline and pot gear DFL according to paragraph (c)(3)(iv)(A)(*2*) of this section.

(*2*) Except as described in paragraph (f)(1)(i) of this section, the operator of a catcher vessel 60 ft (18.3 m) or greater LOA in the GOA must maintain a longline and pot gear DFL according to paragraph (c)(3)(iv)(A)(*2*) of this section, when using longline gear or longline pot gear to harvest IFQ sablefish and when using gear composed of lines with hooks attached, setline gear (IPHC), or longline pot gear to harvest IFQ halibut.

(*3*) Except as described in paragraph (f)(1)(i) of this section, the operator of a catcher vessel 60 ft (18.3 m) or greater LOA in the BSAI must maintain a longline and pot gear DFL according to paragraph (c)(3)(iv)(A)(*2*) of this section, when using hook-and-line gear or pot gear to harvest IFQ sablefish, and when using gear composed of lines with hooks attached or setline gear (IPHC) to harvest IFQ halibut or CDQ halibut.

(*4*) Except as described in paragraph (f)(1)(ii) of this section, the operator of a catcher/processor in the GOA must use a combination of a catcher/processor longline and pot gear DCPL and eLandings according to paragraph (c)(3)(iv)(B)(*2*) of this section, when using longline gear or longline pot gear to harvest IFQ sablefish and when using gear composed of lines with hooks attached, setline gear (IPHC), or longline pot gear to harvest IFQ halibut.

(*5*) Except as described in paragraph (f)(1)(ii) of this section, the operator of a catcher/processor in the BSAI must use a combination of a catcher/processor longline and pot gear DCPL and eLandings according to (c)(3)(iv)(B)(*2*) of this section, when using hook-and-line gear or pot gear to harvest IFQ sablefish, and when using gear composed of lines with hooks attached or setline gear (IPHC) to harvest IFQ halibut or CDQ halibut.

* * * * *

(ii) * * *

(A) * * *

REPORTING TIME LIMITS, CATCHER VESSEL LONGLINE OR POT GEAR

Required information	Time limit for recording
(*1*) FFP number and/or Federal crab vessel permit number (if applicable), IFQ permit numbers (halibut, sablefish, and crab), CDQ group number, halibut CDQ permit number, set number, date and time gear set, date and time gear hauled, beginning and end positions of set, number of skates or pots set, and estimated total hail weight for each set.	Within 2 hours after completion of gear retrieval.

* * * * * * *

(B) * * *

REPORTING TIME LIMITS, CATCHER/PROCESSOR LONGLINE OR POT GEAR

Required information	Record in DCPL	Submit via eLandings	Time limit for reporting
(*1*) FFP number and/or Federal crab vessel permit number (if applicable), IFQ permit numbers (halibut, sablefish, and crab), CDQ group number, halibut CDQ permit number, set number, date and time gear set, date and time gear hauled, beginning and end positions of set, number of skates or pots set, and estimated total hail weight for each set.	X	.....	Within 2 hours after completion of gear retrieval.

* * * * * * *

* * * * *

(iv) * * *

(A) * * *

(*2*) If a catcher vessel identified in paragraph (c)(3)(i)(A)(*1*) or (c)(3)(i)(B)(*1*) through (*3*) of this section is active, the operator must record in the longline and pot gear DFL, for one or more days on each logsheet, the information listed in paragraphs (c)(3)(v), (vi), (viii), and (x) of this section.

* * * * *

(B) * * *

(*2*) If a catcher/processor identified in paragraph (c)(3)(i)(A)(*2*) or (c)(3)(i)(B)(*4*) through (*5*) of this section is active, the operator must record in the catcher/processor longline and pot gear DCPL the information listed in paragraphs (c)(3)(v) and (vi) of this section and must record in eLandings the information listed in paragraphs (c)(3)(v), (vii), and (ix) of this section.

* * * * *

(v) * * *

(G) *Gear type.* Use a separate logsheet for each gear type. Place a check mark in the box for the gear type used to harvest the fish or crab. Record the information from the following table for the appropriate gear type on the logsheet. If the gear type is the same on subsequent logsheets, place a check mark in the box instead of re-entering the gear type information on the next logsheet.

If gear type is . . .	Then . . .
(*1*) Other gear	If gear is other than those listed within this table, indicate "Other" and describe.
(*2*) Pot gear (includes pot-and-line and longline pot).	(*i*) If using longline pot gear in the GOA, enter the length of longline pot set to the nearest foot, the size of pot in inches (width by length by height or diameter), and spacing of pots to the nearest foot. (*ii*) If using longline pot gear in the GOA, enter the number of pots deployed in each set (see paragraph (c)(3)(vi)(F) of this section) and the number of pots lost when the set is retrieved (optional, but may be required by IPHC regulations, see §§ 300.60 through 300.65 of this title). (*iii*) If using pot gear, enter the number of pots deployed in each set (see paragraph (c)(3)(vi)(F) of this section) and the number of pots lost when the set is retrieved (optional, but may be required by IPHC regulations, see §§ 300.60 through 300.65 of this title).
(*3*) Hook-and-line gear	Indicate: (*i*) Whether gear is fixed hook (conventional or tub), autoline, or snap (optional, but may be required by IPHC regulations, see §§ 300.60 through 300.65 of this title). (*ii*) Number of hooks per skate (optional, but may be required by IPHC regulations, see §§ 300.60 through 300.65 of this title), length of skate to the nearest foot (optional, but may be required by IPHC regulations, see §§ 300.60 through 300.65 of this title), size of hooks, and hook spacing in feet. (*iii*) Enter the number of skates set and number of skates lost (optional, but may be required by IPHC regulations, see §§ 300.60 through 300.65 of this title). (*iv*) Seabird avoidance gear code(s) (see § 679.24(e) and Table 19 to this part). (*v*) Enter the number of mammals sighted while hauling gear next to the mammal name: sperm, orca, and other (optional, but may be required by IPHC regulations, see §§ 300.60 through 300.65 of this title). (*vi*) Enter the number of sablefish, halibut, other fish, or hooks damaged found while hauling gear (optional, but may be required by IPHC regulations, see §§ 300.60 through 300.65 of this title).

* * * * *

(l) * * *

(1) * * *

(iii) * * *

(F) IFQ regulatory area(s) in which the IFQ halibut, CDQ halibut, or IFQ sablefish were harvested;

(G) IFQ permit number(s) that will be used to land the IFQ halibut, CDQ halibut, or IFQ sablefish;

(H) Gear type used to harvest the IFQ sablefish or IFQ halibut (see Table 15 to this part); and

(I) If using longline pot gear in the GOA, report the number of pots set, the number of pots lost, and the number of pots left deployed on the fishing grounds.

* * * * *

■ 6. In § 679.7,

■ a. Revise paragraph (a)(6) introductory text, (a)(6)(i), (a)(13) introductory text, (a)(13)(ii) introductory text, and (a)(13)(iv); and

■ b. Add paragraphs (f)(17) through (25).

The additions and revisions read as follows:

§ 679.7 Prohibitions.

* * * * *

(a) * * *

(6) *Gear.* Deploy any trawl, longline, longline pot, pot-and-line, or jig gear in an area when directed fishing for, or retention of, all groundfish by operators of vessels using that gear type is prohibited in that area, except that this paragraph (a)(6) shall not prohibit:

(i) Deployment of fixed gear, as defined in § 679.2 under "Authorized fishing gear," by an operator of a vessel fishing for IFQ halibut during the fishing period prescribed in the annual management measures published in the **Federal Register** pursuant to § 300.62 of this title.

* * * * *

(13) *Halibut.* With respect to halibut caught with fixed gear, as defined in § 679.2 under the definition of "Authorized fishing gear," deployed from a vessel fishing for groundfish, except for vessels fishing for halibut as prescribed in the annual management measures published in the **Federal Register** pursuant to § 300.62 of this title:

* * * * *

(ii) Release halibut caught with longline gear by any method other than—

* * * * *

(iv) Allow halibut caught with longline gear to contact the vessel, if such contact causes, or is capable of causing, the halibut to be stripped from the hook.

* * * * *

(f) * * *

(17) Deploy, conduct fishing with, or retrieve longline pot gear in the GOA before the start or after the end of the IFQ sablefish fishing period specified in § 679.23(g)(1).

(18) Deploy, conduct fishing with, retrieve, or retain IFQ sablefish or IFQ halibut from longline pot gear in the GOA:

(i) In excess of the pot limits specified in § 679.42(l)(5)(ii); and

(ii) Without a pot tag attached to each pot in accordance with § 679.42(l)(4).

(19) Deploy, conduct fishing with, or retain IFQ sablefish or IFQ halibut in the GOA from a pot with an attached pot tag that has a serial number assigned to another vessel or has been reported lost, stolen, or mutilated to NMFS in a request for a replacement pot tag as described in § 679.42(l)(3)(iii).

(20) Deploy longline pot gear to fish IFQ sablefish in the GOA without marking the gear in accordance with § 679.24(a).

(21) Fail to retrieve and remove from the fishing grounds all deployed longline pot gear that is assigned to, and used by, a catcher vessel to fish IFQ sablefish in the Southeast Outside District of the GOA when the vessel makes an IFQ landing.

(22) Fail to redeploy or remove from the fishing grounds all deployed longline pot gear that is assigned to, and used by, a catcher/processor within five days of deploying the gear to fish IFQ sablefish in the Southeast Outside District of the GOA.

(23) Fail to redeploy or remove from the fishing grounds all deployed longline pot gear that is assigned to, and used by, a catcher vessel or a catcher/processor within five days of deploying the gear to fish IFQ sablefish in the West Yakutat District of the GOA and the Central GOA regulatory area.

(24) Fail to redeploy or remove from the fishing grounds all deployed longline pot gear that is assigned to, and used by, a catcher vessel or a catcher/processor within seven days of deploying the gear to fish IFQ sablefish in the Western GOA regulatory area.

(25) Operate a catcher vessel or a catcher/processor using longline pot gear to fish IFQ sablefish or IFQ halibut in the GOA and fail to use functioning VMS equipment as required in § 679.42(k)(2).

* * * * *

■ 7. In § 679.20, revise paragraphs (a)(4)(i), (a)(4)(ii) heading, and (a)(4)(ii)(A) to read as follows:

§ 679.20 General limitations.

* * * * *

(a) * * *

(4) * * *

(i) *Eastern GOA regulatory area*—(A) *Fixed gear.* Vessels in the Eastern GOA regulatory area using fixed gear will be allocated 95 percent of the sablefish TAC.

(B) *Trawl gear.* Vessels in the Eastern GOA regulatory area using trawl gear will be allocated 5 percent of the sablefish TAC for bycatch in other trawl fisheries.

(ii) *Central and Western GOA regulatory areas*—(A) *Fixed gear.* Vessels in the Central and Western GOA regulatory areas using fixed gear will be allocated 80 percent of the sablefish TAC in each of the Central and Western GOA regulatory areas.

* * * * *

■ 8. In § 679.23, revise paragraph (g)(2) to read as follows:

§ 679.23 Seasons.

* * * * *

(g) * * *

(2) Except for catches of sablefish with longline pot gear in the GOA, catches of sablefish by fixed gear during other periods may be retained up to the amounts provided for by the directed fishing standards specified at § 679.20 when made by an individual aboard the vessel who has a valid IFQ permit and unused IFQ in the account on which the permit was issued.

* * * * *

■ 9. In § 679.24,

■ a. Add paragraphs (a)(3) and (b)(1)(iii); and

■ b. Revise paragraphs (c)(2)(i)(A) and (B); and (c)(3).

The additions and revisions read as follows:

§ 679.24 Gear limitations.

* * * * *

(a) * * *

(3) Each end of a set of longline pot gear deployed to fish IFQ sablefish in the GOA must have attached a cluster of four or more marker buoys including one hard buoy ball marked with the capital letters "LP" in accordance with paragraph (a)(2) of this section, a flag mounted on a pole, and radar reflector floating on the sea surface.

(b) * * *

(1) * * *

(iii) While directed fishing for IFQ sablefish in the GOA.

* * * * *

(c) * * *

(2) * * *

(i) * * *

(A) No person may use any gear other than hook-and-line, longline pot, and trawl gear when fishing for sablefish in the Eastern GOA regulatory area.

(B) No person may use any gear other than hook-and-line gear and longline pot gear to engage in directed fishing for IFQ sablefish.

* * * * *

(3) *Central and Western GOA regulatory areas; sablefish as prohibited species.* Operators of vessels using gear types other than hook-and-line, longline

pot, and trawl gear in the Central and Western GOA regulatory areas must treat any catch of sablefish in these areas as a prohibited species as provided by § 679.21(a).

* * * * *

■ 10. In § 679.42,

■ a. Revise paragraphs (b)(1) and (2);

■ b. Revise paragraphs (k)(1) and (k)(2); and

■ c. Add paragraph (l).

The additions and revisions read as follows:

§ 679.42 Limitations on use of QS and IFQ.

* * * * *

(b) * * *

(1) *IFQ Fisheries.* Authorized fishing gear to harvest IFQ halibut and IFQ sablefish is defined in § 679.2.

(i) *IFQ halibut.* IFQ halibut must not be harvested with trawl gear in any IFQ regulatory area, or with pot gear in any IFQ regulatory area in the BSAI.

(ii) *IFQ sablefish.* IFQ sablefish must not be harvested with trawl gear in any IFQ regulatory area, or with pot-and-line gear in the GOA. A vessel operator using longline pot gear in the GOA to fish for IFQ sablefish must comply with the GOA sablefish longline pot gear requirements in paragraph (l) of this section.

(2) *Seabird avoidance gear and methods.* The operator of a vessel using hook-and-line gear authorized at § 679.2 while fishing for IFQ halibut, CDQ halibut, or IFQ sablefish must comply with requirements for seabird avoidance gear and methods set forth at § 679.24(e).

* * * * *

(k) * * *

(1) *Bering Sea or Aleutian Islands*—(i) *General.* Any vessel operator who fishes for IFQ sablefish in the Bering Sea or Aleutian Islands must possess a transmitting VMS transmitter while fishing for IFQ sablefish.

(ii) *VMS requirements.* (A) The operator of the vessel must comply with VMS requirements at § 679.28(f)(3) through (5); and

(B) The operator of the vessel must contact NMFS at 800–304–4846 (option 1) between 0600 and 0000 A.l.t. and receive a VMS confirmation number at least 72 hours prior to fishing for IFQ sablefish in the Bering Sea or Aleutian Islands.

(2) *Gulf of Alaska.* (i) *General.* A vessel operator using longline pot gear to fish for IFQ sablefish in the Gulf of Alaska must possess a transmitting VMS transmitter while fishing for sablefish.

(ii) *VMS requirements.* (A) The operator of the vessel must comply with VMS requirements at § 679.28(f)(3) through (5); and

(B) The operator of the vessel must contact NMFS at 800–304–4846 (option 1) between 0600 and 0000 A.l.t. and receive a VMS confirmation number at least 72 hours prior to using longline pot gear to fish for IFQ sablefish in the Gulf of Alaska.

(l) *GOA sablefish longline pot gear requirements.* Additional regulations that implement specific requirements for any vessel operator who fishes for IFQ sablefish in the GOA using longline pot gear are set out under: § 300.61 Definitions, § 679.2 Definitions, § 679.5 Recordkeeping and reporting (R&R), § 679.7 Prohibitions, § 679.20 General limitations, § 679.23 Seasons, § 679.24 Gear limitations, and § 679.51 Observer requirements for vessels and plants.

(1) *Applicability.* Any vessel operator who fishes for IFQ sablefish with longline pot gear in the GOA must comply with the requirements of this paragraph (l). The IFQ regulatory areas in the GOA include the Southeast Outside District of the GOA, the West Yakutat District of the GOA, the Central GOA regulatory area, and the Western GOA regulatory area.

(2) *General.* To use longline pot gear to fish for IFQ sablefish in the GOA, a vessel operator must:

(i) Request and be issued pot tags from NMFS as specified in paragraph (l)(3);

(ii) Use pot tags as specified in paragraph (l)(4);

(iii) Deploy and retrieve longline pot gear as specified in paragraph (l)(5);

(iv) Retain IFQ halibut caught in longline pot gear if sufficient halibut IFQ is held by persons on board the vessel as specified in paragraph (l)(6); and

(v) Comply with other requirements as specified in paragraph (l)(7).

(3) *Pot tags.* (i) *Request for pot tags.* (A) The owner of a vessel that uses longline pot gear to fish for IFQ sablefish in the GOA must use pot tags issued by NMFS. A vessel owner may only receive pot tags from NMFS for each vessel that uses longline pot gear to fish for IFQ sablefish in the GOA by submitting a complete IFQ Sablefish Longline Pot Gear Vessel Registration and Request for Pot Gear Tags form according to form instructions. The form is located on the NMFS Alaska Region Web site at *alaskafisheries.noaa.gov.*

(B) The vessel owner must specify the number of requested pot tags for each vessel for each IFQ regulatory area in the GOA (up to the maximum number of pots specified in paragraph (l)(5)(ii) of this section) on the IFQ Sablefish Longline Pot Gear Vessel Registration and Request for Pot Gear Tags form.

(ii) *Issuance of pot tags.* (A) Upon submission of a completed IFQ Sablefish Longline Pot Gear Vessel Registration and Request for Pot Gear Tags form, NMFS will assign each pot tag to the vessel specified on the form.

(B) Each pot tag will be a unique color that is specific to the IFQ regulatory area in the GOA in which it must be deployed and imprinted with a unique serial number.

(C) NMFS will send the pot tags to the vessel owner at the address provided on the IFQ Sablefish Longline Pot Gear Vessel Registration and Request for Pot Gear Tags form.

(iii) *Request for pot tag replacement.* (A) The vessel owner may submit a request to NMFS to replace pot tags that are lost, stolen or mutilated.

(B) The vessel owner to whom the lost, stolen or mutilated pot tag was issued must submit a complete IFQ Sablefish Request for Replacement of Longline Pot Gear Tags form according to form instructions. The form is located on the NMFS Alaska Region Web site at *alaskafisheries.noaa.gov.*

(C) A complete form must be signed by the vessel owner and is a sworn affidavit to NMFS indicating the reason for the request for a replacement pot tag or pot tags and the number of replacement pot tags requested by IFQ regulatory area.

(D) NMFS will review a request to replace a pot tag or tags and will issue the appropriate number of replacement pot tags. The total number of pot tags issued to a vessel owner for an IFQ regulatory area in the GOA cannot exceed the maximum number of pots authorized for use by a vessel in that IFQ regulatory area specified in paragraph (l)(5)(ii) of this section. The total number of pot tags issued to a vessel owner for an IFQ regulatory area in the GOA equals the sum of the number of pot tags issued for that IFQ regulatory area that have not been replaced plus the number of replacement pot tags issued for that IFQ regulatory area.

(iv) *Annual vessel registration and pot tag assignment.* (A) The owner of a vessel that uses longline pot gear to fish for IFQ sablefish in the GOA must annually register the vessel with NMFS and specify the pot tags that NMFS will assign to the vessel. Pot tags must be assigned to only one vessel each year.

(B) To register a vessel and assign pot tags, the vessel owner must annually submit a complete IFQ Sablefish Longline Pot Gear Vessel Registration and Request for Pot Gear Tags form to NMFS.

(*1*) The vessel owner must specify the vessel to be registered on the IFQ

Sablefish Longline Pot Gear Vessel Registration and Request for Pot Gear Tags form. The specified vessel must have a valid ADF&G vessel registration number.

(2) The vessel owner must specify on the IFQ Sablefish Longline Pot Gear Vessel Registration and Request for Pot Gear Tags form either that the vessel owner is requesting that NMFS assign pot tags to a vessel to which the pot tags were previously assigned or that the vessel owner is requesting new pot tags from NMFS.

(4) *Using pot tags.* (i) Each pot used to fish for IFQ sablefish in the GOA must be identified with a valid pot tag. A valid pot tag is:

(A) Issued by NMFS according to paragraph (l)(3) of this section;

(B) The color specific to the regulatory area in which it will be used; and

(C) Inscribed with a legible unique serial number.

(ii) A valid pot tag must be attached to each pot on board the vessel to which the pot tags are assigned before the vessel departs port to fish.

(iii) A valid pot tag must be attached to a pot bridge or cross member such that the entire pot tag is visible and not obstructed.

(5) *Restrictions on GOA longline pot gear deployment and retrieval*—(i) *General.*

(A) A vessel operator must mark longline pot gear used to fish IFQ sablefish in the GOA as specified in § 679.24(a).

(B) A vessel operator must deploy and retrieve longline pot gear to fish IFQ sablefish in the GOA only during the sablefish fishing period specified in § 679.23(g)(1).

(ii) *Pot limits.* A vessel operator is limited to deploying a maximum number of pots to fish IFQ sablefish in each IFQ regulatory area in the GOA.

(A) In the Southeast Outside District of the GOA, a vessel operator is limited to deploying a maximum of 120 pots.

(B) In the West Yakutat District of the GOA, a vessel operator is limited to deploying a maximum of 120 pots.

(C) In the Central GOA regulatory area, a vessel operator is limited to deploying a maximum of 300 pots.

(D) In the Western GOA regulatory area, a vessel operator is limited to deploying a maximum of 300 pots.

(iii) *Gear retrieval.* (A) In the Southeast Outside District of the GOA, a catcher vessel operator must retrieve and remove from the fishing grounds all longline pot gear that is assigned to the vessel and deployed to fish IFQ sablefish when the vessel makes an IFQ landing.

(B) In the Southeast Outside District of the GOA, a catcher/processor must redeploy or remove from the fishing grounds all longline pot gear that is assigned to the vessel and deployed to fish IFQ sablefish within five days of deploying the gear.

(C) In the West Yakutat District of the GOA and the Central GOA regulatory area, a vessel operator must redeploy or remove from the fishing grounds all longline pot gear that is assigned to the vessel and deployed to fish IFQ sablefish within five days of deploying the gear.

(D) In the Western GOA regulatory area, a vessel operator must redeploy or remove from the fishing grounds all longline pot gear that is assigned to the vessel and deployed to fish IFQ sablefish within seven days of deploying the gear.

(iv) *Longline pot gear used on multiple vessels.* Longline pot gear assigned to one vessel and deployed to fish IFQ sablefish in the GOA must be removed from the fishing grounds, returned to port, and must have only one set of the appropriate vessel-specific pot tags before being deployed by another vessel to fish IFQ sablefish in the GOA.

(6) *Retention of halibut.* (i) A vessel operator who fishes for IFQ sablefish using longline pot gear must retain IFQ halibut if:

(A) The IFQ halibut is caught in IFQ regulatory areas 2C, 3A, 3B, and that portion of Area 4A in the GOA west of Area 3B and east of 170°00' W. long.; and

(B) An IFQ permit holder on board the vessel has unused halibut IFQ for the IFQ regulatory area fished and IFQ vessel category.

(7) *Other requirements.* A vessel operator who fishes for IFQ sablefish using longline pot gear in the GOA must:

(i) Complete a longline and pot gear Daily Fishing Logbook (DFL) or Daily Cumulative Production Logbook (DCPL) as specified in § 679.5(c); and

(ii) Comply with Vessel Monitoring System (VMS) requirements specified in paragraph (k)(2) of this section.

■ 11. In § 679.51, revise paragraphs (a)(1)(i) introductory text and (a)(1)(i)(B) to read as follows:

§ 679.51 Observer requirements for vessels and plants.

* * * * *

(a) * * *

(1) * * *

(i) *Vessel classes in partial coverage category.* Unless otherwise specified in paragraph (a)(2) of this section, the following catcher vessels and catcher/processors are in the partial observer coverage category when fishing for halibut or when directed fishing for groundfish in a federally managed or parallel groundfish fishery, as defined at § 679.2:

* * * * *

(B) A catcher vessel when fishing for halibut while carrying a person named on a permit issued under § 679.4(d)(1)(i), (d)(2)(i), or (e)(2), or for IFQ sablefish, as defined at § 679.2, while carrying a person named on a permit issued under § 679.4(d)(1)(i) or (d)(2)(i); or

* * * * *

■ 12. In Table 15 to part 679, revise entries for "Pot", "Authorized gear for sablefish harvested from any GOA reporting area", and "Authorized gear for halibut harvested from any IFQ regulatory area", and add entry for "Authorized gear for halibut harvested from any IFQ regulatory area in the BSAI" to read as follows:

TABLE 15 TO PART 679—GEAR CODES, DESCRIPTIONS, AND USE GEAR CODES, DESCRIPTIONS, AND USE

[X indicates where this code is used]

Name of gear	Use alphabetic code to complete the following:			Use numeric code to complete the following:		
	Alpha gear code	NMFS logbooks	Electronic check-in/check-out	Numeric gear code	IERS eLandings	ADF&G COAR
NMFS AND ADF&G GEAR CODES						
* * *	*		*	*		*
Pot (includes longline pot and pot-and-line)	POT	X	X	91	X	X

TABLE 15 TO PART 679—GEAR CODES, DESCRIPTIONS, AND USE GEAR CODES, DESCRIPTIONS, AND USE—Continued

[X indicates where this code is used]

Name of gear	Use alphabetic code to complete the following:			Use numeric code to complete the following:		
	Alpha gear code	NMFS logbooks	Electronic check-in/ check-out	Numeric gear code	IERS eLandings	ADF&G COAR
* * *	*	*	*	*	*	
FIXED GEAR						
Authorized gear for sablefish harvested from any GOA reporting area.	All longline gear (hook-and-line, jig, troll, and handline) and longline pot gear. For purposes of determining initial IFQ allocation, all pot gear used to make a legal landing.					
* * *	*	*	*	*	*	
Authorized gear for halibut harvested from any IFQ regulatory area in the GOA.	All fishing gear composed of lines with hooks attached, including one or more stationary, buoyed, and anchored lines with hooks attached and longline pot gear.					
Authorized gear for halibut harvested from any IFQ regulatory area in the BSAI.	All fishing gear composed of lines with hooks attached, including one or more stationary, buoyed, and anchored lines with hooks attached.					

[FR Doc. 2016–19795 Filed 8–18–16; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 81, No. 161
Friday, August 19, 2016

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

Submission for OMB Review; Comment Request

August 16, 2016.

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, Washington, DC; New Executive Office Building, 725 17th Street NW., Washington, DC 20503. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602.

Comments regarding these information collections are best assured of having their full effect if received by September 19, 2016. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Marketing Service

Title: Export Fruit Regulations—Export Apple Act (7 CFR part 33) and Export Grape and Plum Act (7 CFR part 35).

OMB Control Number: 0581–0143.

Summary of Collection: Fresh apples and grapes grown in the United States and shipped to any foreign destination must meet minimum quality and other requirements established by regulations issued under the Export Apple Act (7 CFR part 33) and the Export Grape and Plum Act (7 CFR part 35). These Acts were designed to promote the foreign trade of the United States in apples and grapes; to protect the reputation of these American-grown commodities; and to prevent deception or misrepresentation of the quality of such products moving in foreign commerce. Plum provisions in the marketing order were terminated in 1991. The regulation issued under the Export Grape and Plum Act (7 CFR part 35) cover fresh grapes grown in the United States and shipped to foreign destinations, except Canada and Mexico.

Need and Use of the Information: Each shipment must be inspected by Federal or Federal-State Inspection Program (FSIP) to determine if a lot of apples or grapes intended for export meet the applicable quality requirements. FSIP inspectors use the Export Form Certificate to certify inspection of the shipment for exports bound for non-Canadian destinations. The USDA's Agricultural Marketing Services uses the certificates for compliance purposes. The inspector records specific information on the certificate relating to the quality of the fruit, the quantity shipped, the date shipped, vessel identification, and the intended foreign destination of the fruit. Export carriers are required to keep on file for three years copies of inspection certificates for apples and grapes.

Description of Respondents: Business or other for-profit; Farms.

Number of Respondents: 94.

Frequency of Responses: Recordkeeping; Reporting; On occasion, Monthly, Annually.

Total Burden Hours: 4,381.

Agricultural Marketing Service

Title: National Sheep Industry Improvement Center.

OMB Control Number: 0581–0263.

Summary of Collection: The National Sheep Industry Improvement Center (NSIIC) was initially authorized under the Consolidated Farm and Rural Development Act (Act) (Pub. L. 104–127). The initial legislation included a provision that privatized the NSIIC 10 years after its ratification. Subsequently, the NSIIC was privatized on September 30, 1996. In 2008, the NSIIC was re-established under Title XI of the Food, Conservation, and Energy Act of 2008 also known as the 2008 Farm Bill. Section 11009 of the 2008 Farm Bill repealed the requirement in section 375(e)(6) of the Act to privatize the NSIIC.

The management of the NSIIC is vested in a Board of Directors (Board) that is appointed by the Secretary of Agriculture. The primary objective of the NSIIC is to assist U.S. sheep and goat industries by strengthening and enhancing the production and marketing of sheep, goats, and their products in the United States.

Need and Use of the Information: Information is collected using the forms "Nominations for Appointments;" "Background Information, AD–755;" and "Nominee's Agreement to Serve." AMS accepts nominations for membership on the Board from national organizations that (1) consist primarily of active sheep or goat producers in the United States and (2) have the primary interest of sheep or goat production in the United States. The information collection requirements in the request are essential to carry out the intent of the enabling legislation.

Description of Respondents: National Organizations consisting primarily of active sheep or goat producers in the U.S.

Number of Respondents: 10.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 6.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2016–19826 Filed 8–18–16; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Missoula Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Missoula Resource Advisory Committee (RAC) will meet in Missoula, Montana. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. RAC information can be found at the following Web site: *http://www.fs.usda.gov/main/lolo/workingtogether/advisorycommittees.*

DATES: The meeting will be held on Tuesday, September 6th, 2016, at 6:00 p.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: The meeting will be held at the Rocky Mountain Elk Foundation, 5705 Grant Creek Road Missoula, Montana.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.** All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Ninemile Ranger District. Please call ahead at 406–626–5201 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Sari Lehl, RAC Coordinator by phone at 406–626–5201, or via email at *slehl@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to discuss, recommend, and vote on RAC projects.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by September 1, 2016, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time to make oral comments must be sent to Sari Lehl, RAC Coordinator, Ninemile Ranger District, 20325 Remount Road, Huson, Montana 59846; or by email to *slehl@fs.fed.us,* or via facsimile to 406–626–5201.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.**

All reasonable accommodation requests are managed on a case by case basis.

Dated: August 11, 2016.

Erin M. Phelps,

District Ranger.

[FR Doc. 2016–19822 Filed 8–18–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Scientific Advisory Committee

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Bureau of the Census (Census Bureau) is giving notice of a meeting of the Census Scientific Advisory Committee (C–SAC). The Committee will address policy, research, and technical issues relating to a full range of Census Bureau programs and activities, including communications, decennial, demographic, economic, field operations, geographic, information technology, and statistics. The C–SAC will meet in a plenary session on September 15–16, 2016. Last minute changes to the schedule are possible, which could prevent giving advance public notice of schedule adjustments. Please visit the Census Advisory Committees Web site for the most current meeting agenda at: *http://www.census.gov/cac.* The meeting will be available via webcast at: *http://www.census.gov/newsroom/census-live.html* or at *http://www.ustream.tv/embed/6504322?wmode=direct.*

DATES: September 15–16, 2016. On September 15, the meeting will begin at approximately 8:30 a.m. and end at approximately 5:00 p.m. On September 16, the meeting will begin at approximately 8:30 a.m. and end at approximately 4:00 p.m.

ADDRESSES: The meeting will be held at the U.S. Census Bureau Auditorium, 4600 Silver Hill Road, Suitland, Maryland 20746.

FOR FURTHER INFORMATION CONTACT: Tara Dunlop Jackson, Branch Chief for Advisory Committees, Customer Liaison and Marketing Services Office, *tara.t.dunlop@census.gov,* Department of Commerce, U.S. Census Bureau, Room 8H177, 4600 Silver Hill Road, Washington, DC 20233, telephone 301–763–5222. For TTY callers, please use the Federal Relay Service 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The members of the C–SAC are appointed by the Director, U.S. Census Bureau. The Committee provides scientific and technical expertise, as appropriate, to address Census Bureau program needs and objectives. The Committee has been established in accordance with the Federal Advisory Committee Act (Title 5, United States Code, Appendix 2, Section 10).

All meetings are open to the public. A brief period will be set aside at the meeting for public comment on September 16. However, individuals with extensive questions or statements must submit them in writing to: *census.scientific.advisory.committee@census.gov* (subject line ''September 2016 C–SAC Meeting Public Comment''), or by letter submission to Kimberly L. Leonard, Committee Liaison Officer, Department of Commerce, U.S. Census Bureau, Room 8H179, 4600 Silver Hill Road, Washington, DC 20233.

If you plan to attend the meeting, please register by Monday, September 12, 2016. You may access the online registration from the following link: *http://www.regonline.com/csac_meeting_sep2016.* Seating is available to the public on a first-come, first-served basis.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should also be directed to the Committee Liaison Officer as soon

as known, and preferably two weeks prior to the meeting.

Due to increased security and for access to the meeting, please call 301–763–9906 upon arrival at the Census Bureau on the day of the meeting. A photo ID must be presented in order to receive your visitor's badge. Visitors are not allowed beyond the first floor.

Topics of discussion will include the following items:

- 2020 Census Program Updates
- Economic Programs Updates
  - 2017 Economic Census
  - Census of Governments
  - Improving Economic Statistics
- Disclosure Avoidance Overview
- Evidence Based Policy Making Commission Overview
- CSAC Working Groups Progress Reports

Dated: August 11, 2016.

John H. Thompson,

Director, Bureau of the Census.

[FR Doc. 2016–19853 Filed 8–18–16; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–24–2016]

Foreign-Trade Zone (FTZ) 22—Chicago, Illinois, Authorization of Production Activity, Omron Automotive Electronics, Inc. (Automotive Electronic Components), St. Charles, Illinois

On April 14, 2016, Omron Automotive Electronics, Inc. submitted a notification of proposed production activity to the Foreign-Trade Zones (FTZ) Board for its facility within FTZ 22—Site 41, in St. Charles, Illinois.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (81 FR 26200, May 2, 2016). The FTZ Board has determined that no further review of the activity is warranted at this time. The production activity described in the notification is authorized, subject to the FTZ Act and the Board's regulations, including Section 400.14.

Dated: August 12, 2016.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2016–19862 Filed 8–18–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Walter Anders, 10701 Huntersville Commons Drive, Suite C, Huntersville, NC 28078; Terand, Inc., 10701 Huntersville Commons Drive, Suite C, Huntersville, NC 28078, Respondents; Order Relating to Walter Anders and Terand, Inc.

The Bureau of Industry and Security, U.S. Department of Commerce ("BIS"), has notified Walter Anders ("Anders") and Terand, Inc. ("Terand") (collectively, referred to as "Terand/Anders" or the "Respondents") of its intention to initiate an administrative proceeding against Respondents pursuant to Section 766.3 of the Export Administration Regulations (the "Regulations"),[1] and Section 13(c) of the Export Administration Act of 1979, as amended (the "Act"),[2] through the issuance of a Proposed Charging Letter to Respondents that alleges that Respondents committed eight violations of the Regulations. Specifically, the charges are:

Charges 1–8 15 CFR 764.2(b)—Causing, Aiding, and/or Abetting Unlicensed Exports of Controlled Carbon Fiber

On at least eight occasions between on or about April 5, 2012, and on or about December 1, 2012, Terand/Anders caused, aided, and/or abetted the export of approximately 6,557 kg of U.S.-origin T300 carbon fiber to Singapore without the required BIS licenses. The T300 carbon fiber is subject to the Regulations, classified under Export Control Classification Number ("ECCN") 1C210.a, and controlled for nuclear proliferation reasons, and was valued at approximately $288,736. Each of the eight exports required a license pursuant to Section 742.3 of the Regulations.

Terand/Anders' involvement in the transactions began soon after Performance Engineered Nonwovens, of Middletown, NY, was informed by BIS that its license to export T300 carbon fiber to Singapore was revoked based on concerns regarding the recipients of the items. Performance Engineered Nonwovens thereafter sought to camouflage its involvement in unlicensed exports of the carbon fiber to Singapore. Within weeks of the license revocation, Terand/Anders had agreed—following discussions between Anders, Terand's president and sole employee, and Performance Engineered Nonwovens' president, Peter Gromacki—that Terand would falsely act as the U.S. exporter of record for exports of the items to Singapore in return for a $1,400 commission for each successful export on Performance Engineered Nonwovens' behalf.

Aware of the license requirement, Terand/Anders took various actions to cause, aid, and abet unlicensed exports of the items to Singapore, while seeking to minimize the risk that the U.S. Government would learn of Performance Engineered Nonwovens' involvement in the transactions. Terand/Anders created and issued commercial invoices on Terand letterhead that falsely named Terand as the exporter and falsely stated that: "This commodity technology exported from the United States is in accordance with the Export Administration Regulations."

Terand/Anders also acted as the intermediary between Performance Engineered Nonwovens/Gromacki and the freight forwarder, providing instructions to the forwarder, signing any required shipping documents, and receiving status reports on the progress of exports to Singapore. In addition, Terand's name appeared as the U.S. Principal Party in Interest on each of the Shippers Export Declarations filed with the U.S. Government in connection with the eight exports at issue, including after the customer in Singapore refused to place additional purchase orders through Terand after the first five of the exports. On or about September 28, 2012, Performance Engineered Nonwovens/Gromacki assured Terand/Anders that their crucial role in facilitating the unlawful exports, and their compensation for doing so, could nonetheless continue:

Starting with today's shipment, I accepted [the purchase order] under PEN [Performance Engineered Nonwovens] name but Terand can continue to serve as exporter of record as you have been doing. . . . You continue to play a crucial role. I cannot export without your help and hence the commission checks will continue to flow in your direction. I shall forward you a copy of each PO.

Terand/Anders did, in fact, continue to falsely act as the U.S. exporter of record for the remaining three exports at issue.

In so causing, aiding, and/or abetting eight exports of the items without the required BIS export licenses, Terand and Anders committed eight violations of Section 764.2(b) of the Regulations, for which they are jointly and severally liable.

WHEREAS, BIS and Respondents have entered into a Settlement Agreement pursuant to Section 766.18(a) of the Regulations, whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein;

WHEREAS, I have approved of the terms of such Settlement Agreement;

IT IS THEREFORE ORDERED:

[1] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2016). The violations alleged occurred in 2012. The Regulations governing the violations at issue are found in the 2012 version of the Code of Federal Regulations (15 CFR parts 730–774). The 2016 Regulations set forth the procedures that apply to this matter.

[2] 50 U.S.C. 4601–4623 (available at *http://uscode.house.gov/*). Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 4, 2016 (81 FR 52587 (Aug. 8, 2016)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.* (2012)).

FIRST, for a period of eight (8) years from the date of this Order, Walter Anders, with last known address 10701 Huntersville Commons Drive, Suite C, Huntersville, NC 28078, and when acting for or on his behalf, his successors, assigns, employees, representatives, or agents, and Terand, Inc., with a last known address of 10701 Huntersville Commons Drive, Suite C, Huntersville, NC 28078, and when acting for or on its behalf, its successors, assigns, directors, officers, employees, representatives, or agents (each a "Denied Person" and collectively the "Denied Persons"), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

SECOND, no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of a Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by a Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby a Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from a Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from a Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by a Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by a Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

THIRD, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to a Denied Person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of the Order.

FOURTH, Respondents shall not take any action or make or permit to be made any public statement, directly or indirectly, denying the allegations in the Proposed Charging Letter or the Order. The foregoing does not affect Respondents' testimonial obligations in any proceeding, nor does it affect their right to take legal or factual positions in civil litigation or other civil proceedings in which the U.S. Department of Commerce is not a party.

FIFTH, the Proposed Charging Letter, the Settlement Agreement, and this Order shall be made available to the public.

SIXTH, this Order shall be served on Respondents, and shall be published in the **Federal Register**.

This Order, which constitutes the final agency action in this matter, is effective immediately.[3]

Issued this 12th day of August, 2016.

Richard R. Majauskas,

Deputy Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 2016–19819 Filed 8–18–16; 8:45 am]

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[3] Review and consideration of this matter has been delegated to the Deputy Assistant Secretary of Commerce for Export Enforcement.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–869]

Certain New Pneumatic Off-the-Road Tires From India: Negative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce ("Department") preliminarily determines that certain new pneumatic off-the-road tires ("OTR tires") from India are not being, or are not likely to be, sold in the United States at less than fair value ("LTFV"). The period of investigation ("POI") is January 1, 2015, through December 31, 2015. The estimated weighted-average dumping margins of sales at LTFV are shown in the "Preliminary Determination" section of this notice. Interested parties are invited to comment on this preliminary determination.

DATES: Effective August 19, 2016.

FOR FURTHER INFORMATION CONTACT: Lilit Astvatsatrian or Trisha Tran, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6412, or (202) 482–4852, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published the notice of initiation of this investigation on February 10, 2016.[1] For a complete description of the events that followed the initiation of this investigation, *see* the memorandum that is dated concurrently with this determination and hereby adopted by this notice.[2] A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and

[1] *See Certain New Pneumatic Off-the-Road Tires from India and the People's Republic of China: Initiation of Less-Than-Fair-Value Investigations,* 81 FR 7073 (February 10, 2016) ("*Initiation Notice*").

[2] *See* Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Certain New Pneumatic Off-the-Road Tires from India," dated concurrently with this notice ("Preliminary Decision Memorandum").

Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System ("ACCESS"). ACCESS is available to registered users at *https://access.trade.gov*, and to all parties in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be found at *http://enforcement.trade.gov/frn/*. The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content.

On June 6, 2016, the Department published a notice of postponement for the preliminary determination in this investigation in accordance with section 733(c)(1)(B) of the Tariff Act of 1930, as amended ("the Act"), and 19 CFR 351.205(f)(1).[3] As a result of the 50-day postponement, the revised deadline for the preliminary determination in this investigation is now August 11, 2016.[4]

Scope of the Investigation

The product covered by this investigation is OTR tires. For a full description of the scope of this investigation, *see* the "Scope of the Investigation," in Appendix I.

Scope Comments

In accordance with the preamble to the Department's regulations,[5] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, "scope").[6] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice*. For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Decision Memorandum.

Methodology

The Department is conducting this investigation in accordance with section 731 of the Act. Export prices or constructed export prices have been calculated in accordance with section 772(a) of the Act. Normal value ("NV") is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our preliminary conclusions, *see* the Preliminary Decision Memorandum.

Preliminary Determination

For this preliminary determination, we have calculated a zero dumping margin for each individually investigated producer/exporter of the subject merchandise. Consistent with section 733(b)(3) of the Act, we are disregarding these rates and preliminarily determine that the individually reviewed mandatory respondents have not made sales of subject merchandise at LTFV.

Exporter/Manufacturer	Weighted-average dumping margin (percent)
ATC Tires Private Ltd	0.00
Balkrishna Industries Limited	0.00

Consistent with section 733(d)(1)(A) of the Act, the Department has not calculated a weighted-average dumping margin for all other producers or exporters because it has not made an affirmative preliminary determination of sales at LTFV.

Suspension of Liquidation

Because the Department has not made an affirmative preliminary determination of sales at LTFV, we are not directing U.S. Customs and Border Protection to suspend liquidation of any entries of OTR tires from India.

Disclosure and Public Comment

We will disclose the calculations performed to interested parties in this proceeding within five days of the date of announcement, in accordance with 19 CFR 351.224(b). Interested parties are invited to comment on this preliminary determination. Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the final verification report is issued in this proceeding, and rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[7] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce. All documents must be filed electronically using ACCESS. An electronically-filed request must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time, within 30 days after the date of publication of this notice.[8] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Verification

As provided in section 782(i) of the Act, we intend to verify information relied upon in making our final determination.

Postponement of Final Determination

Section 735(a)(2)(B) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of a negative preliminary determination, a request for such postponement is made by Petitioners. On July 28, 2016, Petitioner requested that the Department postpone the final determination.[9]

In accordance with section 735(a)(2)(B) of the Act, because our preliminary determination is negative, we are postponing the final determination. Accordingly, we will make our final determination by no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.

International Trade Commission ("ITC") Notification

In accordance with section 733(f) of the Act, we are notifying the ITC of our negative preliminary determination of sales at LTFV. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination, or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

[3] *See Certain New Pneumatic Off-the-Road Tires from India: Postponement of Preliminary Determination of Antidumping Duty Investigation*, 81 FR 36263 (June 6, 2016).

[4] *Id.*, 81 FR at 36264.

[5] *See Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997).

[6] *See Initiation Notice*, 81 FR at 7074.

[7] *See* 19 CFR 351.309.

[8] *See* 19 CFR 351.310(c).

[9] *See* Letter to the Secretary of Commerce from Petitioners "Petitioners' Comment on the Extension of the Final Determination" (July 28, 2016).

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: August 11, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I—Scope of the Investigation

The scope of the investigation is certain new pneumatic off-the-road tires (OTR tires). OTR tires are tires with an off road tire size designation. The tires included in the scope may be either tube-type [10] or tubeless, radial, or non-radial, regardless of whether for original equipment manufacturers or the replacement market.

Subject tires may have the following prefix or suffix designation, which appears on the sidewall of the tire:

Prefix designations:

DH—Identifies a tire intended for agricultural and logging service which must be mounted on a DH drop center rim.

VA—Identifies a tire intended for agricultural and logging service which must be mounted on a VA multipiece rim.

IF—Identifies an agricultural tire to operate at 20 percent higher rated load than standard metric tires at the same inflation pressure.

VF—Identifies an agricultural tire to operate at 40 percent higher rated load than standard metric tires at the same inflation pressure.

Suffix designations:

ML—Mining and logging tires used in intermittent highway service.

DT—Tires primarily designed for sand and paver service.

NHS—Not for Highway Service.

TG—Tractor Grader, off-the-road tire for use on rims having bead seats with nominal +0.188" diameter (not for highway service).

K—Compactor tire for use on 5° drop center or semi-drop center rims having bead seats with nominal minus 0.032 diameter.

IND—Drive wheel tractor tire used in industrial service.

SL—Service limited to agricultural usage.

FI—Implement tire for agricultural towed highway service.

CFO—Cyclic Field Operation.

SS—Differentiates tires for off-highway vehicles such as mini and skid-steer loaders from other tires which use similar size designations such as 7.00–15TR and 7.00–15NHS, but may use different rim bead seat configurations.

All tires marked with any of the prefixes or suffixes listed above in their sidewall markings are covered by the scope regardless of their intended use.

In addition, all tires that lack any of the prefixes or suffixes listed above in their sidewall markings are included in the scope, regardless of their intended use, as long as the tire is of a size that is among the numerical size designations listed in the following sections of the Tire and Rim Association Year Book, as updated annually, unless the tire falls within one of the specific exclusions set forth below. The sections of the Tire and Rim Association Year Book listing numerical size designations of covered OTR tires include:

The table of mining and logging tires included in the section on Truck-Bus tires;

The entire section on Off-the-Road tires;

The entire section on Agricultural tires; and

The following tables in the section on Industrial/ATV/Special Trailer tires:

- Industrial, Mining, Counterbalanced Lift Truck (Smooth Floors Only);
- Industrial and Mining (Other than Smooth Floors);
- Construction Equipment;
- Off-the-Road and Counterbalanced Lift Truck (Smooth Floors Only);
- Aerial Lift and Mobile Crane; and
- Utility Vehicle and Lawn and Garden Tractor.

OTR tires, whether or not mounted on wheels or rims, are included in the scope. However, if a subject tire is imported mounted on a wheel or rim, only the tire is covered by the scope. Subject merchandise includes OTR tires produced in the subject countries whether mounted on wheels or rims in a subject country or in a third country. OTR tires are covered whether or not they are accompanied by other parts, *e.g.*, a wheel, rim, axle parts, bolts, nuts, etc. OTR tires that enter attached to a vehicle are not covered by the scope.

In addition, specifically excluded from the scope are passenger vehicle and light truck tires, racing tires, mobile home tires, motorcycle tires, all-terrain vehicle tires, bicycle tires, on-road or on-highway trailer tires, and truck and bus tires. Such tires generally have in common that the symbol "DOT" must appear on the sidewall, certifying that the tire conforms to applicable motor vehicle safety standards. Such excluded tires may also have the following prefixes and suffixes included as part of the size designation on their sidewalls:

Prefix letter designations:

AT—Identifies a tire intended for service on All-Terrain Vehicles;

P—Identifies a tire intended primarily for service on passenger cars;

LT—Identifies a tire intended primarily for service on light trucks;

T—Identifies a tire intended for one-position "temporary use" as a spare only; and

ST—Identifies a special tire for trailers in highway service.

Suffix letter designations:

TR—Identifies a tire for service on trucks, buses, and other vehicles with rims having specified rim diameter of nominal plus 0.156" or plus 0.250";

MH—Identifies tires for Mobile Homes;

HC—Identifies a heavy duty tire designated for use on "HC" 15" tapered rims used on trucks, buses, and other vehicles. This suffix is intended to differentiate among tires for light trucks, and other vehicles or other services, which use a similar designation.

Example: 8R17.5 LT, 8R17.5 HC;

LT—Identifies light truck tires for service on trucks, buses, trailers, and multipurpose passenger vehicles used in nominal highway service;

ST—Special tires for trailers in highway service; and

M/C—Identifies tires and rims for motorcycles.

The following types of tires are also excluded from the scope: Pneumatic tires that are not new, including recycled or retreaded tires and used tires; non-pneumatic tires, including solid rubber tires; aircraft tires; and turf, lawn and garden, and golf tires. Also excluded from the scope are mining and construction tires that have a rim diameter equal to or exceeding 39 inches. Such tires may be distinguished from other tires of similar size by the number of plies that the construction and mining tires contain (minimum of 16) and the weight of such tires (minimum 1500 pounds).

The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4011.20.1025, 4011.20.1035, 4011.20.5030, 4011.20.5050, 4011.61.0000, 4011.62.0000, 4011.63.0000, 4011.69.0090, 4011.92.0000, 4011.93.4000, 4011.93.8000, 4011.94.4000, 4011.94.8000, 8431.49.9038, 8431.49.9090, 8709.90.0020, and 8716.90.1020. Tires meeting the scope description may also enter under the following HTSUS subheadings: 4011.99.4590, 4011.99.8590, 8424.90.9080, 8431.20.0000, 8431.39.0010, 8431.49.1090, 8431.49.9030, 8432.90.0005, 8432.90.0015, 8432.90.0030, 8432.90.0080, 8433.90.5010, 8503.00.9560, 8708.70.0500, 8708.70.2500, 8708.70.4530, 8716.90.5035 and 8716.90.5055. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the subject merchandise is dispositive.

Appendix II—List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Postponement of Final Determination
V. Scope of the Investigation
VI. Scope Comments
VII. Discussion of Methodology
  A. Determination of the Comparison Method
  B. Results of the Differential Pricing Analysis
VIII. Date of Sale
IX. Product Comparisons
X. Export Price and Constructed Export Price
XI. Normal Value
  A. Home Market Viability
  B. Affiliated Party Transactions and Arm's-Length Test
  C. Level of Trade
  D. Cost of Production Analysis
  1. Calculation of COP
  2. Test of Home Market Sale Prices
  3. Results of the COP Test
  E. Calculation of NV Based on Comparison-Market Prices
XII. Currency Conversion
XIII. U.S. ITC Notification
XIV. Disclosure and Public Comment

[10] While tube-type tires are subject to the scope of these proceedings, tubes and flaps are not subject merchandise and therefore are not covered by the scope of these proceedings, regardless of the manner in which they are sold (*e.g.*, sold with or separately from subject merchandise).

XV. Verification
XVI. Conclusion

[FR Doc. 2016–19867 Filed 8–18–16; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–929]

Small Diameter Graphite Electrodes From the People's Republic of China: Rescission of Antidumping Duty Administrative Review in Part; 2015–2016

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is rescinding its administrative review in part on small diameter graphite electrodes from the People's Republic of China (PRC) for the period of review (POR) February 1, 2015 through January 31, 2016.

DATES: Effective August 19, 2016.

FOR FURTHER INFORMATION CONTACT: Dmitry Vladimirov or Michael Romani AD/CVD Operations Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0665 and (202) 482–0198, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 3, 2016, we published a notice of opportunity to request an administrative review of the antidumping duty order on small diameter graphite electrodes from the PRC for the POR February 1, 2015 through January 31, 2016.[1] On April 7, 2016, in response to a timely request from the petitioners [2] and in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.221(c)(1)(i), we initiated an administrative review of the antidumping duty order on small diameter graphite electrodes from the PRC with respect to 196 companies.[3] On July 6, 2016, the petitioners withdrew their request for an administrative review for 193 out of 196 companies.[4] *See* Appendix for a full list of these companies. No other party requested a review.

Rescission of Administrative Review in Part

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, "in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review." Because the petitioners timely withdrew their review request, and because no other party requested a review of the companies for which the petitioners requested a review, we are rescinding the administrative review, in part, with respect to 193 companies for which the petitioners originally sought a review.

Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. For the companies for which the review is rescinded, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions to CBP within 15 days after publication of this notice.

Notifications to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement may result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO, in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(d)(4).

Dated: August 15, 2016.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

Appendix

The 193 companies for which the petitioners have withdrawn their request for a review are as follows:

1. 5-Continent Imp. & Exp. Co., Ltd.
2. Acclcarbon Co., Ltd.
3. Allied Carbon (China) Co., Limited
4. AMGL
5. Anssen Metallurgy Group Co., Ltd.
6. Apex Maritime (Dalian) Co., Ltd.
7. Asahi Fine Carbon (Dalian) Co., Ltd.
8. Assi Steel Co. Ltd.
9. Beijing International Trade Co., Ltd.
10. Beijing Kang Jie Kong Cargo Agent Expeditors (Tianjin Branch)
11. Beijing Shougang Huaxia International Trade Co. Ltd.
12. Beijing Xinchengze Inc.
13. Beijing Xincheng Sci-Tech. Development Inc.
14. Brilliant Charter Limited
15. Carbon International
16. Chang Cheng Chang Electrode Co., Ltd.
17. Chengde Longhe Carbon Factory
18. Chengdelh Carbonaceous Elements Factory
19. Chengdu Jia Tang Corp.
20. China Carbon Graphite Group Inc.
21. China Carbon Industry
22. China Industrial Mineral & Metals Group
23. China Shaanxi Richbond Imp. & Exp. Industrial Corp. Ltd.
24. China Xingyong Carbon Co., Ltd.
25. CIMM Group Co., Ltd.
26. Dalian Carbon & Graphite Corporation
27. Dalian Hongrui Carbon Co., Ltd.
28. Dalian Honest International Trade Co., Ltd.
29. Dalian Horton International Trading Co., Ltd.
30. Dalian LST Metallurgy Co., Ltd.
31. Dalian Oracle Carbon Co., Ltd.
32. Dalian Shuangji Co., Ltd.
33. Dalian Thrive Metallurgy Imp. & Exp. Co., Ltd.
34. Dandong Xinxin Carbon Co. Ltd.
35. Datong Carbon;
36. Datong Carbon Plant
37. Datong Xincheng Carbon Co., Ltd.
38. Datong Xincheng New Material Co.
39. Dechang Shida Carbon Co., Ltd.
40. De Well Container Shipping Corp.
41. Dewell Group
42. Dignity Success Investment Trading Co., Ltd.

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 81 FR 5712 (February 3, 2016).

[2] SGL Carbon LLC and Superior Graphite Co (collectively, the petitioners). *See* letter from the petitioners to the Department, "7th Administrative Review of Small Diameter Graphite Electrodes from the People's Republic of China—Petitioners' Withdrawal of Certain Requests for Administrative Review" (July 6, 2016) (Withdrawal Request).

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 81 FR 20324 (April 7, 2016).

[4] *See* the petitioners' Withdrawal Request at Attachment 1. No withdrawal was requested for the Fangda Group, Fushun Jinly Petrochemical Carbon Co., Ltd., a.k.a. Fushun Jinli Petrochemical Carbon Co., Ltd., and Jilin Carbon Import and Export Company.

43. Double Dragon Metals and Mineral Tools Co., Ltd.
44. Fangda Lanzhou Carbon Joint Stock Company Co. Ltd.
45. Foset Co., Ltd.
46. Fushun Carbon Plant
47. Fushun Oriental Carbon Co., Ltd.
48. GES (China) Co., Ltd.
49. Gold Success Group Ltd.
50. Grameter Shipping Co., Ltd. (Qingdao Branch)
51. Guangdong Highsun Yongye (Group) Co., Ltd.
52. Guanghan Shida Carbon Co., Ltd.
53. Haimen Shuguang Carbon Industry Co., Ltd.
54. Handan Hanbo Material Co., Ltd.
55. Hanhong Precision Machinery Co., Ltd.
56. Hebei Long Great Wall Electrode Co., Ltd.
57. Heico Universal (Shanghai) Distribution Co., Ltd.
58. Heilongjiang Xinyuan Carbon Co. Ltd.
59. Heilongjiang Xinyuan Carbon Products Co., Ltd.
60. Heilongjiang Xinyuan Metacarbon Company Ltd.
61. Henan Sanli Carbon Products Co., Ltd.
62. Henan Sihai Import and Export Co., Ltd.
63. Hopes (Beijing) International Co., Ltd.
64. Huanan Carbon Factory
65. Hunan Mec Machinery and Electronics Imp. & Exp. Corp.
66. Hunan Yinguang Carbon Factory Co., Ltd.
67. Inner Mongolia QingShan Special Graphite and Carbon Co., Ltd.
68. Inner Mongolia Xinghe County Hongyuan Electrical Carbon Factory
69. Jiangsu Yafei Carbon Co., Ltd.
70. Jiaozuo Zhongzhou Carbon Products Co., Ltd.
71. Jichun International Trade Co., Ltd. of Jilin Province
72. Jiexiu Juyuan Carbon Co., Ltd.
73. Jiexiu Ju-Yuan & Coaly Co., Ltd.
74. Jilin Carbon Graphite Material Co., Ltd.
75. Jilin Songjiang Carbon Co Ltd.
76. Jinneng Group
77. Jinneng Group Co., Ltd.
78. Jinyu Thermo-Electric Material Co., Ltd.
79. JL Group
80. Kaifeng Carbon Company Ltd.
81. KASY Logistics (Tianjin) Co., Ltd.
82. Kimwan New Carbon Technology and Development Co., Ltd.
83. Kingstone Industrial Group Ltd.
84. L & T Group Co., Ltd.
85. Laishui Long Great Wall Electrode Co. Ltd.
86. Lanzhou Carbon Co., Ltd.
87. Lanzhou Carbon Import & Export Corp.
88. Lanzhou Hailong New Material Co.
89. Lanzhou Hailong Technology
90. Lanzhou Ruixin Industrial Material Co., Ltd.
91. Lianxing Carbon Qinghai Co., Ltd.
92. Lianxing Carbon Science Institute
93. Lianxing Carbon (Shandong) Co., Ltd.
94. Lianyungang Jianglida Mineral Co., Ltd.
95. Lianyungang Jinli Carbon Co., Ltd.
96. Liaoning Fangda Group Industrial Co., Ltd.
97. Liaoyang Carbon Co. Ltd.
98. Linghai Hongfeng Carbon Products Co., Ltd.
99. Linyi County Lubei Carbon Co., Ltd.
100. Maoming Yongye (Group) Co., Ltd.
101. MBI Beijing International Trade Co., Ltd.
102. Nantong Dongjin New Energy Co., Ltd.
103. Nantong Falter New Energy Co., Ltd.
104. Nantong River-East Carbon Co., Ltd.
105. Nantong River-East Carbon Joint Stock Co., Ltd.
106. Nantong Yangtze Carbon Corp. Ltd.
107. Nantong Yanzi Carbon Co. Ltd.
108. Oracle Carbon Co., Ltd.
109. Orient (Dalian) Carbon Resources Developing Co., Ltd.
110. Orient Star Transport International, Ltd.
111. Peixian Longxiang Foreign Trade Co. Ltd.
112. Pingdingshan Coal Group
113. Pudong Trans USA, Inc. (Dalian Office)
114. Qingdao Grand Graphite Products Co., Ltd.
115. Qingdao Haosheng Metals Imp. & Exp. Co., Ltd.
116. Quingdao Haosheng Metals & Minerals Imp. & Exp. Co., Ltd.
117. Qingdao Liyikun Carbon Development Co., Ltd.
118. Qingdao Likun Graphite Co., Ltd.
119. Qingdao Ruizhen Carbon Co., Ltd.
120. Qingdao Yijia E.T.I. I/E Co., Ltd.
121. Qingdao Youyuan Metallurgy Material Limited Company (China)
122. Ray Group Ltd.
123. Rex International Forwarding Co., Ltd.
124. Rt Carbon Co., Ltd.
125. Ruitong Carbon Co., Ltd.
126. Sea Trade International, Inc.
127. Seamaster Global Forwarding (China)
128. Shandong Basan Carbon Plant
129. Shandong Zibo Continent Carbon Factory
130. Shanghai Carbon International Trade Co., Ltd.
131. Shanghai GC Co., Ltd.
132. Shanghai Jinneng International Trade Co., Ltd.
133. Shanghai P.W. International Ltd.
134. Shanghai Shen-Tech Graphite Material Co., Ltd.
135. Shanghai Topstate International Trading Co., Ltd.
136. Shanxi Cimm Donghai Advanced Carbon Co., Ltd.
137. Shanxi Datong Energy Development Co., Ltd.
138. Shanxi Foset Carbon Co. Ltd.
139. Shanxi Jiexiu Import and Export Co., Ltd.
140. Shanxi Jinneng Group Co., Ltd.
141. Shanxi Yunheng Graphite Electrode Co., Ltd.
142. Shenyang Jinli Metals & Minerals Imp. & Exp. Co., Ltd.
143. Shida Carbon Group
144. Shijaizhuang Carbon Co., Ltd.
145. Shijiazhuang Huanan Carbon Factory
146. Sichuan 5-Continent Imp & Exp Co., Ltd.
147. Sichuan Dechang Shida Carbon Co., Ltd.
148. Sichuan GMT International Inc.
149. Sichuan Guanghan Shida Carbon Co., Ltd
150. Sichuan Shida Carbon Co., Ltd.
151. Sichuan Shida Trading Co., Ltd.
152. Sinicway International Logistics Ltd.
153. Sinosteel Anhui Co., Ltd.
154. Sinosteel Corp.
155. Sinosteel Jilin Carbon Co., Ltd.
156. Sinosteel Jilin Carbon Imp. & Exp. Co., Ltd.
157. Sinosteel Jilin Carbon Plant
158. Sinosteel Sichuan Co., Ltd.
159. SK Carbon
160. SMMC Group Co., Ltd.
161. Sure Mega (Hong Kong) Ltd.
162. Tangshan Kimwan Special Carbon & Graphite Co., Ltd.
163. Tengchong Carbon Co., Ltd.
164. T.H.I. Global Holdings Corp.
165. T.H.I. Group (Shanghai) Ltd.
166. Tianjin (Teda) Iron & Steel Trade Co., Ltd.
167. Tianjin Kimwan Carbon Technology and Development Co., Ltd.
168. Tianjin Yue Yang Industrial & Trading Co., Ltd.
169. Tianzhen Jintian Graphite Electrodes Co., Ltd.
170. Tielong (Chengdu) Carbon Co., Ltd.
171. UK Carbon & Graphite
172. United Carbon Ltd.
173. United Trade Resources, Inc.
174. Weifang Lianxing Carbon Co., Ltd.
175. World Trade Metals & Minerals Co., Ltd.
176. XC Carbon Group
177. Xinghe County Muzi Carbon Co., Ltd., a.k.a. Xinghe County Muzi Carbon Plant
178. Xinghe Xingyong Carbon Co., Ltd.
179. Xinghe Xinyuan Carbon Products Co., Ltd.
180. Xinyuan Carbon Co., Ltd.
181. Xuanhua Hongli Refractory and Mineral Company
182. Xuchang Minmetals & Industry Co., Ltd.
183. Xuzhou Carbon Co., Ltd.
184. Xuzhou Electrode Factory
185. Xuzhou Jianglong Carbon Products Co., Ltd.
186. Yangzhou Qionghua Carbon Trading Ltd.
187. Yixing Huaxin Imp & Exp Co. Ltd.
188. Youth Industry Co., Ltd
189. Zhengzhou Jinyu Thermo-Electric Material Co., Ltd.
190. Zibo Continent Carbon Factory
191. Zibo DuoCheng Trading Co., Ltd.
192. Zibo Lianxing Carbon Co., Ltd.
193. Zibo Wuzhou Tanshun Carbon Co., Ltd.

[FR Doc. 2016–19859 Filed 8–18–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–886]

Ferrovanadium From the Republic of Korea: Postponement of Preliminary Determination of Antidumping Duty Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Effective August 19, 2016.

FOR FURTHER INFORMATION CONTACT: Andrew Martinez at (202) 482–3627 or Karine Gziryan at (202) 482–4081; AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On April 25, 2016, the Department of Commerce (Department) published a notice of initiation of an antidumping duty investigation on ferrovanadium from the Republic of Korea.[1] Section 733(b)(1)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.205(b)(1) state the Department will make a preliminary determination no later than 140 days after the date of the initiation. The current deadline for the preliminary determination of this investigation is no later than September 5, 2016.

Postponement of Preliminary Determination

Section 733(c)(1)(A) of the Act allows the Department to postpone the preliminary determination until no later than 190 days after the date on which the Department initiated the investigation if the petitioner makes a timely request for an extension of the period within which the determination must be made. On August 5, 2016, the Vanadium Producers and Reclaimers Association (VPRA) and VPRA members AMG Vanadium LLC (AMG V), Bear Metallurgical Company (Bear), Gulf Chemical & Metallurgical Corporation (Gulf), and Evraz Stratcor, Inc. (Stratcor) (collectively, Petitioners) made a timely request, pursuant to 19 CFR 351.205(e), for postponement of the preliminary determination, in order to provide the Department with sufficient time to develop the record in this proceeding. Because there are no compelling reasons to deny Petitioners' request, in accordance with section 733(c)(1)(A) of the Act, the Department is postponing the deadline for the preliminary determination by 50 days.

The new deadline for the preliminary determination is October 25, 2016. In accordance with section 735(a)(1) of the Act, the deadline for the final determination of this investigation will continue to be 75 days after the date of the preliminary determination, unless postponed at a later date.

This notice is issued and published pursuant to section 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: August 12, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2016–19857 Filed 8–18–16; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Ferrovanadium from the Republic of Korea: Initiation of Less-Than-Fair Value Investigation,* 81 FR 24059 (April 25, 2016).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–028]

Hydrofluorocarbon Blends From the People's Republic of China: Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the Department of Commerce (the Department) and the International Trade Commission (the ITC), the Department is issuing an antidumping duty order on hydrofluorocarbon blends from the People's Republic of China (PRC).

DATES: Effective August 19, 2016.

FOR FURTHER INFORMATION CONTACT: Elizabeth Eastwood or Dennis McClure, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3874 or (202) 482–5973.

SUPPLEMENTARY INFORMATION:

Background

In accordance with sections 735(d) and 777(i)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.210(c), on June 29, 2016, the Department published its affirmative final determination in the less-than-fair-value (LTFV) investigation of hydrofluorocarbon (HFC) blends and components thereof from the PRC.[1] On August 5, 2016, the ITC notified the Department of: Its affirmative determination that an industry in the United States is materially injured within the meaning of section 735(b)(1)(A)(i) of the Act, by reason of the LTFV imports of HFC blends from the PRC; its negative determination that an industry in the United States is not materially injured or threatened with material injury by reason of imports of HFC components from the PRC; and its determination that critical circumstances do not exist with respect to imports of HFC blends that are subject to the Department's affirmative critical circumstances finding.[2]

Scope of the Order

The products subject to this order are HFC blends. HFC blends covered by the scope are R–404A, a zeotropic mixture consisting of 52 percent 1,1,1 Trifluoroethane, 44 percent Pentafluoroethane, and 4 percent 1,1,1,2-Tetrafluoroethane; R–407A, a zeotropic mixture of 20 percent Difluoromethane, 40 percent Pentafluoroethane, and 40 percent 1,1,1,2-Tetrafluoroethane; R–407C, a zeotropic mixture of 23 percent Difluoromethane, 25 percent Pentafluoroethane, and 52 percent 1,1,1,2-Tetrafluoroethane; R–410A, a zeotropic mixture of 50 percent Difluoromethane and 50 percent Pentafluoroethane; and R–507A, an azeotropic mixture of 50 percent Pentafluoroethane and 50 percent 1,1,1-Trifluoroethane also known as R–507. The foregoing percentages are nominal percentages by weight. Actual percentages of single component refrigerants by weight may vary by plus or minus two percent points from the nominal percentage identified above.[3]

Any blend that includes an HFC component other than R–32, R–125, R–143a, or R–134a is excluded from the scope of this order.

Excluded from this order are blends of refrigerant chemicals that include products other than HFCs, such as blends including chlorofluorocarbons (CFCs), hydrochlorofluorocarbons (HCFCs), hydrocarbons (HCs), or hydrofluoroolefins (HFOs).

Also excluded from this order are patented HFC blends, including, but not limited to, ISCEON® blends, including MO99™ (R–438A), MO79 (R–422A), MO59 (R–417A), MO49Plus™ (R–437A) and MO29™ (R–4 22D), Genetron® Performax™ LT (R–407F), Choice® R–421A, and Choice® R–421B.

[1] *See Hydrofluorocarbon Blends and Components Thereof from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances;* 81 FR 42314 (June 29, 2016) (*Final Determination*).

[2] *See* Letter to Christian Marsh, Deputy Assistant Secretary of Commerce for Enforcement and Compliance, from Irving Williamson, Chairman of the U.S. International Trade Commission, regarding hydrofluorocarbon blends and components thereof from China (August 5, 2016) (ITC Letter). *See also Hydrofluorocarbon Blends and Components from China* (Investigation No. 731–TA–1279 (Final), USITC Publication 4629, August 2016).

[3] R–404A is sold under various trade names, including Forane® 404A, Genetron® 404A, Solkane® 404A, Klea® 404A, and Suva®404A. R–407A is sold under various trade names, including Forane® 407A, Solkane® 407A, Klea®407A, and Suva®407A. R–407C is sold under various trade names, including Forane® 407C, Genetron® 407C, Solkane® 407C, Klea® 407C and Suva® 407C. R–410A is sold under various trade names, including EcoFluor R410, Forane® 410A, Genetron® R410A and AZ–20, Solkane® 410A, Klea® 410A, Suva® 410A, and Puron®. R–507A is sold under various trade names, including Forane® 507, Solkane® 507, Klea®507, Genetron®AZ–50, and Suva®507. R–32 is sold under various trade names, including Solkane®32, Forane®32, and Klea®32. R–125 is sold under various trade names, including Solkane®125, Klea®125, Genetron®125, and Forane®125. R–143a is sold under various trade names, including Solkane®143a, Genetron®143a, and Forane®125.

HFC blends covered by the scope of this order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings 3824.78.0020 and 3824.78.0050. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.

Antidumping Duty Order

As stated above, on August 5, 2016, in accordance with section 735(d) of the Act, the ITC notified the Department of its final determination in this investigation. In its determination, the ITC found two domestic like products: (1) HFC blends, and (2) HFC components. The ITC notified the Department of: Its affirmative determination that an industry in the United States is materially injured within the meaning of section 735(b)(1)(A)(i) of the Act, by reason of the LTFV imports of HFC blends from the PRC; its negative determination that an industry in the United States is not materially injured or threatened with material injury by reason of imports of HFC components from the PRC; and its determination that critical circumstances do not exist with respect to imports of HFC blends that are subject to the Department's affirmative critical circumstances finding.[4] Therefore, in accordance with section 735(c)(2) of the Act, we are issuing this antidumping duty order with respect to HFC blends as identified in the "Scope of the Order" section above. Because the ITC determined that imports of HFC blends from the PRC are materially injuring a U.S. industry, unliquidated entries of such merchandise from the PRC, entered or withdrawn from warehouse for consumption, are subject to the assessment of antidumping duties.

Therefore, in accordance with section 736(a)(1) of the Act, the Department will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise, for all relevant entries of HFC blends from the PRC. Antidumping duties will be assessed on unliquidated entries of HFC blends from the PRC entered, or withdrawn from warehouse, for consumption on or after February 1, 2016, the date of publication of the preliminary determination,[5] but will not include entries occurring after the expiration of the provisional measures period and before publication of the ITC's final injury determination as further described below.

Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we will instruct CBP to continue to suspend liquidation on all relevant entries of HFC blends from the PRC. These instructions suspending liquidation will remain in effect until further notice.

We will also instruct CBP to require cash deposits equal to the amounts as indicated below. Accordingly, effective on the date of publication of the ITC's final affirmative injury determination,[6] CBP will require, at the same time as importers would normally deposit estimated duties on this subject merchandise, a cash deposit equal to the estimated weighted-average dumping margins listed below.[7] The "PRC-wide" rate applies to all producers or exporters not specifically listed, as appropriate.

With respect to the ITC's negative determination with respect to imports of HFC components from the PRC, we will instruct CBP to terminate the suspension of liquidation for entries of HFC components from the PRC and to refund any cash deposits made to secure the payment of estimated antidumping duties.

Provisional Measures

Section 733(d) of the Act states that instructions issued pursuant to an affirmative preliminary determination may not remain in effect for more than four months, except where exporters representing a significant proportion of exports of the subject merchandise request the Department to extend that four-month period to no more than six months. At the request of exporters that account for a significant proportion of HFC blends from the PRC, the Department extended the four-month period to six months in each case.[8] In the underlying investigation, the Department published the preliminary determination on February 1, 2016. Therefore, the extended period, beginning on the date of publication of the preliminary determination, ended on July 30, 2016.

Furthermore, section 737(b) of the Act states that definitive duties are to begin on the date of publication of the ITC's final injury determination. Therefore, in accordance with section 733(d) of the Act and our practice,[9] we will instruct CBP to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, unliquidated entries of HFC blends from the PRC entered, or withdrawn from warehouse, for consumption on or after July 30, 2016, the date on which the provisional measures expired, until and through the day preceding the date of publication of the ITC's final injury determination in the **Federal Register**. Suspension of liquidation will resume on the date of publication of the ITC's final determination in the **Federal Register**.

Critical Circumstances

With regard to the ITC's negative critical circumstances determination on imports of HFC blends from the PRC, we will instruct CBP to lift suspension and to refund any cash deposits made to secure the payment of estimated antidumping duties with respect to entries of HFC blends from the PRC entered, or withdrawn from warehouse, for consumption on or after November 3, 2015 (*i.e.*, 90 days prior to the date of publication of the *Preliminary Determination*), but before February 1, 2016 (*i.e.*, the date of publication of the *Preliminary Determination*).

Estimated Weighted-Average Dumping Margins

The weighted-average antidumping duty margin percentages are as follows:

[4] *See* ITC Letter.

[5] *See Hydrofluorocarbon Blends and Components Thereof from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances, in Part, and Postponement of Final Determination;* 81 FR 5098 (February 1, 2016) (*Preliminary Determination*).

[6] *See Hydrofluorocarbon Blends and Components From China; Determination,* 81 FR 53157 (August 11, 2016).

[7] *See* section 736(a)(3) of the Act.

[8] *See Preliminary Determination.*

[9] *See Certain Corrosion-Resistant Steel Products From India, Italy, the People's Republic of China, the Republic of Korea and Taiwan: Amended Final Affirmative Antidumping Determination for India and Taiwan, and Antidumping Duty Orders,* 81 FR 48390 (July 25, 2016).

Exporter	Producer	Weighted-average margin (%)
T.T. International Co., Ltd [10]	Sinochem Environmental Protection Chemicals (Taicang) Co., Ltd.	101.82
T.T. International Co., Ltd	Zhejiang Lantian Environmental Protection Fluoro Material Co. Ltd.	101.82
T.T. International Co., Ltd	Jinhua Yonghe Fluorochemical Co., Ltd	101.82
T.T. International Co., Ltd	Zhejiang Sanmei Chemical Industry Co., Ltd	101.82
T.T. International Co., Ltd	Shandong Huaan New Material Co., Ltd	101.82
T.T. International Co., Ltd	Zhejiang Zhonglan Refrigeration Technology Co., Ltd	101.82
T.T. International Co., Ltd	Dongyang Weihua Refrigerants Co., Ltd	101.82
Daikin Fluorochemicals (China) Co., Ltd	Daikin Fluorochemicals (China) Co., Ltd	101.82
Daikin Fluorochemicals (China) Co., Ltd	Arkema Daikin Advanced Fluorochemicals (Changsu) Co., Ltd. (Arkema Daikin).	101.82
Jinhua Yonghe Fluorochemical Co., Ltd	Zhejiang Yonghe Refrigerant Co., Ltd	101.82
Shandong Huaan New Material Co., Ltd	Shandong Huaan New Material Co., Ltd	101.82
Weitron International Refrigeration Equipment (Kunshan) Co., Ltd.	Zhejiang Lantian Environmental Protection Fluoro Material Co., Ltd.	101.82
Weitron International Refrigeration Equipment (Kunshan) Co., Ltd.	Sinochem Environmental Protection Chemicals (Taicang) Co., Ltd.	101.82
Weitron International Refrigeration Equipment (Kunshan) Co., Ltd.	Zhejiang Quzhou Lianzhou Refrigerants Co., Ltd	101.82
Weitron International Refrigeration Equipment (Kunshan) Co., Ltd.	Zhejiang Sanmei Chemical Industry Co., Ltd	101.82
Zhejiang Yonghe Refrigerant Co., Ltd	Jinhua Yonghe Fluorochemical Co., Ltd	101.82
Zhejiang Sanmei Chemical Industry Co., Ltd. (Zhejiang Sanmei Chemical Ind. Co., Ltd.).	Zhejiang Sanmei Chemical Industry Co., Ltd. (Zhejiang Sanmei Chemical Ind. Co., Ltd.).	101.82
Zhejiang Sanmei Chemical Industry Co., Ltd. (Zhejiang Sanmei Chemical Industry Co., Ltd.).	Jiangsu Sanmei Chemicals Co., Ltd	101.82
PRC-Wide Entity		216.37

This notice constitutes the antidumping duty order with respect to HFC blends from the PRC pursuant to section 736(a) of the Act. Interested parties can find a list of antidumping duty orders currently in effect at *http://enforcement.trade.gov/stats/iastats1.html.*

This order is published in accordance with section 736(a) of the Act and 19 CFR 351.211(b).

Dated: August 15, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2016–19873 Filed 8–18–16; 8:45 am]

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[10] In this investigation, the Department determined to treat T.T. International, Ltd. (Dalian) and T.T. International Ltd. (Hong Kong) as a single entity (*i.e.*, T.T. International Co., Ltd. or TTI) for purposes of this antidumping duty proceeding. *See* Memorandum to Melissa G. Skinner, Director, Office II, from Dennis McClure, International Trade Analyst, entitled, "Antidumping Duty Investigation of Hydrofluorocarbons from the People's Republic of China: Affiliation and Single Entity Status," dated June 21, 2016.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–849, A–580–890, A–201–848, A–455–805]

Emulsion Styrene-Butadiene Rubber From Brazil, the Republic of Korea, Mexico, and Poland: Initiation of Less-Than-Fair-Value Investigations

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Effective August 10, 2016.

FOR FURTHER INFORMATION CONTACT: Drew Jackson at (202) 482–4406 (Brazil); Frances Veith at (202) 482–4295 (Republic of Korea); Julia Hancock or Javier Barrientos at (202) 482–1394 or (202) 482–2243, respectively (Mexico); and Stephen Bailey or William Horn at (202) 482–0193 or (202) 482–2615, respectively (Poland), AD/CVD Operations, Enforcement and Compliance, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Petitions

On July 21, 2016, the Department of Commerce (the Department) received antidumping duty (AD) petitions concerning imports of emulsion styrene-butadiene rubber (ESB rubber) from Brazil, the Republic of Korea (Korea), Mexico, and Poland, filed in proper form on behalf of Lion Elastomers LLC and East West Copolymer, LLC (Petitioners).[1] Petitioners are domestic producers of ESB rubber.[2]

On July 25, 26, and August 2, 2016, the Department requested additional information and clarification of certain areas of the Petitions.[3] Petitioners filed

[1] *See* Petitions for the Imposition of Antidumping Duties on Imports of Emulsion Styrene-Butadiene Rubber from Brazil, the Republic of Korea, Mexico, and Poland, dated July 21, 2016 (the Petitions).

[2] *See* Petitions, at 2, and Exhibits I–1 and I–2.

[3] *See* Letter from the Department to Petitioners entitled "Petitions for the Imposition of Antidumping Duties on Imports of Emulsion Styrene-Butadiene Rubber from Brazil, the Republic of Korea, Mexico, and Poland: Supplemental Questions," dated July 25, 2016 (General Issues Supplemental Questionnaire); *see also* Letter from the Department to Petitioners entitled "Petition for the Imposition of Antidumping Duties on Imports of Emulsion Styrene-Butadiene Rubber from Brazil: Supplemental Questions," dated July 26, 2016 (Brazil Supplemental Questionnaire); *see also* Letter from the Department to Petitioners entitled "Petition for the Imposition of Antidumping Duties on Imports of Emulsion Styrene-Butadiene Rubber from Republic of Korea: Supplemental Questions," dated July 26, 2016 (Korea Supplemental Questionnaire); *see also* Letter from the Department to Petitioners entitled "Petition for the Imposition of Antidumping Duties on Imports of Emulsion Styrene-Butadiene Rubber from Mexico: Supplemental Questions," dated July 26, 2016 (Mexico Supplemental Questionnaire); *see also* Letter from the Department to Petitioners entitled "Petition for the Imposition of Antidumping Duties on Imports of Emulsion Styrene-Butadiene Rubber from Mexico: Supplemental Questions," dated July

responses to these requests on August 1 and 3, 2016, respectively.[4]

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), Petitioners allege that imports of ESB rubber from Brazil, Korea, Mexico, and Poland are being, or are likely to be, sold in the United States at less-than-fair value within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, an industry in the United States. Also, consistent with section 732(b)(1) of the Act, Petitioners state that the Petitions are accompanied by information reasonably available to Petitioners supporting their allegations.

The Department finds that Petitioners filed these Petitions on behalf of the domestic industry because Petitioners are interested parties as defined in section 771(9)(C) of the Act. The Department also finds that Petitioners demonstrated sufficient industry support with respect to the initiation of the AD investigations that Petitioners are requesting.[5]

Period of Investigation

Because the Petitions were filed on July 21, 2016, the period of investigation (POI) for each investigation is, pursuant to 19 CFR 351.204(b)(1), July 1, 2015, through June 30, 2016.

Scope of the Investigations

The product covered by these investigations is ESB rubber from Brazil, Korea, Mexico, and Poland. For a full description of the scope of these investigations, *see* the "Scope of the Investigations," at Appendix I of this notice.

Comments on Scope of the Investigations

During our review of the Petitions, the Department issued questions to, and received responses from, Petitioners pertaining to the proposed scope to ensure that the scope language in the Petitions would be an accurate reflection of the products for which the domestic industry is seeking relief.[6] The Department also conducted two telephone calls with Petitioners to clarify Petitioners' intent with respect to the scope.[7] In response, Petitioners provided a revised scope on August 3, 2016.[8]

As discussed in the preamble to the Department's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (scope). The Department will consider all comments received from parties and, if necessary, will consult with parties prior to the issuance of the preliminary determinations. If scope comments include factual information (*see* 19 CFR 351.102(b)(21)), all such factual information should be limited to public information. In order to facilitate preparation of its questionnaires, the Department requests all interested parties to submit such comments by 5:00 p.m. Eastern Daylight Time (EDT) on August 30, 2016, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information (also should be limited to public information), must be filed by 5:00 p.m. EDT on September 9, 2016, which is 10 calendar days after the initial comments. All such comments must be filed on the records of each of the concurrent AD investigations.

The Department requests that any factual information the parties consider relevant to the scope of the investigations be submitted during this time period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigations may be relevant, the party may contact the Department and request permission to submit the additional information. As stated above, all such comments must be filed on the records of each of the concurrent AD investigations.

Filing Requirements

All submissions to the Department must be filed electronically using Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS).[9] An electronically filed document must be received successfully in its entirety by the time and date when it is due. Documents excepted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with Enforcement and Compliance's APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230, and stamped with the date and time of receipt by the applicable deadlines.

Comments on Product Characteristics for AD Questionnaires

The Department will be giving interested parties an opportunity to provide comments on the appropriate physical characteristics of ESB rubber to

26, 2016 (Poland Supplemental Questionnaire); *see also* Memorandum to the File from Drew Jackson, Senior International Trade Compliance Analyst, Office IV, Re: "Petitions for the Imposition of Antidumping Duties on Imports of Emulsion Styrene-Butadiene Rubber from Brazil, the Republic of Korea, Mexico, and Poland, Subject: Telephone Conversation with Petitioners' Counsel," dated August 2, 2016 (Memorandum on Telephone Conversation with Petitioners' Counsel re: Scope); *see also* Memorandum to the File from Vicki Flynn, Senior Policy Analyst, Office of Policy, Re: "Petitions for the Imposition of Antidumping Duties on Imports of Emulsion Styrene-Butadiene Rubber from Brazil, the Republic of Korea, Mexico, and Poland, Subject: Telephone Conversation with Petitioners' Counsel," dated August 2, 2016 (Memorandum on Telephone Conversation with Petitioners' Counsel re: Scope and Other Issues).

[4] *See* Letter from Petitioners to the Department entitled "Re: Emulsion Styrene-Butadiene Rubber from Brazil, Republic of Korea, Mexico, and Poland: Supplemental Questionnaire Response Regarding the Antidumping Petition—General Questions," dated August 1, 2016 (General Issues Supplement); *see also* Letter from Petitioners to the Department entitled "Re: Emulsion Styrene-Butadiene Rubber from Brazil: Supplemental Questionnaire Response Regarding the Antidumping Petition—General Questions," dated August 1, 2016 (Brazil Supplement); *see also* Letter from Petitioners to the Department entitled "Re: Emulsion Styrene-Butadiene Rubber from Republic of Korea: Supplemental Questionnaire Response Regarding the Antidumping Petition—General Questions," dated August 1, 2016 (Korea Supplement); *see also* Letter from Petitioners to the Department entitled "Re Emulsion Styrene-Butadiene Rubber from Mexico: Supplemental Questionnaire Response Regarding the Antidumping Petition—General Questions," dated August 1, 2016 (Mexico Supplement); *see also* Letter from Petitioners to the Department entitled "Re: Emulsion Styrene-Butadiene Rubber from Poland: Supplemental Questionnaire Response," dated August 1, 2016 (Poland Supplement); *see also* Letter from Petitioners to the Department entitled "Re: Amended Petitions for the Imposition of Antidumping Duties on Imports of Emulsion Styrene-Butadiene Rubber from Brazil, the Republic of Korea, Mexico, and Poland," dated August 1, 2016 (Amended Petitions); *see also* Letter from Petitioners to the Department entitled "Re: Revised Amended Petitions for the Imposition of Antidumping Duties on Imports of Emulsion Styrene-Butadiene Rubber from Brazil, the Republic of Korea, Mexico, and Poland," dated August 3, 2016 (Revised Amended Petitions); *see also* Letter from Petitioners to the Department entitled "Amendment to Correct Erroneous Deletion of Exhibit from Re: Amended Petitions for the Imposition of Antidumping Duties on Imports of Emulsion Styrene -Butadiene Rubber from Brazil, the Republic of Korea, Mexico, and Poland," dated August 3, 2016; Letter from Petitioners to the Department entitled "Amendment to Petition For The Imposition of Antidumping Duties on Emulsion Styrene Butadiene Rubber from Brazil, the Republic of Korea, Mexico, and Poland—Revised Scope," dated August 3, 2016 (Scope Amendment).

[5] *See* the "Determination of Industry Support for the Petitions" section below.

[6] *See* General Issues Supplemental Questionnaire and August 2, 2016, Memorandum on Telephone Conversation with Petitioners' Counsel; *see also* General Issues Supplement; and Scope Amendment.

[7] *See* Memorandum on Telephone Conversation with Petitioners' Counsel re: Scope; *see also* Memorandum on Telephone Conversation with Petitioners' Counsel re: Scope and Other Issues.

[8] *See* Scope Amendment.

[9] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011) for details of the Department's electronic filing requirements, which went into effect on August 5, 2011. Information on help using ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://access.trade.gov/help/Handbook%20on%20Electronic%20Filling%20Procedures.pdf.*

be reported in response to the Department's AD questionnaires. This information will be used to identify the key physical characteristics of the merchandise under consideration in order to report the relevant costs of production accurately as well as to develop appropriate product-comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate list of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as: (1) General product characteristics and (2) product-comparison criteria. We note that it is not always appropriate to use all product characteristics as product-comparison criteria. We base product-comparison criteria on meaningful commercial differences among products. In other words, although there may be some physical product characteristics utilized by manufacturers to describe ESB rubber, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in matching products. Generally, the Department attempts to list the most important physical characteristics first and the least important characteristics last.

In order to consider the suggestions of interested parties in developing and issuing the AD questionnaires, all product characteristics comments must be filed by 5:00 p.m. EDT on August 30, 2016, which is 20 calendar days from the signature date of this notice. Any rebuttal comments must be filed by 5:00 p.m. EDT on September 9, 2016. All comments and submissions to the Department must be filed electronically using ACCESS, as explained above, on the records of each of the concurrent AD investigations.

Determination of Industry Support for the Petitions

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the "industry."

Section 771(4)(A) of the Act defines the "industry" as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product,[10] they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law.[11]

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation" (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, Petitioners do not offer a definition of the domestic like product distinct from the scope of the investigations as described in Appendix I of this notice. Based on our analysis of the information submitted on the record, we have determined that ESB rubber, as defined in the "Scope of the Investigations" in Appendix I of this notice, constitutes a single domestic like product and we have analyzed industry support in terms of that domestic like product.[12]

In determining whether Petitioners have standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petitions with reference to the domestic like product as defined in the "Scope of the Investigations," in Appendix I of this notice. To establish industry support, Petitioners provided their 2015 production of the domestic like product and estimated the 2015 production of Goodyear Chemical, the only other known ESB rubber producer in the United States.[13] Petitioners also provided a letter from the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO, CLC (USW), stating that the USW represents the workers at Petitioner Lion Elastomers LLC's Port Neches, TX ESB rubber plant and it supports the Petitions.[14] In addition, Petitioners provided a letter of support for the Petitions from the International Union of Operating Engineers (IUOE) stating that the IUOE represents the workers at Petitioner East West Copolymer, LLC's ESB rubber plant in Baton Rouge, LA and the workers at Goodyear Chemical's Houston, TX ESB rubber plant.[15] Petitioners state that Lion Elastomers LLC, East West Copolymer, LLC, and Goodyear Chemical are the only known producers of ESB rubber in the United States; therefore, Petitioners assert that

[10] *See* section 771(10) of the Act.

[11] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

[12] For a discussion of the domestic like product analysis in this case, *see* Antidumping Duty Investigation Initiation Checklist: Emulsion Styrene-Butadiene Rubber from Brazil (Brazil AD Checklist), at Attachment II, Analysis of Industry Support for the Antidumping Duty Petitions Covering Emulsion Styrene-Butadiene Rubber from Brazil, the Republic of Korea, Mexico, and Poland (Attachment II); Antidumping Duty Investigation Initiation Checklist: Emulsion Styrene-Butadiene Rubber from the Republic of Korea (Korea AD Checklist), at Attachment II; Antidumping Duty Investigation Initiation Checklist: Emulsion Styrene-Butadiene Rubber from Mexico (Mexico AD Checklist), at Attachment II; and Antidumping Duty Investigation Initiation Checklist: Emulsion Styrene-Butadiene Rubber from Poland (Poland AD Checklist), at Attachment II. These checklists are dated concurrently with this notice and on file electronically via ACCESS. Access to documents filed via ACCESS is also available in the Central Records Unit, Room B8024 of the main Department of Commerce building.

[13] *See* Petitions, at 3–4 and Exhibits I–3, I–5, and I–7; *see also* General Issues Supplement, at 2–3; and Revised Amended Petitions, at 3–4 and revised Exhibit I–7.

[14] *See* Petitions, at Exhibit I–6.

[15] *See* Letter from Petitioners entitled "Supplement 1 to Petition for the Imposition of Antidumping Duties on Emulsion Styrene-Butadiene Rubber from Brazil, the Republic of Korea, Mexico, and Poland," July 21, 2016 (IUOE Letter), at Attachment.

the Petitions are supported by 100 percent of the U.S. industry.[16]

Our review of the data provided in the Petitions, IUOE Letter, General Issues Supplement, Amended Petitions, and other information readily available to the Department indicates that Petitioners have established industry support.[17] First, the Petitions established support from domestic producers and workers accounting for more than 50 percent of the total production of the domestic like product and, as such, the Department is not required to take further action in order to evaluate industry support (*e.g.*, polling).[18] Second, the domestic producers and workers have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers and workers who support the Petitions account for at least 25 percent of the total production of the domestic like product.[19] Finally, the domestic producers and workers have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers and workers who support the Petitions account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petitions.[20] Accordingly, the Department determines that the Petitions were filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

The Department finds that Petitioners filed the Petitions on behalf of the domestic industry because they are interested parties as defined in section 771(9)(C) of the Act and they have demonstrated sufficient industry support with respect to the AD investigations that they are requesting the Department initiate.[21]

Allegations and Evidence of Material Injury and Causation

Petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the individual and cumulated imports of the subject merchandise sold at less than normal value (NV).

In addition, with regard to Brazil, Korea, and Mexico, Petitioners allege that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[22]

With regard to Poland, while the allegedly dumped imports from Poland do not exceed the statutory requirements for negligibility, Petitioners allege and provide supporting evidence that there is the potential that imports from Poland will imminently exceed the negligibility threshold and, therefore, are not negligible for purposes of a threat determination, pursuant to section 771(24)(A)(iv) of the Act.[23] Petitioners also contend that, although publicly available import data is limited, there is a reasonable indication that data obtained in the ITC's investigation will establish that imports exceed the negligibility threshold.[24] Petitioners' arguments regarding the limitations of publicly available import data and the collection of import data in the ITC's investigation are consistent with the SAA, which states that the ITC may make reasonable estimates on the basis of available data to address limitations in data collected by the ITC or official import statistics.[25] Furthermore, Petitioners' arguments regarding the potential for imports from Poland to imminently exceed the negligibility threshold are consistent with the statutory criteria for "negligibility in threat analysis" under section 771(24)(A)(iv) of the Act, which provides that imports shall not be treated as negligible if there is a potential that subject imports from a country will imminently exceed the statutory requirements for negligibility.

Petitioners contend that the industry's injured condition is illustrated by reduced market share, underselling and price suppression or depression, lost sales and revenues, declines in production, capacity utilization, and U.S. shipments, negative impact on employment variables, and declines in financial performance, capital expenditures, and research and development expenditures.[26] We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, negligibility, causation, and cumulation, and we have determined that Petitioners' allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.[27]

Allegations of Sales at Less-Than-Fair Value

The following is a description of the allegations of sales at less-than-fair value upon which the Department based its decision to initiate investigations of imports of ESB rubber from Brazil, Korea, Mexico, and Poland. The sources of data for the deductions and adjustments relating to U.S. price and NV are discussed in greater detail in the country-specific initiation checklists.

Export Price

For Brazil, Korea, Mexico, and Poland, Petitioners based export price (EP) on average unit values (AUVs) calculated using publicly available import statistics from the ITC's Dataweb for all imports from each subject country under the relevant Harmonized Tariff Schedule of the United States (HTSUS) subheading for imports of ESB rubber into all U.S. ports during the POI.[28] For Brazil, Korea, and Poland, Petitioners also based EP on transaction-specific AUVs for shipments of ESB rubber identified from each of these countries entered under the relevant HTSUS subheading for one month

[16] *See* Petitions, at 3–4; *see also* Revised Amended Petitions, at 3–4. We note that management at Goodyear Chemical did not express a view with respect to the Petitions; therefore, pursuant to 19 CFR 351.203(e)(3), because the workers of Goodyear Chemical support the Petitions through their union, we are treating the production of Goodyear Chemical as in support of the Petitions.

[17] For a further discussion of the industry support analysis, *see* Brazil AD Initiation Checklist, at Attachment II, Korea AD Initiation Checklist, at Attachment II, Mexico AD Initiation Checklist, at Attachment II, and Poland AD Initiation Checklist, at Attachment II.

[18] *See* section 732(c)(4)(D) of the Act; *see also* Brazil AD Initiation Checklist, at Attachment II, Korea AD Initiation Checklist, at Attachment II, Mexico AD Initiation Checklist, at Attachment II, and Poland AD Initiation Checklist, at Attachment II.

[19] *See* Brazil AD Initiation Checklist, at Attachment II, Korea AD Initiation Checklist, at Attachment II, Mexico AD Initiation Checklist, at Attachment II, and Poland AD Initiation Checklist, at Attachment II.

[20] *Id.*

[21] *See* Brazil AD Initiation Checklist, at Attachment II, Korea AD Initiation Checklist, at Attachment II, Mexico AD Initiation Checklist, at Attachment II, and Poland AD Initiation Checklist, at Attachment II.

[22] *See* General Issues Supplement, at 8–9; *see also* Revised Amended Petitions, at 14–15 and revised Exhibit I–12.

[23] *See* section 771(24)(A)(iv) of the Act; *see also* General Issues Supplement, at 8–9.

[24] *See Statement of Administrative Action* (SAA), H.R. Doc. No. 103–316, Vol. 1, (1994) (SAA), at 857; *see also* General Issues Supplement, at 8–9; and Revised Amended Petitions, at 14–15.

[25] *See* SAA, H.R. Doc. No. 103–316 at 833 (1994).

[26] *See* Petitions, at 12–16, 24–53 and Exhibits I–1, I–2, I–5, I–7, I–8, I–12, I–13 and I–16 through I–34; *see also* General Issues Supplement, at 7; and Revised Amended Petitions, at 12–16, 24–53 and revised Exhibits I–12, I–16, and I–17.

[27] *See* Brazil AD Checklist, at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping Duty Petitions Covering Emulsion Styrene-Butadiene Rubber from Brazil, the Republic of Korea, Mexico, and Poland (Attachment III); *see also* Korea AD Checklist, at Attachment III; Mexico AD Checklist, at Attachment III; and Poland AD Checklist, at Attachment III.

[28] *See* Brazil AD Initiation Checklist, Korea AD Initiation Checklist, Mexico AD Initiation Checklist, and Poland AD Initiation Checklist.

during the POI into a specific port.[29] Under this methodology,[30] Petitioners obtained ship manifest data from Datamyne, Inc. U.S., and Petitioners then linked monthly U.S. port-specific import statistics (obtained from the ITC's Dataweb), for imports of ESB rubber entered under the relevant HTSUS subheading to shipments by producers in the subject countries identified in the ship manifest data.[31]

Under both methodologies, to calculate ex-factory prices and to be conservative, Petitioners made no adjustments to U.S. price for movement expenses, consistent with the manner in which the data is reported in Dataweb.[32]

Normal Value Based on Constructed Value

For Brazil, Korea, Mexico, and Poland, Petitioners were unable to obtain information regarding home market prices, such as price quotes for ESB rubber, or third-country prices, and therefore calculated NV based on constructed value (CV).[33] Pursuant to section 773(e) of the Act, CV consists of the cost of manufacturing (COM), SG&A expenses, financial expenses, packing expenses, and profit. Petitioners calculated COM based on Petitioners' experience, adjusted for known differences between producing in the United States and producing in the respective country (*i.e.,* Brazil, Korea, Mexico, or Poland), during the proposed POI.[34] Using publicly-available data to account for price differences, Petitioners multiplied the surrogate usage quantities by the submitted value of the inputs used to manufacture ESB rubber in each country.[35] For Brazil, Korea, Mexico, and Poland, labor rates were derived from publicly available sources multiplied by the product-specific usage rates.[36] For Brazil, Korea, Mexico, and Poland, to determine factory overhead and packing, Petitioners relied on Petitioners' experience.[37] For Brazil, Korea, Mexico, and Poland, to determine SG&A and financial expense rates, Petitioners relied on financial statements of companies that were producers of identical or comparable merchandise operating in the respective subject country.[38] Petitioners also relied on the financial statements of the same producers that they used for calculating SG&A expenses and financial expenses to calculate the profit rate.[39]

Fair Value Comparisons

Based on the data provided by Petitioners, there is reason to believe that imports of ESB rubber from Brazil, Korea, Mexico, and Poland, are being, or are likely to be, sold in the United States at less-than-fair value. Based on comparisons of EP to NV in accordance with sections 773(a) and (e) of the Act, the estimated dumping margin(s) for ESB rubber are as follows: (1) Brazil, 57.14 percent and 67.99 percent;[40] (2) Korea, 22.48 percent and 44.30 percent;[41] (3) Mexico, 22.39 percent;[42] and (4) Poland, 40.57 percent and 44.54 percent.[43]

Initiation of Less-Than-Fair-Value Investigations

Based upon the examination of the AD Petitions on ESB rubber from Brazil, Korea, Mexico, and Poland, we find that the Petitions meet the requirements of section 732 of the Act. Therefore, we are initiating AD investigations to determine whether imports of ESB rubber for Brazil, Korea, Mexico, and Poland are being, or are likely to be, sold in the United States at less-than-fair value. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determinations no later than 140 days after the date of this initiation.

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015, which made numerous amendments to the AD and countervailing duty (CVD) law.[44] The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained in section 771(7) of the Act, which relate to determinations of material injury by the ITC.[45] The amendments to sections 771(15), 773, 776, and 782 of the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to these AD investigations.[46]

Respondent Selection

Based on shippers' manifest information from the Datamyne, Inc. U.S., Petitioners identified 11 companies in Korea as producers of ESB rubber.[47] Following standard practice in AD investigations involving market economy countries, in the event the Department determines that the number of companies is large and it cannot individually examine each company based upon the Department's resources, where appropriate, the Department intends to select respondents for the Korea investigation based on U.S. Customs and Border Protection (CBP) data for U.S. imports under the appropriate Harmonized Tariff Schedule of the United States numbers listed with the "Scope of the Investigations," in Appendix I, below. We also intend to release the CBP data under Administrative Protective Order (APO) to all parties with access to information protected by APO on the record within five business days of publication of this **Federal Register** notice. Comments regarding the CBP data and respondent selection should be submitted seven calendar days after the placement of the CBP data on the record of the Korea investigation. Parties wishing to submit rebuttal comments should submit those comments five calendar days after the deadline for the initial comments.

With respect to Brazil, Mexico, and Poland, based on shippers' manifest information from the Datamyne, Inc. U.S., Petitioners identified: (1) One company as a producer/exporter of ESB in Brazil, Lanxess Elastomeros do Brasil S.A.; (2) one company as a producer/exporter of ESB in Mexico, Industrias Negromex S.A. de C.V.—Planta Altamira; and (3) one company as a producer/exporter of ESB in Poland, Synthos Dwory 7 Spolka Z Ograniczona Odpowiedzialnoscia Spolka Jawna (Sp. Z O.O.S.J.).[48] With respect to Brazil, Mexico, and Poland, Petitioners

[29] *Id.*

[30] *Id.*

[31] *Id.*

[32] *Id.*

[33] *See* Brazil AD Initiation Checklist, Korea AD Initiation Checklist, Mexico AD Initiation Checklist, and Poland AD Initiation Checklist. In accordance with section 505(a) of the Trade Preferences Extension Act of 2015, amending section 773(b)(2) of the Act, for all of the investigations, the Department will request information necessary to calculate the cost of production (COP) and CV to determine whether there are reasonable grounds to believe or suspect that sales of the foreign like product have been made at prices that represent less than the COP of the product. The Department will no longer require a COP allegation to conduct this analysis.

[34] *See* Brazil AD Initiation Checklist, Korea AD Initiation Checklist, Mexico AD Initiation Checklist, and Poland AD Initiation Checklist.

[35] *Id.*

[36] *Id.*

[37] *Id.*

[38] *Id.*

[39] *Id.*

[40] *See* Brazil AD Initiation Checklist.

[41] *See* Korea AD Initiation Checklist.

[42] *See* Mexico AD Initiation Checklist.

[43] *See* Poland AD Initiation Checklist.

[44] *See* Trade Preferences Extension Act of 2015, Public Law 114–27, 129 Stat. 362 (2015).

[45] *See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015,* 80 FR 46793 (August 6, 2015) (*Applicability Notice*).

[46] *Id.,* at 46794–95. The 2015 amendments may be found at *https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl.*

[47] *See* Petitions, at 11–12 and Exhibit I–11.

[48] *See* Petitions, at Exhibits I–5 and I–11; *see also* General Issues Supplement, at 3–4 and Attachment 1.

provided additional information from independent third party sources as support.[49] Furthermore, we currently know of no additional producers/exporters of merchandise under consideration from these countries. Therefore, consistent with section 777A(c) of the Act and the Department's practice in such circumstances,[50] for Brazil, Mexico, and Poland the Department intends to examine the sole producer/exporter identified in the respective Petitions. Comments regarding respondent selection for each of these AD investigations (*i.e.*, Brazil, Mexico, and Poland) should be submitted five calendar days after the publication of this notice in the **Federal Register** on the record of each respective investigation. Parties wishing to submit rebuttal comments should submit those comments five calendar days after the deadline for the initial comments.

Comments for the above-referenced investigations must be filed electronically using ACCESS. An electronically-filed document must be received successfully in its entirety by the Department's electronic records system, ACCESS, by 5:00 p.m. EDT by the dates noted above. We intend to finalize our decision regarding respondent selection within 20 days of publication of this notice.

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public version of the Petitions have been provided to the governments of Brazil, Korea, Mexico, and Poland via ACCESS. To the extent practicable, we will attempt to provide a copy of the public version of the Petitions to each exporter named in the Petitions, as provided under 19 CFR 351.203(c)(2).

ITC Notification

We will notify the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petitions were filed, whether there is a reasonable indication that imports of ESB rubber from Brazil, Korea, Mexico, and/or Poland are materially injuring or threatening material injury to a U.S. industry.[51] A negative ITC determination for any country will result in the investigation being terminated with respect to that country;[52] otherwise, these investigations will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by the Department; and (v) evidence other than factual information described in (i) through (iv). Any party, when submitting factual information, must specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct. Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Please review the regulations prior to submitting factual information in these investigations.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under Part 351, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under Part 351 expires. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. on the due date. Under certain circumstances, we may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in the letter or memorandum setting forth the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely-filed requests for the extension of time limits. Review *Extension of Time Limits; Final Rule*, 78 FR 57790 (September 20, 2013), available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm*, prior to submitting factual information in this segment.

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[53] Parties are hereby reminded that revised certification requirements are in effect for company/government officials, as well as their representatives. Investigations initiated on the basis of Petitions filed on or after August 16, 2013, and other segments of any AD or CVD proceedings initiated on or after August 16, 2013, should use the formats for the revised certifications provided at the end of the *Final Rule*.[54] The Department intends to reject factual submissions if the submitting party does not comply with applicable revised certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures*, 73 FR 3634 (January 22, 2008). Parties wishing to participate in these investigations should ensure that they meet the requirements of these procedures (*e.g.*, the filing of letters of appearance as discussed in 19 CFR 351.103(d)).

This notice is issued and published pursuant to section 777(i) of the Act and 19 CFR 351.203(c).

Dated: August 10, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigations

For purposes of these investigations, the product covered is cold-polymerized emulsion styrene-butadiene rubber (ESB rubber). The scope of the investigations includes, but is not limited to, ESB rubber in primary forms, bales, granules, crumbs, pellets, powders, plates, sheets, strip, etc. ESB rubber consists of non-pigmented

[49] *See* Petitions, at Exhibit I–11; see also General Issues Supplement, at 3–4 and Attachment 1. *Id.*

[50] *See, e.g., Melamine From the People's Republic of China and Trinidad and Tobago: Initiation of Less-Than-Fair-Value Investigations*, 79 FR 73037, 73041 (December 9, 2014).

[51] *See* section 733(a) of the Act.

[52] *Id.*

[53] *See* section 782(b) of the Act.

[54] *See Certification of Factual Information to Import Administration during Antidumping and Countervailing Duty Proceedings*, 78 FR 42678 (July 17, 2013) (*Final Rule*); *see also* frequently asked questions regarding the *Final Rule*, available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

by the employer is either available and meets the applicable housing standards or has been approved for conditional access to the clearance system as set forth in § 653.502; except that mobile range housing for sheepherders and goatherders must meet existing Departmental guidelines and/or applicable regulations.

(c) *SWA responsibilities.* (1) SWAs must ensure intrastate and interstate clearance orders:

(i) Include the following language: "In view of the statutorily established basic function of the ES as a no-fee labor exchange, that is, as a forum for bringing together employers and job seekers, neither the ETA nor the SWAs are guarantors of the accuracy or truthfulness of information contained on job orders submitted by employers. Nor does any job order accepted or recruited upon by the ES constitute a contractual job offer to which the ETA or a SWA is in any way a party;"

(ii) Do not contain an unlawful discriminatory specification including, for beneficiaries (as defined in 29 CFR 38.4) only, on the basis of citizenship status or participant status;

(iii) Are signed by the employer; and

(iv) State all the material terms and conditions of the employment, including:

(A) The crop;

(B) The nature of the work;

(C) The anticipated period and hours of employment;

(D) The anticipated starting and ending date of employment and the anticipated number of days and hours per week for which work will be available;

(E) The hourly wage rate or the piece rate estimated in hourly wage rate equivalents for each activity and unit size;

(F) Any deductions to be made from wages;

(G) A specification of any non-monetary benefits to be provided by the employer;

(H) Any hours, days, or weeks for which work is guaranteed, and, for each guaranteed week of work except as provided in paragraph (c)(3)(i) of this section, the exclusive manner in which the guarantee may be abated due to weather conditions or other acts of God beyond the employer's control; and

(I) Any bonus or work incentive payments or other expenses which will be paid by the employer in addition to the basic wage rate, including the anticipated time period(s) within which such payments will be made.

(2) SWAs must ensure:

(i) The wages and working conditions offered are not less than the prevailing wages and working conditions among similarly employed farmworkers in the area of intended employment or the applicable Federal or State minimum wage, whichever is higher. If the wages offered are expressed as piece rates or as base rates and bonuses, the employer must make the method of calculating the wage and supporting materials available to ES staff who must check if the employer's calculation of the estimated hourly wage rate is reasonably accurate and is not less than the prevailing wage rate or applicable Federal or State minimum wage, whichever is higher; and

(ii) The employer has agreed to provide or pay for the transportation of the workers and their families at or before the end of the period of employment specified in the job order on at least the same terms as transportation is commonly provided by employers in the area of intended employment to farmworkers and their families recruited from the same area of supply. Under no circumstances may the payment or provision of transportation occur later than the departure time needed to return home to begin the school year, in the case of any worker with children 18 years old or younger, or be conditioned on the farmworker performing work after the period of employment specified in the job order.

(3) SWAs must ensure the clearance order includes the following assurances:

(i) The employer will provide to workers referred through the clearance system the number of hours of work cited in paragraph (c)(1)(iv)(D) of this section for the week beginning with the anticipated date of need, unless the employer has amended the date of need at least 10 business days prior to the original date of need (pursuant to paragraph (c)(3)(iv) of this section) by so notifying the order-holding office in writing (email notification may be acceptable). The SWA must make a record of this notification and must attempt to inform referred workers of the change expeditiously.

(ii) No extension of employment beyond the period of employment specified in the clearance order may relieve the employer from paying the wages already earned, or if specified in the clearance order as a term of employment, providing transportation or paying transportation expenses to the worker's home.

(iii) The working conditions comply with applicable Federal and State minimum wage, child labor, social security, health and safety, farm labor contractor registration and other employment-related laws.

(iv) The employer will expeditiously notify the order-holding office or SWA by emailing and telephoning immediately upon learning that a crop is maturing earlier or later, or that weather conditions, over-recruitment or other factors have changed the terms and conditions of employment.

(v) The employer, if acting as a farm labor contractor ("FLC") or farm labor contractor employee ("FLCE") on the order, has a valid Federal FLC certificate or Federal FLCE identification card and when appropriate, any required State farm labor contractor certificate.

(vi) The availability of no cost or public housing which meets the Federal standards and which is sufficient to house the specified number of workers requested through the clearance system. This assurance must cover the availability of housing for only those workers, and when applicable, family members who are not reasonably able to return to their residence in the same day.

(vii) Outreach workers must have reasonable access to the workers in the conduct of outreach activities pursuant to § 653.107.

(viii) The job order contains all the material terms and conditions of the job. The employer must assure this by signing the following statement in the clearance order: "This clearance order describes the actual terms and conditions of the employment being offered by me and contains all the material terms and conditions of the job."

(4) If a SWA discovers that an employer's clearance order contains a material misrepresentation, the SWA may initiate the Discontinuation of Services as set forth in part 658, subpart F of this chapter.

(5) If there is a change to the anticipated date of need and the employer fails to notify the order-holding office at least 10 business days prior to the original date of need the employer must pay eligible (pursuant to paragraph (d)(4) of this section) workers referred through the clearance system the specified hourly rate of pay, or if the pay is piece-rate, the higher of the Federal or State minimum wage for the first week starting with the originally anticipated date of need or provide alternative work if such alternative work is stated on the clearance order. If an employer fails to comply under this section the order holding office may notify the Department's Wage and Hour Division for possible enforcement.

(d) *Processing clearance orders.* (1) The order-holding office must transmit an electronic copy of the approved clearance order to its SWA. The SWA

must distribute additional electronic copies of the form with all attachments (except that the SWA may, at its discretion, delegate this distribution to the local office) as follows:

(i) At least one copy of the clearance order must be sent to each of the SWAs selected for recruitment (areas of supply);

(ii) At least one copy of the clearance order must be sent to each applicant-holding ETA regional office;

(iii) At least one copy of the clearance order must be sent to the order-holding ETA regional office; and

(iv) At least one copy of the clearance order must be sent to the Regional Farm Labor Coordinated Enforcement Committee and/or other Occupational Safety and Health Administration and Wage and Hour Division regional agricultural coordinators, and/or other committees as appropriate in the area of employment.

(2) The ES office may place an intrastate or interstate order seeking workers to perform farmwork for a specific farm labor contractor or for a worker preferred by an employer provided the order meets ES nondiscrimination criteria. The order would not meet such criteria, for example, if it requested a "white male crew leader" or "any white male crew leader."

(3) The approval process described in paragraph (d)(3) of this section does not apply to clearance orders that are attached to applications for foreign temporary agricultural workers pursuant to part 655, subpart B, of this chapter; such clearance orders must be sent to the processing center as directed by ETA in guidance. For non-criteria clearance orders (orders that are not attached to applications under part 655, subpart B, of this chapter), the ETA regional office must review and approve the order within 10 business days of its receipt of the order, and the Regional Administrator or his/her designee must approve the areas of supply to which the order will be extended. Any denial by the Regional Administrator or his/her designee must be in writing and state the reasons for the denial.

(4) The applicant holding office must notify all referred farmworkers, farm labor contractors on behalf of farmworkers, or family heads on behalf of farmworker family members, to contact an ES office, preferably the order-holding office, to verify the date of need cited in the clearance order between 9 and 5 business days prior to the original date of need cited in the clearance order; and that failure to do so will disqualify the referred farmworker from the first weeks' pay as described in paragraph (c)(3)(i) of this section. The SWA must make a record of this notification.

(5) If the worker referred through the clearance system contacts an ES office (in any State) other than the order holding office, that ES office must assist the referred worker in contacting the order holding office on a timely basis. Such assistance must include, if necessary, contacting the order holding office by telephone or other timely means on behalf of the worker referred through the clearance system.

(6) ES office staff must assist all farmworkers, upon request in their native language, to understand the terms and conditions of employment set forth in intrastate and interstate clearance orders and must provide such workers with checklists in their native language showing wage payment schedules, working conditions, and other material specifications of the clearance order.

(7) If an order holding office learns that a crop is maturing earlier than expected or that other material factors, including weather conditions and recruitment levels have changed since the date the clearance order was accepted, the SWA must contact immediately the applicant holding office which must inform immediately crews and families scheduled to report to the job site of the changed circumstances and must adjust arrangements on behalf of such crews and families.

(8) When there is a delay in the date of need, SWAs must document notifications by employers and contacts by individual farmworkers or crew leaders on behalf of farmworkers or family heads on behalf of farmworker family members to verify the date of need.

(9) If weather conditions, over-recruitment, or other conditions have eliminated the scheduled job opportunities, the SWAs involved must make every effort to place the workers in alternate job opportunities as soon as possible, especially if the worker(s) is/(are) already en-route or at the job site. ES office staff must keep records of actions under this section.

(10) Applicant-holding offices must provide workers referred on clearance orders with a checklist summarizing wages, working conditions and other material specifications in the clearance order. Such checklists, where necessary, must be in the workers' native language. The checklist must include language notifying the worker that a copy of the original clearance order is available upon request. SWAs must use a standard checklist format provided by the Department (such as in Form WH516 or a successor form).

(11) The applicant-holding office must give each referred worker a copy of the list of worker's rights described in the Department's ARS Handbook.

(12) If the labor supply SWA accepts a clearance order, the SWA must actively recruit workers for referral. In the event a potential labor supply SWA rejects a clearance order, the reasons for rejection must be documented and submitted to the Regional Administrator having jurisdiction over the SWA. The Regional Administrator will examine the reasons for rejection, and, if the Regional Administrator agrees, will inform the Regional Administrator with jurisdiction over the order-holding SWA of the rejection and the reasons. If the Regional Administrator who receives the notification of rejection does not concur with the reasons for rejection, that Regional Administrator will inform the National Monitor Advocate, who, in consultation with the appropriate ETA higher authority, will make a final determination on the acceptance or rejection of the order.

§ 653.502 Conditional access to the Agricultural Recruitment System.

(a) *Filing requests for conditional access*—(1) *"Noncriteria" employers.* Except as provided in paragraph (a)(2) of this section, an employer whose housing does not meet applicable standards may file with the ES office serving the area in which its housing is located, a written request for its clearance orders to be conditionally allowed into the intrastate or interstate clearance system, provided that the employer's request assures its housing will be in full compliance with the requirements of the applicable housing standards at least 20 calendar days (giving the specific date) before the housing is to be occupied.

(2) *"Criteria" employers.* If the request for conditional access described in paragraph (a)(1) of this section is from an employer filing a clearance order pursuant to an application for temporary alien agricultural labor certification for H–2A workers under subpart B of part 655 of this chapter, the request must be filed with the Certifying Officer (CO) at the processing center designated by ETA in guidance to make determinations on applications for temporary employment certification under the H–2A program.

(3) *Assurance.* The employer's request pursuant to paragraph (a)(1) or (2) of this section must contain an assurance that the housing will be in full compliance with the applicable housing standards at least 20 calendar days

(stating the specific date) before the housing is to be occupied.

(b) *Processing requests*—(1) *SWA processing.* Upon receipt of a written request for conditional access to the intrastate or interstate clearance system under paragraph (a)(1) of this section, the ES office must send the request to the SWA, which, in turn, must forward it to the Regional Administrator.

(2) *Regional office processing and determination.* Upon receipt of a request for conditional access pursuant to paragraph (b)(1) of this section, the Regional Administrator must review the matter and, as appropriate, must either grant or deny the request.

(c) *Authorization.* The authorization for conditional access to the intrastate or interstate clearance system must be in writing, and must state that although the housing does not comply with the applicable standards, the employer's job order may be placed into intrastate or interstate clearance until a specified date. The Regional Administrator must send the authorization to the employer and must send copies (hard copy or electronic) to the appropriate SWA and ES office. The employer must submit and the ES office must attach copies of the authorization to each of the employer's clearance orders which is placed into intrastate or interstate clearance.

(d) *Notice of denial.* If the Regional Administrator denies the request for conditional access to the intrastate or interstate clearance system he/she must provide written notice to the employer, the appropriate SWA, and the ES office, stating the reasons for the denial.

(e) *Inspection.* The ES office serving the area containing the housing of any employer granted conditional access to the intrastate or interstate clearance system must assure that the housing is inspected no later than the date by which the employer has promised to have its housing in compliance with the applicable housing standards. An employer however, may request an earlier preliminary inspection. If, on the date set forth in the authorization, the housing is not in full compliance with the applicable housing standards as assured in the request for conditional access, the ES office must afford the employer 5 calendar days to bring the housing into full compliance. After the 5-calendar-day period, if the housing is not in full compliance with the applicable housing standards as assured in the request for conditional access, the ES office must immediately:

(1) Notify the RA or the NPC designated by the Regional Administrator;

(2) Remove the employer's clearance orders from intrastate and interstate clearance; and

(3) If workers have been recruited against these orders, in cooperation with the ES agencies in other States, make every reasonable attempt to locate and notify the appropriate crew leaders or workers, and to find alternative and comparable employment for the workers.

§ 653.503 Field checks.

(a) If a worker is placed on a clearance order, the SWA must notify the employer in writing that the SWA, through its ES offices, and/or Federal staff, must conduct random, unannounced field checks to determine and document whether wages, hours, and working and housing conditions are being provided as specified in the clearance order.

(b) Where the SWA has made placements on 10 or more agricultural clearance orders (pursuant to this subpart) during the quarter, the SWA must conduct field checks on at least 25 percent of the total of such orders. Where the SWA has made placements on nine or fewer job orders during the quarter (but at least one job order), the SWA must conduct field checks on 100 percent of all such orders. This requirement must be met on a quarterly basis.

(c) Field checks must include visit(s) to the worksite at a time when workers are present. When conducting field checks, ES staff must consult both the employees and the employer to ensure compliance with the full terms and conditions of employment.

(d) If SWA or Federal personnel observe or receive information, or otherwise have reason to believe that conditions are not as stated in the clearance order or that an employer is violating an employment-related law, the SWA must document the finding and attempt informal resolution where appropriate (for example, informal resolution must not be attempted in certain cases, such as E.O. related issues and others identified by the Department through guidance.) If the matter has not been resolved within 5 business days, the SWA must initiate the Discontinuation of Services as set forth at part 658, subpart F, of this chapter and must refer apparent violations of employment-related laws to appropriate enforcement agencies in writing.

(e) SWAs may enter into formal or informal arrangements with appropriate State and Federal enforcement agencies where the enforcement agency staff may conduct field checks instead of and on behalf of SWA personnel. The agreement may include the sharing of information and any actions taken regarding violations of the terms and conditions of the employment as stated in the clearance order and any other violations of employment-related laws. An enforcement agency field check must satisfy the requirement for SWA field checks where all aspects of wages, hours, working and housing conditions have been reviewed by the enforcement agency. The SWA must supplement enforcement agency efforts with field checks focusing on areas not addressed by enforcement agencies.

(f) ES staff must keep records of all field checks.

PART 654—SPECIAL RESPONSIBILITIES OF THE EMPLOYMENT SERVICE SYSTEM

■ 8. Revise the authority citation for part 654 to read as follows:

Authority: 29 U.S.C. 49k; 8 U.S.C. 1188(c)(4); 41 Op.A.G. 406 (1959).

■ 9. Revise subpart E of part 654 to read as follows:

Subpart E—Housing for Farmworkers

Purpose and Applicability

Sec.
654.400 Scope and purpose.
654.401 Applicability.
654.402 Variances.
654.403 [Reserved]

Housing Standards

Sec.
654.404 Housing site.
654.405 Water supply.
654.406 Excreta and liquid waste disposal.
654.407 Housing.
654.408 Screening.
654.409 Heating.
654.410 Electricity and lighting.
654.411 Toilets.
654.412 Bathing, laundry, and hand washing.
654.413 Cooking and eating facilities.
654.414 Garbage and other refuse.
654.415 Insect and rodent control.
654.416 Sleeping facilities.
654.417 Fire, safety, and first aid.

Subpart E—Housing for Farmworkers

Purpose and Applicability

§ 654.400 Scope and purpose.

(a) This subpart sets forth the Department's Employment and Training Administration (ETA) standards for agricultural housing and variances. Local Wagner-Peyser Act Employment Service (ES) offices, as part of the State ES agencies and in cooperation with the ES program, assist employers in recruiting farmworkers from places outside the area of intended employment. The experiences of the ES agencies indicate that employees so

referred have on many occasions been provided with inadequate, unsafe, and unsanitary housing conditions. To discourage this practice, it is the policy of the Federal-State ES system to deny its intrastate and interstate recruitment services to employers until the State ES agency has ascertained that the employer's housing meets certain standards.

(b) To implement this policy, § 653.501 of this chapter provides that recruitment services must be denied unless the employer has signed an assurance that if the workers are to be housed, a preoccupancy inspection has been conducted, and the ES staff has ascertained that, with respect to intrastate or interstate clearance orders, the employer's housing meets the full set of standards set forth at 29 CFR 1910.142 or this subpart, except that mobile range housing for sheepherders or goatherders must meet existing Departmental guidelines and/or applicable regulations.

§ 654.401 Applicability.

(a) Employers whose housing was completed or under construction prior to April 3, 1980, or was under a signed contract for construction prior to March 4, 1980, may continue to follow the full set of the Department's ETA standards set forth in this subpart.

(b) The Department will consider agricultural housing which complies with ETA transitional standards set forth in this subpart also to comply with the Occupational Safety and Health Administration (OSHA) temporary labor camp standards at 29 CFR 1910.142.

§ 654.402 Variances.

(a) An employer may apply for a structural variance from a specific standard(s) in this subpart by filing a written application for such a variance with the local ES office serving the area in which the housing is located. This application must:

(1) Clearly specify the standard(s) from which the variance is desired;

(2) Adequately justify that the variance is necessary to obtain a beneficial use of an existing facility, and to prevent a practical difficulty or unnecessary hardship; and

(3) Clearly set forth the specific alternative measures which the employer has taken to protect the health and safety of workers and adequately show that such alternative measures have achieved the same result as the standard(s) from which the employer desires the variance.

(b) Upon receipt of a written request for a variance under paragraph (a) of this section, the local ES office must send the request to the State office which, in turn, must forward it to the ETA Regional Administrator (RA). The RA must review the matter and, after consultation with OSHA, must either grant or deny the request for a variance.

(c) The variance granted by the RA must be in writing, must state the particular standard(s) involved, and must state as conditions of the variance the specific alternative measures which have been taken to protect the health and safety of the workers. The RA must send the approved variance to the employer and must send copies to OSHA's Regional Administrator, the Regional Administrator of the Wage and Hour Division (WHD), and the appropriate State Workforce Agency (SWA) and the local ES office. The employer must submit and the local ES office must attach copies of the approved variance to each of the employer's job orders which is placed into intrastate or interstate clearance.

(d) If the RA denies the request for a variance, the RA must provide written notice stating the reasons for the denial to the employer, the appropriate SWA, and the local ES office. The notice also must offer the employer an opportunity to request a hearing before a Department of Labor Hearing Officer, provided the employer requests such a hearing from the RA within 30 calendar days of the date of the notice. The request for a hearing must be handled in accordance with the complaint procedures set forth at §§ 658.424 and 658.425 of this chapter.

(e) The procedures of paragraphs (a) through (d) of this section only apply to an employer who has chosen, as evidenced by its written request for a variance, to comply with the ETA housing standards at §§ 654.404 through 654.417.

§ 654.403 [Reserved]

Housing Standards

§ 654.404 Housing site.

(a) Housing sites must be well drained and free from depressions in which water may stagnate. They must be located where the disposal of sewage is provided in a manner which neither creates nor is likely to create a nuisance, or a hazard to health.

(b) Housing must not be subject to, or in proximity to, conditions that create or are likely to create offensive odors, flies, noise, traffic, or any similar hazards.

(c) Grounds within the housing site must be free from debris, noxious plants (poison ivy, etc.) and uncontrolled weeds or brush.

(d) The housing site must provide a space for recreation reasonably related to the size of the facility and the type of occupancy.

§ 654.405 Water supply.

(a) An adequate and convenient supply of water that meets the standards of the State health authority must be provided.

(b) A cold water tap must be available within 100 feet of each individual living unit when water is not provided in the unit. Adequate drainage facilities must be provided for overflow and spillage.

(c) Common drinking cups are not permitted.

§ 654.406 Excreta and liquid waste disposal.

(a) Facilities must be provided and maintained for effective disposal of excreta and liquid waste. Raw or treated liquid waste may not be discharged or allowed to accumulate on the ground surface.

(b) Where public sewer systems are available, all facilities for disposal of excreta and liquid wastes must be connected thereto.

(c) Where public sewers are not available, a subsurface septic tank-seepage system or other type of liquid waste treatment and disposal system, privies or portable toilets must be provided. Any requirements of the State health authority must be complied with.

§ 654.407 Housing.

(a) Housing must be structurally sound, in good repair, in a sanitary condition and must provide protection to the occupants against the elements.

(b) Housing must have flooring constructed of rigid materials, smooth finished, readily cleanable, and so located as to prevent the entrance of ground and surface water.

(c) The following space requirements must be provided:

(1) For sleeping purposes only in family units and in dormitory accommodations using single beds, not less than 50 square feet of floor space per occupant;

(2) For sleeping purposes in dormitory accommodations using double bunk beds only, not less than 40 square feet per occupant; and

(3) For combined cooking, eating, and sleeping purposes not less than 60 square feet of floor space per occupant.

(d) Housing used for families with one or more children over 6 years of age must have a room or partitioned sleeping area for the husband and wife. The partition must be of rigid materials and installed so as to provide reasonable privacy.

(e) Separate sleeping accommodations must be provided for each sex or each family.

(f) Adequate and separate arrangements for hanging clothing and storing personal effects for each person or family must be provided.

(g) At least one-half of the floor area in each living unit must have a minimum ceiling height of 7 feet. No floor space may be counted toward minimum requirements where the ceiling height is less than 5 feet.

(h) Each habitable room (not including partitioned areas) must have at least one window or skylight opening directly to the out-of-doors. The minimum total window or skylight area, including windows in doors, must equal at least 10 percent of the usable floor area. The total openable area must equal at least 45 percent of the minimum window or skylight area required, except where comparably adequate ventilation is supplied by mechanical or some other method.

§ 654.408 Screening.

(a) All outside openings must be protected with screening of not less than 16 mesh.

(b) All screen doors must be tight fitting, in good repair, and equipped with self-closing devices.

§ 654.409 Heating.

(a) All living quarters and service rooms must be provided with properly installed, operable heating equipment capable of maintaining a temperature of at least 68 degrees Fahrenheit (°F) if during the period of normal occupancy the temperature in such quarters falls below 68 °F.

(b) Any stoves or other sources of heat utilizing combustible fuel must be installed and vented in such a manner as to prevent fire hazards and a dangerous concentration of gases. No portable heaters other than those operated by electricity may be provided. If a solid or liquid fuel stove is used in a room with wooden or other combustible flooring, there must be a concrete slab, insulated metal sheet, or other fireproof material on the floor under each stove, extending at least 18 inches beyond the perimeter of the base of the stove.

(c) Any wall or ceiling within 18 inches of a solid or liquid fuel stove or a stovepipe must be of fireproof material. A vented metal collar must be installed around a stovepipe, or vent passing through a wall, ceiling, floor, or roof.

(d) When a heating system has automatic controls, the controls must be of the type which cut off the fuel supply upon the failure or interruption of the flame or ignition, or whenever a predetermined safe temperature or pressure is exceeded.

§ 654.410 Electricity and lighting.

(a) All housing sites must be provided with electric service.

(b) Each habitable room and all common use rooms, and areas such as: laundry rooms, toilets, privies, hallways, stairways, etc., must contain adequate ceiling or wall-type light fixtures. At least one wall-type electrical convenience outlet must be provided in each individual living room.

(c) Adequate lighting must be provided for the yard area, and pathways to common use facilities.

(d) All wiring and lighting fixtures must be installed and maintained in a safe condition.

§ 654.411 Toilets.

(a) Toilets must be constructed, located, and maintained so as to prevent any nuisance or public health hazard.

(b) Water closets or privy seats for each sex must be in the ratio of not less than one such unit for each 15 occupants, with a minimum of one unit for each sex in common use facilities.

(c) Urinals, constructed of nonabsorbent materials, may be substituted for men's toilet seats on the basis of one urinal or 24 inches of trough-type urinal for one toilet seat up to a maximum of one-third of the required toilet seats.

(d) Except in individual family units, separate toilet accommodations for men and women must be provided. If toilet facilities for men and women are in the same building, they must be separated by a solid wall from floor to roof or ceiling. Toilets must be distinctly marked "men" and "women" in English and in the native language of the persons expected to occupy the housing.

(e) Where common use toilet facilities are provided, an adequate and accessible supply of toilet tissue, with holders, must be furnished.

(f) Common use toilets and privies must be well lighted and ventilated and must be clean and sanitary.

(g) Toilet facilities must be located within 200 feet of each living unit.

(h) Privies may not be located closer than 50 feet from any living unit or any facility where food is prepared or served.

(i) Privy structures and pits must be fly-tight. Privy pits must have adequate capacity for the required seats.

§ 654.412 Bathing, laundry, and hand washing.

(a) Bathing and hand washing facilities, supplied with hot and cold water under pressure, must be provided for the use of all occupants. These facilities must be clean and sanitary and located within 200 feet of each living unit.

(b) There must be a minimum of 1 showerhead per 15 persons. Showerheads must be spaced at least 3 feet apart, with a minimum of 9 square feet of floor space per unit. Adequate, dry dressing space must be provided in common use facilities. Shower floors must be constructed of nonabsorbent nonskid materials and sloped to properly constructed floor drains. Except in individual family units, separate shower facilities must be provided each sex. When common use shower facilities for both sexes are in the same building they must be separated by a solid nonabsorbent wall extending from the floor to ceiling, or roof, and must be plainly designated "men" or "women" in English and in the native language of the persons expected to occupy the housing.

(c) Lavatories or equivalent units must be provided in a ratio of 1 per 15 persons.

(d) Laundry facilities, supplied with hot and cold water under pressure, must be provided for the use of all occupants. Laundry trays or tubs must be provided in the ratio of 1 per 25 persons. Mechanical washers may be provided in the ratio of 1 per 50 persons in lieu of laundry trays, although a minimum of 1 laundry tray per 100 persons must be provided in addition to the mechanical washers.

§ 654.413 Cooking and eating facilities.

(a) When workers or their families are permitted or required to cook in their individual unit, a space must be provided and equipped for cooking and eating. Such space must be provided with:

(1) A cookstove or hot plate with a minimum of two burners;

(2) Adequate food storage shelves and a counter for food preparation;

(3) Provisions for mechanical refrigeration of food at a temperature of not more than 45 °F;

(4) A table and chairs or equivalent seating and eating arrangements, all commensurate with the capacity of the unit; and

(5) Adequate lighting and ventilation.

(b) When workers or their families are permitted or required to cook and eat in a common facility, a room or building separate from the sleeping facilities must be provided for cooking and eating. Such room or building must be provided with:

(1) Stoves or hot plates, with a minimum equivalent of 2 burners, in a ratio of 1 stove or hot plate to 10

persons, or 1 stove or hot plate to 2 families;

(2) Adequate food storage shelves and a counter for food preparation;

(3) Mechanical refrigeration for food at a temperature of not more than 45 °F;

(4) Tables and chairs or equivalent seating adequate for the intended use of the facility;

(5) Adequate sinks with hot and cold water under pressure;

(6) Adequate lighting and ventilation; and

(7) Floors must be of nonabsorbent, easily cleaned materials.

(c) When central mess facilities are provided, the kitchen and mess hall must be in proper proportion to the capacity of the housing and must be separate from the sleeping quarters. The physical facilities, equipment, and operation must be in accordance with provisions of applicable State codes.

(d) Wall surface adjacent to all food preparation and cooking areas must be of nonabsorbent, easily cleaned material. In addition, the wall surface adjacent to cooking areas must be of fire-resistant material.

§ 654.414 Garbage and other refuse.

(a) Durable, fly-tight, clean containers in good condition of a minimum capacity of 20 gallons, must be provided adjacent to each housing unit for the storage of garbage and other refuse. Such containers must be provided in a minimum ratio of 1 per 15 persons.

(b) Provisions must be made for collection of refuse at least twice a week, or more often if necessary. The disposal of refuse, which includes garbage, must be in accordance with State and local law.

§ 654.415 Insect and rodent control.

Housing and facilities must be free of insects, rodents, and other vermin.

§ 654.416 Sleeping facilities.

(a) Sleeping facilities must be provided for each person. Such facilities must consist of comfortable beds, cots, or bunks, provided with clean mattresses.

(b) Any bedding provided by the housing operator must be clean and sanitary.

(c) Triple deck bunks may not be provided.

(d) The clear space above the top of the lower mattress of a double deck bunk and the bottom of the upper bunk must be a minimum of 27 inches. The distance from the top of the upper mattress to the ceiling must be a minimum of 36 inches.

(e) Beds used for double occupancy may be provided only in family accommodations.

§ 654.417 Fire, safety, and first aid.

(a) All buildings in which people sleep or eat must be constructed and maintained in accordance with applicable State or local fire and safety laws.

(b) In family housing and housing units for less than 10 persons, of one story construction, two means of escape must be provided. One of the two required means of escape may be a readily accessible window with an openable space of not less than 24 × 24 inches.

(c) All sleeping quarters intended for use by 10 or more persons, central dining facilities, and common assembly rooms must have at least two doors remotely separated so as to provide alternate means of escape to the outside or to an interior hall.

(d) Sleeping quarters and common assembly rooms on the second story must have a stairway, and a permanent, affixed exterior ladder or a second stairway.

(e) Sleeping and common assembly rooms located above the second story must comply with the State and local fire and building codes relative to multiple story dwellings.

(f) Fire extinguishing equipment must be provided in a readily accessible place located not more than 100 feet from each housing unit. Such equipment must provide protection equal to a 2½ gallon stored pressure or 5-gallon pump-type water extinguisher.

(g) First aid facilities must be provided and readily accessible for use at all time. Such facilities must be equivalent to the 16 unit first aid kit recommended by the American Red Cross, and provided in a ratio of 1 per 50 persons.

(h) No flammable or volatile liquids or materials must be stored in or adjacent to rooms used for living purposes, except for those needed for current household use.

(i) Agricultural pesticides and toxic chemicals may not be stored in the housing area.

■ 10. Revise part 658 to read as follows:

PART 658—ADMINISTRATIVE PROVISIONS GOVERNING THE WAGNER–PEYSER ACT EMPLOYMENT SERVICE

Subpart A–D—[Reserved]

Subpart E—Employment Service and Employment-Related Law Complaint System (Complaint System)

Sec.

658.400 Purpose and scope of subpart.

Complaints Filed at the Local and State Level

Sec.

658.410 Establishment of local and State complaint systems.
658.411 Action on complaints.
658.417 State hearings.
658.418 Decision of the State hearing official.
658.419 Apparent violations.

When a Complaint Rises to the Federal Level

Sec.

658.420 Responsibilities of the Employment and Training Administration regional office.
658.421 Handling of Wagner-Peyser Act Employment Service regulation-related complaints.
658.422 Handling of employment-related law complaints by the Regional Administrator.
658.424 Proceedings before the Office of Administrative Law Judges.
658.425 Decision of Department of Labor Administrative Law Judge.
658.426 Complaints against the United States Employment Service.

Subpart F—Discontinuation of Services to Employers by the Wagner-Peyser Act Employment Service

Sec.

658.500 Scope and purpose of subpart.
658.501 Basis for discontinuation of services.
658.502 Notification to employers.
658.503 Discontinuation of services.
658.504 Reinstatement of services.

Subpart G—Review and Assessment of State Workforce Agency Compliance With Employment Service Regulations

Sec.

658.600 Scope and purpose of subpart.
658.601 State Workforce Agency responsibility.
658.602 Employment and Training Administration National Office responsibility.
658.603 Employment and Training Administration Regional Office responsibility.
658.604 Assessment and evaluation of program performance data.
658.605 Communication of findings to State agencies.

Subpart H—Federal Application of Remedial Action to State Workforce Agencies

Sec.

658.700 Scope and purpose of subpart.
658.701 Statements of policy.
658.702 Initial action by the Regional Administrator.
658.703 Emergency corrective action.
658.704 Remedial actions.
658.705 Decision to decertify.
658.706 Notice of decertification.
658.707 Requests for hearings.
658.708 Hearings.
658.709 Conduct of hearings.
658.710 Decision of the Administrative Law Judge.
658.711 Decision of the Administrative Review Board.

Authority: Secs. 189, 503, Pub. L. 113–128, 128 Stat. 1425 (Jul. 22, 2014); 29 U.S.C. chapter 4B.

Subpart A–D—[Reserved]

Subpart E—Employment Service and Employment-Related Law Complaint System (Complaint System)

§ 658.400 Purpose and scope of subpart.

(a) This subpart sets forth the regulations governing the Complaint System for the Wagner-Peyser Act Employment Service (ES) at the State and Federal levels. Specifically, the Complaint System handles complaints against an employer about the specific job to which the applicant was referred through the ES and complaints involving the failure to comply with the ES regulations under parts 651, 652, 653, and 654 of this chapter and this part. As noted in § 658.411(d)(6), this subpart only covers ES-related complaints made within 2 years of the alleged violation.

(b) Any complaints alleging violations under the Unemployment Insurance program, under Workforce Innovation and Opportunity Act (WIOA) title I programs, or complaints by veterans alleging employer violations of the mandatory listing requirements under 38 U.S.C. 4212 are not covered by this subpart and must be referred to the appropriate administering agency which would follow the procedures set forth in the respective regulations.

(c) The Complaint System also accepts, refers, and, under certain circumstances, tracks complaints involving employment-related laws as defined in § 651.10 of this chapter.

(d) A complainant may designate an individual to act as his/her representative.

Complaints Filed at the Local and State Level

§ 658.410 Establishment of local and State complaint systems.

(a) Each State Workforce Agency (SWA) must establish and maintain a Complaint System pursuant to this subpart.

(b) The State Administrator must have overall responsibility for the operation of the Complaint System. At the ES office level the manager must be responsible for the operation of the Complaint System.

(c) SWAs must ensure centralized control procedures are established for the processing of complaints. The manager of the ES office and the SWA Administrator must ensure a central complaint log is maintained, listing all complaints taken by the ES office or the SWA, and specifying for each complaint:

(1) The name of the complainant;

(2) The name of the respondent (employer or State agency);

(3) The date the complaint is filed;

(4) Whether the complaint is by or on behalf of a migrant and seasonal farmworker (MSFW);

(5) Whether the complaint concerns an employment-related law or the ES regulations; and

(6) The action taken and whether the complaint has been resolved.

(d) State agencies must ensure information pertaining to the use of the Complaint System is publicized, which must include, but is not limited to, the prominent display of an Employment and Training Administration (ETA)-approved Complaint System poster in each one-stop center.

(e) Each one-stop center must ensure there is appropriate staff available during regular office hours to take complaints.

(f) Complaints may be accepted in any one-stop center, or by a State Workforce Agency, or elsewhere by an outreach worker.

(g) All complaints filed through the local ES office must be handled by a trained Complaint System representative.

(h) All complaints received by a SWA must be assigned to a State agency official designated by the State Administrator, provided that the State agency official designated to handle MSFW complaints must be the State Monitor Advocate (SMA).

(i) State agencies must ensure any action taken by the Complaint System representative, including referral on a complaint from an MSFW is fully documented containing all relevant information, including a notation of the type of each complaint pursuant to Department guidance, a copy of the original complaint form, a copy of any ES-related reports, any relevant correspondence, a list of actions taken, a record of pertinent telephone calls and all correspondence relating thereto.

(j) Within 1 month after the end of the calendar quarter, the ES office manager must transmit an electronic copy of the quarterly Complaint System log described in paragraph (c) of this section to the SMA. These logs must be made available to the Department upon request.

(k) The appropriate SWA or ES office representative handling a complaint must offer to assist the complainant through the provision of appropriate services.

(l) The State Administrator must establish a referral system for cases where a complaint is filed alleging a violation that occurred in the same State but through a different ES office.

(m) Follow-up on unresolved complaints. When a complaint is submitted or referred to a SWA, the Complaint System representative (where the complainant is an MSFW, the Complaint System representative will be the SMA), must follow-up monthly regarding MSFW complaints, and must inform the complainant of the status of the complaint. No follow-up with the complainant is required for non-MSFW complaints.

(n) When a complainant is an English Language Learner (ELL), all written correspondence with the complainant under part 658, subpart E must include a translation into the complainant's native language.

(o) A complainant may designate an individual to act as his/her representative throughout the filing and processing of a complaint.

§ 658.411 Action on complaints.

(a) *Filing complaints.* (1) Whenever an individual indicates an interest in filing a complaint under this subpart with an ES office or SWA representative, or an outreach worker, the individual receiving the complaint must offer to explain the operation of the Complaint System and must offer to take the complaint in writing.

(2) During the initial discussion with the complainant, the staff taking the complaint must:

(i) Make every effort to obtain all the information he/she perceives to be necessary to investigate the complaint;

(ii) Request that the complainant indicate all of the physical addresses, email, and telephone numbers through which he/she might be contacted during the investigation of the complaint; and

(iii) Request that the complainant contact the Complaint System representative before leaving the area if possible, and explain the need to maintain contact during the investigation.

(3) The staff must ensure the complainant (or his/her representative) submits the complaint on the Complaint/Referral Form or another complaint form prescribed or approved by the Department or submits complaint information which satisfies paragraph (a)(4) of this section. The Complaint/Referral Form must be used for all complaints, including complaints about unlawful discrimination, except as provided in paragraph (a)(4) of this section. The staff must offer to assist the complainant in filling out the form and submitting all necessary information, and must do so if the complainant desires such assistance. If the complainant also represents several other complainants, all such

complainants must be named. The complainant, or his/her representative, must sign the completed form in writing or electronically. The identity of the complainant(s) and any persons who furnish information relating to, or assisting in, an investigation of a complaint must be kept confidential to the maximum extent possible, consistent with applicable law and a fair determination of the complaint. A copy of the completed complaint submission must be given to the complainant(s), and the complaint form must be given to the appropriate Complaint System representative described in § 658.410(g).

(4) Any complaint in a reasonable form (letter or email) which is signed by the complainant, or his/her representative, and includes sufficient information to initiate an investigation must be treated as if it were a properly completed Complaint/Referral Form filed in person. A letter (via hard copy or email) confirming the complaint was received must be sent to the complainant and the document must be sent to the appropriate Complaint System representative. The Complaint System representative must request additional information from the complainant if the complainant has not provided sufficient information to investigate the matter expeditiously.

(b) *Complaints regarding an employment-related law.* (1) When a complaint is filed regarding an employment-related law with a ES office or a SWA the office must determine if the complainant is an MSFW.

(i) If the complainant is a non-MSFW, the office must immediately refer the complainant to the appropriate enforcement agency, another public agency, a legal aid organization, and/or a consumer advocate organization, as appropriate, for assistance. Upon completing the referral the local or State representative is not required to follow-up with the complainant.

(ii) If the complainant is a MSFW, the ES office or SWA Complaint System representative must:

(A) Take from the MSFW or his/her representative, in writing (hard copy or electronic), the complaint(s) describing the alleged violation(s) of the employment-related law(s); and

(B) Attempt to resolve the issue informally at the local level, except in cases where the complaint was submitted to the SWA and the SMA determines that he/she must take immediate action and except in cases where informal resolution at the local level would be detrimental to the complainant(s). In cases where informal resolution at the local level would be detrimental to the complainant(s), the Complaint System Representative or SMA (depending on where the complaint was filed) must immediately refer the complaint to the appropriate enforcement agency. Concurrently, the Complaint System representative must offer to refer the MSFW to other employment services should the MSFW be interested.

(C) If the issue is not resolved within 5 business days, the Complaint System representative must refer the complaint to the appropriate enforcement agency (or another public agency, a legal aid organization, or a consumer advocate organization, as appropriate) for further assistance.

(D) If the ES office or SWA Complaint System representative determines that the complaint must be referred to a State or Federal agency, he/she must refer the complaint to the SMA who must immediately refer the complaint to the appropriate enforcement agency for prompt action.

(E) If the complaint was referred to the SMA under paragraph (b)(1)(ii)(D) of this section, the representative must provide the SMA's contact information to the complainant. The SMA must notify the complainant of the enforcement agency to which the complaint was referred.

(2) If an enforcement agency makes a final determination that the employer violated an employment-related law and the complaint is connected to a job order, the SWA must initiate procedures for discontinuation of services immediately in accordance with subpart F of this part. If this occurs, the SWA must notify the complainant and the employer of this action.

(c) *Complaints alleging a violation of rights under the Equal Employment Opportunity Commission (EEOC) regulations or enforced by the Department of Labor's Civil Rights Center (CRC).* (1) All complaints received by a ES office or a SWA alleging unlawful discrimination, as well as reprisal for protected activity, in violation of EEOC regulations, must be logged and immediately referred to either a local Equal Opportunity (EO) representative, the State EO representative, or the EEOC. The Complaint System representative must notify the complainant of the referral in writing.

(2) Any complaints received either at the local and State level or at the ETA regional office, that allege violations of civil rights laws and regulations such as those under title VI of the Civil Rights Act or sec. 188 of WIOA, including for beneficiaries (as defined in 29 CFR 38.4) only, on the basis of citizenship status or participant status, as well as reprisal for protected activity, must immediately be logged and directed or forwarded to the recipient's Equal Opportunity Officer or the CRC.

(d) *Complaints regarding the ES regulations (ES complaints).* (1) When an ES complaint is filed with a ES office or a SWA the following procedures apply:

(i) When an ES complaint is filed against an employer, the proper office to handle the complaint is the ES office serving the area in which the employer is located.

(ii) When a complaint is against an employer in another State or against another SWA:

(A) The ES office or SWA receiving the complaint must send, after ensuring that the Complaint/Referral Form is adequately completed, a copy of the Complaint/Referral Form and copies of any relevant documents to the SWA in the other State. Copies of the referral letter must be sent to the complainant, and copies of the complaint and referral letter must be sent to the ETA Regional Office(s) with jurisdiction over the transferring and receiving State agencies. All such copies must be sent via hard copy or electronic mail.

(B) The SWA receiving the complaint must handle the complaint as if it had been initially filed with that SWA.

(C) The ETA regional office with jurisdiction over the receiving SWA must follow-up with it to ensure the complaint is handled in accordance with these regulations.

(D) If the complaint is against more than one SWA, the complaint must so clearly state. Additionally, the complaints must be processed as separate complaints and must be handled according to procedures in this paragraph (d).

(iii) When an ES complaint is filed against a ES office, the proper office to handle the complaint is the ES office serving the area in which the alleged violation occurred.

(iv) When an ES complaint is filed against more than one ES offices and is in regard to an alleged agency-wide violation the SWA representative or his/her designee must process the complaint.

(v) When a complaint is filed alleging a violation that occurred in the same State but through a different ES office, the ES office where the complaint is filed must ensure that the Complaint/Referral Form is adequately completed and send the form to the appropriate local ES office for tracking, further referral if necessary, and follow-up. A copy of the referral letter must be sent

to the complainant via hard copy or electronic mail.

(2)(i) If a complaint regarding an alleged violation of the ES regulations is filed in a ES office by either a non-MSFW or MSFW, or their representative(s) (or if all necessary information has been submitted to the office pursuant to paragraph (a)(4) of this section), the appropriate ES office Complaint System representative must investigate and attempt to resolve the complaint immediately upon receipt.

(ii) If resolution has not been achieved to the satisfaction of the complainant within 15 working days after receipt of the complaint, or 5 working days with respect to complaints filed by or on behalf of MSFWs, (or after all necessary information has been submitted to the ES office pursuant to paragraph (a)(4) of this section), the Complaint System representative must send the complaint to the SWA for resolution or further action.

(iii) The ES office must notify the complainant and the respondent, in writing (via hard copy or electronic mail), of the determination (pursuant to paragraph (d)(5) of this section) of its investigation under paragraph (d)(2)(i) of this section, or of the referral to the SWA (if referred).

(3) When a non-MSFW or his/her representative files a complaint regarding the ES regulations with a SWA, or when a non-MSFW complaint is referred from a ES office the following procedures apply:

(i) If the complaint is not transferred to an enforcement agency under paragraph (b)(1)(i) of this section the Complaint System representative must investigate and attempt to resolve the complaint immediately upon receipt.

(ii) If resolution at the SWA level has not been accomplished within 30 working days after the complaint was received by the SWA (or after all necessary information has been submitted to the SWA pursuant to paragraph (a)(4) of this section), whether the complaint was received directly or from a ES office pursuant to paragraph (d)(2)(ii) of this section, the SWA must make a written determination regarding the complaint and must send electronic copies to the complainant and the respondent. The determination must follow the procedures set forth in paragraph (d)(5) of this section.

(4)(i) When a MSFW or his/her representative files a complaint regarding the ES regulations directly with a SWA, or when a MSFW complaint is referred from a ES office, the SMA must investigate and attempt to resolve the complaint immediately upon receipt and may, if necessary, conduct a further investigation.

(ii) If resolution at the SWA level has not been accomplished within 20 business days after the complaint was received by the SWA (or after all necessary information has been submitted to the SWA pursuant to paragraph (a)(4) of this section), the SMA must make a written determination regarding the complaint and must send electronic copies to the complainant and the respondent. The determination must follow the procedures set forth in paragraph (d)(5) of this section.

(5)(i) All written determinations by ES or SWA officials on complaints under the ES regulations must be sent by certified mail (or another legally viable method) and a copy of the determination may be sent via electronic mail. The determination must include all of the following:

(A) The results of any SWA investigation;

(B) The conclusions reached on the allegations of the complaint;

(C) If a resolution was not reached, an explanation of why the complaint was not resolved; and

(D) If the complaint is against the SWA, an offer to the complainant of the opportunity to request, in writing, a hearing within 20 business days after the certified date of receipt of the notification.

(ii) If the SWA determines that the employer has not violated the ES regulations, the SWA must offer to the complainant the opportunity to request a hearing within 20 working days after the certified date of receipt of the notification.

(iii) If the SWA, within 20 business days from the certified date of receipt of the notification provided for in paragraph (d)(5) of this section, receives a written request (via hard copy or electronic mail) for a hearing, the SWA must refer the complaint to a State hearing official for hearing. The SWA must, in writing (via hard copy or electronic mail), notify the respective parties to whom the determination was sent that:

(A) The parties will be notified of the date, time, and place of the hearing;

(B) The parties may be represented at the hearing by an attorney or other representative;

(C) The parties may bring witnesses and/or documentary evidence to the hearing;

(D) The parties may cross-examine opposing witnesses at the hearing;

(E) The decision on the complaint will be based on the evidence presented at the hearing;

(F) The State hearing official may reschedule the hearing at the request of a party or its representative; and

(G) With the consent of the SWA's representative and of the State hearing official, the party who requested the hearing may withdraw the request for hearing in writing before the hearing.

(iv) If the State agency makes a final determination that the employer who has or is currently using the ES has violated the ES regulations, the determination, pursuant to paragraph (d)(5) of this section, must state that the State will initiate procedures for discontinuation of services to the employer in accordance with subpart F of this part.

(6) A complaint regarding the ES regulations must be handled to resolution by these regulations only if it is made within 2 years of the alleged occurrence.

(e) *Resolution of complaints.* A complaint is considered resolved when:

(1) The complainant indicates satisfaction with the outcome via written correspondence;

(2) The complainant chooses not to elevate the complaint to the next level of review;

(3) The complainant or the complainant's authorized representative fails to respond to a request for information under paragraph (a)(4) of this section within 20 working days or, in cases where the complainant is an MSFW, 40 working days of a written request by the appropriate ES office or State agency;

(4) The complainant exhausts all available options for review; or

(5) A final determination has been made by the enforcement agency to which the complaint was referred.

(f) *Reopening of case after resolution.* If the complainant or the complainant's authorized representative fails to respond pursuant to paragraph (e)(3) of this section, the complainant or the complainant's authorized representative may reopen the case within 1 year after the SWA has closed the case.

§ 658.417 State hearings.

(a) The hearing described in § 658.411(d)(5) must be held by State hearing officials. A State hearing official may be any State official authorized to hold hearings under State law. Examples of hearing officials are referees in State unemployment compensation hearings and officials of the State agency authorized to preside at State administrative hearings.

(b) The State hearing official may decide to conduct hearings on more than one complaint concurrently if he/she determines that the issues are

related or that the complaints will be handled more expeditiously if conducted together.

(c) The State hearing official, upon the referral of a case for a hearing, must:

(1) Notify all involved parties of the date, time, and place of the hearing; and

(2) Reschedule the hearing, as appropriate.

(d) In conducting a hearing, the State hearing official must:

(1) Regulate the course of the hearing;

(2) Issue subpoenas if necessary, provided the official has the authority to do so under State law;

(3) Ensure that all relevant issues are considered;

(4) Rule on the introduction of evidence and testimony; and

(5) Take all actions necessary to ensure an orderly proceeding.

(e) All testimony at the hearing must be recorded and may be transcribed when appropriate.

(f) The parties must be afforded the opportunity to present, examine, and cross-examine witnesses.

(g) The State hearing official may elicit testimony from witnesses, but may not act as advocate for any party.

(h) The State hearing official must receive and include in the record, documentary evidence offered by any party and accepted at the hearing. Copies thereof must be made available by the party submitting the document to other parties to the hearing upon request.

(i) Federal and State rules of evidence do not apply to hearings conducted pursuant to this section; however rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination, must be applied where reasonably necessary by the State hearing official. The State hearing official may exclude irrelevant, immaterial, or unduly repetitious evidence.

(j) The case record, or any portion thereof, must be available for inspection and copying by any party at, prior to, or subsequent to the hearing upon request. Special procedures may be used for disclosure of medical and psychological records such as disclosure to a physician designated by the individual.

(k) The State hearing official must, if feasible, resolve the dispute at any time prior to the conclusion of the hearing.

(l) At the State hearing official's discretion, other appropriate individuals, organizations, or associations may be permitted to participate in the hearing as amicus curiae (friends of the court) with respect to any legal or factual issues relevant to the complaint. Any documents submitted by the amicus curiae must be included in the record.

(m) If the parties to the hearing are located in more than one State or are located in the same State but access to the hearing location is extremely inconvenient for one or more parties as determined by the State hearing official, the hearing official must:

(1) Whenever possible, hold a single hearing at a location convenient to all parties or their representatives wishing to appear and present evidence, with all such parties and/or their representatives present.

(2) If a hearing location cannot be established by the State hearing official under paragraph (m)(1) of this section, the State hearing official may conduct, with the consent of the parties, the hearing by a telephone conference call from a State agency office. If the hearing is conducted via telephone conference call the parties and their representatives must have the option to participate in person or via telephone.

(3) Where the State agency is not able, for any reason, to conduct a telephonic hearing under paragraph (m)(2) of this section, the State agencies in the States where the parties are located must take evidence and hold the hearing in the same manner as used for appealed interstate unemployment claims in those States, to the extent that such procedures are consistent with this section.

§ 658.418 Decision of the State hearing official.

(a) The State hearing official may:

(1) Rule that it lacks jurisdiction over the case;

(2) Rule that the complaint has been withdrawn properly in writing;

(3) Rule that reasonable cause exists to believe that the request has been abandoned; or

(4) Render such other rulings as are appropriate to resolve the issues in question.

However, the State hearing official does not have authority or jurisdiction to consider the validity or constitutionality of the ES regulations or of the Federal statutes under which they are promulgated.

(b) Based on the entire record, including the investigations and determinations of the ES offices and State agencies and any evidence provided at the hearing, the State hearing official must prepare a written decision. The State hearing official must send a copy of the decision stating the findings of fact and conclusions of law, and the reasons therefor to the complainant, the respondent, entities serving as amicus capacity (if any), the State agency, the Regional Administrator, and the Solicitor of Labor, Attn: Associate Solicitor for Employment and Training Legal Services, Department of Labor, Room N2101, 200 Constitution Avenue NW., Washington, DC 20210. The notification to the complainant and respondent must be sent by certified mail or by other legally viable means.

(c) All decisions of a State hearing official must be accompanied by a written notice informing the parties (not including the Regional Administrator, the Solicitor of Labor, or entities serving in an amicus capacity) that they may appeal the judge's decision within 20 working days of the certified date of receipt of the decision, and they may file an appeal in writing with the Regional Administrator. The notice must give the address of the Regional Administrator.

§ 658.419 Apparent violations.

(a) If a SWA, ES office employee, or outreach worker, observes, has reason to believe, or is in receipt of information regarding a suspected violation of employment-related laws or ES regulations by an employer, except as provided at § 653.503 of this chapter (field checks) or § 658.411 (complaints), the employee must document the suspected violation and refer this information to the ES office manager.

(b) If the employer has filed a job order with the ES office within the past 12 months, the ES office must attempt informal resolution provided at § 658.411.

(c) If the employer has not filed a job order with the ES office during the past 12 months, the suspected violation of an employment-related law must be referred to the appropriate enforcement agency in writing.

When a Complaint Rises to the Federal Level

§ 658.420 Responsibilities of the Employment and Training Administration regional office.

(a) Each Regional Administrator must establish and maintain a Complaint System within each ETA regional office.

(b) The Regional Administrator must designate Department of Labor officials to handle ES regulation-related complaints as follows:

(1) Any complaints received either at the local and State level or at the ETA regional office, that allege violations of civil rights laws and regulations such as those under Title VI of the Civil Rights Act or sec. 188 of WIOA, including for beneficiaries (as defined in 29 CFR 38.4) only, on the basis of citizenship status or participant status, as well as reprisal

rubbers and oil-extended non-pigmented rubbers, both of which contain at least one percent of organic acids from the emulsion polymerization process.

ESB rubber is produced and sold in accordance with a generally accepted set of product specifications issued by the International Institute of Synthetic Rubber Producers (IISRP). The scope of the investigations covers grades of ESB rubber included in the IISRP 1500 and 1700 series of synthetic rubbers. The 1500 grades are light in color and are often described as "Clear" or "White Rubber." The 1700 grades are oil-extended and thus darker in color, and are often called "Brown Rubber."

Specifically excluded from the scope of these investigations are products which are manufactured by blending ESB rubber with other polymers, high styrene resin master batch, carbon black master batch (*i.e.*, IISRP 1600 series and 1800 series) and latex (an intermediate product).

The products subject to these investigations are currently classifiable under subheadings 4002.19.0015 and 4002.19.0019 of the Harmonized Tariff Schedule of the United States (HTSUS). ESB rubber is described by Chemical Abstract Services (CAS) Registry No. 9003–55–8. This CAS number also refers to other types of styrene butadiene rubber. Although the HTSUS subheadings and CAS registry number are provided for convenience and customs purposes, the written description of the scope of these investigations is dispositive.

[FR Doc. 2016–19769 Filed 8–18–16; 8:45 a.m.]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In-Quota Rate of Duty

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Effective August 19, 2016.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave. NW., Washington, DC 20230, telephone: (202) 482–3692.

SUPPLEMENTARY INFORMATION: Section 702 of the Trade Agreements Act of 1979 (as amended) (the Act) requires the Department of Commerce (the Department) to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of cheese subject to an in-quota rate of duty, as defined in section 702(h) of the Act, and to publish quarterly updates to the type and amount of those subsidies. We hereby provide the Department's quarterly update of subsidies on articles of cheese that were imported during the periods January 1, 2016, through March 31, 2016.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies, as defined in section 702(h) of the Act, being provided either directly or indirectly by foreign governments on articles of cheese subject to an in-quota rate of duty. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amounts of each subsidy for which information is currently available. The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of cheese subject to an in-quota rate of duty to submit such information in writing to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, 14th Street and Constitution Ave. NW., Washington, DC 20230.

This determination and notice are in accordance with section 702(a) of the Act.

Dated: August 11, 2016.

Ronald Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

APPENDIX—SUBSIDY PROGRAMS ON CHEESE SUBJECT TO AN IN-QUOTA RATE OF DUTY

Country	Program(s)	Gross [1] subsidy ($/lb)	Net [2] subsidy ($/lb)
28 European Union Member States [3]	European Union Restitution Payments	$0.00	$0.00
Canada	Export Assistance on Certain Types of Cheese	0.48	0.48
Norway	Indirect (Milk) Subsidy	0.00	0.00
	Consumer Subsidy	0.00	0.00
	Total	0.00	0.00
Switzerland	Deficiency Payments	0.00	0.00

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 1677(6).
[3] The 28 member states of the European Union are: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom.

[FR Doc. 2016–19767 Filed 8–18–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

United States Trade Finance Advisory Council

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an Opportunity To Apply for Membership on the U.S. Trade Finance Advisory Council.

SUMMARY: The Secretary of Commerce (Secretary) has established the U.S. Trade Finance Advisory Council (TFAC) to solicit input regarding the challenges faced by U.S. exporters in accessing capital, innovative solutions that can

for protected activity, must immediately be logged and directed or forwarded to the recipient's Equal Opportunity Officer or the CRC.

(2) All complaints alleging discrimination on the basis of genetic information must be assigned to a Regional Director for Equal Opportunity and Special Review and, where appropriate, handled in accordance with procedures Coordinated Enforcement at 29 CFR part 31.

(3) All complaints other than those described in paragraphs (b)(1) and (2) of this section, must be assigned to a regional office official designated by the Regional Administrator, provided that the regional office official designated to handle MSFW complaints must be the Regional Monitor Advocate (RMA).

(c) Except for those complaints under paragraphs (b)(1) and (2) of this section, the Regional Administrator must designate Department of Labor officials to handle employment-related law complaints in accordance with § 658.411, provided that the regional official designated to handle MSFW employment-related law complaints must be the RMA. The RMA must follow up monthly on all complaints filed by MSFWs including complaints under paragraphs (b)(1) and (2) of this section.

(d) The Regional Administrator must ensure that all complaints and all related documents and correspondence are logged with a notation of the nature of each item.

§ 658.421 Handling of Wagner-Peyser Act Employment Service regulation-related complaints.

(a)(1) Except as provided below in paragraph (a)(2) of this section, no complaint alleging a violation of the ES regulations may be handled at the ETA regional office level until the complainant has exhausted the SWA administrative remedies set forth at §§ 658.411 through 658.418. If the Regional Administrator determines that a complaint has been prematurely filed with an ETA regional office, the Regional Administrator must inform the complainant within 10 working days in writing that the complainant must first exhaust those remedies before the complaint may be filed in the regional office. A copy of this letter and a copy of the complaint also must be sent to the State Administrator.

(2) If a complaint is submitted directly to the Regional Administrator and if he/she determines that the nature and scope of a complaint described in paragraph (a) of this section is such that the time required to exhaust the administrative procedures at the SWA level would adversely affect a significant number of individuals, the RA must accept the complaint and take the following action:

(i) If the complaint is filed against an employer, the regional office must handle the complaint in a manner consistent with the requirements imposed upon State agencies by §§ 658.411 and 658.418. A hearing must be offered to the parties once the Regional Administrator makes a determination on the complaint.

(ii) If the complaint is filed against a SWA, the regional office must follow procedures established at § 658.411(d).

(b) The ETA regional office is responsible for handling appeals of determinations made on complaints at the SWA level. An appeal includes any letter or other writing which the Regional Administrator reasonably understands to be requesting review if it is received by the regional office and signed by a party to the complaint.

(c)(1) Once the Regional Administrator receives a timely appeal, he/she must request the complete SWA file, including the original Complaint/Referral Form from the appropriate SWA.

(2) The Regional Administrator must review the file in the case and must determine within 10 business days whether any further investigation or action is appropriate; however if the Regional Administrator determines that he/she needs to request legal advice from the Office of the Solicitor at the U.S. Department of Labor then the Regional Administrator is allowed 20 business days to make this determination.

(d) If the Regional Administrator determines that no further action is warranted, the Regional Administrator will send his/her determination in writing to the appellant within 5 days of the determination, with a notification that the appellant may request a hearing before a Department of Labor Administrative Law Judge (ALJ) by filing a hearing request in writing with the Regional Administrator within 20 working days of the appellant's receipt of the notification.

(e) If the Regional Administrator determines that further investigation or other action is warranted, the Regional Administrator must undertake such an investigation or other action necessary to resolve the complaint.

(f) After taking the actions described in paragraph (e) of this section, the Regional Administrator must either affirm, reverse, or modify the decision of the State hearing official, and must notify each party to the State hearing official's hearing or to whom the State office determination was sent, notice of the determination and notify the parties that they may appeal the determination to the Department of Labor's Office of Administrative Law Judges within 20 business days of the party's receipt of the notice.

(g) If the Regional Administrator finds reason to believe that a SWA or one of its ES offices has violated ES regulations, the Regional Administrator must follow the procedures set forth at subpart H of this part.

§ 658.422 Handling of employment-related law complaints by the Regional Administrator.

(a) This section applies to all complaints submitted directly to the Regional Administrator or his/her representative.

(b) Each complaint filed by an MSFW alleging violation(s) of employment-related laws must be taken in writing, logged, and referred to the appropriate enforcement agency for prompt action.

(c) Each complaint submitted by a non-MSFW alleging violation(s) of employment-related laws must be logged and referred to the appropriate enforcement agency for prompt action.

(d) Upon referring the complaint in accordance with paragraphs (b) and (c) of this section, the regional official must inform the complainant of the enforcement agency (and individual, if known) to which the complaint was referred.

§ 658.424 Proceedings before the Office of Administrative Law Judges.

(a) If a party requests a hearing pursuant to § 658.421 or § 658.707, the Regional Administrator must:

(1) Send the party requesting the hearing, and all other parties to the prior State level hearing, a written notice (hard copy or electronic) that the matter will be referred to the Office of Administrative Law Judges for a hearing;

(2) Compile four hearing files (hard copy or electronic) containing copies of all documents relevant to the case, indexed and compiled chronologically; and

(3) Send simultaneously one hearing file to the Department of Labor Chief Administrative Law Judge, 800 K Street NW., Suite 400N, Washington, DC 20001–8002, one hearing file to the OWI Administrator, and one hearing file to the Solicitor of Labor, Attn: Associate Solicitor for Employment and Training Legal Services, and retain one hearing file.

(b) Proceedings under this section are governed by the rules of practice and procedure at subpart A of 29 CFR part

18, Rule of Practice and Procedure for Administrative Hearings before the Office of Administrative Law Judges, except where otherwise specified in this section or at § 658.425.

(c) Upon receipt of a hearing file, the ALJ designated to the case must notify the party requesting the hearing, all parties to the prior State hearing official hearing (if any), the State agency, the Regional Administrator, the OWI Administrator, and the Solicitor of Labor of the receipt of the case. After conferring all the parties, the ALJ may decide to make a determination on the record in lieu of scheduling a hearing.

(d) The ALJ may decide to consolidate cases and conduct hearings on more than one complaint concurrently if he/she determines that the issues are related or that the complaints will be handled more expeditiously.

(e) If the parties to the hearing are located in more than one State or are located in the same State but access to the hearing location is extremely inconvenient for one or more parties as determined by the ALJ, the ALJ must:

(1) Whenever possible, hold a single hearing, at a location convenient to all parties or their representatives wishing to appear and present evidence, with all such parties and/or their representatives present.

(2) If a hearing location cannot be established by the ALJ at a location pursuant to paragraph (e)(1) of this section, the ALJ may conduct, with the consent of the parties, the hearing by a telephone conference call. If the hearing is conducted via telephone conference call the parties and their representatives must have the option to participate in person or via telephone.

(3) Where the ALJ is unable, for any reason, to conduct a telephonic hearing under paragraph (e)(2) of this section, the ALJ must confer with the parties on how to proceed.

(f) Upon deciding to hold a hearing, the ALJ must notify all involved parties of the date, time, and place of the hearing.

(g) The parties to the hearing must be afforded the opportunity to present, examine, and cross-examine witnesses. The ALJ may elicit testimony from witnesses, but may not act as advocate for any party. The ALJ has the authority to issue subpoenas.

(h) The ALJ must receive, and make part of the record, documentary evidence offered by any party and accepted at the hearing, provided that copies of such evidence is provided to the other parties to the proceeding prior to the hearing at the time required by the ALJ.

(i) Technical rules of evidence do not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination must be applied where reasonably necessary by the ALJ conducting the hearing. The ALJ may exclude irrelevant, immaterial, or unduly repetitious evidence.

(j) The case record, or any portion thereof, must be available for inspection and copying by any party to the hearing at, prior to, or subsequent to the hearing upon request. Special procedures may be used for disclosure of medical and psychological records such as disclosure to a physician designated by the individual concerned.

(k) The ALJ must, if feasible, encourage resolution of the dispute by conciliation at any time prior to the conclusion of the hearing.

§ 658.425 Decision of Department of Labor Administrative Law Judge.

(a) The ALJ may:

(1) Rule that he/she lacks jurisdiction over the case;

(2) Rule that the appeal has been withdrawn, with the written consent of all parties;

(3) Rule that reasonable cause exists to believe that the appeal has been abandoned; or

(4) Render such other rulings as are appropriate to the issues in question. However, the ALJ does not have jurisdiction to consider the validity or constitutionality of the ES regulations or of the Federal statutes under which they are promulgated.

(b) Based on the entire record, including any legal briefs, the record before the State agency, the investigation (if any) and determination of the Regional Administrator, and evidence provided at the hearing, the ALJ must prepare a written decision. The ALJ must send a copy of the decision stating the findings of fact and conclusions of law to the parties to the hearing, including the State agency, the Regional Administrator, the OWI Administrator, and the Solicitor, and to entities filing amicus briefs (if any).

(c) The decision of the ALJ serves as the final decision of the Secretary.

§ 658.426 Complaints against the United States Employment Service.

(a) Complaints alleging that an ETA regional office or the National Office has violated ES regulations must be mailed to the Assistant Secretary for Employment and Training, U.S. Department of Labor, Washington, DC 20210. Such complaints must include:

(1) A specific allegation of the violation;

(2) The date of the incident;

(3) Location of the incident;

(4) The individual alleged to have committed the violation; and

(5) Any other relevant information available to the complainant.

(b) The Assistant Secretary or the Regional Administrator as designated must make a determination and respond to the complainant after investigation of the complaint.

Subpart F—Discontinuation of Services to Employers by the Wagner-Peyser Act Employment Service

§ 658.500 Scope and purpose of subpart.

This subpart contains the regulations governing the discontinuation of services provided pursuant part 653 of this chapter to employers by the ETA, including SWAs.

§ 658.501 Basis for discontinuation of services.

(a) The SWA must initiate procedures for discontinuation of services to employers who:

(1) Submit and refuse to alter or withdraw job orders containing specifications which are contrary to employment-related laws;

(2) Submit job orders and refuse to provide assurances, in accordance with the Agricultural Recruitment System for U.S. Workers at part 653, subpart F, of this chapter, that the jobs offered are in compliance with employment-related laws, or to withdraw such job orders;

(3) Are found through field checks or otherwise to have either misrepresented the terms or conditions of employment specified on job orders or failed to comply fully with assurances made on job orders;

(4) Are found by a final determination by an appropriate enforcement agency to have violated any employment-related laws and notification of this final determination has been provided to the Department or the SWA by that enforcement agency;

(5) Are found to have violated ES regulations pursuant to § 658.411;

(6) Refuse to accept qualified workers referred through the clearance system;

(7) Refuse to cooperate in the conduct of field checks conducted pursuant to § 653.503 of this chapter; or

(8) Repeatedly cause the initiation of the procedures for discontinuation of services pursuant to paragraphs (a)(1) through (7) of this section.

(b) The SWA may discontinue services immediately if, in the judgment of the State Administrator, exhaustion of the administrative procedures set

forth in this subpart in paragraphs (a)(1) through (7) of this section would cause substantial harm to a significant number of workers. In such instances, procedures at §§ 658.503 and 658.504 must be followed.

(c) If it comes to the attention of a ES office or SWA that an employer participating in the ES may not have complied with the terms of its temporary labor certification, under, for example the H–2A and H–2B visa programs, State agencies must engage in the procedures for discontinuation of services to employers pursuant to paragraphs (a)(1) through (8) of this section and simultaneously notify the Chicago National Processing Center (CNPC) of the alleged non-compliance for investigation and consideration of ineligibility pursuant to § 655.184 or § 655.73 of this chapter respectively for subsequent temporary labor certification.

§ 658.502 Notification to employers.

(a) The SWA must notify the employer in writing that it intends to discontinue the provision of employment services pursuant to this part and parts 652, 653, and 654 of this chapter, and the reason therefore.

(1) Where the decision is based on submittal and refusal to alter or to withdraw job orders containing specifications contrary to employment-related laws, the SWA must specify the date the order was submitted, the job order involved, the specifications contrary to employment-related laws and the laws involved. The SWA must notify the employer in writing that all employment services will be terminated in 20 working days unless the employer within that time:

(i) Provides adequate evidence that the specifications are not contrary to employment-related laws; or

(ii) Withdraws the specifications and resubmits the job order in compliance with all employment-related laws; or

(iii) If the job is no longer available, makes assurances that all future job orders submitted will be in compliance with all employment-related laws; or

(iv) Requests a hearing from the SWA pursuant to § 658.417.

(2) Where the decision is based on the employer's submittal of an order and refusal to provide assurances that the job is in compliance with employment-related laws or to withdraw the order, the SWA must specify the date the order was submitted, the job order involved, and the assurances involved. The employer must be notified that all employment services will be terminated within 20 working days unless the employer within that time:

(i) Resubmits the order with the appropriate assurances; or

(ii) If the job is no longer available, make assurances that all future job orders submitted will contain all necessary assurances that the job offered is in compliance with employment-related laws; or

(iii) Requests a hearing from the SWA pursuant to § 658.417.

(3) Where the decision is based on a finding that the employer has misrepresented the terms or conditions of employment specified on job orders or failed to comply fully with assurances made on job orders, the SWA must specify the basis for that determination. The employer must be notified that all employment services will be terminated in 20 working days unless the employer within that time:

(i) Provides adequate evidence that terms and conditions of employment were not misrepresented; or

(ii) Provides adequate evidence that there was full compliance with the assurances made on the job orders; or

(iii) Provides resolution of a complaint which is satisfactory to a complainant referred by the ES; and

(iv) Provides adequate assurance that specifications on future orders will accurately represent the terms and conditions of employment and that there will be full compliance with all job order assurances; or

(v) Requests a hearing from the SWA pursuant to § 658.417.

(4) Where the decision is based on a final determination by an enforcement agency, the SWA must specify the enforcement agency's findings of facts and conclusions of law. The employer must be notified that all employment services will be terminated in 20 working days unless the employer within that time:

(i) Provides adequate evidence that the enforcement agency has reversed its ruling and that the employer did not violate employment-related laws; or

(ii) Provides adequate evidence that the appropriate fines have been paid and/or appropriate restitution has been made; and

(iii) Provides assurances that any policies, procedures, or conditions responsible for the violation have been corrected and the same or similar violations are not likely to occur in the future.

(5) Where the decision is based on a finding of a violation of ES regulations under § 658.411, the SWA must specify the finding. The employer must be notified that all employment services will be terminated in 20 working days unless the employer within that time:

(i) Provides adequate evidence that the employer did not violate ES regulations; or

(ii) Provides adequate evidence that appropriate restitution has been made or remedial action taken; and

(iii) Provides assurances that any policies, procedures, or conditions responsible for the violation have been corrected and the same or similar violations are not likely to occur in the future; or

(iv) Requests a hearing from the SWA pursuant to § 658.417.

(6) Where the decision is based on an employer's failure to accept qualified workers referred through the clearance system, the SWA must specify the workers referred and not accepted. The employer must be notified that all employment services will be terminated in 20 working days unless the employer within that time:

(i) Provides adequate evidence that the workers were accepted; or

(ii) Provides adequate evidence that the workers were not available to accept the job; or

(iii) Provides adequate evidence that the workers were not qualified; and

(iv) Provides adequate assurances that qualified workers referred in the future will be accepted; or

(v) Requests a hearing from the SWA pursuant to § 658.417.

(7) Where the decision is based on lack of cooperation in the conduct of field checks, the SWA must specify the lack of cooperation. The employer must be notified that all employment services will be terminated in 20 working days unless the employer within that time:

(i) Provides adequate evidence that he/she did cooperate; or

(ii) Cooperates immediately in the conduct of field checks; and

(iii) Provides assurances that he/she will cooperate in future field checks in further activity; or

(iv) Requests a hearing from the SWA pursuant to § 658.417.

(b) If the employer chooses to respond pursuant to this section by providing documentary evidence or assurances, he/she must at the same time request a hearing if such hearing is desired in the event that the SWA does not accept the documentary evidence or assurances as adequate.

(c) Where the decision is based on repeated initiation of procedures for discontinuation of services, the employer must be notified that services have been terminated.

(d) If the employer makes a timely request for a hearing, in accordance with this section, the SWA must follow procedures set forth at § 658.411 and notify the complainant whenever the

discontinuation of services is based on a complaint pursuant to § 658.411.

§ 658.503 Discontinuation of services.

(a) If the employer does not provide a satisfactory response in accordance with § 658.502, within 20 working days, or has not requested a hearing, the SWA must immediately terminate services to the employer.

(b) If services are discontinued to an employer subject to Federal Contractor Job Listing Requirements, the SWA must notify the ETA regional office immediately.

§ 658.504 Reinstatement of services.

(a) Services may be reinstated to an employer after discontinuation under § 658.503(a) and (b), if:

(1) The State is ordered to do so by a Federal ALJ Judge or Regional Administrator; or

(2)(i) The employer provides adequate evidence that any policies, procedures or conditions responsible for the previous discontinuation of services have been corrected and that the same or similar circumstances are not likely to occur in the future; and

(ii) The employer provides adequate evidence that he/she has responded adequately to any findings of an enforcement agency, SWA, or ETA, including restitution to the complainant and the payment of any fines, which were the basis of the discontinuation of services.

(b) The SWA must notify the employer requesting reinstatement within 20 working days whether his/her request has been granted. If the State denies the request for reinstatement, the basis for the denial must be specified and the employer must be notified that he/she may request a hearing within 20 working days.

(c) If the employer makes a timely request for a hearing, the SWA must follow the procedures set forth at § 658.417.

(d) The SWA must reinstate services to an employer if ordered to do so by a State hearing official, Regional Administrator, or Federal ALJ as a result of a hearing offered pursuant to paragraph (c) of this section.

Subpart G—Review and Assessment of State Workforce Agency Compliance With Employment Service Regulations

§ 658.600 Scope and purpose of subpart.

This subpart sets forth the regulations governing review and assessment of State Workforce Agency (SWA) compliance with the ES regulations at this part and parts 651, 652, 653, and 654 of this chapter. All recordkeeping and reporting requirements contained in this part and part 653 of this chapter have been approved by the Office of Management and Budget as required by the Paperwork Reduction Act of 1980.

§ 658.601 State Workforce Agency responsibility.

(a) Each SWA must establish and maintain a self-appraisal system for ES operations to determine success in reaching goals and to correct deficiencies in performance. The self-appraisal system must include numerical (quantitative) appraisal and non-numerical (qualitative) appraisal.

(1) Numerical appraisal at the ES office level must be conducted as follows:

(i) Performance must be measured on a quarterly-basis against planned service levels as stated in the Unified or Combined State Plan ("State Plan"). The State Plan must be consistent with numerical goals contained in ES office plans.

(ii) To appraise numerical activities/indicators, actual results as shown on the Department's ETA 9002A report, or any successor report required by the Department must be compared to planned levels. Differences between achievement and plan levels must be identified.

(iii) When the numerical appraisal of required activities/indicators identifies significant differences from planned levels, additional analysis must be conducted to isolate possible contributing factors. This data analysis must include, as appropriate, comparisons to past performance, attainment of State Plan goals and consideration of pertinent non-numerical factors.

(iv) Results of ES office numerical reviews must be documented and significant deficiencies identified. A corrective action plan as described in paragraph (a)(6) of this section must be developed to address these deficiencies.

(v) The result of ES office appraisal, including corrective action plans, must be communicated in writing to the next higher level of authority for review. This review must cover adequacy of analysis, appropriateness of corrective actions, and need for higher level involvement. When this review is conducted at an area or district office, a report describing ES office performance within the area or district jurisdiction must be communicated to the SWA on a quarterly basis.

(2) Numerical appraisal at the SWA level must be conducted as follows:

(i) Performance must be measured on a quarterly basis against planned service levels as stated in the State Plan. The State Plan must be consistent with numerical goals contained in ES office plans.

(ii) To appraise these key numerical activities/indicators, actual results as shown on the ETA 9002A report, or any successor report required by the Department must be compared to planned levels. Differences between achievement and plan levels must be identified.

(iii) The SWA must review statewide data and performance against planned service levels as stated in the State Plan on at least a quarterly basis to identify significant statewide deficiencies and to determine the need for additional analysis, including identification of trends, comparisons to past performance, and attainment of State Plan goals.

(iv) Results of numerical reviews must be documented and significant deficiencies identified. A corrective action plan as described in paragraph (a)(5) of this section must be developed to address these deficiencies. These plans must be submitted to the ETA Regional Office as part of the periodic performance process described at § 658.603(d)(2).

(3) Non-numerical (qualitative) appraisal of ES office activities must be conducted at least annually as follows:

(i) Each ES office must assess the quality of its services to applicants, employers, and the community and its compliance with Federal regulations.

(ii) At a minimum, non-numerical review must include an assessment of the following factors:

(A) Appropriateness of services provided to participants and employers;

(B) Timely delivery of services to participants and employers;

(C) Staff responsiveness to individual participants and employer needs;

(D) Thoroughness and accuracy of documents prepared in the course of service delivery; and

(E) Effectiveness of ES interface with external organizations, such as other ETA-funded programs, community groups, etc.

(iii) Non-numerical review methods must include:

(A) Observation of processes;

(B) Review of documents used in service provisions; and

(C) Solicitation of input from applicants, employers, and the community.

(iv) The result of non-numerical reviews must be documented and deficiencies identified. A corrective action plan addressing these deficiencies as described in paragraph (a)(6) of this section must be developed.

(v) The result of ES office non-numerical appraisal, including corrective actions, must be communicated in writing to the next higher level of authority for review. This review must cover thoroughness and adequacy of ES office appraisal, appropriateness of corrective actions, and need for higher level involvement. When this review is conducted at an area or district level, a report summarizing local ES office performance within that jurisdiction must be communicated to the SWA on an annual basis.

(4) As part of its oversight responsibilities, the SWA must conduct onsite reviews in those ES offices which show continuing internal problems or deficiencies in performance as indicated by such sources as data analysis, non-numerical appraisal, or other sources of information.

(5) Non-numerical (qualitative) review of SWA ES activities must be conducted as follows:

(i) SWA operations must be assessed annually to determine compliance with Federal regulations.

(ii) Results of non-numerical reviews must be documented and deficiencies identified. A corrective action plan addressing these deficiencies must be developed.

(6) Corrective action plans developed to address deficiencies uncovered at any administrative level within the State as a result of the self-appraisal process must include:

(i) Specific descriptions of the type of action to be taken, the time frame involved, and the assignment of responsibility.

(ii) Provision for the delivery of technical assistance as needed.

(iii) A plan to conduct follow-up on a timely basis to determine if action taken to correct the deficiencies has been effective.

(7)(i) The provisions of the ES regulations which require numerical and non-numerical assessment of service to special applicant groups (*e.g.*, services to veterans at 20 CFR part 1001—Services for Veterans and services to MSFWs at this part and part 653 of this chapter), are supplementary to the provisions of this section.

(ii) Each State Administrator and ES office manager must ensure their staff know and carry out ES regulations, including regulations on performance standards and program emphases, and any corrective action plans imposed by the SWA or by the Department.

(iii) Each State Administrator must ensure the SWA complies with its approved State Plan.

(iv) Each State Administrator must ensure to the maximum extent feasible the accuracy of data entered by the SWA into Department-required management information systems. Each SWA must establish and maintain a data validation system pursuant to Department instructions. The system must review every local ES office at least once every 4 years. The system must include the validation of time distribution reports and the review of data gathering procedures.

(b) [Reserved]

§ 658.602 Employment and Training Administration National Office responsibility.

The ETA National Office must:

(a) Monitor ETA Regional Offices' operations under ES regulations;

(b) From time to time, conduct such special reviews and audits as necessary to monitor ETA regional office and SWA compliance with ES regulations;

(c) Offer technical assistance to the ETA regional offices and SWAs in carrying out ES regulations and programs;

(d) Have report validation surveys conducted in support of resource allocations; and

(e) Develop tools and techniques for reviewing and assessing SWA performance and compliance with ES regulations.

(f) ETA must appoint a National Monitor Advocate (NMA), who must devote full time to the duties set forth in this subpart. The NMA must:

(1) Review the effective functioning of the Regional Monitor Advocates (RMAs) and SMAs;

(2) Review the performance of SWAs in providing the full range of employment services to MSFWs;

(3) Take steps to resolve or refer ES-related problems of MSFWs which come to his/her attention;

(4) Take steps to refer non ES-related problems of MSFWs which come to his/her attention;

(5) Recommend to the Administrator changes in policy toward MSFWs; and

(6) Serve as an advocate to improve services for MSFWs within the ES system. The NMA must be a member of the National Farm Labor Coordinated Enforcement Staff Level Working Committee and other Occupational Safety and Health Administration (OSHA) and Wage and Hour Division (WHD) task forces, and other committees as appropriate.

(g) The NMA must be appointed by the Office of Workforce Investment Administrator (Administrator) after informing farmworker organizations and other organizations with expertise concerning MSFWs of the opening and encouraging them to refer qualified applicants to apply through the Federal merit system. Among qualified candidates, determined through merit systems procedures, individuals must be sought who meet the criteria used in the selection of the SMAs, as provided in SWA self-monitoring requirements at § 653.108(b) of this chapter.

(h) The NMA must be assigned staff necessary to fulfill effectively all the responsibilities set forth in this subpart.

(i) The NMA must submit the Annual Report to the OWI Administrator, the ETA Assistant Secretary, and the National Farm Labor Coordinated Enforcement Committee covering the matters set forth in this subpart.

(j) The NMA must monitor and assess SWA compliance with ES regulations affecting MSFWs on a continuing basis. His/her assessment must consider:

(1) Information from RMAs and SMAs;

(2) Program performance data, including the service indicators;

(3) Periodic reports from regional offices;

(4) All Federal on-site reviews;

(5) Selected State on-site reviews;

(6) Other relevant reports prepared by the ES;

(7) Information received from farmworker organizations and employers; and

(8) His/her personal observations from visits to SWAs, ES offices, agricultural work sites, and migrant camps. In the Annual Report, the NMA must include both a quantitative and qualitative analysis of his/her findings and the implementation of his/her recommendations by State and Federal officials, and must address the information obtained from all of the foregoing sources.

(k) The NMA must review the activities of the State/Federal monitoring system as it applies to services to MSFWs and the Complaint System including the effectiveness of the regional monitoring function in each region and must recommend any appropriate changes in the operation of the system. The NMA's findings and recommendations must be fully set forth in the Annual Report.

(l) If the NMA finds the effectiveness of any RMA has been substantially impeded by the Regional Administrator or other regional office official, he/she must, if unable to resolve such problems informally, report and recommend appropriate actions directly to the OWI Administrator. If the NMA receives information that the effectiveness of any SMA has been substantially impeded by the State Administrator or other State or

Federal ES official, he/she must, in the absence of a satisfactory informal resolution at the regional level, report and recommend appropriate actions directly to the OWI Administrator.

(m) The NMA must be informed of all proposed changes in policy and practice within the ES, including ES regulations, which may affect the delivery of services to MSFWs. The NMA must advise the Administrator concerning all such proposed changes which may adversely affect MSFWs. The NMA must propose directly to the OWI Administrator changes in ES policy and administration which may substantially improve the delivery of services to MSFWs. He/she also must recommend changes in the funding of SWAs and/or adjustment or reallocation of the discretionary portions of funding formulae.

(n) The NMA must participate in the review and assessment activities required in this section and §§ 658.700 through 658.711. As part of such participation, the NMA, or if he/she is unable to participate, a RMA must accompany the National Office review team on National Office on-site reviews. The NMA must engage in the following activities in the course of each State on-site review:

(1) He/she must accompany selected outreach workers on their field visits.

(2) He/she must participate in a random field check(s) of migrant camps or work site(s) where MSFWs have been placed on inter or intrastate clearance orders.

(3) He/she must contact local WIOA sec. 167 National Farmworker Jobs Program grantees or other farmworker organizations as part of the on-site review, and, discuss with representatives of these organizations current trends and any other pertinent information concerning MSFWs.

(4) He/she must meet with the SMA and discuss the full range of the employment services to MSFWs, including monitoring and the Complaint System.

(o) In addition to the duties specified in paragraph (f)(8) of this section, the NMA each year during the harvest season must visit the four States with the highest level of MSFW activity during the prior fiscal year, if they are not scheduled for a National Office on-site review during the current fiscal year, and must:

(1) Meet with the SMA and other SWA staff to discuss MSFW service delivery; and

(2) Contact representatives of MSFW organizations and interested employer organizations to obtain information concerning ES delivery and coordination with other agencies.

(p) The NMA must perform duties specified in §§ 658.700 through 765.711. As part of this function, he/she must monitor the performance of regional offices in imposing corrective action. The NMA must report any deficiencies in performance to the Administrator.

(q) The NMA must establish routine and regular contacts with WIOA sec. 167 National Farmworker Jobs Program grantees, other farmworker organizations and agricultural employers and/or employer organizations. He/she must attend conferences or meetings of these groups wherever possible and must report to the Administrator and the National Farm Labor Coordinated Enforcement Committee on these contacts when appropriate. The NMA must include in the Annual Report recommendations about how the Department might better coordinate ES and WIOA sec. 167 National Farmworker Jobs Program services as they pertain to MSFWs.

(r) In the event that any SMA or RMA, enforcement agency, or MSFW group refers a matter to the NMA which requires emergency action, he/she must assist them in obtaining action by appropriate agencies and staff, inform the originating party of the action taken, and, upon request, provide written confirmation.

(s) Through all the mechanisms provided in this subpart, the NMA must aggressively seek to ascertain and remedy, if possible, systemic deficiencies in the provisions of employment services and protections afforded by these regulations to MSFWs. The NMA must:

(1) Use the regular reports on complaints submitted by SWAs and ETA regional offices to assess the adequacy of these systems and to determine the existence of systemic deficiencies.

(2) Provide technical assistance to ETA regional office and State Workforce Agency staff for administering the Complaint System, and any other employment services as appropriate.

(3) Recommend to the Regional Administrator specific instructions for action by regional office staff to correct any ES-related systemic deficiencies. Prior to any ETA review of regional office operations concerning employment services to MSFWs, the NMA must provide to the Regional Administrator a brief summary of ES-related services to MSFWs in that region and his/her recommendations for incorporation in the regional review materials as the Regional Administrator and ETA reviewing organization deem appropriate.

(4) Recommend to the National Farm Labor Coordinated Enforcement Committee specific instructions for action by WHD and OSHA regional office staff to correct any non-ES-related systemic deficiencies of which he/she is aware.

§ 658.603 Employment and Training Administration Regional Office responsibility.

(a) The Regional Administrator must have responsibility for the regular review and assessment of SWA performance and compliance with ES regulations.

(b) The Regional Administrator must participate with the National Office staff in reviewing and approving the State Plan for the SWAs within the region. In reviewing the State Plans the Regional Administrator and appropriate National Office staff must consider relevant factors including the following:

(1) State Workforce Agency compliance with ES regulations;

(2) State Workforce Agency performance against the goals and objectives established in the previous State Plan;

(3) The effect which economic conditions and other external factors considered by the ETA in the resource allocation process may have had or are expected to have on the SWA's performance;

(4) SWA adherence to national program emphasis; and

(5) The adequacy and appropriateness of the State Plan for carrying out ES programs.

(c) The Regional Administrator must assess the overall performance of SWAs on an ongoing basis through desk reviews and the use of required reporting systems and other available information.

(d) As appropriate, Regional Administrators must conduct or have conducted:

(1) Comprehensive on-site reviews of SWAs and their offices to review SWA organization, management, and program operations;

(2) Periodic performance reviews of SWA operation of ES programs to measure actual performance against the State Plan, past performance, the performance of other SWAs, etc.;

(3) Audits of SWA programs to review their program activity and to assess whether the expenditure of grant funds has been in accordance with the approved budget. Regional Administrators also may conduct audits through other agencies or organizations or may require the SWA to have audits conducted;

(4) Validations of data entered into management information systems to assess:

(i) The accuracy of data entered by the SWAs into the management information system;

(ii) Whether the SWAs' data validating and reviewing procedures conform to Department instructions; and

(iii) Whether SWAs have implemented any corrective action plans required by the Department to remedy deficiencies in their validation programs;

(5) Technical assistance programs to assist SWAs in carrying out ES regulations and programs;

(6) Reviews to assess whether the SWA has complied with corrective action plans imposed by the Department or by the SWA itself; and

(7) Random, unannounced field checks of a sample of agricultural work sites to which ES placements have been made through the clearance system to determine and document whether wages, hours, working and housing conditions are as specified on the job order. If regional office staff find reason to believe that conditions vary from job order specifications, findings must be documented on the Complaint/Apparent Violation Referral Form and provided to the State Workforce Agency to be handled as an apparent violation under § 658.419.

(e) The Regional Administrator must provide technical assistance to SWAs to assist them in carrying out ES regulations and programs.

(f) The Regional Administrator must appoint a RMA who must devote full time to the duties set forth in this subpart. The RMA must:

(1) Review the effective functioning of the SMAs in his/her region;

(2) Review the performance of SWAs in providing the full range of employment services to MSFWs;

(3) Take steps to resolve ES-related problems of MSFWs which come to his/her attention;

(4) Recommend to the Regional Administrator changes in policy towards MSFWs;

(5) Review the operation of the Complaint System; and

(6) Serve as an advocate to improve service for MSFWs within the ES. The RMA must be a member of the Regional Farm Labor Coordinated Enforcement Committee.

(g) The RMA must be appointed by the Regional Administrator after informing farmworker organizations and other organizations in the region with expertise concerning MSFWs of the opening and encouraging them to refer qualified applicants to apply through the Federal merit system. The RMA must have direct personal access to the Regional Administrator wherever he/she finds it necessary. Among qualified candidates, individuals must be sought who meet the criteria used in the selection of the SMAs, as provided in § 653.108(b) of this chapter.

(h) The Regional Administrator must ensure that staff necessary to fulfill effectively all the regional office responsibilities set forth in this section are assigned. The RMA must notify the Regional Administrator of any staffing deficiencies and the Regional Administrator must take appropriate action.

(i) The RMA within the first 3 months of his/her tenure must participate in a training session(s) approved by the National Office.

(j) At the regional level, the RMA must have primary responsibility for:

(1) Monitoring the effectiveness of the Complaint System set forth at subpart E of this part;

(2) Apprising appropriate State and ETA officials of deficiencies in the Complaint System; and

(3) Providing technical assistance to SMAs in the region.

(k) At the ETA regional level, the RMA must have primary responsibility for ensuring SWA compliance with ES regulations as it pertains to services to MSFWs is monitored by the regional office. He/she must independently assess on a continuing basis the provision of employment services to MSFWs, seeking out and using:

(1) Information from SMAs, including all reports and other documents;

(2) Program performance data;

(3) The periodic and other required reports from SWAs;

(4) Federal on-site reviews;

(5) Other reports prepared by the National Office;

(6) Information received from farmworker organizations and employers; and

(7) Any other pertinent information which comes to his/her attention from any possible source.

(8) In addition, the RMA must consider his/her personal observations from visits to ES offices, agricultural work sites, and migrant camps.

(l) The RMA must assist the Regional Administrator and other line officials in applying appropriate corrective and remedial actions to State agencies.

(m) The Regional Administrator's quarterly report to the National Office must include the RMA's summary of his/her independent assessment as required in paragraph (f)(5) of this section. The fourth quarter summary must include an annual summary from the region. The summary also must include both a quantitative and a qualitative analysis of his/her reviews and must address all the matters with respect to which he/she has responsibilities under these regulations.

(n) The RMA must review the activities and performance of the SMAs and the State monitoring system in the region, and must recommend any appropriate changes in the operation of the system to the Regional Administrator. The RMA's review must include a determination whether the SMA:

(1) Does not have adequate access to information;

(2) Is being impeded in fulfilling his/her duties; or

(3) Is making recommendations which are being consistently ignored by SWA officials. If the RMA believes that the effectiveness of any SMA has been substantially impeded by the State Administrator, other State agency officials, or any Federal officials, he/she must report and recommend appropriate actions to the Regional Administrator. Copies of the recommendations must be provided to the NMA electronically or in hard copy.

(o) The RMA must be informed of all proposed changes in policy and practice within the ES, including ES regulations, which may affect the delivery of services to MSFWs. He/she must advise the Regional Administrator on all such proposed changes which, in his/her opinion, may adversely affect MSFWs or which may substantially improve the delivery of services to MSFWs.

The RMA also may recommend changes in ES policy or regulations, as well as changes in the funding of State Workforce Agencies and/or adjustments of reallocation of the discretionary portions of funding formulae as they pertain to MSFWs.

(p) The RMA must participate in the review and assessment activities required in this section and §§ 658.700 *through 658.711*. He/she, an assistant, or another RMA, must participate in National Office and regional office on-site statewide reviews of employment services to MSFWs in States in the region. The RMA must engage in the following activities in the course of participating in an on-site SWA review:

(1) Accompany selected outreach workers on their field visits;

(2) Participate in a random field check of migrant camps or work sites where MSFWs have been placed on intrastate or interstate clearance orders;

(3) Contact local WIOA sec. 167 National Farmworker Jobs Program grantees or other farmworker

organizations as part of the on-site review, and must discuss with representatives of these organizations perceived trends, and/or other relevant information concerning MSFWs in the area; and

(4) Meet with the SMA and discuss the full range of the employment services to MSFWs, including monitoring and the Complaint System.

(q) During the calendar quarter preceding the time of peak MSFW activity in each State, the RMA must meet with the SMA and must review in detail the State Workforce Agency's capability for providing the full range of services to MSFWs as required by ES regulations, during the upcoming harvest season. The RMA must offer technical assistance and recommend to the SWA and/or the Regional Administrator any changes in State policy or practice that he/she finds necessary.

(r) The RMA each year during the peak harvest season must visit each State in the region not scheduled for an on-site review during that fiscal year and must:

(1) Meet with the SMA and other SWA staff to discuss MSFW service delivery; and

(2) Contact representatives of MSFW organizations to obtain information concerning ES delivery and coordination with other agencies and interested employer organizations.

(s) The RMA must initiate and maintain regular and personal contacts, including informal contacts in addition to those specifically required by these regulations, with SMAs in the region. In addition, the RMA must have personal and regular contact with the NMA. The RMA also must establish routine and regular contacts with WIOA sec. 167 National Farmworker Jobs Program grantees, other farmworker organizations and agricultural employers and/or employer organizations in his/her region. He/she must attend conferences or meetings of these groups wherever possible and must report to the Regional Administrator and the Regional Farm Labor Coordinated Enforcement Committee on these contacts when appropriate. He/she also must make recommendations as to how the Department might better coordinate ES and WIOA sec. 167 National Farmworker Jobs Program services to MSFWs.

(t) The RMA must attend MSFW-related public meeting(s) conducted in the region. Following such meetings or hearings, the RMA must take such steps or make such recommendations to the Regional Administrator, as he/she deems necessary to remedy problem(s) or condition(s) identified or described therein.

(u) The RMA must attempt to achieve regional solutions to any problems, deficiencies, or improper practices concerning services to MSFWs which are regional in scope. Further, he/she must recommend policies, offer technical assistance, or take any other necessary steps as he/she deems desirable or appropriate on a regional, rather than State-by-State basis, to promote region-wide improvement in the delivery of employment services to MSFWs. He/she must facilitate region-wide coordination and communication regarding provision of employment services to MSFWs among SMAs, State Administrators, and Federal ETA officials to the greatest extent possible. In the event that any SWA or other RMA, enforcement agency, or MSFW group refers a matter to the RMA which requires emergency action, he/she must assist them in obtaining action by appropriate agencies and staff, inform the originating party of the action taken, and, upon request, provide written confirmation.

(v) The RMA must initiate and maintain such contacts as he/she deems necessary with RMAs in other regions to seek to resolve problems concerning MSFWs who work, live, or travel through the region. He/she must recommend to the Regional Administrator and/or the National Office inter-regional cooperation on any particular matter, problem, or policy with respect to which inter-regional action is desirable.

(w) The RMA must establish regular contacts with the regional agricultural coordinators from WHD and OSHA and any other regional staff from other Federal enforcement agencies and must establish contacts with the staff of other Department agencies represented on the Regional Farm Labor Coordinated Enforcement Committee and to the extent necessary, on other pertinent task forces or committees.

(x) The RMA must participate in the regional reviews of the State Plans, and must comment to the Regional Administrator as to the SWA compliance with the ES regulations as they pertain to services to MSFWs, including the staffing of ES offices.

§ 658.604 Assessment and evaluation of program performance data.

(a) State Workforce Agencies must compile program performance data required by the Department, including statistical information on program operations.

(b) The Department must use the program performance data in assessing and evaluating whether each SWA has complied with ES regulations and its State Plan.

(c) In assessing and evaluating program performance data, the Department must act in accordance with the following general principles:

(1) The fact that the program performance data from a SWA, whether overall or relative to a particular program activity, indicate poor program performance does not by itself constitute a violation of ES regulations or of the State Workforce Agency's responsibilities under its State Plan;

(2) Program performance data, however, may so strongly indicate that a SWA's performance is so poor that the data may raise a presumption (*prima facie* case) that a SWA is violating ES regulations or the State Plan. A SWA's failure to meet the operational objectives set forth in the State Plan raises a presumption that the agency is violating ES regulations and/or obligations under its State Plan. In such cases, the Department must afford the SWA an opportunity to rebut the presumption of a violation pursuant to the procedures at subpart H of this part.

(3) The Department must take into account that certain program performance data may measure items over which SWAs have direct or substantial control while other data may measure items over which the SWA has indirect or minimal control.

(i) Generally, for example, a SWA has direct and substantial control over the delivery of employment services such as referrals to jobs, job development contacts, counseling, referrals to career and supportive services, and the conduct of field checks.

(ii) State Workforce Agencies, however, have only indirect control over the outcome of services. For example, SWAs cannot guarantee that an employer will hire a referred applicant, nor can they guarantee that the terms and conditions of employment will be as stated on a job order.

(iii) Outside forces, such as a sudden heavy increase in unemployment rates, a strike by SWA employees, or a severe drought or flood, may skew the results measured by program performance data.

(4) The Department must consider a SWA's failure to keep accurate and complete program performance data required by ES regulations as a violation of the ES regulations.

§ 658.605 Communication of findings to State agencies.

(a) The Regional Administrator must inform SWAs in writing of the results of

review and assessment activities and, as appropriate, must discuss with the State Administrator the impact or action required by the Department as a result of review and assessment activities.

(b) The ETA National Office must transmit the results of any review and assessment activities it conducted to the Regional Administrator who must send the information to the SWA.

(c) Whenever the review and assessment indicates a SWA violation of ES regulations or its State Plan, the Regional Administrator must follow the procedures set forth at subpart H of this part.

(d) Regional Administrators must follow-up any corrective action plan imposed on a SWA under subpart H of this part by further review and assessment of the State Workforce Agency pursuant to this subpart.

Subpart H—Federal Application of Remedial Action to State Workforce Agencies

§ 658.700 Scope and purpose of subpart.

This subpart sets forth the procedures which the Department must follow upon either discovering independently or receiving from other(s) information indicating that SWAs may not be adhering to ES regulations.

§ 658.701 Statements of policy.

(a) It is the policy of the Department to take all necessary action, including the imposition of the full range of sanctions set forth in this subpart, to ensure State Workforce Agencies comply with all requirements established by ES regulations.

(b) It is the policy of the Department to initiate decertification procedures against SWAs in instances of serious or continual violations of ES regulations if less stringent remedial actions taken in accordance with this subpart fail to resolve noncompliance.

(c) It is the policy of the Department to act on information concerning alleged violations by SWAs of the ES regulations received from any person or organization.

§ 658.702 Initial action by the Regional Administrator.

(a) The ETA Regional Administrator is responsible for ensuring that all SWAs in his/her region are in compliance with ES regulations.

(b) Wherever a Regional Administrator discovers or is apprised of possible SWA violations of ES regulations by the review and assessment activities under subpart G of this part, or through required reports or written complaints from individuals, organizations, or employers which are elevated to the Department after the exhaustion of SWA administrative remedies, the Regional Administrator must conduct an investigation. Within 10 business days after receipt of the report or other information, the Regional Administrator must make a determination whether there is probable cause to believe that a SWA has violated ES regulations.

(c) The Regional Administrator must accept complaints regarding possible SWA violations of ES regulations from employee organizations, employers or other groups, without exhaustion of the complaint process described at subpart E of this part, if the Regional Administrator determines that the nature and scope of the complaint are such that the time required to exhaust the administrative procedures at the State level would adversely affect a significant number of applicants. In such cases, the Regional Administrator must investigate the matter within 10 business days, may provide the SWA 10 business days for comment, and must make a determination within an additional 10 business days whether there is probable cause to believe that the SWA has violated ES regulations.

(d) If the Regional Administrator determines that there is no probable cause to believe that a SWA has violated ES regulations, he/she must retain all reports and supporting information in Department files. In all cases where the Regional Administrator has insufficient information to make a probable cause determination, he/she must so notify the Administrator in writing and the time for the investigation must be extended 20 additional business days.

(e) If the Regional Administrator determines there is probable cause to believe a SWA has violated ES regulations, he/she must issue a Notice of Initial Findings of Non-compliance by registered mail (or other legally viable means) to the offending SWA. The notice will specify the nature of the violation, cite the regulations involved, and indicate corrective action which may be imposed in accordance with paragraphs (g) and (h) of this section. If the non-compliance involves services to MSFWs or the Complaint System, a copy of said notice must be sent to the NMA.

(f)(1) The SWA may have 20 business days to comment on the findings, or up to 20 additional days, if the Regional Administrator determines a longer period is appropriate. The SWA's comments must include agreement or disagreement with the findings and suggested corrective actions, where appropriate.

(2) After the period elapses, the Regional Administrator must prepare within 20 business days, written final findings which specify whether the SWA has violated ES regulations. If in the final findings the Regional Administrator determines the SWA has not violated ES regulations, the Regional Administrator must notify the State Administrator of this finding and retain supporting documents in his/her files. If the final finding involves services to MSFWs or the Complaint System, the Regional Administrator also must notify the NMA. If the Regional Administrator determines a SWA has violated ES regulations, the Regional Administrator must prepare a Final Notice of Noncompliance which must specify the violation(s) and cite the regulations involved. The Final Notice of Noncompliance must be sent to the SWA by registered mail or other legally viable means. If the noncompliance involves services to MSFWs or the Complaint System, a copy of the Final Notice must be sent to the NMA.

(g) If the violation involves the misspending of grant funds, the Regional Administrator may order in the Final Notice of Noncompliance a disallowance of the expenditure and may either demand repayment or withhold future funds in the amount in question. If the Regional Administrator disallows costs, the Regional Administrator must give the reasons for the disallowance, inform the SWA that the disallowance is effective immediately and that no more funds may be spent in the disallowed manner, and offer the SWA the opportunity to request a hearing pursuant to § 658.707. The offer, or the acceptance of an offer of a hearing, however, does not stay the effectiveness of the disallowance. The Regional Administrator must keep complete records of the disallowance.

(h) If the violation does not involve misspending of grant funds or the Regional Administrator determines that the circumstances warrant other action:

(1) The Final Notice of Noncompliance must direct the SWA to implement a specific corrective action plan to correct all violations. If the SWA's comment demonstrates with supporting evidence (except where inappropriate) that all violations have already been corrected, the Regional Administrator need not impose a corrective action plan and instead may cite the violation(s) and accept the SWA's resolution, subject to follow-up review, if necessary. If the Regional Administrator determines that the violation(s) cited had been found previously and that the corrective action(s) taken had not corrected the

violation(s) contrary to the findings of previous follow-up reviews, the Regional Administrator must apply remedial actions to the SWA pursuant to § 658.704.

(2) The Final Notice of Noncompliance must specify the time by which each corrective action must be taken. This period may not exceed 40 business days unless the Regional Administrator determines that exceptional circumstances necessitate corrective actions requiring a longer time period. In such cases, and if the violations involve services to MSFWs or the Complaint System, the Regional Administrator must notify the Administrator in writing of the exceptional circumstances which necessitate more time, and must specify the additional time period. The specified time must commence with the date of signature on the registered mail receipt.

(3) When the time provided for in paragraph (h)(2) of this section elapses, Department staff must review the SWA's efforts as documented by the SWA to determine if the corrective action(s) has been taken and if the SWA has achieved compliance with ES regulations. If necessary, Department staff must conduct a follow-up visit as part of this review.

(4) If, as a result of this review, the Regional Administrator determines the SWA has corrected the violation(s), the Regional Administrator must record the basis for this determination, notify the SWA, send a copy to the Administrator, and retain a copy in Department files.

(5) If, as a result of this review, the Regional Administrator determines the SWA has taken corrective action but is unable to determine if the violation has been corrected due to seasonality or other factors, the Regional Administrator must notify in writing the SWA and the Administrator of his/her findings. The Regional Administrator must conduct further follow-up at an appropriate time to make a final determination if the violation has been corrected. If the Regional Administrator's follow-up reveals that violations have not been corrected, the Regional Administrator must apply remedial actions to the SWA pursuant to § 658.704.

(6) If, as a result of the review the Regional Administrator determines the SWA has not corrected the violations and has not made good faith efforts and adequate progress toward the correction of the violations, the Regional Administrator must apply remedial actions to the SWA pursuant to § 658.704.

(7) If, as a result of the review, the Regional Administrator determines the SWA has made good faith efforts and adequate progress toward the correction of the violation and it appears the violation will be fully corrected within a reasonable amount of time, the SWA must be advised by registered mail or other legally viable means (with a copy sent to the Administrator) of this conclusion, of remaining differences, of further needed corrective action, and that all deficiencies must be corrected within a specified time period. This period may not exceed 40 business days unless the Regional Administrator determines exceptional circumstances necessitate corrective action requiring more time. In such cases, the Regional Administrator must notify the Administrator in writing of the exceptional circumstances which necessitate more time, and must specify that time period. The specified time commences with the date of signature on the registered mail receipt.

(8)(i) If the SWA has been given additional time pursuant to paragraph (h)(7) of this section, Department staff must review the SWA's efforts as documented by the SWA at the end of the time period. If necessary, the Department must conduct a follow-up visit as part of this review.

(ii) If the SWA has corrected the violation(s), the Regional Administrator must document that finding, notify in writing the SWA and the Administrator, and retain supporting documents in Department files. If the SWA has not corrected the violation(s), the Regional Administrator must apply remedial actions pursuant to § 658.704.

§ 658.703 Emergency corrective action.

In critical situations as determined by the Regional Administrator, where it is necessary to protect the integrity of the funds, or ensure the proper operation of the program, the Regional Administrator may impose immediate corrective action. Where immediate corrective action is imposed, the Regional Administrator must notify the SWA of the reason for imposing the emergency corrective action prior to providing the SWA an opportunity to comment.

§ 658.704 Remedial actions.

(a) If a SWA fails to correct violations as determined pursuant to § 658.702, the Regional Administrator must apply one or more of the following remedial actions to the SWA:

(1) Imposition of special reporting requirements for a specified time;

(2) Restrictions of obligational authority within one or more expense classifications;

(3) Implementation of specific operating systems or procedures for a specified time;

(4) Requirement of special training for SWA personnel;

(5) With the approval of the Assistant Secretary and after affording the State Administrator the opportunity to request a conference with the Assistant Secretary, the elevation of specific decision-making functions from the State Administrator to the Regional Administrator;

(6) With the approval of the Assistant Secretary and after affording the State Administrator the opportunity to request a conference with the Assistant Secretary, the imposition of Federal staff in key SWA positions;

(7) With the approval of the Assistant Secretary and after affording the State Administrator the opportunity to request a conference with the Assistant Secretary, funding of the SWA on a short-term basis or partial withholding of funds for a specific function or for a specific geographical area;

(8) Holding of public hearings in the State on the SWA's deficiencies;

(9) Disallowance of funds pursuant to § 658.702(g); or

(10) If the matter involves a serious or continual violation, the initiation of decertification procedures against the State Workforce Agency, as set forth in paragraph (e) of this section.

(b) The Regional Administrator must send, by registered mail, a Notice of Remedial Action to the SWA. The Notice of Remedial Action must set forth the reasons for the remedial action. When such a notice is the result of violations of regulations governing services to MSFWs (§§ 653.100 *through 653.113* of this chapter) or the Complaint System (§§ 658.400 through 658.426), a copy of said notice must be sent to the Administrator, who must publish the notice promptly in the **Federal Register**.

(c) If the remedial action is other than decertification, the notice must state the remedial action must take effect immediately. The notice also must state the SWA may request a hearing pursuant to § 658.707 by filing a request in writing with the Regional Administrator pursuant to § 658.707 within 20 business days of the SWA's receipt of the notice. The offer of hearing, or the acceptance thereof, however, does not stay or otherwise delay the implementation of remedial action.

(d) Within 60 business days after the initial application of remedial action, the Regional Administrator must conduct a review of the SWA's compliance with ES regulations unless

address these challenges, and recommendations on strategies that can expand access to finance and educate U.S. exporters on available resources. This federal advisory committee is necessary to provide input to the Secretary on the development of strategies and programs that would help expand access to trade finance for U.S. exporters. The Department of Commerce is seeking applications for membership on the TFAC. In order to accommodate requests for extensions, we are now extending the deadline to receive applications until 5:00 p.m. EDT on Monday, August 29, 2016.

DATES: All applications for immediate consideration must be received by the Office of Finance and Insurance Industries by 5:00 p.m. Eastern Daylight Time (EDT) on Monday, August 29 2016. After that date, ITA will continue to accept applications under this notice for a period of up to two years from the deadline to fill any vacancies that may arise.

ADDRESSES: Please submit applications by email to *TFAC@trade.gov*, attention: Ericka Ukrow, Office of Finance and Insurance Industries, U.S. Department of Commerce Trade Finance Advisory Council Executive Secretariat, or by mail to Ericka Ukrow, Office of Finance and Insurance Industries, U.S. Department of Commerce Trade Finance Advisory Council, Room 18002, 1401 Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Office of Finance and Insurance Industries, U.S. Department of Commerce Trade Finance Advisory Council Executive Secretariat, Ericka Ukrow, Room 18002, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0405, email: *Ericka.Ukrow@trade.gov*. Please visit *http://trade.gov/TFAC* for additional information.

SUPPLEMENTARY INFORMATION:

I. Background and Authority

On July 25, 2016 (81 FR 48386), the Secretary of Commerce announced the establishment of the United States Trade Finance Advisory Council (the Council) in accordance with the provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C. App., to advise the Secretary on matters relating to private sector trade financing for U.S. exporters. As indicated in that notice, the Department of Commerce, Office of Finance and Insurance Industries, is accepting applications for membership on the TFAC. The TFAC functions solely as an advisory committee. The TFAC shall advise the Secretary in identifying effective ways to help expand access to finance for U.S. exporters, especially small- and medium-sized enterprises (SMEs), and their foreign buyers.

The TFAC shall provide a necessary forum to facilitate the discussion between a diverse group of stakeholders such as banks, non-bank financial institutions, other trade finance related organizations, and exporters to gain a better understanding regarding current challenges facing U.S. exporters in accessing finance.

The TFAC shall draw upon the experience of its members in order to obtain ideas and suggestions for innovative solutions to these challenges.

The TFAC shall develop recommendations on programs or activities that the Department of Commerce could incorporate as part of its export promotion and trade finance education efforts.

The TFAC shall report to the Secretary on its activities and recommendations. In creating its reports, the TFAC should: (1) Evaluate current credit conditions and specific financing challenges faced by U.S. exporters, especially SMEs, and their foreign buyers, (2) examine other noteworthy issues raised by stakeholders represented by the membership, (3) identify emerging financing sources that would address these gaps, and (4) recommend specific activities by which these recommendations could be incorporated and implemented.

II. Structure, Membership, and Operation

The TFAC shall consist of no more than twenty members appointed by the Secretary. Members may be drawn from:

- U.S. companies that are exporters of goods and services;
- U.S. commercial banks that provide trade finance products, cross-border payment services, or foreign exchange solutions;
- Non-bank U.S. financial institutions that provide trade finance products, cross-border payment services, or foreign exchange solutions;
- Associations that represent: (a) U.S. exporters and SMEs; and (b) U.S. commercial banks or non-bank financial institutions or other professionals that facilitate international trade transactions;
- U.S. companies or entities whose business includes trade-finance-related activities or services;
- U.S. scholars, academic institutions, or public policy organizations with expertise in global business, trade finance, and international banking related subjects; and
- Economic development organizations and other U.S. regional, state and local governmental and non-governmental organizations whose missions or activities include the analysis, provision, or facilitation of trade finance products/services.

Membership shall include a broad range of companies and organizations in terms of products and services, company size, and geographic location of both the source and destination of trade finance. Members will be selected based on their ability to carry out the objectives of the TFAC, in accordance with applicable Department of Commerce guidelines, in a manner that ensures that the TFAC is balanced in terms of points of view and demographics. Priority may be given to candidates who have executive-level (Chief Executive Officer, Executive Chairman, President, or comparable level of responsibility) experience.

Members, with the exception of those from academia and public policy organizations, serve in a representative capacity, representing their own views and interests or those of their sponsoring entities, not as Special Government Employees. The members from academia and public policy organizations serve as experts and therefore are Special Government Employees (SGEs), pursuant to 18 U.S.C. 202, and will be required to comply with certain ethics laws and rules, including filing a Confidential Financial Disclosure form. Additionally, a member serving as an expert must not be a Federally Registered Lobbyist.

Prospective nominees should designate the capacity in which they are applying to serve and identify either their area of expertise or the U.S. industry sector they wish to represent.

Members of the TFAC will not be compensated for their services or reimbursed for their travel expenses. Appointments to the TFAC shall be made without regard to political affiliation.

Each member shall be appointed for a term of two years and will serve at the pleasure of the Secretary. The Secretary may at his/her discretion reappoint any member to an additional term or terms, provided that the member proves to work effectively on the TFAC and his/her knowledge and advice are still needed.

The TFAC chair and vice chair or vice chairs shall be selected from the members of the TFAC by the Assistant Secretary for Industry & Analysis after consulting with the members. Their term of service will not exceed the duration of the current charter term and they may be reselected for additional periods should the charter be renewed and should they remain on the TFAC.

the Regional Administrator determines more time is necessary. In such cases, the Regional Administrator must notify the Administrator in writing of the circumstances which necessitate more time, and specify that time period. If necessary, Department staff must conduct a follow-up visit as part of this review. If the SWA is in compliance with the ES regulations, the Regional Administrator must fully document these facts and must terminate the remedial actions. The Regional Administrator must notify the SWA of his/her findings. When the case involves violations of regulations governing services to MSFWs or the Complaint System, a copy of said notice must be sent to the Administrator, who must promptly publish the notice in the **Federal Register**. The Regional Administrator must conduct, within a reasonable time after terminating the remedial actions, a review of the SWA's compliance to determine whether any remedial actions must be reapplied.

(e) If, upon conducting the on-site review referred to in paragraph (c) of this section, the Regional Administrator finds the SWA remains in noncompliance, the Regional Administrator must continue the remedial action and/or impose different additional remedial actions. The Regional Administrator must fully document all such decisions and, when the case involves violations of regulations governing services to MSFWs or the Complaint System, must send copies to the Administrator, who must promptly publish the notice in the **Federal Register**.

(f)(1) If the SWA has not brought itself into compliance with ES regulations within 120 business days of the initial application of remedial action, the Regional Administrator must initiate decertification unless the Regional Administrator determines the circumstances necessitate continuing remedial action for more time. In such cases, the Regional Administrator must notify the Administrator in writing of the circumstances which necessitate the extended time, and specify the time period.

(2) The Regional Administrator must notify the SWA by registered mail or by other legally viable means of the decertification proceedings, and must state the reasons therefor. Whenever such a notice is sent to a SWA, the Regional Administrator must prepare five copies (hard copies or electronic copies) containing, in chronological order, all the documents pertinent to the case along with a request for decertification stating the grounds therefor. One copy must be retained. Two must be sent to the ETA National Office, one must be sent to the Solicitor of Labor, Attention: Associate Solicitor for Employment and Training, and, if the case involves violations of regulations governing services to MSFWs or the Complaint System, one copy must be sent to the NMA. All copies also must be sent electronically to each respective party. The notice sent by the Regional Administrator must be published promptly in the **Federal Register**.

§ 658.705 Decision to decertify.

(a) Within 30 business days of receiving a request for decertification, the ETA Assistant Secretary must review the case and must decide whether to proceed with decertification.

(b) The Assistant Secretary must grant the request for decertification unless he/she makes a finding that:

(1) The violations of ES regulations are neither serious nor continual;

(2) The SWA is in compliance; or

(3) The Assistant Secretary has reason to believe the SWA will achieve compliance within 80 business days unless exceptional circumstances necessitate more time, pursuant to the remedial action already applied or to be applied. (In the event the Assistant Secretary does not have sufficient information to act upon the request, he/she may postpone the determination for up to an additional 20 business days in order to obtain any available additional information.) In making a determination of whether violations are "serious" or "continual," as required by paragraph (b)(1) of this section, the Assistant Secretary must consider:

(i) Statewide or multiple deficiencies as shown by performance data and/or on-site reviews;

(ii) Recurrent violations, even if they do not persist over consecutive reporting periods, and

(iii) The good faith efforts of the State to achieve full compliance with ES regulations as shown by the record.

(c) If the Assistant Secretary denies a request for decertification, he/she must write a complete report documenting his/her findings and, if appropriate, instructing an alternate remedial action or actions be applied. Electronic copies of the report must be sent to the Regional Administrator. Notice of the Assistant Secretary's decision must be published promptly in the **Federal Register** and the report of the Assistant Secretary must be made available for public inspection and copying.

(d) If the Assistant Secretary decides decertification is appropriate, he/she must submit the case to the Secretary providing written explanation for his/her recommendation of decertification.

(e) Within 30 business days after receiving the Assistant Secretary's report, the Secretary must determine whether to decertify the SWA. The Secretary must grant the request for decertification unless he/she makes one of the three findings set forth in paragraph (b) of this section. If the Secretary decides not to decertify, he/she must then instruct that remedial action be continued or that alternate actions be applied. The Secretary must write a report explaining his/her reasons for not decertifying the SWA and copies (hard copy and electronic) will be sent to the SWA. Notice of the Secretary's decision must be published promptly in the **Federal Register**, and the report of the Secretary must be made available for public inspection and copy.

(f) Where either the Assistant Secretary or the Secretary denies a request for decertification and orders further remedial action, the Regional Administrator must continue to monitor the SWA's compliance. If the SWA achieves compliance within the time established pursuant to paragraph (b) of this section, the Regional Administrator must terminate the remedial actions. If the SWA fails to achieve full compliance within that time period after the Secretary's decision not to decertify, the Regional Administrator must submit a report of his/her findings to the Assistant Secretary who must reconsider the request for decertification pursuant to the requirements of paragraph (b) of this section.

§ 658.706 Notice of decertification.

If the Secretary decides to decertify a SWA, he/she must send a Notice of Decertification to the SWA stating the reasons for this action and providing a 10 business day period during which the SWA may request an administrative hearing in writing to the Secretary. The notice must be published promptly in the **Federal Register**.

§ 658.707 Requests for hearings.

(a) Any SWA which received a Notice of Decertification under § 658.706 or a notice of disallowance under § 658.702(g) may request a hearing on the issue by filing a written request for hearing with the Secretary within 10 business days of receipt of the notice. This request must state the reasons the SWA believes the basis of the decision to be wrong, and it must be signed by the State Administrator (electronic signatures may be accepted).

(b) When the Secretary receives a request for a hearing from a SWA, he/she must send copies of a file containing

all materials and correspondence relevant to the case to the Assistant Secretary, the Regional Administrator, the Solicitor of Labor, and the Department of Labor Chief Administrative Law Judge. When the case involves violations of regulations governing services to MSFWs or the Complaint System, a copy must be sent to the NMA.

(c) The Secretary must publish notice of hearing in the **Federal Register**. This notice must invite all interested parties to attend and to present evidence at the hearing. All interested parties who make written request to participate must thereafter receive copies (hard copy and/or electronic) of all documents filed in said proceedings.

§ 658.708 Hearings.

(a) Upon receipt of a hearing file by the Chief Administrative Law Judge, the case must be docketed and notice sent by electronic mail, other means of electronic service, or registered mail, return receipt requested, to the Solicitor of Labor, Attention: Associate Solicitor for Employment and Training, the Administrator, the Regional Administrator and the State Administrator. The notice must set a time, place, and date for a hearing on the matter and must advise the parties that:

(1) They may be represented at the hearing;

(2) They may present oral and documentary evidence at the hearing;

(3) They may cross-examine opposing witnesses at the hearing; and

(4) They may request rescheduling of the hearing if the time, place, or date set are inconvenient.

(b) The Solicitor of Labor or the Solicitor's designee will represent the Department at the hearing.

§ 658.709 Conduct of hearings.

(a) Proceedings under this section are governed by secs. 5 through 8 of the Administrative Procedure Act, 5 U.S.C. 553 *et seq.* and the rules of practice and procedure at subpart A of 29 CFR part 18, except as otherwise specified in this section.

(b) Technical rules of evidence do not apply, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination, must be applied if necessary by the ALJ conducting the hearing. The ALJ may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record must be open to examination by the parties. Opportunity must be given to refute facts and arguments advanced on either side of the issue. A transcript must be made of the oral evidence except to the extent the substance thereof is stipulated for the record.

(c) Discovery may be conducted as provided in the rules of practice and procedure at 29 CFR 18.50 through 18.65.

(d) When a public officer is a respondent in a hearing in an official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the proceeding does not abate and the officer's successor is automatically substituted as a party. Proceedings following the substitution must be in the name of the substituted party, but any misnomer not affecting the substantive rights of the parties must be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order may not affect the substitution.

§ 658.710 Decision of the Administrative Law Judge.

(a) The ALJ has jurisdiction to decide all issues of fact and related issues of law and to grant or deny appropriate motions, but does not have jurisdiction to decide upon the validity of Federal statutes or regulations.

(b) The decision of the ALJ must be based on the hearing record, must be in writing, and must state the factual and legal basis of the decision. The ALJ's decision must be available for public inspection and copying.

(c) Except when the case involves the decertification of a SWA, the decision of the ALJ will be considered the final decision of the Secretary.

(d) If the case involves the decertification of an appeal to the SWA, the decision of the ALJ must contain a notice stating that, within 30 calendar days of the decision, the SWA or the Administrator may appeal to the Administrative Review Board, United States Department of Labor, by sending a written appeal to the Administrative Review Board.

§ 658.711 Decision of the Administrative Review Board.

(a) Upon the receipt of an appeal to the Administrative Review Board, United States Department of Labor, the ALJ must certify the record in the case to the Administrative Review Board, which must make a decision to decertify or not on the basis of the hearing record.

(b) The decision of the Administrative Review Board is the final decision of the Secretary on decertification appeals. It must be in writing, and must set forth the factual and legal basis for the decision. Notice of the Administrative Review Board's decision must be published in the **Federal Register**, and copies must be made available for public inspection and copying.

■ 11. Add part 675 to read as follows:

PART 675—INTRODUCTION TO THE REGULATIONS FOR THE WORKFORCE DEVELOPMENT SYSTEMS UNDER TITLE I OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT

Sec.

675.100 What are the purposes of title I of the Workforce Innovation and Opportunity Act?
675.200 What do the regulations for workforce development systems under title I of the Workforce Innovation and Opportunity Act cover?
675.300 What definitions apply to these regulations?

Authority: Secs. 2, 3, 189, 503, Pub. L. 113–128, 128 Stat. 1425 (Jul. 22, 2014).

§ 675.100 What are the purposes of title I of the Workforce Innovation and Opportunity Act?

The purposes of title I of the Workforce Innovation and Opportunity Act (WIOA) include:

(a) Increasing access to, and opportunities for individuals to receive, the employment, education, training, and support services necessary to succeed in the labor market, with a particular focus on those individuals with disabilities or other barriers to employment including out of school youth with the goal of improving their outcomes;

(b) Enhancing the strategic role for States and elected officials, and Local Workforce Development Boards (WDBs) in the public workforce system by increasing flexibility to tailor services to meet employer and worker needs at State, regional, and local levels;

(c) Streamlining service delivery across multiple programs by requiring colocation, coordination, and integration of activities and information to make the system understandable and accessible for individuals, including individuals with disabilities and those with other barriers to employment, and businesses.

(d) Supporting the alignment of the workforce investment, education, and economic development systems in support of a comprehensive, accessible, and high-quality workforce development system at the Federal, State, and local and regional levels;

(e) Improving the quality and labor market relevance of workforce investment, education, and economic development efforts by promoting the use of industry and sector partnerships,

career pathways, and regional service delivery strategies in order to both provide America's workers with the skills and credentials that will enable them to secure and advance in employment with family-sustaining wages, and to provide America's employers with the skilled workers the employers need to succeed in a global economy;

(f) Promoting accountability using core indicators of performance measured across all WIOA authorized programs, sanctions, and high quality evaluations to improve the structure and delivery of services through the workforce development system to address and improve the employment and skill needs of workers, job seekers, and employers;

(g) Increasing the prosperity and economic growth of workers, employers, communities, regions, and States; and

(h) Providing workforce development activities through statewide and local workforce development systems to increase employment, retention and earnings of participants and to increase industry-recognized postsecondary credential attainment to improve the quality of the workforce, reduce welfare dependency, increase economic self-sufficiency, meet skill requirements of employers, and enhance productivity and competitiveness of the nation.

§ 675.200 What do the regulations for workforce development systems under title I of the Workforce Innovation and Opportunity Act cover?

(a) The regulations found in parts 675 through 688 of this chapter set forth the regulatory requirements that are applicable to programs operated with funds provided under title I of WIOA. This part describes the purpose of that Act, explains the format of these regulations, and sets forth definitions for terms that apply to each part. Parts 676, 677 and 678 of this chapter contain regulations relating to Unified and Combined State Plans, performance accountability, and the one-stop delivery system and the roles of one-stop partners, respectively. Part 679 of this chapter contains regulations relating to statewide and local governance of the workforce development system. Part 680 of this chapter sets forth requirements applicable to WIOA title I programs serving adults and dislocated workers. Part 681 of this chapter sets forth requirements applicable to WIOA title I programs serving youth. Part 682 of this chapter contains regulations relating to statewide activities. Part 683 of this chapter sets forth the administrative requirements applicable to programs funded under WIOA title I. Parts 684 and 685 of this chapter contain the particular requirements applicable to programs serving Indians and Native Americans and Migrant and Seasonal Farmworkers, respectively. Parts 686 and 687 of this chapter describe the particular requirements applicable to the Job Corps and the national dislocated worker grant programs, respectively. Part 688 of this chapter contains the regulations governing the YouthBuild program. In addition, part 603 of this chapter provides the requirements regarding confidentiality and disclosure of State Unemployment Compensation program data under WIOA.

(b) Finally, parts 651 through 658 of this chapter address provisions for the Wagner-Peyser Act Employment Service, as amended by WIOA title III. Specifically, part 651 of this chapter contains general provisions and definitions of terms used in parts 651 through 658 of this chapter; part 652 of this chapter establishes the State Employment Service and describes its operation and services; part 653 of this chapter describes employment services to migrant and seasonal farmworkers and the role of the State Monitor Advocate; part 654 of this chapter addresses the special responsibilities of the Employment Service regarding housing for farmworkers; and part 658 of this chapter contains the administrative provisions that apply to the Wagner-Peyser Act Employment Service.

(c) Title 29 CFR part 38 contains the Department's nondiscrimination regulations implementing WIOA sec. 188.

§ 675.300 What definitions apply to these regulations?

In addition to the definitions set forth in WIOA and those set forth in specific parts of this chapter, the following definitions apply to the regulations in parts 675 through 688 of this chapter:

Consultation means the process by which State and/or local stakeholders convene to discuss changes to the public workforce system and constitutes a robust conversation in which all parties are given an opportunity to share their thoughts and opinions.

Contract means a legal instrument by which a non-Federal entity purchases property or services needed to carry out the project or program under a Federal award. The term as used in this part does not include a legal instrument, even if the non-Federal entity considers it a contract, when the substance of the transaction meets the definition of a Federal award or subaward as defined in this section.

Contractor means an entity that receives a contract as defined in this section.

Cooperative agreement means a legal instrument of financial assistance between a Federal awarding agency or pass-through entity and a non-Federal entity that, consistent with 31 U.S.C. 6302–6305:

(1) Is used to enter into a relationship the principal purpose of which is to transfer anything of value from the Federal awarding agency or pass-through entity to the non-Federal entity to carry out a public purpose authorized by a law of the United States (see 31 U.S.C. 6101(3)); and not to acquire property or services for the Federal government or pass-through entity's direct benefit or use;

(2) Is distinguished from a grant in that it provides for substantial involvement between the Federal awarding agency or pass-through entity and the non-Federal entity in carrying out the activity contemplated by the Federal award.

(3) The term does not include:

(i) A cooperative research and development agreement as defined in 15 U.S.C. 3710a; or

(ii) An agreement that provides only:

(A) Direct United States Government cash assistance to an individual;

(B) A subsidy;

(C) A loan;

(D) A loan guarantee; or

(E) Insurance.

Department means the U.S. Department of Labor, including its agencies and organizational units.

Employment and training activity means a workforce investment activity that is carried out for an adult or dislocated worker under part 678 of this chapter.

Equal opportunity data or *EO data* means data on race and ethnicity, age, sex, and disability required by 29 CFR part 38 of the Department of Labor regulations implementing sec. 188 of WIOA, governing nondiscrimination.

Employment and Training Administration or *ETA* means the Employment and Training Administration of the U.S. Department of Labor.

Family means two or more persons related by blood, marriage, or decree of court, who are living in a single residence, and are included in one or more of the following categories:

(1) A married couple and dependent children;

(2) A parent or guardian and dependent children; or

(3) A married couple.

Federal award means:

(1) The Federal financial assistance that a non-Federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity, as described in 2 CFR 200.101 (Applicability);

(2) The cost-reimbursement contract under the Federal Acquisition Regulations that a non-Federal entity receives directly from a Federal awarding agency or indirectly from a pass-through entity, as described in 2 CFR 200.101 (Applicability); and

(3) The instrument setting forth the terms and conditions. The instrument is the grant agreement, cooperative agreement, other agreement for assistance covered in paragraph (b) of 2 CFR 200.40 (Federal financial assistance), or the cost-reimbursement contract awarded under the Federal Acquisition Regulations.

(4) Federal award does not include other contracts that a Federal agency uses to buy goods or services from a contractor or a contract to operate Federal government owned, contractor operated facilities (GOCOs).

Federal financial assistance means:

(1) For grants and cooperative agreements, assistance in the form of:

(i) Grants;

(ii) Cooperative agreements;

(iii) Non-cash contributions or donations of property (including donated surplus property);

(iv) Direct appropriations;

(v) Food commodities; and

(vi) Other financial assistance, except assistance listed in paragraph (2) of this definition.

(2) For purposes of the audit requirements at 2 CFR part 200, subpart F, Federal financial assistance includes assistance that non-Federal entities receive or administer in the form of:

(i) Loans;

(ii) Loan Guarantees;

(iii) Interest subsidies; and

(iv) Insurance.

(3) Federal financial assistance does not include amounts received as reimbursement for services rendered to individuals as described in 2 CFR 200.502, which outlines the basis for determining Federal awards expended.

Grant or *grant agreement* means a legal instrument of financial assistance between a Federal awarding agency and a non-Federal entity that, consistent with 31 U.S.C. 6302, 6304:

(1) Is used to enter into a relationship the principal purpose of which is to transfer anything of value from the Federal awarding agency to carry out a public purpose authorized by a law of the United States (see 31 U.S.C. 6101(3)); and not to acquire property or services for the Federal awarding agency's direct benefit or use;

(2) Is distinguished from a cooperative agreement in that it does not provide for substantial involvement between the Federal awarding agency or pass-through entity and the non-Federal entity in carrying out the activity contemplated by the Federal award.

(3) Grant agreement does not include an agreement that provides only:

(i) Direct United States Government cash assistance to an individual;

(ii) A subsidy;

(iii) A loan;

(iv) A loan guarantee; or

(v) Insurance.

Grantee means the direct recipient of grant funds from the Department of Labor under a grant or grant agreement. A grantee also may be referred to as a recipient.

Individual with a disability means an individual with any disability as defined in sec. 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102). For purposes of WIOA sec. 188, this term is defined at 29 CFR 38.4.

Labor Federation means an alliance of two or more organized labor unions for the purpose of mutual support and action.

Literacy means an individual's ability to read, write, and speak in English, and to compute, and solve problems, at levels of proficiency necessary to function on the job, in the family of the individual, and in society.

Local WDB means a Local Workforce Development Board (WDB) established under WIOA sec. 107, to set policy for the local workforce development system.

Non-Federal entity, as defined in 2 CFR 2900.2, means a State, local government, Indian tribe, institution of higher education (IHE), for-profit entity, foreign public entity, foreign organization or nonprofit organization that carries out a Federal award as a recipient or subrecipient.

Obligations when used in connection with a non-Federal entity's utilization of funds under a Federal award, means orders placed for property and services, contracts and subawards made, and similar transactions during a given period that require payment by the non-Federal entity during the same or a future period.

Outlying area means:

(1) The United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands; and

(2) The Republic of Palau, except during a period that the Secretaries determine both that a Compact of Free Association is in effect and that the Compact contains provisions for training and education assistance prohibiting the assistance provided under WIOA.

Pass-through entity means a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program.

Recipient means a non-Federal entity that receives a Federal award directly from a Federal awarding agency to carry out an activity under a Federal program. The term recipient does not include subrecipients.

Register means the process for collecting information, including identifying information, to determine an individual's eligibility for services under WIOA title I. Individuals may be registered in a variety ways, as described in § 680.110 of this chapter.

Secretary means the Secretary of the U.S. Department of Labor, or their designee.

Secretaries means the Secretaries of the U.S. Department Labor and the U.S. Department of Education, or their designees.

Self-certification means an individual's signed attestation that the information they submit to demonstrate eligibility for a program under title I of WIOA is true and accurate.

State means each of the several States of the United States, the District of Columbia, and the Commonwealth of Puerto Rico. The term "State" does not include outlying areas.

State WDB means a State Workforce Development Board (WDB) established under WIOA sec. 101.

Subgrant or *subaward* means an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity. It does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract.

Subrecipient means a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program, but does not include an individual that is a beneficiary of such program. A subrecipient also may be a recipient of other Federal awards directly from a Federal awarding agency.

Unliquidated obligations means, for financial reports prepared on a cash basis, obligations incurred by the non-Federal entity that have not been paid (liquidated). For reports prepared on an accrual expenditure basis, these are obligations incurred by the non-Federal

entity for which an expenditure has not been recorded.

Unobligated balance means the amount of funds under a Federal award that the non-Federal entity has not obligated. The amount is computed by subtracting the cumulative amount of the non-Federal entity's unliquidated obligations and expenditures of funds under the Federal award from the cumulative amount of the funds that the Federal awarding agency or pass-through entity authorized the non-Federal entity to obligate.

Wagner-Peyser Act means the Act of June 6, 1933, as amended, codified at 29 U.S.C. 49 *et seq.*

WIA regulations mean the regulations in parts 660 through 672 of this chapter, the Wagner-Peyser Act regulations in part 652, subpart C, of this chapter, and the regulations implementing WIA sec. 188 in 29 CFR part 37.

WIOA regulations mean the regulations in parts 675 through 687 of this chapter, the Wagner-Peyser Act regulations in part 652, subpart C, of this chapter, and the regulations implementing WIA sec. 188 in 29 CFR part 38.

Workforce investment activities mean the array of activities permitted under title I of WIOA, which include employment and training activities for adults and dislocated workers, as described in WIOA sec. 134, and youth activities, as described in WIOA sec. 129.

Youth workforce investment activity means a workforce investment activity that is carried out for eligible youth under part 679 of this chapter.

■ 12. Add part 679 to read as follows:

PART 679—STATEWIDE AND LOCAL GOVERNANCE OF THE WORKFORCE DEVELOPMENT SYSTEM UNDER TITLE I OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT

Subpart A—State Workforce Development Board

Sec.

679.100 What is the purpose of the State Workforce Development Board?
679.110 What is the State Workforce Development Board?
679.120 What is meant by the terms "optimum policy-making authority" and "demonstrated experience and expertise"?
679.130 What are the functions of the State Workforce Development Board?
679.140 How does the State Workforce Development Board meet its requirement to conduct business in an open manner under "sunshine provision" of the Workforce Innovation and Opportunity Act?
679.150 Under what circumstances may the Governor select an alternative entity in place of the State Workforce Development Board?
679.160 Under what circumstances may the State Workforce Development Board hire staff?

Subpart B—Workforce Innovation and Opportunity Act Local Governance (Workforce Development Areas)

Sec.

679.200 What is the purpose of requiring States to identify regions?
679.210 What are the requirements for identifying a region?
679.220 What is the purpose of the local area?
679.230 What are the general procedural requirements for designation of local areas?
679.240 What are the substantive requirements for designation of local areas that were not designated as local areas under the Workforce Investment Act of 1998?
679.250 What are the requirements for initial and subsequent designation of workforce development areas that had been designated as local areas under the Workforce Investment Act of 1998?
679.260 What do the terms "performed successfully" and "sustained fiscal integrity" mean for purposes of designating local areas?
679.270 What are the special designation provisions for single-area States?
679.280 How does the State fulfill the requirement to provide assistance to local areas within a planning region that wish to redesignate into a single local area?
679.290 What right does an entity have to appeal the Governor's decision rejecting a request for designation as a workforce development area?

Subpart C—Local Workforce Development Boards

Sec.

679.300 What is the vision and purpose of the Local Workforce Development Board?
679.310 What is the Local Workforce Development Board?
679.320 Who are the required members of the Local Workforce Development Board?
679.330 Who must chair a Local Workforce Development Board?
679.340 What is meant by the terms "optimum policy-making authority" and "demonstrated experience and expertise"?
679.350 What criteria will be used to establish the membership of the Local Workforce Development Board?
679.360 What is a standing committee, and what is its relationship to the Local Workforce Development Board?
679.370 What are the functions of the Local Workforce Development Board?
679.380 How does the Local Workforce Development Board satisfy the consumer choice requirements for career services and training services?
679.390 How does the Local Workforce Development Board meet its requirement to conduct business in an open manner under the "sunshine provision" of the Workforce Innovation and Opportunity Act?
679.400 Who are the staff to the Local Workforce Development Board and what is their role?
679.410 Under what conditions may a Local Workforce Development Board directly be a provider of career services, or training services, or act as a one-stop operator?
679.420 What are the functions of the local fiscal agent?
679.430 How do entities performing multiple functions in a local area demonstrate internal controls and prevent conflict of interest?

Subpart D—Regional and Local Plan

Sec.

679.500 What is the purpose of the regional and local plan?
679.510 What are the requirements for regional planning?
679.520 What are the requirements for approval of a regional plan?
679.530 When must the regional plan be modified?
679.540 How are local planning requirements reflected in a regional plan?
679.550 What are the requirements for the development of the local plan?
679.560 What are the contents of the local plan?
679.570 What are the requirements for approval of a local plan?
679.580 When must the local plan be modified?

Subpart E—Waivers/WorkFlex (Workforce Flexibility Plan)

Sec.

679.600 What is the purpose of the general statutory and regulatory waiver authority in the Workforce Innovation and Opportunity Act?
679.610 What provisions of the Workforce Innovation and Opportunity Act and the Wagner-Peyser Act may be waived, and what provisions may not be waived?
679.620 Under what conditions may a Governor request, and the Secretary approve, a general waiver of statutory or regulatory requirements under the Workforce Innovation and Opportunity Act?
679.630 Under what conditions may the Governor submit a workforce flexibility plan?
679.640 What limitations apply to the State's workforce flexibility plan authority under the Workforce Innovation and Opportunity Act?

Authority: Secs. 101, 106, 107, 108, 189, 503, Public Law 113–128, 128 Stat. 1425 (Jul. 22, 2014).

Subpart A—State Workforce Development Board

§ 679.100 What is the purpose of the State Workforce Development Board?

The purpose of the State Workforce Development Board (WDB) is to convene State, regional, and local workforce system and partners, to—

(a) Enhance the capacity and performance of the workforce development system;

(b) Align and improve the outcomes and effectiveness of Federally-funded and other workforce programs and investments; and

(c) Through these efforts, promote economic growth.

(d) Engage public workforce system representatives, including businesses, education providers, economic development, labor representatives, and other stakeholders to help the workforce development system achieve the purpose of the Workforce Innovation and Opportunity Act (WIOA); and

(e) Assist to achieve the State's strategic and operational vision and goals as outlined in the State Plan.

§ 679.110 What is the State Workforce Development Board?

(a) The State WDB is a board established by the Governor in accordance with the requirements of WIOA sec. 101 and this section.

(b) The membership of the State WDB must meet the requirements of WIOA sec. 101(b) and must represent diverse geographic areas of the State, including urban, rural, and suburban areas. The WDB membership must include:

(1) The Governor;

(2) A member of each chamber of the State legislature, appointed by the appropriate presiding officers of such chamber, as appropriate under State law; and

(3) Members appointed by the Governor, which must include:

(i) A majority of representatives of businesses or organizations in the State who:

(A) Are the owner or chief executive officer for the business or organization, or is an executive with the business or organization with optimum policy-making or hiring authority, and also may be members of a Local WDB as described in WIOA sec. 107(b)(2)(A)(i);

(B) Represent businesses, or organizations that represent businesses described in paragraph (b)(3)(i) of this section, that, at a minimum, provide employment and training opportunities that include high-quality, work-relevant training and development in in-demand industry sectors or occupations in the State; and

(C) Are appointed from a list of potential members nominated by State business organizations and business trade associations; and

(D) At a minimum, one member representing small businesses as defined by the U.S. Small Business Administration.

(ii) Not less than 20 percent who are representatives of the workforce within the State, which:

(A) Must include two or more representatives of labor organizations nominated by State labor federations;

(B) Must include one representative who must be a member of a labor organization or training director from a joint labor-management registered apprenticeship program, or, if no such joint program exists in the State, a member of a labor organization or training director who is a representative of an registered apprenticeship program;

(C) May include one or more representatives of community-based organizations that have demonstrated experience and expertise in addressing the employment, training, or education needs of individuals with barriers to employment, including organizations that serve veterans or provide or support competitive, integrated employment for individuals with disabilities; and

(D) May include one or more representatives of organizations that have demonstrated experience and expertise in addressing the employment, training, or education needs of eligible youth, including representatives of organizations that serve out-of-school youth.

(iii) The balance of the members:

(A) Must include representatives of the Government including:

(*1*) The lead State officials with primary responsibility for the following core programs—

(*i*) The adult, dislocated worker, and youth programs authorized under title I of WIOA and the Wagner-Peyser Act;

(*ii*) The Adult Education and Family Literacy Act (AEFLA) program authorized under title II of WIOA; and

(*iii*) The State Vocational Rehabilitation (VR) program authorized under the Rehabilitation Act of 1973, as amended by title IV of WIOA.

(*iv*) Where the lead official represents more than one core program, that official must ensure adequate representation of the needs of all core programs under his or her jurisdiction.

(*2*) Two or more chief elected officials (collectively representing both cities and counties, where appropriate).

(B) May include other appropriate representatives and officials designated by the Governor, such as, but not limited to, State agency officials responsible for one-stop partner programs, economic development or juvenile justice programs in the State, individuals who represent an Indian tribe or tribal organization as defined in WIOA sec. 166(b), and State agency officials responsible for education programs in the State, including chief executive officers of community colleges and other institutions of higher education.

(c) The Governor must select a chairperson for the State WDB from the business representatives on the WDB described in paragraph (b)(3)(i) of this section).

(d) The Governor must establish by-laws that at a minimum address:

(1) The nomination process used by the Governor to select the State WDB chair and members;

(2) The term limitations and how the term appointments will be staggered to ensure only a portion of membership expire in a given year;

(3) The process to notify the Governor of a WDB member vacancy to ensure a prompt nominee;

(4) The proxy and alternative designee process that will be used when a WDB member is unable to attend a meeting and assigns a designee as per the following requirements:

(i) If the alternative designee is a business representative, he or she must have optimum policy-making hiring authority.

(ii) Other alternative designees must have demonstrated experience and expertise and optimum policy-making authority.

(5) The use of technology, such as phone and Web-based meetings, that must be used to promote WDB member participation;

(6) The process to ensure members actively participate in convening the workforce development system's stakeholders, brokering relationships with a diverse range of employers, and leveraging support for workforce development activities; and

(7) Other conditions governing appointment or membership on the State WDB as deemed appropriate by the Governor.

(e) Members who represent organizations, agencies or other entities described in paragraphs (b)(3)(ii) through (iii) of this section must be individuals who have optimum policy-making authority in the organization or for the core program that they represent.

(f)(1) A State WDB member may not represent more than one of the categories described in:

(i) Paragraph (b)(3)(i) of this section (business representatives);

(ii) Paragraph (b)(3)(ii) of this section (workforce representatives); or

(iii) Paragraph (b)(3)(iii) of this section (government representatives).

(2) A State WDB member may not serve as a representative of more than one subcategory under paragraph (b)(3)(ii) of this section.

(3) A State WDB member may not serve as a representative of more than one subcategory under paragraph (b)(3)(iii) of this section, except that where a single government agency is responsible for multiple required programs, the head of the agency may represent each of the required programs.

(g) All required WDB members must have voting privileges. The Governor also may convey voting privileges to non-required members.

§ 679.120 What is meant by the terms "optimum policy-making authority" and "demonstrated experience and expertise"?

For purposes of § 679.110:

(a) A representative with "optimum policy-making authority" is an individual who can reasonably be expected to speak affirmatively on behalf of the entity he or she represents and to commit that entity to a chosen course of action.

(b) A representative with "demonstrated experience and expertise" means an individual with documented leadership in developing or implementing workforce development, human resources, training and development, or a core program function. Demonstrated experience and expertise may include individuals with experience in education or training of job seekers with barriers to employment as described in § 679.110(b)(3)(ii)(C) and (D).

§ 679.130 What are the functions of the State Workforce Development Board?

Under WIOA sec. 101(d), the State WDB must assist the Governor in the:

(a) Development, implementation, and modification of the 4-year State Plan;

(b) Review of statewide policies, programs, and recommendations on actions that must be taken by the State to align workforce development programs to support a comprehensive and streamlined workforce development system. Such review of policies, programs, and recommendations must include a review and provision of comments on the State Plans, if any, for programs and activities of one-stop partners that are not core programs;

(c) Development and continuous improvement of the workforce development system, including—

(1) Identification of barriers and means for removing barriers to better coordinate, align, and avoid duplication among programs and activities;

(2) Development of strategies to support career pathways for the purpose of providing individuals, including low-skilled adults, youth, and individuals with barriers to employment, including individuals with disabilities, with workforce investment activities, education, and supportive services to enter or retain employment;

(3) Development of strategies to provide effective outreach to and improved access for individuals and employers who could benefit from workforce development system;

(4) Development and expansion of strategies to meet the needs of employers, workers, and job seekers particularly through industry or sector partnerships related to in-demand industry sectors and occupations;

(5) Identification of regions, including planning regions for the purposes of WIOA sec. 106(a), and the designation of local areas under WIOA sec. 106, after consultation with Local WDBs and chief elected officials;

(6) Development and continuous improvement of the one-stop delivery system in local areas, including providing assistance to Local WDBs, one-stop operators, one-stop partners, and providers. Such assistance includes assistance with planning and delivering services, including training and supportive services, to support effective delivery of services to workers, job seekers, and employers; and

(7) Development of strategies to support staff training and awareness across the workforce development system and its programs;

(d) Development and updating of comprehensive State performance and accountability measures to assess core program effectiveness under WIOA sec. 116(b);

(e) Identification and dissemination of information on best practices, including best practices for—

(1) The effective operation of one-stop centers, relating to the use of business outreach, partnerships, and service delivery strategies, including strategies for serving individuals with barriers to employment;

(2) The development of effective Local WDBs, which may include information on factors that contribute to enabling Local WDBs to exceed negotiated local levels of performance, sustain fiscal integrity, and achieve other measures of effectiveness; and

(3) Effective training programs that respond to real-time labor market analysis, that effectively use direct assessment and prior learning assessment to measure an individual's prior knowledge, skills, competencies, and experiences for adaptability, to support efficient placement into employment or career pathways;

(f) Development and review of statewide policies affecting the coordinated provision of services through the State's one-stop delivery system described in WIOA sec. 121(e), including the development of—

(1) Objective criteria and procedures for use by Local WDBs in assessing the effectiveness, physical and programmatic accessibility and continuous improvement of one-stop centers. Where a Local WDB serves as the one-stop operator, the State WDB must use such criteria to assess and certify the one-stop center;

(2) Guidance for the allocation of one-stop center infrastructure funds under WIOA sec. 121(h); and

(3) Policies relating to the appropriate roles and contributions of entities carrying out one-stop partner programs within the one-stop delivery system, including approaches to facilitating equitable and efficient cost allocation in the system;

(g) Development of strategies for technological improvements to facilitate access to, and improve the quality of services and activities provided through the one-stop delivery system, including such improvements to—

(1) Enhance digital literacy skills (as defined in sec. 202 of the Museum and Library Service Act, 20 U.S.C. 9101);

(2) Accelerate acquisition of skills and recognized postsecondary credentials by participants;

(3) Strengthen professional development of providers and workforce professionals; and

(4) Ensure technology is accessible to individuals with disabilities and individuals residing in remote areas;

(h) Development of strategies for aligning technology and data systems across one-stop partner programs to enhance service delivery and improve efficiencies in reporting on performance accountability measures, including design implementation of common intake, data collection, case management information, and performance accountability measurement and reporting processes and the incorporation of local input into such design and implementation to improve coordination of services across one-stop partner programs;

(i) Development of allocation formulas for the distribution of funds for employment and training activities for adults and youth workforce investment activities, to local areas as permitted under WIOA secs. 128(b)(3) and 133(b)(3);

(j) Preparation of the annual reports described in paragraphs (1) and (2) of WIOA sec. 116(d);

(k) Development of the statewide workforce and labor market information system described in sec. 15(e) of the Wagner-Peyser Act; and

(l) Development of other policies as may promote statewide objectives for and enhance the performance of the workforce development system in the State.

§ 679.140 How does the State Workforce Development Board meet its requirement to conduct business in an open manner under the "sunshine provision" of the Workforce Innovation and Opportunity Act?

(a) The State WDB must conduct business in an open manner as required by WIOA sec. 101(g).

(b) The State WDB must make available to the public, on a regular basis through electronic means and open meetings, information about the activities and functions of the State WDB, including:

(1) The State Plan, or modification to the State Plan, prior to submission of the State Plan or modification of the State Plan;

(2) Information regarding membership;

(3) Minutes of formal meetings of the State WDB upon request;

(4) State WDB by-laws as described at § 679.110(d).

§ 679.150 Under what circumstances may the Governor select an alternative entity in place of the State Workforce Development Board?

(a) The State may use any State entity that meets the requirements of WIOA sec. 101(e) to perform the functions of the State WDB. This may include:

(1) A State council;

(2) A State WDB within the meaning of the Workforce Investment Act of 1998, as in effect on the day before the date of enactment of WIOA; or

(3) A combination of regional WDBs or similar entity.

(b) If the State uses an alternative entity, the State Plan must demonstrate that the alternative entity meets all three of the requirements of WIOA sec. 101(e)(1):

(1) Was in existence on the day before the date of enactment of the Workforce Investment Act of 1998 (WIA);

(2) Is substantially similar to the State WDB described in WIOA secs. 101(a)–(c) and § 679.110; and

(3) Includes representatives of business and labor organizations in the State.

(c) If the alternative entity does not provide representatives for each of the categories required under WIOA sec. 101(b), the State Plan must explain the manner in which the State will ensure an ongoing role for any unrepresented membership group in the workforce development system. The State WDB must maintain an ongoing and meaningful role for an unrepresented membership group, including entities carrying out the core programs, by such methods as:

(1) Regularly scheduled consultations with entities within the unrepresented membership groups;

(2) Providing an opportunity for input into the State Plan or other policy development by unrepresented membership groups; and

(3) Establishing an advisory committee of unrepresented membership groups.

(d) In parts 675 through 687 of this chapter, all references to the State WDB also apply to an alternative entity used by a State.

§ 679.160 Under what circumstances may the State Workforce Development Board hire staff?

(a) The State WDB may hire a director and other staff to assist in carrying out the functions described in WIOA sec. 101(d) and § 679.130 using funds described in WIOA sec. 129(b)(3) or sec. 134(a)(3)(B)(i).

(b) The State WDB must establish and apply a set of objective qualifications for the position of director that ensures the individual selected has the requisite knowledge, skills, and abilities to meet identified benchmarks and to assist in effectively carrying out the functions of the State WDB.

(c) The director and staff must be subject to the limitations on the payment of salary and bonuses described in WIOA sec. 194(15).

Subpart B—Workforce Innovation and Opportunity Act Local Governance (Workforce Development Areas)

§ 679.200 What is the purpose of requiring States to identify regions?

The purpose of identifying regions is to align workforce development activities and resources with larger regional economic development areas and available resources to provide coordinated and efficient services to both job seekers and employers.

§ 679.210 What are the requirements for identifying a region?

(a) The Governor must assign local areas to a region prior to submission of the State Unified or Combined Plan, in order for the State to receive WIOA title I, subtitle B adult, dislocated worker, and youth allotments.

(b) The Governor must develop a policy and process for identifying regions. Such policy must include:

(1) Consultation with the Local WDBs and chief elected officials (CEOs) in the local area(s) as required in WIOA sec. 102(b)(2)(D)(i)(II) and WIOA sec. 106(a)(1); and

(2) Consideration of the extent to which the local areas in a proposed region:

(i) Share a single labor market;

(ii) Share a common economic development area; and

(iii) Possess the Federal and non-Federal resources, including appropriate education and training institutions, to administer activities under WIOA subtitle B.

(c) In addition to the required criteria described in paragraph (b)(2) of this section, other factors the Governor also may consider include:

(1) Population centers;

(2) Commuting patterns;

(3) Land ownership;

(4) Industrial composition;

(5) Location quotients;

(6) Labor force conditions;

(7) Geographic boundaries; and

(8) Additional factors as determined by the Secretary.

(d) Regions must consist of:

(1) One local area;

(2) Two or more contiguous local areas in a single State; or

(3) Two or more contiguous local areas in two or more States.

(e) Planning regions are those regions described in paragraph (d)(2) or (3) of this section. Planning regions are subject to the regional planning requirements in § 679.510.

§ 679.220 What is the purpose of the local area?

(a) The purpose of a local area is to serve as a jurisdiction for the administration of workforce development activities and execution of adult, dislocated worker, and youth funds allocated by the State. Such areas may be aligned with a region identified in WIOA sec. 106(a)(1) or may be components of a planning region, each with its own Local WDB. Also, significantly, local areas are the areas within which Local WDBs oversee their functions, including strategic planning, operational alignment and service delivery design, and a jurisdiction where partners align resources at a sub-State level to design and implement overall service delivery strategies.

(b) The Governor must designate local areas (local areas) in order for the State to receive adult, dislocated worker, and youth funding under title I, subtitle B of WIOA.

§ 679.230 What are the general procedural requirements for designation of local areas?

As part of the process of designating or redesignating a local area, the Governor must develop a policy for designation of local areas that must include:

(a) Consultation with the State WDB;

(b) Consultation with the chief elected officials and affected Local WDBs; and

(c) Consideration of comments received through a public comment process which must:

(1) Offer adequate time for public comment prior to designation of the local area; and

(2) Provide an opportunity for comment by representatives of Local WDBs, chief elected officials, businesses, institutions of higher education, labor organizations, other primary stakeholders, and the general public regarding the designation of the local area.

§ 679.240 What are the substantive requirements for designation of local areas that were not designated as local areas under the Workforce Investment Act of 1998?

(a) Except as provided in § 679.250, the Governor may designate or redesignate a local area in accordance with policies and procedures developed by the Governor, which must include at a minimum consideration of the extent to which the proposed area:

(1) Is consistent with local labor market areas;

(2) Has a common economic development area; and

(3) Has the Federal and non-Federal resources, including appropriate education and training institutions, to administer activities under WIOA subtitle B.

(b) The Governor may approve a request at any time for designation as a workforce development area from any unit of general local government, including a combination of such units, if the State WDB determines that the area meets the requirements of paragraph (a)(1) of this section and recommends designation.

(c) Regardless of whether a local area has been designated under this section or § 679.250, the Governor may redesignate a local area if the redesignation has been requested by a local area and the Governor approves the request.

§ 679.250 What are the requirements for initial and subsequent designation of workforce development areas that had been designated as local areas under the Workforce Investment Act of 1998?

(a) If the chief elected official and Local WDB in a local area submits a request for initial designation, the Governor must approve the request if, for the 2 program years preceding the date of enactment of WIOA, the following criteria are met:

(1) The local area was designated as a local area for purposes of WIA;

(2) The local area performed successfully; and

(3) The local area sustained fiscal integrity.

(b) Subject to paragraph (c) of this section, after the period of initial designation, if the chief elected official and Local WDB in a local area submits a request for subsequent designation, the Governor must approve the request if the following criteria are met for the 2 most recent program years of initial designation:

(1) The local area performed successfully;

(2) The local area sustained fiscal integrity; and

(3) In the case of a local area in a planning region, the local area met the regional planning requirements described in WIOA sec. 106(c)(1).

(c) No determination of subsequent eligibility may be made before the conclusion of Program Year (PY) 2017.

(d) The Governor:

(1) May review a local area designated under paragraph (b) of this section at any time to evaluate whether that the area continues to meet the requirements for subsequent designation under that paragraph; and

(2) Must review a local area designated under paragraph (b) of this section before submitting its State Plan during each 4-year State planning cycle to evaluate whether the area continues to meet the requirements for subsequent designation under that paragraph.

(e) For purposes of subsequent designation under paragraphs (b) and (d) of this section, the local area and chief elected official must be considered to have requested continued designation unless the local area and chief elected official notify the Governor that they no longer seek designation.

(f) Local areas designated under § 679.240 or States designated as single-area States under § 679.270 are not subject to the requirements described in paragraph (b) of this section related to the subsequent designation of a local area.

(g) The Governor may approve, under paragraph (c) of this section, a request for designation as a local area from areas served by rural concentrated employment programs as described in WIOA sec. 107(c)(1)(C).

§ 679.260 What do the terms "performed successfully" and "sustained fiscal integrity" mean for purposes of designating local areas?

(a) For the purpose of initial local area designation, the term "performed successfully" means that the local area met or exceeded the levels of performance the Governor negotiated with the Local WDB and chief elected official under WIA sec. 136(c) for the last 2 full program years before the enactment of WIOA, and that the local area has not failed any individual measure for the last 2 consecutive program years before the enactment of WIOA.

(b) For the purpose of determining subsequent local area designation, the term "performed successfully" means that the local area met or exceeded the levels of performance the Governor negotiated with the Local WDB and chief elected official for core indicators of performance as provided in paragraphs (b)(1) and (2) of this section as appropriate, and that the local area has not failed any individual measure for the last 2 consecutive program years in accordance with a State-established definition, provided in the State Plan, of met or exceeded performance.

(1) For subsequent designation determinations made at the conclusion of PY 2017, a finding of whether a local area performed successfully must be limited to having met or exceeded the negotiated levels for the Employment Rate 2nd Quarter after Exit and the Median Earnings indicators of performance, as described at § 677.155(a)(1)(i) and (iii) of this chapter respectively, for PY 2016 and PY 2017.

(2) For subsequent designation determinations made at the conclusion of PY 2018, or at any point thereafter, a finding of whether a local area performed successfully must be based on all six of the WIOA indicators of performance as described at § 677.155(a)(1)(i) through (vi) of this chapter for the 2 most recently completed program years.

(c) For the purpose of determining initial and subsequent local area designation under § 679.250(a) and (b), the term "sustained fiscal integrity" means that the Secretary has not made a formal determination that either the grant recipient or the administrative entity of the area misexpended funds due to willful disregard of the requirements of the provision involved, gross negligence, or failure to comply with accepted standards of administration for the 2-year period preceding the determination.

§ 679.270 What are the special designation provisions for single-area States?

(a) The Governor of any State that was a single-State local area under the WIA as in effect on July 1, 2013 may designate the State as a single-State local area under WIOA.

(b) The Governor of a State local area under paragraph (a) of this section who seeks to designate the State as a single-State local area under WIOA must:

(1) Identify the State as a single-area State in the Unified or Combined State Plan; and

(2) Include the local plan for approval as part of the Unified or Combined State Plan.

(c) The State WDB for a single-area State must act as the Local WDB and carry out the functions of the Local WDB in accordance with WIOA sec. 107 and § 679.370, except that the State is not required to meet and report on a set of local performance accountability measures.

(d) Single-area States must conduct the functions of the Local WDB as outlined in paragraph (c) of this section to achieve the incorporation of local interests but may do so in a manner that reduces unnecessary burden and duplication of processes.

(e) States must carry out the duties of State and Local WDBs in accordance with guidance issued by the Secretary of Labor.

§ 679.280 How does the State fulfill the requirement to provide assistance to local areas within a planning region that wish to redesignate into a single local area?

(a) When the chief elected officials and Local WDBs of each local area within a planning region make a request to the Governor to redesignate into a single local area, the State WDB must authorize statewide adult, dislocated worker, and youth program funds to facilitate such redesignation.

(b) When statewide funds are not available, the State may provide funds for redesignation in the next available program year.

(c) Redesignation activities that may be carried out by the local areas include:

(1) Convening sessions and conferences;

(2) Renegotiation of contracts and agreements; and

(3) Other activities directly associated with the redesignation as deemed appropriate by the State WDB.

§ 679.290 What right does an entity have to appeal the Governor's decision rejecting a request for designation as a workforce development area?

(a) A unit of local government (or combination of units) or a local area which has requested but has been denied its request for designation as a workforce development area under § 679.250 may appeal the decision to the State WDB, in accordance with appeal procedures established in the State Plan and § 683.630(a) of this chapter.

(b) If a decision on the appeal is not rendered in a timely manner or if the appeal to the State WDB does not result in designation, the entity may request review by the Secretary of Labor, under the procedures set forth at § 683.640 of this chapter.

Subpart C—Local Workforce Development Boards

§ 679.300 What is the vision and purpose of the Local Workforce Development Board?

(a) The vision for the Local WDB is to serve as a strategic leader and convener of local workforce development system stakeholders. The Local WDB partners with employers and the workforce development system to develop policies and investments that support public workforce system strategies that support regional economies, the development of effective approaches including local and regional sector partnerships and career pathways, and high quality, customer centered service delivery and service delivery approaches;

(b) The purpose of the Local WDB is to—

(1) Provide strategic and operational oversight in collaboration with the required and additional partners and workforce stakeholders to help develop a comprehensive and high-quality workforce development system in the local area and larger planning region;

(2) Assist in the achievement of the State's strategic and operational vision and goals as outlined in the Unified State Plan or Combined State Plan; and

(3) Maximize and continue to improve the quality of services, customer satisfaction, effectiveness of the services provided.

§ 679.310 What is the Local Workforce Development Board?

(a) The Local WDB is appointed by the chief elected official(s) in each local area in accordance with State criteria established under WIOA sec. 107(b), and is certified by the Governor every 2 years, in accordance with WIOA sec. 107(c)(2).

(b) In partnership with the chief elected official(s), the Local WDB sets policy for the portion of the statewide workforce development system within the local area and consistent with State policies.

(c) The Local WDB and the chief elected official(s) may enter into an agreement that describes the respective roles and responsibilities of the parties.

(d) The Local WDB, in partnership with the chief elected official(s), develops the local plan and performs the functions described in WIOA sec. 107(d) and § 679.370.

(e) If a local area includes more than one unit of general local government in accordance with WIOA sec. 107(c)(1)(B), the chief elected officials of such units may execute an agreement to describe their responsibilities for carrying out the roles and responsibilities. If the chief elected officials are unable to reach agreement after a reasonable effort, the Governor may appoint the members of the Local WDB from individuals nominated or recommended as specified in WIOA sec. 107(b).

(f) If the State Plan indicates that the State will be treated as a local area under WIOA, the State WDB must carry out the roles of the Local WDB in accordance with WIOA sec. 107, except that the State is not required to meet and report on a set of local performance accountability measures.

(g) The CEO must establish by-laws, consistent with State policy for Local WDB membership, that at a minimum address:

(1) The nomination process used by the CEO to select the Local WDB chair and members;

(2) The term limitations and how the term appointments will be staggered to ensure only a portion of membership expire in a given year;

(3) The process to notify the CEO of a WDB member vacancy to ensure a prompt nominee;

(4) The proxy and alternative designee process that will be used when a WDB member is unable to attend a meeting and assigns a designee as per the requirements at § 679.110(d)(4);

(5) The use of technology, such as phone and Web-based meetings, that will be used to promote WDB member participation;

(6) The process to ensure WDB members actively participate in convening the workforce development system's stakeholders, brokering relationships with a diverse range of employers, and leveraging support for workforce development activities; and

(7) A description of any other conditions governing appointment or membership on the Local WDB as deemed appropriate by the CEO.

§ 679.320 Who are the required members of the Local Workforce Development Board?

(a) For each local area in the State, the members of Local WDB must be selected by the chief elected official consistent

III. Meetings

The TFAC shall, to the extent practical, meet a minimum of two times a year. Additional meetings may be called at the discretion of the Secretary or his/her designee. The meetings will take place in Washington, DC, or elsewhere in the United States, or be held via teleconference. Members are required to attend a majority of the TFAC's meetings.

IV. Application

To be considered for membership, submit the following information to the email address listed in the **ADDRESSES** section above. In order to accommodate requests for extensions, we are now extending the deadline to receive applications until 5:00 p.m. EDT on Monday, August 29, 2016.

Applications for immediate consideration must be received by this deadline.

For all applicants, submit:

1. Name and title of the individual requesting consideration.
2. The applicant's personal resume and short biography (less than 300 words).
3. A brief statement describing how the applicant will contribute to the work of the TFAC based on his/her unique experience and perspective (not to exceed 100 words).
4. All relevant contact information, including mailing address, fax, email, phone number, and support staff information where relevant.
5. An affirmative statement that the applicant meets all eligibility criteria, including an affirmative statement that the applicant is not required to register as a foreign agent under the Foreign Agents Registration Act of 1938, as amended.
6. For applicants to serve in a representative capacity, also submit:
   a. A sponsor letter on the sponsoring entity's letterhead containing a brief statement of why the applicant should be considered for membership on the TFAC. This sponsor letter should also address the applicant's experience and leadership related to trade finance;
   b. A brief description of the company, institution, trade association, or organization to be represented and its business activities and export market(s) served, if applicable;
   c. Information regarding the ownership and control of the sponsoring entity, including the stock holdings as appropriate; and
   d. The sponsoring entity's size (number of employees and annual sales), place of incorporation, product or service line, major markets in which the entity operates, and the entity's export or import experience.
7. For applicants to serve as experts (*i.e.*, not in a representative capacity), also submit:
   a. A statement that the applicant is not a Federally registered lobbyist and that the applicant understands that, if appointed, the applicant will not be allowed to continue to serve as a Committee member if the applicant becomes a Federally registered lobbyist.

Dated: August 15, 2016.

Paul Thanos,

Director, Office of Finance and Insurance Industries.

[FR Doc. 2016–19981 Filed 8–17–16; 4:15 pm]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE818

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; public meeting.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Highly Migratory Species Management Team (HMSMT) will hold a webinar, which is open to the public.

DATES: The webinar will be held on Thursday, September 8, 2016, from 1:30 p.m. to 4:30 p.m.

ADDRESSES:

Webinar information: To join the meeting, visit this link: *http://www.joinwebinar.com;* enter the Webinar ID: 157–057–235 and your name and email address (required). After logging in to the webinar, please select "Use Telephone" and dial this TOLL number *+1 (213) 929–4232;* enter the attendee phone audio access code 832–921–033 and enter your audio phone PIN (shown after joining the webinar). (Participants are required to use their telephone, as this is the best practice to avoid technical issues and excessive feedback, see the *PFMC GoToMeeting Audio Diagram for best practices.*)

Council address: Pacific Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Dr. Kit Dahl, Pacific Council; telephone: (503) 820–2422; email: *kit.dahl@noaa.gov.*

SUPPLEMENTARY INFORMATION: The HMSMT will discuss preparation of reports for the September 12–20, 2016, Council meeting. HMS items on the Council agenda are: (1) Update on International Issues, (2) Exempted Fishing Permits, (3) Biennial Harvest Specifications and Management Measures, (4) Deep-Set Buoy Gear Exempted Fishing Permit Criteria to Advance Gear Authorization, and (5) Federal Drift Gillnet Permit Amendment.

There will be a public listening station at the Council office (see **ADDRESSES**).

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt at (503) 820–2425 at least 5 days prior to the meeting date.

Dated: August 16, 2016.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–19813 Filed 8–18–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE801

Fisheries of the Gulf of Mexico; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of SEDAR 49 Assessment webinar III for Gulf of Mexico Data-limited Species.

SUMMARY: The SEDAR 49 assessment of the Gulf of Mexico Data-limited Species will consist of a data workshop, a review workshop, and a series of assessment webinars. See **SUPPLEMENTARY INFORMATION.**

DATES: The SEDAR 49 Assessment webinar III will be held from 1 p.m. to 3 p.m. on September 14, 2016.

ADDRESSES:

Meeting address: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julie A. Neer at SEDAR

with criteria established under WIOA sec. 107(b)(1) and criteria established by the Governor, and must meet the requirements of WIOA sec. 107(b)(2).

(b) A majority of the members of the Local WDB must be representatives of business in the local area. At a minimum, two members must represent small business as defined by the U.S. Small Business Administration. Business representatives serving on Local WDBs also may serve on the State WDB. Each business representative must meet the following criteria:

(1) Be an owner, chief executive officer, chief operating officer, or other individual with optimum policy-making or hiring authority; and

(2) Provide employment opportunities in in-demand industry sectors or occupations, as those terms are defined in WIOA sec. 3(23).

(c) At least 20 percent of the members of the Local WDB must be workforce representatives. These representatives:

(1) Must include two or more representatives of labor organizations, where such organizations exist in the local area. Where labor organizations do not exist, representatives must be selected from other employee representatives;

(2) Must include one or more representatives of a joint labor-management, or union affiliated, registered apprenticeship program within the area who must be a training director or a member of a labor organization. If no union affiliated registered apprenticeship programs exist in the area, a representative of a registered apprenticeship program with no union affiliation must be appointed, if one exists;

(3) May include one or more representatives of community-based organizations that have demonstrated experience and expertise in addressing the employment, training or education needs of individuals with barriers to employment, including organizations that serve veterans or provide or support competitive integrated employment for individuals with disabilities; and

(4) May include one or more representatives of organizations that have demonstrated experience and expertise in addressing the employment, training, or education needs of eligible youth, including representatives of organizations that serve out-of-school youth.

(d) The Local WDB also must include:

(1) At least one eligible training provider administering adult education and literacy activities under WIOA title II;

(2) At least one representative from an institution of higher education providing workforce investment activities, including community colleges; and

(3) At least one representative from each of the following governmental and economic and community development entities:

(i) Economic and community development entities;

(ii) The State Employment Service office under the Wagner-Peyser Act (29 U.S.C. 49 *et seq.*) serving the local area; and

(iii) The programs carried out under title I of the Rehabilitation Act of 1973, other than sec. 112 or part C of that title;

(e) The membership of Local WDBs may include individuals or representatives of other appropriate entities in the local area, including:

(1) Entities administering education and training activities who represent local educational agencies or community-based organizations with demonstrated expertise in addressing the education or training needs for individuals with barriers to employment;

(2) Governmental and economic and community development entities who represent transportation, housing, and public assistance programs;

(3) Philanthropic organizations serving the local area; and

(4) Other appropriate individuals as determined by the chief elected official.

(f) Members must be individuals with optimum policy-making authority within the entities they represent.

(g) Chief elected officials must establish a formal nomination and appointment process, consistent with the criteria established by the Governor and State WDB under sec. 107(b)(1) of WIOA for appointment of members of the Local WDBs, that ensures:

(1) Business representatives are appointed from among individuals who are nominated by local business organizations and business trade associations;

(2) Labor representatives are appointed from among individuals who are nominated by local labor federations (or, for a local area in which no employees are represented by such organizations, other representatives of employees); and

(3) When there is more than one local area provider of adult education and literacy activities under title II, or multiple institutions of higher education providing workforce investment activities as described in WIOA sec. 107(b)(2)(C)(i) or (ii), nominations are solicited from those particular entities.

(h) An individual may be appointed as a representative of more than one entity if the individual meets all the criteria for representation, including the criteria described in paragraphs (c) through (g) of this section, for each entity.

(i) All required WDB members must have voting privilege. The chief elected official may convey voting privileges to non-required members.

§ 679.330 Who must chair a Local Workforce Development Board?

The Local WDB must elect a chairperson from among the business representatives on the WDB.

§ 679.340 What is meant by the terms "optimum policy-making authority" and "demonstrated experience and expertise"?

For purposes of selecting representatives to Local WDBs:

(a) A representative with "optimum policy-making authority" is an individual who can reasonably be expected to speak affirmatively on behalf of the entity he or she represents and to commit that entity to a chosen course of action.

(b) A representative with "demonstrated experience and expertise" means an individual who:

(1) Is a workplace learning advisor as defined in WIOA sec. 3(70);

(2) Contributes to the field of workforce development, human resources, training and development, or a core program function; or

(3) The Local WDB recognizes for valuable contributions in education or workforce development related fields.

§ 679.350 What criteria will be used to establish the membership of the Local Workforce Development Board?

The Local WDB is appointed by the chief elected official(s) in the local area in accordance with State criteria established under WIOA sec. 107(b), and is certified by the Governor every 2 years, in accordance with WIOA sec. 107(c)(2).

§ 679.360 What is a standing committee, and what is its relationship to the Local Workforce Development Board?

(a) Standing committees may be established by the Local WDB to provide information and assist the Local WDB in carrying out its responsibilities under WIOA sec. 107. Standing committees must be chaired by a member of the Local WDB, may include other members of the Local WDB, and must include other individuals appointed by the Local WDB who are not members of the Local WDB and who have demonstrated experience and expertise in accordance with § 679.340(b) and as determined by the Local WDB. Standing committees may include each of the following:

(1) A standing committee to provide information and assist with operational and other issues relating to the one-stop delivery system, which may include representatives of the one-stop partners.

(2) A standing committee to provide information and to assist with planning, operational, and other issues relating to the provision of services to youth, which must include community-based organizations with a demonstrated record of success in serving eligible youth.

(3) A standing committee to provide information and to assist with operational and other issues relating to the provision of services to individuals with disabilities, including issues relating to compliance with WIOA sec. 188, if applicable, and applicable provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*) regarding providing programmatic and physical access to the services, programs, and activities of the one-stop delivery system, as well as appropriate training for staff on providing supports for or accommodations to, and finding employment opportunities for, individuals with disabilities.

(b) The Local WDB may designate other standing committees in addition to those specified in paragraph (a) of this section.

(c) Local WDBs may designate an entity in existence as of the date of the enactment of WIOA, such as an effective youth council, to serve as a standing committee as long as the entity meets the requirements of WIOA sec. 107(b)(4).

§ 679.370 What are the functions of the Local Workforce Development Board?

As provided in WIOA sec. 107(d), the Local WDB must:

(a) Develop and submit a 4-year local plan for the local area, in partnership with the chief elected official and consistent with WIOA sec. 108;

(b) If the local area is part of a planning region that includes other local areas, develop and submit a regional plan in collaboration with other local areas. If the local area is part of a planning region, the local plan must be submitted as a part of the regional plan;

(c) Conduct workforce research and regional labor market analysis to include:

(1) Analyses and regular updates of economic conditions, needed knowledge and skills, workforce, and workforce development (including education and training) activities to include an analysis of the strengths and weaknesses (including the capacity to provide) of such services to address the identified education and skill needs of the workforce and the employment needs of employers;

(2) Assistance to the Governor in developing the statewide workforce and labor market information system under the Wagner-Peyser Act for the region; and

(3) Other research, data collection, and analysis related to the workforce needs of the regional economy as the WDB, after receiving input from a wide array of stakeholders, determines to be necessary to carry out its functions;

(d) Convene local workforce development system stakeholders to assist in the development of the local plan under § 679.550 and in identifying non-Federal expertise and resources to leverage support for workforce development activities. Such stakeholders may assist the Local WDB and standing committees in carrying out convening, brokering, and leveraging functions at the direction of the Local WDB;

(e) Lead efforts to engage with a diverse range of employers and other entities in the region in order to:

(1) Promote business representation (particularly representatives with optimum policy-making or hiring authority from employers whose employment opportunities reflect existing and emerging employment opportunities in the region) on the Local WDB;

(2) Develop effective linkages (including the use of intermediaries) with employers in the region to support employer utilization of the local workforce development system and to support local workforce investment activities;

(3) Ensure that workforce investment activities meet the needs of employers and support economic growth in the region by enhancing communication, coordination, and collaboration among employers, economic development entities, and service providers; and

(4) Develop and implement proven or promising strategies for meeting the employment and skill needs of workers and employers (such as the establishment of industry and sector partnerships), that provide the skilled workforce needed by employers in the region, and that expand employment and career advancement opportunities for workforce development system participants in in-demand industry sectors or occupations;

(f) With representatives of secondary and postsecondary education programs, lead efforts to develop and implement career pathways within the local area by aligning the employment, training, education, and supportive services that are needed by adults and youth, particularly individuals with barriers to employment;

(g) Lead efforts in the local area to identify and promote proven and promising strategies and initiatives for meeting the needs of employers, workers and job seekers, and identify and disseminate information on proven and promising practices carried out in other local areas for meeting such needs;

(h) Develop strategies for using technology to maximize the accessibility and effectiveness of the local workforce development system for employers, and workers and job seekers, by:

(1) Facilitating connections among the intake and case management information systems of the one-stop partner programs to support a comprehensive workforce development system in the local area;

(2) Facilitating access to services provided through the one-stop delivery system involved, including access in remote areas;

(3) Identifying strategies for better meeting the needs of individuals with barriers to employment, including strategies that augment traditional service delivery, and increase access to services and programs of the one-stop delivery system, such as improving digital literacy skills; and

(4) Leveraging resources and capacity within the local workforce development system, including resources and capacity for services for individuals with barriers to employment;

(i) In partnership with the chief elected official for the local area:

(1) Conduct oversight of youth workforce investment activities authorized under WIOA sec. 129(c), adult and dislocated worker employment and training activities under WIOA secs. 134(c) and (d), and the entire one-stop delivery system in the local area;

(2) Ensure the appropriate use and management of the funds provided under WIOA subtitle B for the youth, adult, and dislocated worker activities and one-stop delivery system in the local area; and

(3) Ensure the appropriate use management, and investment of funds to maximize performance outcomes under WIOA sec. 116;

(j) Negotiate and reach agreement on local performance indicators with the chief elected official and the Governor;

(k) Negotiate with CEO and required partners on the methods for funding the infrastructure costs of one-stop centers in the local area in accordance with § 678.715 of this chapter or must notify the Governor if they fail to reach agreement at the local level and will use

a State infrastructure funding mechanism;

(l) Select the following providers in the local area, and where appropriate terminate such providers in accordance with 2 CFR part 200:

(1) Providers of youth workforce investment activities through competitive grants or contracts based on the recommendations of the youth standing committee (if such a committee is established); however, if the Local WDB determines there is an insufficient number of eligible training providers in a local area, the Local WDB may award contracts on a sole-source basis as per the provisions at WIOA sec. 123(b);

(2) Providers of training services consistent with the criteria and information requirements established by the Governor and WIOA sec. 122;

(3) Providers of career services through the award of contracts, if the one-stop operator does not provide such services; and

(4) One-stop operators in accordance with §§ 678.600 through 678.635 of this chapter;

(m) In accordance with WIOA sec. 107(d)(10)(E) work with the State to ensure there are sufficient numbers and types of providers of career services and training services serving the local area and providing the services in a manner that maximizes consumer choice, as well as providing opportunities that lead to competitive integrated employment for individuals with disabilities;

(n) Coordinate activities with education and training providers in the local area, including:

(1) Reviewing applications to provide adult education and literacy activities under WIOA title II for the local area to determine whether such applications are consistent with the local plan;

(2) Making recommendations to the eligible agency to promote alignment with such plan; and

(3) Replicating and implementing cooperative agreements to enhance the provision of services to individuals with disabilities and other individuals, such as cross training of staff, technical assistance, use and sharing of information, cooperative efforts with employers, and other efforts at cooperation, collaboration, and coordination;

(o) Develop a budget for the activities of the Local WDB, with approval of the chief elected official and consistent with the local plan and the duties of the Local WDB;

(p) Assess, on an annual basis, the physical and programmatic accessibility of all one-stop centers in the local area, in accordance with WIOA sec. 188, if applicable, and applicable provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*); and

(q) Certification of one-stop centers in accordance with § 678.800 of this chapter.

§ 679.380 How does the Local Workforce Development Board satisfy the consumer choice requirements for career services and training services?

(a) In accordance with WIOA sec. 122 and in working with the State, the Local WDB satisfies the consumer choice requirement for training services by:

(1) Determining the initial eligibility of entities providing a program of training services, renewing the eligibility of providers, and considering the possible termination of an eligible training provider due to the provider's submission of inaccurate eligibility and performance information or the provider's substantial violation of WIOA;

(2) Working with the State to ensure there are sufficient numbers and types of providers of training services, including eligible training providers with expertise in assisting individuals with disabilities and eligible training providers with expertise in assisting adults in need of adult education and literacy activities described under WIOA sec. 107(d)(10)(E), serving the local area;

(3) Ensuring the dissemination and appropriate use of the State list through the local one-stop delivery system;

(4) Receiving performance and cost information from the State and disseminating this information through the one-stop delivery systems within the State; and

(5) Providing adequate access to services for individuals with disabilities.

(b) Working with the State, the Local WDB satisfies the consumer choice requirement for career services by:

(1) Determining the career services that are best performed by the one-stop operator consistent with §§ 678.620 and 678.625 of this chapter and career services that require contracting with a career service provider; and

(2) Identifying a wide-array of potential career service providers and awarding contracts where appropriate including to providers to ensure:

(i) Sufficient access to services for individuals with disabilities, including opportunities that lead to integrated, competitive employment for individuals with disabilities; and

(ii) Sufficient access for adult education and literacy activities.

§ 679.390 How does the Local Workforce Development Board meet its requirement to conduct business in an open manner under the "sunshine provision" of the Workforce Innovation and Opportunity Act?

The Local WDB must conduct its business in an open manner as required by WIOA sec. 107(e), by making available to the public, on a regular basis through electronic means and open meetings, information about the activities of the Local WDB. This includes:

(a) Information about the Local Plan, or modification to the Local Plan, before submission of the plan;

(b) List and affiliation of Local WDB members;

(c) Selection of one-stop operators;

(d) Award of grants or contracts to eligible training providers of workforce investment activities including providers of youth workforce investment activities;

(e) Minutes of formal meetings of the Local WDB; and

(f) Local WDB by-laws, consistent with § 679.310(g).

§ 679.400 Who are the staff to the Local Workforce Development Board and what is their role?

(a) WIOA sec. 107(f) grants Local WDBs authority to hire a director and other staff to assist in carrying out the functions of the Local WDB.

(b) Local WDBs must establish and apply a set of qualifications for the position of director that ensures the individual selected has the requisite knowledge, skills, and abilities to meet identified benchmarks and to assist in carrying out the functions of the Local WDB.

(c) The Local WDB director and staff must be subject to the limitations on the payment of salary and bonuses described in WIOA sec. 194(15).

(d) In general, Local WDB staff only may assist the Local WDB fulfill the required functions at WIOA sec. 107(d).

(e) Should the WDB select an entity to staff the WDB that provides additional workforce functions beyond the functions described at WIOA sec. 107(d), such an entity is required to enter into a written agreement with the Local WDB and chief elected official(s) to clarify their roles and responsibilities as required by § 679.430.

§ 679.410 Under what conditions may a Local Workforce Development Board directly be a provider of career services, or training services, or act as a one-stop operator?

(a)(1) A Local WDB may be selected as a one-stop operator:

(i) Through sole source procurement in accordance with § 678.610 of this chapter; or

(ii) Through successful competition in accordance with § 678.615 of this chapter.

(2) The chief elected official in the local area and the Governor must agree to the selection described in paragraph (a)(1) of this section.

(3) Where a Local WDB acts as a one-stop operator, the State must ensure certification of one-stop centers in accordance with § 678.800 of this chapter.

(b) A Local WDB may act as a provider of career services only with the agreement of the chief elected official in the local area and the Governor.

(c) A Local WDB is prohibited from providing training services, unless the Governor grants a waiver in accordance with the provisions in WIOA sec. 107(g)(1).

(1) The State must develop a procedure for approving waivers that includes the criteria at WIOA sec. 107(g)(1)(B)(i):

(i) Satisfactory evidence that there is an insufficient number of eligible training providers of such a program of training services to meet local demand in the local area;

(ii) Information demonstrating that the WDB meets the requirements for eligible training provider services under WIOA sec. 122; and

(iii) Information demonstrating that the program of training services prepares participants for an in-demand industry sector or occupation in the local area.

(2) The local area must make the proposed request for a waiver available to eligible training providers and other interested members of the public for a public comment period of not less than 30 days and includes any comments received during this time in the final request for the waiver.

(3) The waiver must not exceed the duration of the local plan and may be renewed by submitting a new waiver request consistent with paragraphs (c)(1) and (2) of this section for additional periods, not to exceed the durations of such subsequent plans.

(4) The Governor may revoke the waiver if the Governor determines the waiver is no longer needed or that the Local WDB involved has engaged in a pattern of inappropriate referrals to training services operated by the Local WDB.

(d) The restrictions on the provision of career and training services by the Local WDB, as one-stop operator, also apply to staff of the Local WDB.

§ 679.420 What are the functions of the local fiscal agent?

(a) In order to assist in administration of the grant funds, the chief elected official or the Governor, where the Governor serves as the local grant recipient for a local area, may designate an entity to serve as a local fiscal agent. Designation of a fiscal agent does not relieve the chief elected official or Governor of liability for the misuse of grant funds. If the CEO designates a fiscal agent, the CEO must ensure this agent has clearly defined roles and responsibilities.

(b) In general the fiscal agent is responsible for the following functions:

(1) Receive funds.

(2) Ensure sustained fiscal integrity and accountability for expenditures of funds in accordance with Office of Management and Budget circulars, WIOA and the corresponding Federal Regulations and State policies.

(3) Respond to audit financial findings.

(4) Maintain proper accounting records and adequate documentation.

(5) Prepare financial reports.

(6) Provide technical assistance to subrecipients regarding fiscal issues.

(c) At the direction of the Local WDB or the State WDB in single-area States, the fiscal agent may have the following additional functions:

(1) Procure contracts or obtain written agreements.

(2) Conduct financial monitoring of service providers.

(3) Ensure independent audit of all employment and training programs.

§ 679.430 How do entities performing multiple functions in a local area demonstrate internal controls and prevent conflict of interest?

Local organizations often function simultaneously in a variety of roles, including local fiscal agent, Local WDB staff, one-stop operator, and direct provider of services. Any organization that has been selected or otherwise designated to perform more than one of these functions must develop a written agreement with the Local WDB and CEO to clarify how the organization will carry out its responsibilities while demonstrating compliance with WIOA and corresponding regulations, relevant Office of Management and Budget circulars, and the State's conflict of interest policy.

Subpart D—Regional and Local Plan

§ 679.500 What is the purpose of the regional and local plan?

(a) The local plan serves as 4-year action plan to develop, align, and integrate service delivery strategies and to support the State's vision and strategic and operational goals. The local plan sets forth the strategy to:

(1) Direct investments in economic, education, and workforce training programs to focus on providing relevant education and training to ensure that individuals, including youth and individuals with barriers to employment, have the skills to compete in the job market and that employers have a ready supply of skilled workers;

(2) Apply job-driven strategies in the one-stop delivery system;

(3) Enable economic, education, and workforce partners to build a skilled workforce through innovation in, and alignment of, employment, training, and education programs; and

(4) Incorporate the local plan into the regional plan per § 679.540.

(b) In the case of planning regions, a regional plan is required to meet the purposes described in paragraph (a) of this section and to coordinate resources among multiple WDBs in a region.

(c) The Governor must establish and disseminate to Local WDBs and regional planning areas a policy for the submission of local and regional plans. The policy must set a deadline for the submission of the regional and local plans that accounts for the activities required in plan development outlined in §§ 679.510 and 679.550.

§ 679.510 What are the requirements for regional planning?

(a) Local WDBs and chief elected officials within an identified planning region (as defined in WIOA secs. 106(a)(2)(B)–(C) and § 679.200) must:

(1) Participate in a regional planning process that results in:

(i) The preparation of a regional plan, as described in paragraph (a)(2) of this section and consistent with any guidance issued by the Department;

(ii) The establishment of regional service strategies, including use of cooperative service delivery agreements;

(iii) The development and implementation of sector initiatives for in-demand industry sectors or occupations for the planning region;

(iv) The collection and analysis of regional labor market data (in conjunction with the State) which must include the local planning requirements at § 679.560(a)(1)(i) and (ii);

(v) The coordination of administrative cost arrangements, including the pooling of funds for administrative costs, as appropriate;

(vi) The coordination of transportation and other supportive services as appropriate;

(vii) The coordination of services with regional economic development services and providers; and

(viii) The establishment of an agreement concerning how the planning

region will collectively negotiate and reach agreement with the Governor on local levels of performance for, and report on, the performance accountability measures described in WIOA sec. 116(c) for local areas or the planning region.

(2) Prepare, submit, and obtain approval of a single regional plan that:

(i) Includes a description of the activities described in paragraph (a)(1) of this section; and

(ii) Incorporates local plans for each of the local areas in the planning region, consistent with § 679.540(a).

(b) Consistent with § 679.550(b), the Local WDBs representing each local area in the planning region must provide an opportunity for public comment on the development of the regional plan or subsequent plan modifications before submitting the plan to the Governor. To provide adequate opportunity for public comment, the Local WDBs must:

(1) Make copies of the proposed regional plan available to the public through electronic and other means, such as public hearings and local news media;

(2) Include an opportunity for comment by members of the public, including representatives of business, labor organizations, and education;

(3) Provide no more than a 30-day period for comment on the plan before its submission to the Governor, beginning on the date on which the proposed plan is made available; and

(4) The Local WDBs must submit any comments that express disagreement with the plan to the Governor along with the plan.

(5) Consistent with WIOA sec. 107(e), the Local WDB must make information about the plan available to the public on a regular basis through electronic means and open meetings.

(c) The State must provide technical assistance and labor market data, as requested by local areas, to assist with regional planning and subsequent service delivery efforts.

(d) As they relate to regional areas and regional plans, the terms local area and local plan are defined in WIOA secs. 106(c)(3)(A)–(B).

§ 679.520 What are the requirements for approval of a regional plan?

Consistent with the requirements of § 679.570, the Governor must review completed plans (including a modification to the plan). Such plans will be considered approved 90 days after receipt of the plan unless the Governor determines in writing that:

(a) There are deficiencies in workforce investment activities that have been identified through audits and the local area has not made acceptable progress in implementing plans to address deficiencies; or

(b) The plan does not comply with applicable provisions of WIOA and the WIOA regulations, including the required consultations and public comment provisions, and the nondiscrimination requirements of 29 CFR part 38.

(c) The plan does not align with the State Plan, including with regard to the alignment of the core programs to support the strategy identified in the State Plan in accordance with WIOA sec. 102(b)(1)(E) and § 676.105 of this chapter.

§ 679.530 When must the regional plan be modified?

(a) Consistent with § 679.580, the Governor must establish procedures governing the modification of regional plans.

(b) At the end of the first 2-year period of the 4-year local plan, the Local WDBs within a planning region, in partnership with the appropriate chief elected officials, must review the regional plan and prepare and submit modifications to the regional plan to reflect changes:

(1) In regional labor market and economic conditions; and

(2) Other factors affecting the implementation of the local plan, including but not limited to changes in the financing available to support WIOA title I and partner-provided WIOA services.

§ 679.540 How are local planning requirements reflected in a regional plan?

(a) The regional plan must address the requirements at WIOA secs. 106(c)(1)(A)–(H), and incorporate the local planning requirements identified for local plans at WIOA secs. 108(b)(1)–(22).

(b) The Governor may issue regional planning guidance that allows Local WDBs and chief elected officials in a planning region to address any local plan requirements through the regional plan where there is a shared regional responsibility.

§ 679.550 What are the requirements for the development of the local plan?

(a) Under WIOA sec. 108, each Local WDB must, in partnership with the appropriate chief elected officials, develop and submit a comprehensive 4-year plan to the Governor.

(1) The plan must identify and describe the policies, procedures, and local activities that are carried out in the local area, consistent with the State Plan.

(2) If the local area is part of a planning region, the Local WDB must comply with WIOA sec. 106(c) and §§ 679.510 through 679.540 in the preparation and submission of a regional plan.

(b) Consistent with § 679.510(b), the Local WDB must provide an opportunity for public comment on the development of the local plan or subsequent plan modifications before submitting the plan to the Governor. To provide adequate opportunity for public comment, the Local WDB must:

(1) Make copies of the proposed local plan available to the public through electronic and other means, such as public hearings and local news media;

(2) Include an opportunity for comment by members of the public, including representatives of business, labor organizations, and education;

(3) Provide no more than a 30-day period for comment on the plan before its submission to the Governor, beginning on the date on which the proposed plan is made available, prior to its submission to the Governor; and

(4) The Local WDB must submit any comments that express disagreement with the plan to the Governor along with the plan.

(5) Consistent WIOA sec. 107(e), the Local WDB must make information about the plan available to the public on a regular basis through electronic means and open meetings.

§ 679.560 What are the contents of the local plan?

(a) The local workforce investment plan must describe strategic planning elements, including:

(1) A regional analysis of:

(i) Economic conditions including existing and emerging in-demand industry sectors and occupations; and

(ii) Employment needs of employers in existing and emerging in-demand industry sectors and occupations.

(iii) As appropriate, a local area may use an existing analysis, which is a timely current description of the regional economy, to meet the requirements of paragraphs (a)(1)(i) and (ii) of this section;

(2) Knowledge and skills needed to meet the employment needs of the employers in the region, including employment needs in in-demand industry sectors and occupations;

(3) An analysis of the regional workforce, including current labor force employment and unemployment data, information on labor market trends, and educational and skill levels of the workforce, including individuals with barriers to employment;

(4) An analysis of workforce development activities, including

education and training, in the region. This analysis must include the strengths and weaknesses of workforce development activities and capacity to provide the workforce development activities to address the education and skill needs of the workforce, including individuals with barriers to employment, and the employment needs of employers;

(5) A description of the Local WDB's strategic vision to support regional economic growth and economic self-sufficiency. This must include goals for preparing an educated and skilled workforce (including youth and individuals with barriers to employment), and goals relating to the performance accountability measures based on performance indicators described in § 677.155(a)(1) of this chapter; and

(6) Taking into account analyses described in paragraphs (a)(1) through (4) of this section, a strategy to work with the entities that carry out the core programs and required partners to align resources available to the local area, to achieve the strategic vision and goals described in paragraph (a)(5) of this section.

(b) The plan must include a description of the following requirements at WIOA secs. 108(b)(2)–(21):

(1) The workforce development system in the local area that identifies:

(i) The programs that are included in the system; and

(ii) How the Local WDB will support the strategy identified in the State Plan under § 676.105 of this chapter and work with the entities carrying out core programs and other workforce development programs, including programs of study authorized under the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2301 *et seq.*) to support service alignment;

(2) How the Local WDB will work with entities carrying out core programs to:

(i) Expand access to employment, training, education, and supportive services for eligible individuals, particularly eligible individuals with barriers to employment;

(ii) Facilitate the development of career pathways and co-enrollment, as appropriate, in core programs; and

(iii) Improve access to activities leading to a recognized postsecondary credential (including a credential that is an industry-recognized certificate or certification, portable, and stackable);

(3) The strategies and services that will be used in the local area:

(i) To facilitate engagement of employers in workforce development programs, including small employers and employers in in-demand industry sectors and occupations;

(ii) To support a local workforce development system that meets the needs of businesses in the local area;

(iii) To better coordinate workforce development programs and economic development;

(iv) To strengthen linkages between the one-stop delivery system and unemployment insurance programs; and

(v) That may include the implementation of initiatives such as incumbent worker training programs, on-the-job training programs, customized training programs, industry and sector strategies, career pathways initiatives, utilization of effective business intermediaries, and other business services and strategies designed to meet the needs of regional employers. These initiatives must support the strategy described in paragraph (b)(3) of this section;

(4) An examination of how the Local WDB will coordinate local workforce investment activities with regional economic development activities that are carried out in the local area and how the Local WDB will promote entrepreneurial skills training and microenterprise services;

(5) The one-stop delivery system in the local area, including:

(i) How the Local WDB will ensure the continuous improvement of eligible providers through the system and that such providers will meet the employment needs of local employers, workers, and job seekers;

(ii) How the Local WDB will facilitate access to services provided through the one-stop delivery system, including in remote areas, through the use of technology and other means;

(iii) How entities within the one-stop delivery system, including one-stop operators and the one-stop partners, will comply with WIOA sec. 188, if applicable, and applicable provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*) regarding the physical and programmatic accessibility of facilities, programs and services, technology, and materials for individuals with disabilities, including providing staff training and support for addressing the needs of individuals with disabilities; and

(iv) The roles and resource contributions of the one-stop partners;

(6) A description and assessment of the type and availability of adult and dislocated worker employment and training activities in the local area;

(7) A description of how the Local WDB will coordinate workforce investment activities carried out in the local area with statewide rapid response activities;

(8) A description and assessment of the type and availability of youth workforce investment activities in the local area including activities for youth who are individuals with disabilities, which must include an identification of successful models of such activities;

(9) How the Local WDB will coordinate relevant secondary and postsecondary education programs and activities with education and workforce investment activities to coordinate strategies, enhance services, and avoid duplication of services;

(10) How the Local WDB will coordinate WIOA title I workforce investment activities with the provision of transportation and other appropriate supportive services in the local area;

(11) Plans, assurances, and strategies for maximizing coordination, improving service delivery, and avoiding duplication of Wagner-Peyser Act (29 U.S.C. 49 *et seq.*) services and other services provided through the one-stop delivery system;

(12) How the Local WDB will coordinate WIOA title I workforce investment activities with adult education and literacy activities under WIOA title II. This description must include how the Local WDB will carry out the review of local applications submitted under title II consistent with WIOA secs. 107(d)(11)(A) and (B)(i) and WIOA sec. 232;

(13) Copies of executed cooperative agreements which define how all local service providers, including additional providers, will carry out the requirements for integration of and access to the entire set of services available in the local one-stop delivery system. This includes cooperative agreements (as defined in WIOA sec. 107(d)(11)) between the Local WDB or other local entities described in WIOA sec. 101(a)(11)(B) of the Rehabilitation Act of 1973 (29 U.S.C. 721(a)(11)(B)) and the local office of a designated State agency or designated State unit administering programs carried out under title I of the Rehabilitation Act (29 U.S.C. 720 *et seq.*) (other than sec. 112 or part C of that title (29 U.S.C. 732, 741) and subject to sec. 121(f)) in accordance with sec. 101(a)(11) of the Rehabilitation Act (29 U.S.C. 721(a)(11)) with respect to efforts that will enhance the provision of services to individuals with disabilities and to other individuals, such as cross training of staff, technical assistance, use and sharing of information, cooperative efforts with employers, and other efforts at cooperation, collaboration, and coordination;

(14) An identification of the entity responsible for the disbursal of grant funds described in WIOA sec. 107(d)(12)(B)(i)(III), as determined by the chief elected official or the Governor under WIOA sec. 107(d)(12)(B)(i);

(15) The competitive process that will be used to award the subgrants and contracts for WIOA title I activities;

(16) The local levels of performance negotiated with the Governor and chief elected official consistent with WIOA sec. 116(c), to be used to measure the performance of the local area and to be used by the Local WDB for measuring the performance of the local fiscal agent (where appropriate), eligible providers under WIOA title I subtitle B, and the one-stop delivery system in the local area;

(17) The actions the Local WDB will take toward becoming or remaining a high-performing WDB, consistent with the factors developed by the State WDB;

(18) How training services outlined in WIOA sec. 134 will be provided through the use of individual training accounts, including, if contracts for training services will be used, how the use of such contracts will be coordinated with the use of individual training accounts under that chapter, and how the Local WDB will ensure informed customer choice in the selection of training programs regardless of how the training services are to be provided;

(19) The process used by the Local WDB, consistent with WIOA sec. 108(d), to provide a 30-day public comment period prior to submission of the plan, including an opportunity to have input into the development of the local plan, particularly for representatives of businesses, education, and labor organizations;

(20) How one-stop centers are implementing and transitioning to an integrated, technology-enabled intake and case management information system for programs carried out under WIOA and by one-stop partners; and

(21) The direction given by the Governor and the Local WDB to the one-stop operator to ensure priority for adult career and training services will be given to recipients of public assistance, other low-income individuals, and individuals who are basic skills deficient consistent with WIOA sec. 134(c)(3)(E) and § 680.600 of this chapter.

(c) The local plan must include any additional information required by the Governor.

(d) The local plan must identify the portions that the Governor has designated as appropriate for common response in the regional plan where there is a shared regional responsibility, as permitted by § 679.540(b).

(e) Comments submitted during the public comment period that represent disagreement with the plan must be submitted with the local plan.

§ 679.570 What are the requirements for approval of a local plan?

(a) Consistent with the requirements at § 679.520 the Governor must review completed plans (including a modification to the plan). Such plans will be considered approved 90 days after the Governor receives the plan unless the Governor determines in writing that:

(1) There are deficiencies in workforce investment activities that have been identified through audits and the local area has not made acceptable progress in implementing plans to address deficiencies; or

(2) The plan does not comply with applicable provisions of WIOA and the WIOA regulations, including the required consultations and public comment provisions, and the nondiscrimination requirements of 29 CFR part 38.

(3) The plan does not align with the State Plan, including with regard to the alignment of the core programs to support the strategy identified in the State Plan in accordance with WIOA sec. 102(b)(1)(E) and § 676.105 of this chapter.

(b) In cases where the State is a single local area:

(1) The State must incorporate the local plan into the State's Unified or Combined State Plan and submit it to the U.S. Department of Labor in accordance with the procedures described in § 676.105 of this chapter.

(2) The Secretary of Labor performs the roles assigned to the Governor as they relate to local planning activities.

(3) The Secretary of Labor will issue planning guidance for such States.

§ 679.580 When must the local plan be modified?

(a) Consistent with the requirements at § 679.530, the Governor must establish procedures governing the modification of local plans.

(b) At the end of the first 2-year period of the 4-year local plan, each Local WDB, in partnership with the appropriate chief elected officials, must review the local plan and prepare and submit modifications to the local plan to reflect changes:

(1) In labor market and economic conditions; and

(2) Other factors affecting the implementation of the local plan, including but not limited to:

(i) Significant changes in local economic conditions;

(ii) Changes in the financing available to support WIOA title I and partner-provided WIOA services;

(iii) Changes to the Local WDB structure; and

(iv) The need to revise strategies to meet local performance goals.

Subpart E—Waivers/WorkFlex (Workforce Flexibility Plan)

§ 679.600 What is the purpose of the general statutory and regulatory waiver authority in the Workforce Innovation and Opportunity Act?

(a) The purpose of the general statutory and regulatory waiver authority provided at sec. 189(i)(3) of the WIOA is to provide flexibility to States and local areas and enhance their ability to improve the statewide workforce development system to achieve the goals and purposes of WIOA.

(b) A waiver may be requested to address impediments to the implementation of a Unified or Combined State Plan, including the continuous improvement strategy, consistent with the purposes of title I of WIOA as identified in § 675.100 of this chapter.

§ 679.610 What provisions of the Workforce Innovation and Opportunity Act and the Wagner-Peyser Act may be waived, and what provisions may not be waived?

(a) The Secretary may waive for a State, or local area in a State, any of the statutory or regulatory requirements of subtitles A, B and E of title I of WIOA, except for requirements relating to:

(1) Wage and labor standards;

(2) Non-displacement protections;

(3) Worker rights;

(4) Participation and protection of workers and participants;

(5) Grievance procedures and judicial review;

(6) Nondiscrimination;

(7) Allocation of funds to local areas;

(8) Eligibility of providers or participants;

(9) The establishment and functions of local areas and Local WDBs;

(10) Procedures for review and approval of State and Local plans;

(11) The funding of infrastructure costs for one-stop centers; and

(12) Other requirements relating to the basic purposes of title I of WIOA described in § 675.100 of this chapter.

(b) The Secretary may waive for a State, or local area in a State, any of the statutory or regulatory requirements of secs. 8 through 10 of the Wagner- Peyser Act (29 U.S.C. 49g–49i) except for requirements relating to:

(1) The provision of services to unemployment insurance claimants and veterans; and

(2) Universal access to the basic labor exchange services without cost to job seekers.

§ 679.620 Under what conditions may a Governor request, and the Secretary approve, a general waiver of statutory or regulatory requirements under the Workforce Innovation and Opportunity Act?

(a) The Secretary will issue guidelines under which the States may request general waivers of WIOA and Wagner-Peyser Act requirements.

(b) A Governor may request a general waiver in consultation with appropriate chief elected officials:

(1) By submitting a waiver plan which may accompany the State's WIOA 4-year Unified or Combined State Plan or 2-year modification; or

(2) After a State's WIOA Plan is approved, by separately submitting a waiver plan.

(c) A Governor's waiver request may seek waivers for the entire State or for one or more local areas within the State.

(d) A Governor requesting a general waiver must submit to the Secretary a plan to improve the statewide workforce development system that:

(1) Identifies the statutory or regulatory requirements for which a waiver is requested and the goals that the State or local area, as appropriate, intends to achieve as a result of the waiver and how those goals relate to the Unified or Combined State Plan;

(2) Describes the actions that the State or local area, as appropriate, has undertaken to remove State or local statutory or regulatory barriers;

(3) Describes the goals of the waiver and the expected programmatic outcomes if the request is granted;

(4) Describes how the waiver will align with the Department's policy priorities, such as:

(i) Supporting employer engagement;

(ii) Connecting education and training strategies;

(iii) Supporting work-based learning;

(iv) Improving job and career results; and

(v) Other priorities as articulated in guidance;

(5) Describes the individuals affected by the waiver, including how the waiver will impact services for disadvantaged populations or individuals with multiple barriers to employment; and

(6) Describes the processes used to:

(i) Monitor the progress in implementing the waiver;

(ii) Provide notice to any Local WDB affected by the waiver;

(iii) Provide any Local WDB affected by the waiver an opportunity to comment on the request;

(iv) Ensure meaningful public comment, including comment by business and organized labor, on the waiver; and

(v) Collect and report information about waiver outcomes in the State's WIOA Annual Report.

(7) The Secretary may require that States provide the most recent data available about the outcomes of the existing waiver in cases where the State seeks renewal of a previously approved waiver.

(e) The Secretary will issue a decision on a waiver request within 90 days after the receipt of the original waiver request.

(f) The Secretary will approve a waiver request if and only to the extent that:

(1) The Secretary determines that the requirements for which a waiver is requested impede the ability of either the State or local area to implement the State's Plan to improve the statewide workforce development system;

(2) The Secretary determines that the waiver plan meets all of the requirements of WIOA sec. 189(i)(3) and §§ 679.600 through 679.620; and

(3) The State has executed a memorandum of understanding (MOU) with the Secretary requiring the State to meet, or ensure that the local area meets, agreed-upon outcomes and to implement other appropriate measures to ensure accountability.

(g) A waiver may be approved for as long as the Secretary determines appropriate, but for not longer than the duration of the State's existing Unified or Combined State Plan.

(h) The Secretary may revoke a waiver granted under this section if the Secretary determines that the State has failed to meet the agreed upon outcomes, measures, failed to comply with the terms and conditions in the MOU described in paragraph (f) of this section or any other document establishing the terms and conditions of the waiver, or if the waiver no longer meets the requirements of §§ 679.600 through 679.620.

§ 679.630 Under what conditions may the Governor submit a workforce flexibility plan?

(a) A State may submit to the Secretary, and the Secretary may approve, a workforce flexibility (workflex) plan under which the State is authorized to waive, in accordance with the plan:

(1) Any of the statutory or regulatory requirements under title I of WIOA applicable to local areas, if the local area requests the waiver in a waiver application, except for:

(i) Requirements relating to the basic purposes of title I of WIOA described in § 675.100 of this chapter;

(ii) Wage and labor standards;

(iii) Grievance procedures and judicial review;

(iv) Nondiscrimination;

(v) Eligibility of participants;

(vi) Allocation of funds to local areas;

(vii) Establishment and functions of local areas and Local WDBs;

(viii) Procedures for review and approval of local plans; and

(ix) Worker rights, participation, and protection.

(2) Any of the statutory or regulatory requirements applicable to the State under secs. 8 through 10 of the Wagner-Peyser Act (29 U.S.C. 49g-49i), except for requirements relating to:

(i) The provision of services to unemployment insurance claimants and veterans; and

(ii) Universal access to basic labor exchange services without cost to job seekers.

(3) Any of the statutory or regulatory requirements applicable under the Older Americans Act of 1965 (OAA) (42 U.S.C. 3001 *et seq.*), to State agencies on aging with respect to activities carried out using funds allotted under OAA sec. 506(b) (42 U.S.C. 3056d(b)), except for requirements relating to:

(i) The basic purposes of OAA;

(ii) Wage and labor standards;

(iii) Eligibility of participants in the activities; and

(iv) Standards for grant agreements.

(b) A workforce flexibility plan submitted under paragraph (a) of this section must include descriptions of:

(1) The process by which local areas in the State may submit and obtain State approval of applications for waivers of requirements under title I of WIOA;

(2) A description of the criteria the State will use to approve local area waiver requests and how such requests support implementation of the goals identified State Plan;

(3) The statutory and regulatory requirements of title I of WIOA that are likely to be waived by the State under the workforce flexibility plan;

(4) The statutory and regulatory requirements of secs. 8 through 10 of the Wagner-Peyser Act that are proposed for waiver, if any;

(5) The statutory and regulatory requirements of the OAA that are proposed for waiver, if any;

(6) The outcomes to be achieved by the waivers described in paragraphs (b)(1) through (5) of this section including, where appropriate, revisions

to adjusted levels of performance included in the State or local plan under title I of WIOA, and a description of the data or other information the State will use to track and assess outcomes; and

(7) The measures to be taken to ensure appropriate accountability for Federal funds in connection with the waivers.

(c) A State's workforce flexibility plan may accompany the State's Unified or Combined State Plan, 2-year modification, or may be submitted separately as a modification to that plan.

(d) The Secretary may approve a workforce flexibility plan consistent with the period of approval of the State's Unified or Combined State Plan, and not for more than 5 years.

(e) Before submitting a workforce flexibility plan to the Secretary for approval, the State must provide adequate notice and a reasonable opportunity for comment on the proposed waiver requests under the workforce flexibility plan to all interested parties and to the general public.

(f) The Secretary will issue guidelines under which States may request designation as a work-flex State. These guidelines may require a State to implement an evaluation of the impact of work-flex in the State.

§ 679.640 What limitations apply to the State's workforce flexibility plan authority under the Workforce Innovation and Opportunity Act?

(a)(1) Under work-flex waiver authority a State must not waive the WIOA, Wagner-Peyser Act or OAA requirements which are excepted from the work-flex waiver authority and described in § 679.630(a).

(2) Requests to waive statutory and regulatory requirements of title I of WIOA applicable at the State level may not be granted under work-flex waiver authority granted to a State. Such requests only may be granted by the Secretary under the general waiver authority described at §§ 679.610 through 679.620.

(b) As required in § 679.630(b)(6), States must address the outcomes to result from work-flex waivers as part of its workforce flexibility plan. The Secretary may terminate a State's work-flex designation if the State fails to meet agreed-upon outcomes or other terms and conditions contained in its workforce flexibility plan.

■ 13. Add part 680 to read as follows:

PART 680—ADULT AND DISLOCATED WORKER ACTIVITIES UNDER TITLE I OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT

Subpart A—Delivery of Adult and Dislocated Worker Activities Under Title I of the Workforce Innovation and Opportunity Act

Sec.

680.100 What is the role of the adult and dislocated worker programs in the one-stop delivery system?
680.110 When must adults and dislocated workers be registered and considered a participant?
680.120 What are the eligibility criteria for career services for adults in the adult and dislocated worker programs?
680.130 What are the eligibility criteria for career services for dislocated workers in the adult and dislocated worker programs?
680.140 What Workforce Innovation and Opportunity Act title I adult and dislocated worker services are Local Workforce Development Boards required and permitted to provide?
680.150 What career services must be provided to adults and dislocated workers?
680.160 How are career services delivered?
680.170 What is the individual employment plan?
680.180 What is an internship or work experience for adults and dislocated workers?
680.190 What is a transitional job?
680.195 What funds may be used for transitional jobs?

Subpart B—Training Services

Sec.

680.200 What are training services for adults and dislocated workers? 680.210 Who may receive training services?
680.220 Are there particular career services an individual must receive before receiving training services under the Workforce Innovation and Opportunity Act?
680.230 What are the requirements for coordination of Workforce Innovation and Opportunity Act training funds and other grant assistance?

Subpart C—Individual Training Accounts

Sec.

680.300 How are training services provided?
680.310 Can the duration and amount of Individual Training Accounts be limited?
680.320 Under what circumstances may mechanisms other than Individual Training Accounts be used to provide training services?
680.330 How can Individual Training Accounts, supportive services, and needs-related payments be used to support placing participating adults and dislocated workers into a registered apprenticeship program and support participants once they are in a registered apprenticeship program?
680.340 What are the requirements for consumer choice?
680.350 May Workforce Innovation and Opportunity Act title I adult and dislocated worker funds be used to directly support adult education and literacy activities?

Subpart D—Eligible Training Providers

Sec.

680.400 What is the purpose of this subpart?
680.410 What is an eligible training provider?
680.420 What is a "program of training services"?
680.430 Who is responsible for managing the training provider eligibility process?
680.440 [Reserved]
680.450 What is the initial eligibility process for new providers and programs?
680.460 What is the application procedure for continued eligibility?
680.470 What are the procedures for including and removing registered apprenticeship programs on a State list of eligible training providers and programs?
680.480 May an eligible training provider lose its eligibility?
680.490 What kind of performance and cost information must eligible training providers other than registered apprenticeship programs provide for each program of training services?
680.500 How is the State list of eligible training providers and programs disseminated?
680.510 In what ways can a Local Workforce Development Board supplement the information available from the State list of eligible training providers and programs?
680.520 May individuals choose training providers and programs located outside of the local area or outside of the State?
680.530 What eligibility requirements apply to providers of on-the-job-training, customized training, incumbent worker training, and other training exceptions?

Subpart E—Priority and Special Populations

680.600 What priority must be given to low-income adults and public assistance recipients and individuals who are basic skills deficient served with adult funds under title I of the Workforce Innovation and Opportunity Act?
680.610 Does the statutory priority for use of adult funds also apply to dislocated worker funds?
680.620 How does the Temporary Assistance for Needy Families program relate to the one-stop delivery system?
680.630 How does a displaced homemaker qualify for services under title I of the Workforce Innovation and Opportunity Act?
680.640 May an individual with a disability whose family does not meet income eligibility criteria under the Workforce Innovation and Opportunity Act be eligible for priority as a low-income adult?

680.650 Do veterans receive priority of service under the Workforce Innovation and Opportunity Act?
680.660 Are separating military service members eligible for dislocated worker activities under the Workforce Innovation and Opportunity Act?

Subpart F—Work-Based Training

680.700 What are the requirements for on-the-job training?
680.710 What are the requirements for on-the-job training contracts for employed workers?
680.720 What conditions govern on-the-job training payments to employers?
680.730 Under what conditions may a Governor or Local Workforce Development Board raise the on-the-job training reimbursement rate up to 75 percent of the wage rate?
680.740 How can on-the-job training funds be used to support placing participants into a registered apprenticeship program?
680.750 Can Individual Training Account and on-the-job training funds be combined to support placing participants into a registered apprenticeship program?
680.760 What is customized training?
680.770 What are the requirements for customized training for employed workers?
680.780 Who is an "incumbent worker" for purposes of statewide and local employment and training activities?
680.790 What is incumbent worker training?
680.800 What funds may be used for incumbent worker training?
680.810 What criteria must be taken into account for an employer to be eligible to receive local incumbent worker funds?
680.820 Are there cost sharing requirements for local area incumbent worker training?
680.830 May funds provided to employers for work-based training be used to assist, promote, or deter union organizing?
680.840 May funds provided to employers for work-based training and other work experiences be used to fill job openings as a result of a labor dispute?

Subpart G—Supportive Services

680.900 What are supportive services for adults and dislocated workers?
680.910 When may supportive services be provided to participants?
680.920 Are there limits on the amount or duration of funds for supportive services?
680.930 What are needs-related payments?
680.940 What are the eligibility requirements for adults to receive needs-related payments?
680.950 What are the eligibility requirements for dislocated workers to receive needs-related payments?
680.960 May needs-related payments be paid while a participant is waiting to start training classes?
680.970 How is the level of needs-related payments determined?

Authority: Secs. 122, 134, 189, 503, Pub. L. 113–128, 128 Stat. 1425 (Jul. 22, 2014).

Subpart A—Delivery of Adult and Dislocated Worker Activities Under Title I of the Workforce Innovation and Opportunity Act

§ 680.100 What is the role of the adult and dislocated worker programs in the one-stop delivery system?

(a) The one-stop delivery system is the basic delivery system for adult and dislocated worker services. Through this system, adults and dislocated workers can access a continuum of services. The services are classified as career and training services.

(b) The chief elected official or his/her designee(s), as the local grant recipient(s) for the adult and dislocated worker programs, is a required one-stop partner and is subject to the provisions relating to such partners described in part 678 of this chapter. Consistent with those provisions:

(1) Career services for adults and dislocated workers must be made available in at least one one-stop center in each local area. Services also may be available elsewhere, either at affiliated sites or at specialized centers. For example, specialized centers may be established to serve workers being dislocated from a particular employer or industry, or to serve residents of public housing.

(2) Through the one-stop delivery system, adults and dislocated workers needing training are provided Individual Training Accounts (ITAs) and access to lists of eligible training providers and programs of training. These lists contain quality consumer information, including cost and performance information for each of the providers' programs, so that participants can make informed choices on where to use their ITAs. (ITAs are more fully discussed in subpart C of this part.)

§ 680.110 When must adults and dislocated workers be registered and considered a participant?

(a) Registration is the process for collecting information to support a determination of eligibility. This information may be collected through methods that include electronic data transfer, personal interview, or an individual's application. Individuals are considered participants when they have received a Workforce Innovation and Opportunity Act (WIOA) service other than self-service or information-only activities and have satisfied all applicable programmatic requirements for the provision of services, such as eligibility determination (*see* § 677.150(a) of this chapter).

(b) Adults and dislocated workers who receive services funded under WIOA title I other than self-service or information-only activities must be registered and must be a participant.

(c) EO data, as defined in § 675.300 of this chapter, must be collected on every individual who is interested in being considered for WIOA title I financially assisted aid, benefits, services, or training by a recipient, and who has signified that interest by submitting personal information in response to a request from the grant recipient or designated service provider.

§ 680.120 What are the eligibility criteria for career services for adults in the adult and dislocated worker programs?

To be eligible to receive career services as an adult in the adult and dislocated worker programs, an individual must be 18 years of age or older. To be eligible for any dislocated worker programs, an eligible adult must meet the criteria of § 680.130. Eligibility criteria for training services are found at § 680.210.

§ 680.130 What are the eligibility criteria for career services for dislocated workers in the adult and dislocated worker programs?

(a) To be eligible to receive career services as a dislocated worker in the adult and dislocated worker programs, an individual must meet the definition of "dislocated worker" at WIOA sec. 3(15). Eligibility criteria for training services are found at § 680.210.

(b) Governors and Local Workforce Development Boards (WDBs) may establish policies and procedures for one-stop centers to use in determining an individual's eligibility as a dislocated worker, consistent with the definition at WIOA sec. 3(15). These policies and procedures may address such conditions as:

(1) What constitutes a "general announcement" of plant closing under WIOA sec. 3(15)(B)(ii) or (iii);

(2) What constitutes "unemployed as a result of general economic conditions in the community in which the individual resides or because of natural disasters" for determining the eligibility of self-employed individuals, including family members and farm workers or ranch hands, under WIOA sec. 3(15)(C); and

(3) What constitutes "unlikely to return to a previous industry or occupation" under WIOA sec. 3(15)(A)(iii), consistent with § 680.660.

§ 680.140 What Workforce Innovation and Opportunity Act title I adult and dislocated worker services are Local Workforce Development Boards required and permitted to provide?

(a) WIOA title I formula funds allocated to local areas for adults and

(see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

SEDAR address: 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Coordinator; (843) 571–4366; email: *Julie.neer@safmc.net*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a multi-step process including: (1) Data Workshop; (2) Assessment Process utilizing webinars; and (3) Review Workshop. The product of the Data Workshop is a data report that compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report that describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion in the Assessment Process webinars are as follows:

1. Using datasets and initial assessment analysis recommended from the Data Workshop, panelists will employ assessment models to evaluate stock status, estimate population benchmarks and management criteria, and project future conditions.

2. Participants will recommend the most appropriate methods and configurations for determining stock status and estimating population parameters.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 10 business days prior to each workshop.

Note: The times and sequence specified in this agenda are subject to change.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 16, 2016.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–19812 Filed 8–18–16; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List: Proposed Addition and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed addition to and deletions from the Procurement List.

SUMMARY: The Committee is proposing to add a product to the Procurement List that will be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities, and delete services previously furnished by such agencies.

DATES: Comments must be received on or before September 18, 2016..

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Addition

If the Committee approves the proposed addition, the entities of the Federal Government identified in this notice will be required to procure the product listed below from the nonprofit agency employing persons who are blind or have other severe disabilities.

The following product is proposed for addition to the Procurement List for production by the nonprofit agency listed:

Product

NSN(s)—Product Name(s): 8465–00–NIB–0263—Airborne Rucksack, Modular Lightweight Load-Carrying Equipment (MOLLE), OCP2015
Mandatory Source(s) of Supply: Winston Salem Industries for the Blind, Inc.,Winston-Salem, NC
Mandatory Purchase for: 100% of the requirement of the U.S. Army
Contracting Activity: Army Contracting Command—Aberdeen Proving Ground, Natick Contracting Division
Distribution: C-List

Deletions

The following services are proposed for deletion from the Procurement List:

Services

Service Type: Janitorial/Custodial Service
Mandatory for: Gerald W. Heaney Federal Building and U.S. Courthouse, 515 West First Street, Duluth, MN
Mandatory Source(s) of Supply: Goodwill Industries Vocational Enterprises, Inc., Duluth, MN
Contracting Activity: Public Buildings Service, Property Management Service Center

Service Type: Custodial Service
Mandatory for: Superior National Forest Supervisors Office, 8901 Grand Avenue Place, Duluth, MN
Mandatory Source(s) of Supply: Goodwill Industries Vocational Enterprises, Inc., Duluth, MN
Contracting Activity: Forest Service, Superior National Forest

Service Type: Food Service Attendant Service
Mandatory for: 148th Fighter Wing: 4680 Viper St. (Dining Hall), Duluth, MN
Mandatory Source(s) of Supply: Goodwill Industries Vocational Enterprises, Inc., Duluth, MN
Contracting Activity: Dept of the Army, W7NG USPFO ACTIVITY MN ARNG

Service Type: Janitorial/Custodial Service
Mandatory for: U.S. Army Reserve Center: 1500 St. Louis Avenue, Duluth, MN
Mandatory Source(s) of Supply: Goodwill

dislocated workers must be used to provide career and training services through the one-stop delivery system. Local WDBs determine the most appropriate mix of these services, but both types must be available for eligible adults and dislocated workers. Different eligibility criteria apply for each type of services. *See* §§ 680.120, 680.130, and 680.210.

(b) WIOA title I funds also may be used to provide the additional services described in WIOA sec. 134(d), including:

(1) Job seeker services, such as:

(i) Customer support to enable individuals with barriers to employment (including individuals with disabilities) and veterans, to navigate among multiple services and activities;

(ii) Training programs for displaced homemakers and for individuals training for nontraditional employment (as defined in WIOA sec. 3(37) as occupations or fields of work in which individuals of one gender comprise less than 25 percent of the individuals so employed), in conjunction with programs operated in the local area;

(iii) Work support activities for low-wage workers, in coordination with one-stop partners, which will provide opportunities for these workers to retain or enhance employment. These activities may include any activities available under the WIOA adult and dislocated worker programs in coordination with activities and resources available through partner programs. These activities may be provided in a manner that enhances the worker's ability to participate, for example by providing them at nontraditional hours or providing on-site child care;

(iv) Supportive services, including needs-related payments, as described in subpart G of this part; and

(v) Transitional jobs, as described in § 680.190, to individuals with barriers to employment who are chronically unemployed or have an inconsistent work history;

(2) Employer services, such as:

(i) Customized screening and referral of qualified participants in training services to employers;

(ii) Customized employment-related services to employers, employer associations, or other such organization on a fee-for-service basis that are in addition to labor exchange services available to employers under the Wagner-Peyser Act Employment Service;

(iii) Activities to provide business services and strategies that meet the workforce investment needs of area employers, as determined by the Local WDB and consistent with the local plan (*see* § 678.435 of this chapter and WIOA sec. 134(d)(1)(A)(ix)); and

(3) Coordination activities, such as:

(i) Employment and training activities in coordination with child support enforcement activities, as well as child support services and assistance activities, of the State and local agencies carrying out part D of title IV of the Social Security Act (42 U.S.C. 651 *et seq.*);

(ii) Employment and training activities in coordination with cooperative extension programs carried out by the Department of Agriculture;

(iii) Employment and training activities in coordination with activities to facilitate remote access to services provided through a one-stop delivery system, including facilitating access through the use of technology;

(iv) Improving coordination between workforce investment activities and economic development activities carried out within the local area involved, and to promote entrepreneurial skills training and microenterprise services;

(v) Improving services and linkages between the local workforce development system (including the local one-stop delivery system) and employers, including small employers, in the local area;

(vi) Strengthening linkages between the one-stop delivery system and the unemployment insurance programs; and

(vii) Improving coordination between employment and training activities and programs carried out in the local area for individuals with disabilities, including programs carried out by State agencies relating to intellectual disabilities and developmental disabilities, activities carried out by Statewide Independent Living Councils established under sec. 705 of the Rehabilitation Act of 1973 (29 U.S.C. 796d), programs funded under part B of chapter 1 of title VII of such Act (29 U.S.C. 796e *et seq.*), and activities carried out by centers for independent living, as defined in sec. 702 of such Act (29 U.S.C. 796a);

(4) Implementing a Pay-for-Performance contract strategy for training services in accordance with §§ 683.500 through 683.530 of this chapter for which up to 10 percent of the Local WDB's total adult and dislocated worker funds may be used;

(5) Technical assistance for one-stop centers, partners, and eligible training providers (ETPs) on the provision of service to individuals with disabilities in local areas, including staff training and development, provision of outreach and intake assessments, service delivery, service coordination across providers and programs, and development of performance accountability measures;

(6) Activities to adjust the economic self-sufficiency standards referred to in WIOA sec. 134(a)(3)(A)(xii) for local factors or activities to adopt, calculate or commission for approval, economic self-sufficiency standards for the local areas that specify the income needs of families, by family size, the number and ages of children in the family, and sub-State geographical considerations;

(7) Implementing promising service to workers and businesses, which may include support for education, training, skill upgrading, and statewide networking for employees to become workplace learning advisors and maintain proficiency in carrying out the activities associated with such advising; and

(8) Incumbent worker training programs, as described in subpart F of this part.

§ 680.150 What career services must be provided to adults and dislocated workers?

(a) At a minimum, all of the basic career services described in WIOA secs. 134(c)(2)(A)(i)–(xi) and § 678.430(a) of this chapter must be provided in each local area through the one-stop delivery system.

(b) Individualized career services described in WIOA sec. 134(c)(2)(A)(xii) and § 678.430(b) of this chapter must be made available, if determined appropriate in order for an individual to obtain or retain employment.

(c) Follow-up services, as described in WIOA sec. 134(c)(2)(A)(xiii) and § 678.430(c) of this chapter, must be made available, as determined appropriate by the Local WDB, for a minimum of 12 months following the first day of employment, to participants who are placed in unsubsidized employment.

§ 680.160 How are career services delivered?

Career services must be provided through the one-stop delivery system. Career services may be provided directly by the one-stop operator or through contracts with service providers that are approved by the Local WDB. The Local WDB only may be a provider of career services when approved by the chief elected official and the Governor in accordance with the requirements of WIOA sec. 107(g)(2) and § 679.410 of this chapter.

§ 680.170 What is the individual employment plan?

The individual employment plan (IEP) is an individualized career service, under WIOA sec. 134(c)(2)(A)(xii)(II),

that is developed jointly by the participant and career planner when determined appropriate by the one-stop center or one-stop partner. The plan is an ongoing strategy to identify employment goals, achievement objectives, and an appropriate combination of services for the participant to achieve the employment goals.

§ 680.180 What is an internship or work experience for adults and dislocated workers?

For the purposes of WIOA sec. 134(c)(2)(A)(xii)(VII), an internship or work experience is a planned, structured learning experience that takes place in a workplace for a limited period of time. Internships and other work experience may be paid or unpaid, as appropriate and consistent with other laws, such as the Fair Labor Standards Act. An internship or other work experience may be arranged within the private for profit sector, the non-profit sector, or the public sector. Labor standards apply in any work experience setting where an employee/employer relationship, as defined by the Fair Labor Standards Act, exists. Transitional jobs are a type of work experience, as described in §§ 680.190 and 680.195.

§ 680.190 What is a transitional job?

A transitional job is one that provides a time-limited work experience, that is wage-paid and subsidized, and is in the public, private, or non-profit sectors for those individuals with barriers to employment who are chronically unemployed or have inconsistent work history, as determined by the Local WDB. These jobs are designed to enable an individual to establish a work history, demonstrate work success in an employee-employer relationship, and develop the skills that lead to unsubsidized employment.

§ 680.195 What funds may be used for transitional jobs?

The local area may use up to 10 percent of their combined total of adult and dislocated worker allocations for transitional jobs as described in § 680.190. Transitional jobs must be combined with comprehensive career services (*see* § 680.150) and supportive services (*see* § 680.900).

Subpart B—Training Services

§ 680.200 What are training services for adults and dislocated workers?

Types of training services are listed in WIOA sec. 134(c)(3)(D) and in paragraphs (a) through (k) of this section. This list is not all-inclusive and additional training services may be provided.

(a) Occupational skills training, including training for nontraditional employment;

(b) On-the-job training (OJT) (*see* §§ 680.700, 680.710, 680.720, and 680.730);

(c) Incumbent worker training, in accordance with WIOA sec. 134(d)(4) and §§ 680.780, 680.790, 680.800, 680.810, and 680.820;

(d) Programs that combine workplace training with related instruction, which may include cooperative education programs;

(e) Training programs operated by the private sector;

(f) Skills upgrading and retraining;

(g) Entrepreneurial training;

(h) Transitional jobs in accordance with WIOA sec 134(d)(5) and §§ 680.190 and 680.195;

(i) Job readiness training provided in combination with services listed in paragraphs (a) through (h) of this section;

(j) Adult education and literacy activities, including activities of English language acquisition and integrated education and training programs, provided concurrently or in combination with training services listed in paragraphs (a) through (g) of this section; and

(k) Customized training conducted with a commitment by an employer or group of employers to employ an individual upon successful completion of the training (*see* §§ 680.760 and 680.770).

§ 680.210 Who may receive training services?

Under WIOA sec. 134(c)(3)(A) training services may be made available to employed and unemployed adults and dislocated workers who:

(a) A one-stop center or one-stop partner determines, after an interview, evaluation, or assessment, and career planning, are:

(1) Unlikely or unable to obtain or retain employment that leads to economic self-sufficiency or wages comparable to or higher than wages from previous employment through career services;

(2) In need of training services to obtain or retain employment leading to economic self-sufficiency or wages comparable to or higher than wages from previous employment; and

(3) Have the skills and qualifications to participate successfully in training services;

(b) Select a program of training services that is directly linked to the employment opportunities in the local area or the planning region, or in another area to which the individuals are willing to commute or relocate;

(c) Are unable to obtain grant assistance from other sources to pay the costs of such training, including such sources as State-funded training funds, Trade Adjustment Assistance (TAA), and Federal Pell Grants established under title IV of the Higher Education Act of 1965, or require WIOA assistance in addition to other sources of grant assistance, including Federal Pell Grants (provisions relating to fund coordination are found at § 680.230 and WIOA sec. 134(c)(3)(B)); and

(d) If training services are provided through the adult funding stream, are determined eligible in accordance with the State and local priority system in effect for adults under WIOA sec. 134(c)(3)(E) and § 680.600.

§ 680.220 Are there particular career services an individual must receive before receiving training services under the Workforce Innovation and Opportunity Act?

(a) Yes, except as provided by paragraph (b) of this section, an individual must at a minimum receive either an interview, evaluation, or assessment, and career planning or any other method through which the one-stop center or partner can obtain enough information to make an eligibility determination to be determined eligible for training services under WIOA sec. 134(c)(3)(A)(i) and § 680.210. Where appropriate, a recent interview, evaluation, or assessment, may be used for the assessment purpose.

(b) The case file must contain a determination of need for training services under § 680.210 as determined through the interview, evaluation, or assessment, and career planning informed by local labor market information and training provider performance information, or through any other career service received. There is no requirement that career services be provided as a condition to receipt of training services; however, if career services are not provided before training, the Local WDB must document the circumstances that justified its determination to provide training without first providing the services described in paragraph (a) of this section.

(c) There is no Federally required minimum time period for participation in career services before receiving training services.

§ 680.230 What are the requirements for coordination of Workforce Innovation and Opportunity Act training funds and other grant assistance?

(a) WIOA funding for training is limited to participants who:

(1) Are unable to obtain grant assistance from other sources to pay the costs of their training; or

(2) Require assistance beyond that available under grant assistance from other sources to pay the costs of such training. Programs and training providers must coordinate funds available to pay for training as described in paragraphs (b) and (c) of this section. In making the determination under this paragraph (a), one-stop centers may take into account the full cost of participating in training services, including the cost of support services and other appropriate costs.

(b) One-stop centers must coordinate training funds available and make funding arrangements with one-stop partners and other entities to apply the provisions of paragraph (a) of this section. One-stop centers must consider the availability of other sources of grants to pay for training costs such as Temporary Assistance for Needy Families (TANF), State-funded training funds, and Federal Pell Grants, so that WIOA funds supplement other sources of training grants.

(c) A WIOA participant may enroll in WIOA-funded training while his/her application for a Pell Grant is pending as long as the one-stop center has made arrangements with the training provider and the WIOA participant regarding allocation of the Pell Grant, if it is subsequently awarded. In that case, the training provider must reimburse the one-stop center the WIOA funds used to underwrite the training for the amount the Pell Grant covers, including any education fees the training provider charges to attend training. Reimbursement is not required from the portion of Pell Grant assistance disbursed to the WIOA participant for education-related expenses.

Subpart C—Individual Training Accounts

§ 680.300 How are training services provided?

Training services for eligible individuals are typically provided by training providers who receive payment for their services through an ITA. The ITA is a payment agreement established on behalf of a participant with a training provider. WIOA title I adult and dislocated workers purchase training services from State eligible training providers they select in consultation with the career planner, which includes discussion of program quality and performance information on the available eligible training providers. Payments from ITAs may be made in a variety of ways, including the electronic transfer of funds through financial institutions, vouchers, or other appropriate methods. Payments also may be made incrementally, for example, through payment of a portion of the costs at different points in the training course. Under limited conditions, as provided in § 680.320 and WIOA sec. 134(d)(3)(G), a Local WDB may contract for these services, rather than using an ITA for this purpose. In some limited circumstances, the Local WDB may itself provide the training services, but only if it obtains a waiver from the Governor for this purpose, and the Local WDB meets the other requirements of § 679.410 of this chapter and WIOA sec. 107(g)(1).

§ 680.310 Can the duration and amount of Individual Training Accounts be limited?

(a) Yes, the State or Local WDB may impose limits on ITAs, such as limitations on the dollar amount and/or duration.

(b) Limits to ITAs may be established in different ways:

(1) There may be a limit for an individual participant that is based on the needs identified in the IEP, such as the participant's occupational choice or goal and the level of training needed to succeed in that goal; or

(2) There may be a policy decision by the State WDB or Local WDB to establish a range of amounts and/or a maximum amount applicable to all ITAs.

(c) Limitations established by State or Local WDB policies must be described in the State or Local Plan, respectively, but must not be implemented in a manner that undermines WIOA's requirement that training services are provided in a manner that maximizes customer choice in the selection of an ETP. Exceptions to ITA limitations may be provided for individual cases and must be described in State or Local WDB policies.

(d) An individual may select training that costs more than the maximum amount available for ITAs under a State or local policy when other sources of funds are available to supplement the ITA. These other sources may include: Pell Grants; scholarships; severance pay; and other sources.

§ 680.320 Under what circumstances may mechanisms other than Individual Training Accounts be used to provide training services?

(a) Contracts for services may be used instead of ITAs only when one or more of the following five exceptions apply, and the local area has fulfilled the consumer choice requirements of § 680.340:

(1) When the services provided are on-the-job-training (OJT), customized training, incumbent worker training, or transitional jobs.

(2) When the Local WDB determines that there are an insufficient number of eligible training providers in the local area to accomplish the purpose of a system of ITAs. The determination process must include a public comment period for interested providers of at least 30 days, and be described in the Local Plan.

(3) When the Local WDB determines that there is a training services program of demonstrated effectiveness offered in the area by a community-based organization or another private organization to serve individuals with barriers to employment, as described in paragraph (b) of this section. The Local WDB must develop criteria to be used in determining demonstrated effectiveness, particularly as it applies to the individuals with barriers to employment to be served. The criteria may include:

(i) Financial stability of the organization;

(ii) Demonstrated performance in the delivery of services to individuals with barriers to employment through such means as program completion rate; attainment of the skills, certificates or degrees the program is designed to provide; placement after training in unsubsidized employment; and retention in employment; and

(iii) How the specific program relates to the workforce investment needs identified in the local plan.

(4) When the Local WDB determines that it would be most appropriate to contract with an institution of higher education (*see* WIOA sec. 3(28)) or other provider of training services in order to facilitate the training of multiple individuals in in-demand industry sectors or occupations, provided that the contract does not limit consumer choice.

(5) When the Local WDB is considering entering into a Pay-for-Performance contract, and the Local WDB ensures that the contract is consistent with § 683.510 of this chapter.

(b) Under paragraph (a)(3) of this section, individuals with barriers to

employment include those individuals in one or more of the following categories, as prescribed by WIOA sec. 3(24):

(1) Displaced homemakers;

(2) Low-income individuals;

(3) Indians, Alaska Natives, and Native Hawaiians;

(4) Individuals with disabilities;

(5) Older individuals, *i.e.*, those aged 55 or over;

(6) Ex-offenders;

(7) Homeless individuals;

(8) Youth who are in or have aged out of the foster care system;

(9) Individuals who are English language learners, individuals who have low levels of literacy, and individuals facing substantial cultural barriers;

(10) Eligible migrant and seasonal farmworkers, defined in WIOA sec. 167(i);

(11) Individuals within 2 years of exhausting lifetime eligibility under TANF (part A of title IV of the Social Security Act);

(12) Single-parents (including single pregnant women);

(13) Long-term unemployed individuals; or

(14) Other groups determined by the Governor to have barriers to employment.

(c) The Local Plan must describe the process to be used in selecting the providers under a contract for services.

§ 680.330 How can Individual Training Accounts, supportive services, and needs-related payments be used to support placing participating adults and dislocated workers into a registered apprenticeship program and support participants once they are in a registered apprenticeship program?

Registered apprenticeships automatically qualify to be a on a State's eligible training provider list (ETPL) as described in § 680.470.

(a) ITAs can be used to support placing participants in registered apprenticeship through:

(1) Pre-apprenticeship training, as defined in § 681.480 of this chapter; and

(2) Training services provided under a registered apprenticeship program.

(b) Supportive services may be provided as described in §§ 680.900 and 680.910.

(c) Needs-related payments may be provided as described in §§ 680.930, 680.940, 680.950, 680.960, and 680.970.

(d) Work-based training options also may be used to support participants in registered apprenticeship programs (*see* §§ 680.740 and 680.750).

§ 680.340 What are the requirements for consumer choice?

(a) Training services, whether under ITAs or under contract, must be provided in a manner that maximizes informed consumer choice in selecting an eligible provider.

(b) Each Local WDB, through the one-stop center, must make available to customers the State list of eligible training providers required in WIOA sec. 122(d). The list includes a description of the programs through which the providers may offer the training services, and the performance and cost information about those providers described in WIOA sec. 122(d). Additionally, the Local WDB must make available information identifying eligible providers as may be required by the Governor under WIOA sec. 122(h) (where applicable).

(c) An individual who has been determined eligible for training services under § 680.210 may select a provider described in paragraph (b) of this section after consultation with a career planner. Unless the program has exhausted training funds for the program year, the one-stop center must refer the individual to the selected provider, and establish an ITA for the individual to pay for training. For purposes of this paragraph (c), a referral may be carried out by providing a voucher or certificate to the individual to obtain the training.

(d) The cost of referral of an individual with an ITA to a training provider is paid by the applicable adult or dislocated worker program under title I of WIOA.

(e) Each Local WDB, through the one-stop center, may coordinate funding for ITAs with funding from other Federal, State, local, or private job training programs or sources to assist the individual in obtaining training services.

(f) Consistent with paragraph (a) of this section, priority consideration must be given to programs that lead to recognized postsecondary credentials (defined at WIOA sec. 3(52)) that are aligned with in-demand industry sectors or occupations in the local area.

§ 680.350 May Workforce Innovation and Opportunity Act title I adult and dislocated worker funds be used to directly support adult education and literacy activities?

Yes, under WIOA sec. 134(c)(3)(D)(x), title I funds may provide adult education and literacy activities if they are provided concurrently or in combination with one or more of the following training services:

(a) Occupational skills training, including training for nontraditional employment;

(b) OJT;

(c) Incumbent worker training (as described in §§ 680.780, 680.790, 680.800, 680.810, and 680.820);

(d) Programs that combined workplace training and related instruction, which may include cooperative education programs;

(e) Training programs operated by the private sector;

(f) Skill upgrading and retraining; or

(g) Entrepreneurial training.

Subpart D—Eligible Training Providers

§ 680.400 What is the purpose of this subpart?

(a) This subpart describes the process for determining eligible training providers and programs for WIOA title I, subtitle B adult, dislocated worker, and out-of-school youth (OSY) aged 16–24 training participants and for publicly disseminating the list of these providers with relevant information about their programs. The workforce development system established under WIOA emphasizes informed consumer choice, job-driven training, provider performance, and continuous improvement. The quality and selection of providers and programs of training services is vital to achieving these core principles.

(b) The State list of eligible training providers and programs and the related eligibility procedures ensure the accountability, quality and labor-market relevance of programs of training services that receive funds through WIOA title I, subtitle B. The State list of eligible training providers and programs also is a means for ensuring informed customer choice for individuals eligible for training. In administering the eligible training provider eligibility process, States and local areas must work to ensure that qualified providers offering a wide variety of job-driven programs of training services are available. The State list of eligible training providers and programs is made publicly available online through Web sites and searchable databases as well as any other means the State uses to disseminate information to consumers, including formats accessible to individuals with disabilities. The list must be accompanied by relevant performance and cost information and must be presented in a way that is easily understood, in order to maximize informed consumer choice and serve all significant population groups, and also must be available in an electronic format. The State eligible training provider performance reports, as required under WIOA sec. 116(d)(4), are addressed separately in § 677.230 of this chapter.

§ 680.410 What is an eligible training provider?

An ETP:

(a) Is the only type of entity that receives funding for training services, as defined in § 680.200, through an individual training account;

(b) Must be included on the State list of eligible training providers and programs under this subpart;

(c) Must provide a program of training services; and

(d) Must be one of the following types of entities:

(1) Institutions of higher education that provide a program which leads to a recognized postsecondary credential;

(2) Entities that carry out programs registered under the National Apprenticeship Act (29 U.S.C. 50 *et seq.*); or

(3) Other public or private providers of training services, which may include:

(i) Community-based organizations;

(ii) Joint labor-management organizations; and

(iii) Eligible providers of adult education and literacy activities under title II of WIOA if such activities are provided in combination with training services described at § 680.350.

§ 680.420 What is a "program of training services"?

A program of training services is one or more courses or classes, or a structured regimen, that provides the services in § 680.200 and leads to:

(a) An industry-recognized certificate or certification, a certificate of completion of a registered apprenticeship, a license recognized by the State involved or the Federal government, an associate or baccalaureate degree;

(b) Consistent with § 680.350, a secondary school diploma or its equivalent;

(c) Employment; or

(d) Measurable skill gains toward a credential described in paragraph (a) or (b) of this section or employment.

§ 680.430 Who is responsible for managing the training provider eligibility process?

(a) The Governor, in consultation with the State WDB, establishes the criteria, information requirements, and procedures, including procedures identifying the respective roles of the State and local areas, governing the eligibility of providers and programs of training services to receive funds through ITAs.

(b) The Governor may designate a State agency (or appropriate State entity) to assist in carrying out the process and procedures for determining the eligibility of training providers and programs of training services. The Governor or such agency (or appropriate State entity) is responsible for:

(1) Ensuring the development and maintenance of the State list of eligible training providers and programs, as described in §§ 680.450 (initial eligibility), 680.460 (continued eligibility), and 680.490 (performance and cost information reporting requirements);

(2) Ensuring that programs meet eligibility criteria and performance levels established by the State, including verifying the accuracy of the information;

(3) Removing programs that do not meet State-established program criteria or performance levels, as described in § 680.480(c);

(4) Taking appropriate enforcement actions against providers that intentionally provide inaccurate information, or that substantially violate the requirements of WIOA, as described in § 680.480(a) and (b); and

(5) Disseminating the State list of eligible training providers and programs, accompanied by performance and cost information relating to each program, to the public and the Local WDBs throughout the State, as further described in § 680.500.

(c) The Local WDB must:

(1) Carry out the procedures assigned to the Local WDB by the State, such as determining the initial eligibility of entities providing a program of training services, renewing the eligibility of providers and programs, and considering the possible termination of an eligible training provider due to the provider's submission of inaccurate eligibility and performance information or the provider's substantial violation of WIOA requirements;

(2) Work with the State to ensure there are sufficient numbers and types of providers of training services, including eligible providers with expertise in assisting individuals with disabilities and eligible providers with expertise in assisting adults in need of adult education and literacy activities described under WIOA sec. 107(d)(10)(E), serving the local area; and

(3) Ensure the dissemination and appropriate use of the State list of eligible training providers and programs through the local one-stop delivery system, including formats accessible to individuals with disabilities.

(d) The Local WDB may make recommendations to the Governor on the procedure used in determining eligibility of providers and programs.

(e) The Local WDB may, except with respect to registered apprenticeship programs:

(1) Require additional criteria and information from local providers as criteria to become or remain eligible in that local area; and

(2) Set higher levels of performance than those required by the State as criteria for local programs to become or remain eligible to provide services in that local area.

§ 680.440 [Reserved]

§ 680.450 What is the initial eligibility process for new providers and programs?

(a) All providers and programs that have not previously been eligible to provide training services under WIOA sec. 122 or WIA sec. 122, except for registered apprenticeship programs, must submit required information to be considered for initial eligibility in accordance with the Governor's procedures.

(b) Apprenticeship programs registered under the National Apprenticeship Act are exempt from initial eligibility procedures. Registered apprenticeship programs must be included and maintained on the State list of eligible training providers and programs as long as the program remains registered, unless the registered apprenticeship program is removed from the list for a reason set forth in § 680.470. Procedures for registered apprenticeship programs to be included and maintained on the list are described in § 680.470.

(c) In establishing the State requirements described in paragraph (e) of this section, the Governor must, in consultation with the State WDB, develop a procedure for determining the eligibility of training providers and programs. This procedure, which must be described in the State Plan, must be developed after:

(1) Soliciting and taking into consideration recommendations from Local WDBs and providers of training services within the State;

(2) Providing an opportunity for interested members of the public, including representatives of business and labor organizations, to submit comments on the procedure; and

(3) Designating a specific time period for soliciting and considering the recommendations of Local WDBs and providers, and for providing an opportunity for public comment.

(d) For institutions of higher education that provide a program that leads to a recognized postsecondary credential and for other public or private providers of programs of training services, including joint labor-management organizations, and providers of adult education and literacy activities, the Governor must establish criteria and State requirements

for providers and programs seeking initial eligibility.

(e) The Governor must require providers and programs seeking initial eligibility to provide verifiable program specific performance information. At a minimum, these criteria must require applicant providers to:

(1) Describe each program of training services to be offered;

(2) Provide information addressing a factor related to the indicators of performance, as described in WIOA secs. 116(b)(2)(A)(i)(I)–(IV) and § 680.460(g)(1) through (4) which include unsubsidized employment during the second quarter after exit, unsubsidized employment during the fourth quarter after exit, median earnings and credentials attainment;

(3) Describe whether the provider is in a partnership with a business;

(4) Provide other information the Governor may require in order to demonstrate high quality programs of training services, which may include information related to training services that lead to a recognized postsecondary credential; and

(5) Provide information that addresses alignment of the training services with in-demand industry sectors and occupations, to the extent possible.

(f) In establishing the initial eligibility procedures and criteria, the Governor may establish minimum performance standards, based on the performance information described in paragraph (e) of this section.

(g) Under WIOA sec. 122(b)(4)(B), eligible training providers receive initial eligibility for only 1 year for a particular program.

(h) After the initial eligibility expires, these initially eligible training providers are subject to the Governor's application procedures for continued eligibility, described at § 680.460, in order to remain eligible.

§ 680.460 What is the application procedure for continued eligibility?

(a) The Governor must establish an application procedure for eligible training providers and programs to maintain their continued eligibility. The application procedure must take into account the program's prior eligibility status.

(1) Training providers and programs that were previously eligible under WIA will be subject to the application procedure for continued eligibility after the close of the Governor's transition period for implementation.

(2) Training providers and programs that were not previously eligible under WIA and have been determined to be initially eligible under WIOA, under the procedures described at § 680.450, will be subject to the application procedure for continued eligibility after their initial eligibility expires.

(b) The Governor must develop this procedure after:

(1) Soliciting and taking into consideration recommendations from Local WDBs and providers of training services within the State;

(2) Providing an opportunity for interested members of the public, including representatives of business and labor organizations, to submit comments on such procedure; and

(3) Designating a specific time period for soliciting and considering the recommendations of Local WDBs and providers, and for providing an opportunity for public comment.

(c) Procedures for registered apprenticeship programs to be included and maintained on the list are described in § 680.470. Apprenticeship programs registered under the National Apprenticeship Act must be included and maintained on the State list of eligible training providers and programs as long as the program remains registered, unless the registered apprenticeship program is removed from the list for a reason set forth in § 680.470.

(d) The application procedure must describe the roles of the State and local areas in receiving and reviewing provider applications and in making eligibility determinations.

(e) The application procedure must be described in the State Plan.

(f) In establishing eligibility criteria, the Governor must take into account:

(1) The performance of the eligible training provider's program on:

(i) The performance accountability measures described in WIOA secs. 116(b)(2)(A)(i)(I)–(IV) and the other matters required by WIOA sec. 122(b)(2);

(ii) Other appropriate measures of performance outcomes determined by the Governor for program participants receiving training services under WIOA title I, subtitle B, taking into consideration the characteristics of the population served and relevant economic conditions; and

(iii) Outcomes of the program for students in general with respect to employment and earnings as defined in WIOA sec. 116(b)(2).

(iv) All of these measures may include minimum performance standards.

(v) Until data from the conclusion of each performance indicator's first data cycle are available, the Governor may take into account alternate factors related to the measures described in paragraphs (f)(1)(i) through (iv) of this section.

(2) Ensuring access to training services throughout the State, including in rural areas, and through the use of technology;

(3) Information reported to State agencies on Federal and State training programs other than programs within WIOA title I, subtitle B;

(4) The degree to which programs of training services relate to in-demand industry sectors and occupations in the State;

(5) State licensure requirements of training providers;

(6) Encouraging the use of industry-recognized certificates and credentials;

(7) The ability of providers to offer programs of training services that lead to postsecondary credentials;

(8) The quality of the program of training services including a program that leads to a recognized postsecondary credential;

(9) The ability of the providers to provide training services to individuals who are employed and individuals with barriers to employment;

(10) Whether the providers timely and accurately submitted all of the information required for completion of eligible training provider performance reports required under WIOA sec. 116(d)(4) and all of the information required for initial and continued eligibility in this subpart; and

(11) Other factors that the Governor determines are appropriate in order to ensure: The accountability of providers; that one-stop centers in the State will meet the needs of local employers and participants; and, that participants will be given an informed choice among providers.

(g) The information requirements that the Governor establishes under paragraph (f)(1) of this section must require eligible training providers to submit appropriate, accurate, and timely information for participants receiving training under WIOA title I, subtitle B. That information must include:

(1) The percentage of program participants who are in unsubsidized employment during the second quarter after exit from the program;

(2) The percentage of program participants who are in unsubsidized employment during the fourth quarter after exit from the program;

(3) The median earnings of program participants who are in unsubsidized employment during the second quarter after exit from the program;

(4) The percentage of program participants who obtain a recognized postsecondary credential, or a secondary school diploma or its

recognized equivalent during participation in or within 1 year after exit from the program;

(5) Information on recognized postsecondary credentials received by program participants;

(6) Information on cost of attendance, including costs of tuition and fees, for program participants;

(7) Information on the program completion rate for such participants.

(h) The eligibility criteria must require that:

(1) Providers submit performance and cost information as described in paragraph (g) of this section and in the Governor's procedures for each program of training services for which the provider has been determined to be eligible, in a timeframe and manner determined by the State, but at least every 2 years; and

(2) That the collection of information required to demonstrate compliance with the criteria is not unduly burdensome or costly to providers.

(i) The procedure for continued eligibility also must provide for the State biennially to review provider eligibility information to assess the renewal of training provider eligibility. Such procedures may establish minimum levels of training provider performance as criteria for continued eligibility.

(j) The procedure for biennial review of the provider eligibility must include verification of the registration status of registered apprenticeship programs and removal of any registered apprenticeship programs as described in § 680.470.

(k) The Governor may establish procedures and timeframes for providing technical assistance to eligible training providers who are not intentionally supplying inaccurate information or who have not substantially violated any of the requirements under this section but are failing to meet the criteria and information requirements due to undue cost or burden.

(l) The Governor's procedures must include what the Governor considers to be a substantial violation of the requirement to timely and accurately submit all of the information required for completion of the eligible training provider performance reports required under WIOA sec. 116(d)(4) and all of the information required for initial and continued eligibility in this subpart.

(1) The Governor's procedures on determining a substantial violation must take into account exceptional circumstances beyond the provider's control, such as natural disasters, unexpected personnel transitions, and unexpected technology-related issues.

(2) Providers who substantially violate the requirement in paragraph (g) of this section to timely and accurately submit all required information must be removed from the State list of eligible training providers and programs, as provided in § 680.480(b).

§ 680.470 What are the procedures for including and removing registered apprenticeship programs on a State list of eligible training providers and programs?

(a) All registered apprenticeship programs that are registered with the U.S. Department of Labor, Office of Apprenticeship, or a recognized State apprenticeship agency, are automatically eligible to be included in the State list of eligible training providers and programs. All registered apprenticeship programs must be informed of their automatic eligibility to be included on the list, and must be provided an opportunity to consent to their inclusion, before being placed on the State list of eligible training providers and programs. The Governor must establish a mechanism for registered apprenticeship program sponsors in the State to be informed of their automatic eligibility and to indicate that the program sponsor wishes to be included on the State list of eligible training providers and programs. This mechanism must place minimal burden on registered apprenticeship program sponsors and must be developed in accordance with guidance from the U.S. Department of Labor Office of Apprenticeship or with the assistance of the recognized State apprenticeship agency, as applicable.

(b) Once on the State list of eligible training providers and programs, registered apprenticeship programs will remain on the list:

(1) Until they are deregistered;

(2) Until the registered apprenticeship program notifies the State that it no longer wants to be included on the list; or

(3) Until the registered apprenticeship program is determined to have intentionally supplied inaccurate information or to have substantially violated any provision of title I of WIOA or the WIOA regulations, including 29 CFR part 38.

(c) A registered apprenticeship program whose eligibility is terminated under paragraph (b)(3) of this section must be terminated for not less than 2 years and is liable to repay all youth, adult, and dislocated worker training funds it received during the period of noncompliance. The Governor must specify in the procedures required by § 680.480 which individual or entity is responsible for making these determinations and the process by which the determination will be made, which must include an opportunity for a hearing that meets the requirements of § 683.630(b) of this chapter.

(d) Inclusion of a registered apprenticeship in the State list of eligible training providers and programs allows an individual who is eligible to use WIOA title I, subtitle B funds to use those funds toward registered apprenticeship training, consistent with their availability and limitations as prescribed by § 680.300. The use of ITAs and other WIOA title I, subtitle B funds toward registered apprenticeship training is further described in § 680.330.

(e) The Governor is encouraged to consult with the State and Local WDBs, ETA's Office of Apprenticeship, recognized State apprenticeship agencies (where they exist in the Governor's State) or other State agencies, to establish voluntary reporting of performance information.

(f) Pre-apprenticeship providers that wish to provide training services to participants using WIOA title I, subtitle B funds are subject to the eligibility procedures of this subpart.

§ 680.480 May an eligible training provider lose its eligibility?

(a) Yes. A training provider must meet the Governors requirements for eligibility and provide accurate information in order to retain its status as an eligible training provider.

(b) Providers determined to have intentionally supplied inaccurate information or to have substantially violated any provision of title I of WIOA or the WIOA regulations, including 29 CFR part 38, must be removed from the State list of eligible training providers and programs in accordance with the enforcement provisions of WIOA sec. 122(f). A provider whose eligibility is terminated under these conditions must be terminated for not less than 2 years and is liable to repay all youth, adult, and dislocated worker training funds it received during the period of noncompliance. The Governor must specify in the procedures which individual or entity is responsible for making these determinations and the process by which the determination will be made, which must include an opportunity for a hearing that meets the requirements of § 683.630(b) of this chapter.

(c) As a part of the biennial review of eligibility established by the Governor, the State must remove programs of training services that fail to meet criteria

established by the Governor to remain eligible, which may include failure to meet established minimum performance levels. Registered apprenticeship programs only may be removed for the reasons set forth in § 680.470.

(d) The Governor must establish an appeals procedure for providers of training services to appeal a denial of eligibility under this subpart that meets the requirements of § 683.630(b) of this chapter, which explains the appeals process for denial or termination of eligibility of a provider of training services.

(e) Where a Local WDB has established higher minimum performance standards, according to § 680.430(e), the Local WDB may remove a program of training services from the eligible programs in that local area for failure to meet those higher performance standards. Training providers may appeal a denial of eligibility under § 683.630(b) of this chapter.

§ 680.490 What kind of performance and cost information must eligible training providers other than registered apprenticeship programs provide for each program of training services?

(a) In accordance with the State procedure under § 680.460(i), eligible training providers, except registered apprenticeship programs, must submit, at least every 2 years, appropriate, timely, and accurate performance and cost information.

(b) Program-specific performance information must include:

(1) The information described in WIOA sec. 122(b)(2)(A) for individuals participating in the programs of training services who are receiving assistance under WIOA. This information includes indicators of performance as described in WIOA secs. 116(b)(2)(I)–(IV) and § 680.460(g)(1) through (4);

(2) Information identifying the recognized postsecondary credentials received by such participants in § 680.460(g)(5);

(3) Program cost information, including tuition and fees, for WIOA participants in the program in § 680.460(g)(6); and

(4) Information on the program completion rate for WIOA participants in § 680.460(g)(7).

(c) Governors may require any additional performance information (such as the information described at WIOA sec. 122(b)(1)) that the Governor determines to be appropriate to determine, maintain eligibility, or better to inform consumers.

(d) Governors must establish a procedure by which a provider can demonstrate that providing additional information required under this section would be unduly burdensome or costly. If the Governor determines that providers have demonstrated such extraordinary costs or undue burden:

(1) The Governor must provide access to cost-effective methods for the collection of the information;

(2) The Governor may provide additional resources to assist providers in the collection of the information from funds for statewide workforce investment activities reserved under WIOA secs. 128(a) and 133(a)(1); or

(3) The Governor may take other steps to assist eligible training providers in collecting and supplying required information such as offering technical assistance.

§ 680.500 How is the State list of eligible training providers and programs disseminated?

(a) In order to assist participants in choosing employment and training activities, the Governor or State agency must disseminate the State list of eligible training providers and programs and accompanying performance and cost information to Local WDBs in the State and to members of the public online, including through Web sites and searchable databases, and through whatever other means the State uses to disseminate information to consumers, including the one-stop delivery system and its program partners throughout the State.

(b) The State list of eligible training providers and programs and information must be updated regularly and provider and program eligibility must be reviewed biennially according to the procedures established by the Governor in § 680.460(i).

(c) In order to ensure informed consumer choice, the State list of eligible training providers and programs and accompanying information must be widely available to the public through electronic means, including Web sites and searchable databases, as well as through any other means the State uses to disseminate information to consumers. The list and accompanying information must be available through the one-stop delivery system and its partners including the State's secondary and postsecondary education systems. The list must be accessible to individuals seeking information on training outcomes, as well as participants in employment and training activities funded under WIOA, including those under § 680.210, and other programs. In accordance with WIOA sec. 188, the State list also must be accessible to individuals with disabilities.

(d) The State list of eligible training providers and programs must be accompanied by appropriate information to assist participants in choosing employment and programs of training services. Such information must include:

(1) Recognized postsecondary credential(s) offered;

(2) Provider information supplied to meet the Governor's eligibility procedure as described in §§ 680.450 and 680.460;

(3) Performance and cost information as described in § 680.490; and

(4) Additional information as the Governor determines appropriate.

(e) The State list of eligible training providers and programs and accompanying information must be made available in a manner that does not reveal personally identifiable information about an individual participant. In addition, in developing the information to accompany the State list described in § 680.490(b), disclosure of personally identifiable information from an education record must be carried out in accordance with the Family Educational Rights and Privacy Act, including the circumstances relating to prior written consent.

§ 680.510 In what ways can a Local Workforce Development Board supplement the information available from the State list of eligible training providers and programs?

(a) Local WDBs may supplement the criteria and information requirements established by the Governor in order to support informed consumer choice and the achievement of local performance indicators. However, the Local WDB may not do so for registered apprenticeship programs.

(b) This additional information may include:

(1) Information on programs of training services that are linked to occupations in demand in the local area;

(2) Performance and cost information, including program-specific performance and cost information, for the local outlet(s) of multi-site eligible training providers;

(3) Information that shows how programs are responsive to local requirements; and

(4) Other appropriate information related to the objectives of WIOA.

§ 680.520 May individuals choose training providers and programs located outside of the local area or outside of the State?

(a) An individual may choose training providers and programs outside of the local area provided the training program

is on the State list, in accordance with local policies and procedures.

(b) An individual may choose eligible training providers and programs outside of the State consistent with State and local policies and procedures. State policies and procedures may provide for reciprocal or other agreements established with another State to permit eligible training providers in a State to accept ITAs provided by the other State.

§ 680.530 What eligibility requirements apply to providers of on-the-job-training, customized training, incumbent worker training, and other training exceptions?

(a) Providers of on-the-job training, customized training, incumbent worker training, internships, paid or unpaid work experience, or transitional jobs are not subject to the requirements applicable to entities listed on the eligible training provider list, and are not included on the State list of eligible training providers and programs.

(b) For providers of training described in paragraph (a) of this section, the Governor may establish performance criteria those providers must meet to receive funds under the adult or dislocated worker programs pursuant to a contract as provided in § 680.320.

(c) One-stop operators in a local area must collect such performance information as the Governor may require and determine whether the providers meet any performance criteria the Governor may establish under paragraph (b) of this section.

(d) One-stop operators must disseminate information identifying providers and programs that have met the Governor's performance criteria, along with the relevant performance information about them, through the one-stop delivery system.

Subpart E—Priority and Special Populations

§ 680.600 What priority must be given to low-income adults and public assistance recipients and individuals who are basic skills deficient served with adult funds under title I of the Workforce Innovation and Opportunity Act?

(a) WIOA sec. 134(c)(3)(E) states that priority for individualized career services (*see* § 678.430(b) of this chapter) and training services funded with title I adult funds must be given to recipients of public assistance, other low-income individuals, and individuals who are basic skills deficient (as defined in WIOA sec. 3(5)(B)) in the local area.

(b) States and local areas must establish criteria by which the one-stop center will apply the priority under WIOA sec. 134(c)(3)(E). Such criteria may include the availability of other funds for providing employment and training-related services in the local area, the needs of the specific groups within the local area, and other appropriate factors.

(c) The priority established under paragraph (a) of this section does not necessarily mean that these services only may be provided to recipients of public assistance, other low-income individuals, and individuals who are basic skills deficient. The Local WDB and the Governor may establish a process that also gives priority to other individuals eligible to receive such services, provided that it is consistent with priority of service for veterans (*see* § 680.650) and the priority provisions of WIOA sec. 134(c)(3)(E), discussed above in paragraphs (a) and (b) of this section.

§ 680.610 Does the statutory priority for use of adult funds also apply to dislocated worker funds?

No, the statutory priority only applies to adult funds and only applies to providing individualized career services, as described in § 680.150(b), and training services. Funds allocated for dislocated workers are not subject to this requirement.

§ 680.620 How does the Temporary Assistance for Needy Families program relate to the one-stop delivery system?

The local TANF program is a required partner in the one-stop delivery system. Part 678 of this chapter describes the roles of such partners in the one-stop delivery system and it applies to the TANF program. TANF serves individuals who also may be served by the WIOA programs and, through appropriate linkages and referrals, these customers will have access to a broader range of services through the cooperation of the TANF program in the one-stop delivery system. TANF participants, who are determined to be WIOA eligible, and who need occupational skills training may be referred through the one-stop delivery system to receive WIOA training, when TANF grant and other grant funds are not available to the individual in accordance with § 680.230(a). WIOA participants who also are determined TANF eligible may be referred to the TANF program for assistance.

§ 680.630 How does a displaced homemaker qualify for services under title I of the Workforce Innovation and Opportunity Act?

(a) Individuals who meet the definitions of a "displaced homemaker" (*see* WIOA sec. 3(16)) qualify for career and training services with dislocated worker title I funds.

(b) Displaced homemakers also may qualify for career and training services with adult funds under title I if the requirements of this part are met (*see* §§ 680.120 and 680.600).

(c) Displaced homemakers also may be served in statewide employment and training projects conducted with reserve funds for innovative programs for displaced homemakers, as described in § 682.210(c) of this chapter.

(d) The definition of displaced homemaker includes the dependent spouse of a member of the Armed Forces on active duty (as defined in sec. 101(d)(1) of title 10, United States Code) and whose family income is significantly reduced because of a deployment, a call or order to active duty under a provision of law referred to in sec. 101(a)(13)(B) of title 10, United State Code, a permanent change of station, or the service-connected death or disability of the member.

§ 680.640 May an individual with a disability whose family does not meet income eligibility criteria under the Workforce Innovation and Opportunity Act be eligible for priority as a low-income adult?

Yes, even if the family of an individual with a disability does not meet the income eligibility criteria, the individual with a disability is to be considered a low-income individual if the individual's own income:

(a) Meets the income criteria established in WIOA sec. 3(36)(A)(vi); or

(b) Meets the income eligibility criteria for payments under any Federal, State or local public assistance program (see WIOA sec. 3(36)(A)(i)).

§ 680.650 Do veterans receive priority of service under the Workforce Innovation and Opportunity Act?

Yes, veterans, as defined under WIOA sec. 3(63)(A) and 38 U.S.C. 101, receive priority of service in all Department of Labor-funded training programs under 38 U.S.C. 4215 and described in 20 CFR part 1010. A veteran still must meet each program's eligibility criteria to receive services under the respective employment and training program. For income-based eligibility determinations, amounts paid while on active duty or paid by the Department of Veterans Affairs (VA) for vocational rehabilitation, disability payments, or related VA-funded programs are not to be considered as income, in accordance with 38 U.S.C. 4213 and § 683.230 of this chapter.

§ 680.660 Are separating military service members eligible for dislocated worker activities under the Workforce Innovation and Opportunity Act?

If the separating service member is separating from the Armed Forces with a discharge that is anything other than dishonorable, the separating service member qualifies for dislocated worker activities based on the following criteria:

(a) The separating service member has received a notice of separation, a DD–214 from the Department of Defense, or other documentation showing a separation or imminent separation from the Armed Forces to satisfy the termination or layoff part of the dislocated worker eligibility criteria in WIOA sec. 3(15)(A)(i);

(b) The separating service member qualifies for the dislocated worker eligibility criteria on eligibility for or exhaustion of unemployment compensation in WIOA sec. 3(15)(A)(ii)(I) or (II); and,

(c) As a separating service member, the individual meets the dislocated worker eligibility criteria that the individual is unlikely to return to a previous industry or occupation in WIOA sec. 3(15)(A)(iii).

Subpart F—Work-Based Training

§ 680.700 What are the requirements for on-the-job training?

(a) OJT is defined at WIOA sec. 3(44). OJT is provided under a contract with an employer or registered apprenticeship program sponsor in the public, private non-profit, or private sector. Through the OJT contract, occupational training is provided for the WIOA participant in exchange for the reimbursement, typically up to 50 percent of the wage rate of the participant, for the extraordinary costs of providing the training and supervision related to the training. In limited circumstances, as provided in WIOA sec. 134(c)(3)(h) and § 680.730, the reimbursement may be up to 75 percent of the wage rate of the participant.

(b) OJT contracts under WIOA title I, must not be entered into with an employer who has received payments under previous contracts under WIOA or WIA if the employer has exhibited a pattern of failing to provide OJT participants with continued long-term employment as regular employees with wages and employment benefits (including health benefits) and working conditions at the same level and to the same extent as other employees working a similar length of time and doing the same type of work.

(c) An OJT contract must be limited to the period of time required for a participant to become proficient in the occupation for which the training is being provided. In determining the appropriate length of the contract, consideration should be given to the skill requirements of the occupation, the academic and occupational skill level of the participant, prior work experience, and the participant's IEP.

§ 680.710 What are the requirements for on-the-job training contracts for employed workers?

OJT contracts may be written for eligible employed workers when:

(a) The employee is not earning a self-sufficient wage or wages comparable to or higher than wages from previous employment, as determined by Local WDB policy;

(b) The requirements in § 680.700 are met; and

(c) The OJT relates to the introduction of new technologies, introduction to new production or service procedures, upgrading to new jobs that require additional skills, workplace literacy, or other appropriate purposes identified by the Local WDB.

§ 680.720 What conditions govern on-the-job training payments to employers?

(a) OJT payments to employers are deemed to be compensation for the extraordinary costs associated with training participants and potentially lower productivity of the participants while in the OJT.

(b) Employers may be reimbursed up to 50 percent of the wage rate of an OJT participant, and up to 75 percent using the criteria in § 680.730, for the extraordinary costs of providing the training and additional supervision related to the OJT.

(c) Employers are not required to document such extraordinary costs.

§ 680.730 Under what conditions may a Governor or Local Workforce Development Board raise the on-the-job training reimbursement rate up to 75 percent of the wage rate?

(a) The Governor may increase the reimbursement rate for OJT contracts funded through the statewide employment and training activities described in § 682.210 of this chapter up to 75 percent, and the Local WDB also may increase the reimbursement rate for OJT contracts described in § 680.320(a)(1) up to 75 percent, when taking into account the following factors:

(1) The characteristics of the participants taking into consideration whether they are "individuals with barriers to employment," as defined in WIOA sec. 3(24);

(2) The size of the employer, with an emphasis on small businesses;

(3) The quality of employer-provided training and advancement opportunities, for example if the OJT contract is for an in-demand occupation and will lead to an industry-recognized credential; and

(4) Other factors the Governor or Local WDB may determine to be appropriate, which may include the number of employees participating, wage and benefit levels of the employees (both at present and after completion), and relation of the training to the competitiveness of the participant.

(b) Governors or Local WDBs must document the factors used when deciding to increase the wage reimbursement levels above 50 percent up to 75 percent.

§ 680.740 How can on-the-job training funds be used to support placing participants into a registered apprenticeship program?

(a) OJT contracts may be entered into with registered apprenticeship program sponsors or participating employers in registered apprenticeship programs for the OJT portion of the registered apprenticeship program consistent with § 680.700. Depending on the length of the registered apprenticeship and State and local OJT policies, these funds may cover some or all of the registered apprenticeship training.

(b) If the apprentice is unemployed at the time of participation, the OJT must be conducted as described in § 680.700. If the apprentice is employed at the time of participation, the OJT must be conducted as described in § 680.710.

§ 680.750 Can Individual Training Account and on-the-job training funds be combined to support placing participants into a registered apprenticeship program?

There is no Federal prohibition on using both ITA and OJT funds when placing participants into a registered apprenticeship program. See § 680.330 on using ITAs to support participants in registered apprenticeship.

§ 680.760 What is customized training?

Customized training is training:

(a) That is designed to meet the special requirements of an employer (including a group of employers);

(b) That is conducted with a commitment by the employer to employ an individual upon successful completion of the training; and

(c) For which the employer pays for a significant cost of the training, as determined by the Local WDB in

Industries Vocational Enterprises, Inc., Duluth, MN
Contracting Activity: Dept of the Army, W6QM MICC FT MCCOY (RC)

Service Type: Recycling Service
Mandatory for: March Air Reserve Base, March Air Force Reserve Base, CA
Mandatory Source(s) of Supply: Valley Resource Center for the Retarded, Inc., Hemet, CA
Contracting Activity: Dept of the Air Force, FA7014 AFDW PK

Service Type: Mailing Service
Mandatory for: USDA, Farm Service Agency, Phoenix, AZ
Mandatory Source(s) of Supply: Goodwill Community Services, Inc., Phoenix, AZ
Contracting Activity: Department of Agriculture, Procurement Operations Division

Service Type: Car Wash Service
Mandatory for: Customs and Border Protection, Indio Border Station, 83–801 Vin Deo Circle, Indio, CA
Mandatory Source(s) of Supply: Sheltering Wings Corp., Blythe, CA
Contracting Activity: U.S. Customs and Border Protection, Procurement Directorate

Service Type: Custodial Service
Mandatory for: FAA, Air Traffic Control Tower, Duluth International Airport, 4525 Airport Approach Road, Duluth, MN
Mandatory Source(s) of Supply: Goodwill Industries Vocational Enterprises, Inc., Duluth, MN
Contracting Activity: Dept of Transportation, Federal Aviation Administration

Service Type: Recycling Service
Mandatory for: Naval Weapons Station: NAWS Recycling Center, China Lake, CA
Mandatory Source(s) of Supply: Desert Area Resources and Training, Ridgecrest, CA
Contracting Activity: Dept of the Navy, U.S. Fleet Forces Command

Service Type: Grounds Maintenance Service
Mandatory for: China Lake Naval Air Weapons Station: Tot Lot Parks- Housing Area, China Lake, CA
Mandatory Source(s) of Supply: Desert Area Resources and Training, Ridgecrest, CA
Contracting Activity: Dept of the Navy, U.S. Fleet Forces Command

Service Type: Grounds Maintenance Service
Mandatory for: Defense Commissary Agency, China Lake Naval Air Weapons Station Commissary, 1 Administration Circle, China Lake, CA
Mandatory Source(s) of Supply: Desert Area Resources and Training, Ridgecrest, CA
Contracting Activity: Dept of the Navy, NAVFAC SOUTHWEST

Barry S. Lineback,
Director, Business Operations.

[FR Doc. 2016–19841 Filed 8–18–16; 8:45 am]
BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List: Addition and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to and deletions from the Procurement List.

SUMMARY: This action adds a product to the Procurement List that will be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities, and deletes products from the Procurement List previously furnished by such agencies.

DATES: Effective on September 18, 2016.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Addition

On 7/15/2016 (81 FR 46061–46062), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed addition to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agency to provide the product and impact of the addition on the current or most recent contractors, the Committee has determined that the product listed below is suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organization that will furnish the product to the Government.

2. The action will result in authorizing a small entity to furnish the product to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the product proposed for addition to the Procurement List.

End of Certification

Accordingly, the following product is added to the Procurement List:

Product

NSN(s)—Product Name(s): MR 343—Handheld Spiralizer
Mandatory Source(s) of Supply: Cincinnati Association for the Blind, Cincinnati, OH
Mandatory Purchase for: The requirements of military commissaries and exchanges in accordance with the Code of Federal Regulations, Chapter 51, 51–6.4.
Contracting Activity: Defense Commissary Agency
Distribution: C-List

Deletions

On 7/15/2016 (81 FR 46061–46062), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List. After consideration of the relevant matter presented, the Committee has determined that the products listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products deleted from the Procurement List.

End of Certification

Accordingly, the following products are deleted from the Procurement List:

Products

NSN(s)—Product Name(s):
8410–01–279–7730—Skirt, Gabardine, Lined, Marine Corps, Women's, Blue, 6 Short
8410–01–279–7731—Skirt, Gabardine, Lined, Marine Corps, Women's, Blue, 6R
8410–01–279–7732—Skirt, Gabardine, Lined, Marine Corps, Women's, Blue, 6L
8410–01–279–7733—Skirt, Gabardine, Lined, Marine Corps, Women's, Blue, 8S
8410–01–279–7734—Skirt, Gabardine, Lined, Marine Corps, Women's, Blue, 8R
8410–01–279–7735—Skirt, Gabardine, Lined, Marine Corps, Women's, Blue, 8L

accordance with the factors identified in WIOA sec. 3(14).

§ 680.770 What are the requirements for customized training for employed workers?

Customized training of an eligible employed individual may be provided for an employer or a group of employers when:

(a) The employee is not earning a self-sufficient wage or wages comparable to or higher than wages from previous employment, as determined by Local WDB policy;

(b) The requirements in § 680.760 are met; and

(c) The customized training relates to the purposes described in § 680.710(c) or other appropriate purposes identified by the Local WDB.

§ 680.780 Who is an "incumbent worker" for purposes of statewide and local employment and training activities?

States and local areas must establish policies and definitions to determine which workers, or groups of workers, are eligible for incumbent worker services. To qualify as an incumbent worker, the incumbent worker needs to be employed, meet the Fair Labor Standards Act requirements for an employer-employee relationship, and have an established employment history with the employer for 6 months or more, with the following exception: In the event that the incumbent worker training is being provided to a cohort of employees, not every employee in the cohort must have an established employment history with the employer for 6 months or more as long as a majority of those employees being trained do meet the employment history requirement. An incumbent worker does not have to meet the eligibility requirements for career and training services for adults and dislocated workers under WIOA, unless they also are enrolled as a participant in the WIOA adult or dislocated worker program.

§ 680.790 What is incumbent worker training?

Incumbent worker training must satisfy the requirements in WIOA sec. 134(d)(4) and increase the competitiveness of the employee or employer. For purposes of WIOA sec. 134(d)(4)(B), incumbent worker training is training:

(a) Designed to meet the special requirements of an employer (including a group of employers) to retain a skilled workforce or avert the need to lay off employees by assisting the workers in obtaining the skills necessary to retain employment.

(b) Conducted with a commitment by the employer to retain or avert the layoffs of the incumbent worker(s) trained.

§ 680.800 What funds may be used for incumbent worker training?

(a) The local area may reserve up to 20 percent of their combined total of adult and dislocated worker allocations for incumbent worker training as described in § 680.790;

(b) The State may use their statewide activities funds (per WIOA sec. 134(a)(3)(A)(i)) and Rapid Response funds for statewide incumbent worker training activities (*see* §§ 682.210(b) and 682.320(b)(4) of this chapter).

§ 680.810 What criteria must be taken into account for an employer to be eligible to receive local incumbent worker training funds?

The Local WDB must consider under WIOA sec. 134(d)(4)(A)(ii):

(a) The characteristics of the individuals in the program;

(b) The relationship of the training to the competitiveness of an individual and the employer; and

(c) Other factors the Local WDB determines appropriate, including number of employees trained, wages and benefits including post training increases, and the existence of other training opportunities provided by the employer.

§ 680.820 Are there cost sharing requirements for local area incumbent worker training?

Yes. Under WIOA secs. 134(d)(4)(C) and 134(d)(4)(D)(i)–(iii), employers participating in incumbent worker training are required to pay the non-Federal share of the cost of providing training to their incumbent workers. The amount of the non-Federal share depends upon the limits established under WIOA secs. 134(d)(4)(ii)(C) and (D).

§ 680.830 May funds provided to employers for work-based training be used to assist, promote, or deter union organizing?

No. Funds provided to employers for work-based training, as described in this subpart, must not be used to directly or indirectly assist, promote, or deter union organizing.

§ 680.840 May funds provided to employers for work-based training and other work experiences be used to fill job openings as a result of a labor dispute?

No. Funds provided to employers for work-based training, as described in this subpart and in subpart A of this part, may not be used to directly or indirectly aid in the filling of a job opening which is vacant because the former occupant is on strike, or is being locked out in the course of a labor dispute, or the filling of which is otherwise an issue in a labor dispute involving a work stoppage.

Subpart G—Supportive Services

§ 680.900 What are supportive services for adults and dislocated workers?

Supportive services for adults and dislocated workers are defined at WIOA sec. 3(59) and secs. 134(d)(2) and (3). Local WDBs, in consultation with the one-stop partners and other community service providers, must develop a policy on supportive services that ensures resource and service coordination in the local area. The policy should address procedures for referral to such services, including how such services will be funded when they are not otherwise available from other sources. The provision of accurate information about the availability of supportive services in the local area, as well as referral to such activities, is one of the career services that must be available to adults and dislocated workers through the one-stop delivery system. (WIOA sec. 134(c)(2)(A)(ix) and § 678.430 of this chapter). Local WDBs must ensure that needs-related payments are made in a manner consistent with §§ 680.930, 680.940, 680.950, 680.960, and 680.970. Supportive services are services that are necessary to enable an individual to participate in activities authorized under WIOA sec. 134(c)(2) and (3). These services may include, but are not limited to, the following:

(a) Linkages to community services;

(b) Assistance with transportation;

(c) Assistance with child care and dependent care;

(d) Assistance with housing;

(e) Needs-related payments, as described at §§ 680.930, 680.940, 680.950, 680.960, and 680.970;

(f) Assistance with educational testing;

(g) Reasonable accommodations for individuals with disabilities;

(h) Legal aid services;

(i) Referrals to health care;

(j) Assistance with uniforms or other appropriate work attire and work-related tools, including such items as eyeglasses and protective eye gear;

(k) Assistance with books, fees, school supplies, and other necessary items for students enrolled in postsecondary education classes; and

(l) Payments and fees for employment and training-related applications, tests, and certifications.

§ 680.910 When may supportive services be provided to participants?

(a) Supportive services may only be provided to individuals who are:

(1) Participating in career or training services as defined in WIOA secs. 134(c)(2) and (3); and

(2) Unable to obtain supportive services through other programs providing such services.

(b) Supportive services only may be provided when they are necessary to enable individuals to participate in career service or training activities.

§ 680.920 Are there limits on the amount or duration of funds for supportive services?

(a) Local WDBs may establish limits on the provision of supportive services or provide the one-stop center with the authority to establish such limits, including a maximum amount of funding and maximum length of time for supportive services to be available to participants.

(b) Procedures also may be established to allow one-stop centers to grant exceptions to the limits established under paragraph (a) of this section.

§ 680.930 What are needs-related payments?

Needs-related payments provide financial assistance to participants for the purpose of enabling them to participate in training and are a supportive service authorized by WIOA sec. 134(d)(3). Unlike other supportive services, in order to qualify for needs-related payments a participant must be enrolled in training.

§ 680.940 What are the eligibility requirements for adults to receive needs-related payments?

Adults must:

(a) Be unemployed;

(b) Not qualify for, or have ceased qualifying for, unemployment compensation; and

(c) Be enrolled in a program of training services under WIOA sec. 134(c)(3).

§ 680.950 What are the eligibility requirements for dislocated workers to receive needs-related payments?

To receive needs-related payments, a dislocated worker must:

(a) Be unemployed, and:

(1) Have ceased to qualify for unemployment compensation or trade readjustment allowance under TAA; and

(2) Be enrolled in a program of training services under WIOA sec. 134(c)(3) by the end of the 13th week after the most recent layoff that resulted in a determination of the worker's eligibility as a dislocated worker, or, if later, by the end of the 8th week after the worker is informed that a short-term layoff will exceed 6 months; or

(b) Be unemployed and did not qualify for unemployment compensation or trade readjustment assistance under TAA and be enrolled in a program of training services under WIOA sec. 134(c)(3).

§ 680.960 May needs-related payments be paid while a participant is waiting to start training classes?

Yes, payments may be provided if the participant has been accepted in a training program that will begin within 30 calendar days. The Governor may authorize local areas to extend the 30-day period to address appropriate circumstances.

§ 680.970 How is the level of needs-related payments determined?

(a) The payment level for adults must be established by the Local WDB. For statewide projects, the payment level for adults must be established by the State WDB.

(b) For dislocated workers, payments must not exceed the greater of either of the following levels:

(1) The applicable weekly level of the unemployment compensation benefit, for participants who were eligible for unemployment compensation as a result of the qualifying dislocation; or

(2) The poverty level for an equivalent period, for participants who did not qualify for unemployment compensation as a result of the qualifying layoff. The weekly payment level must be adjusted to reflect changes in total family income, as determined by Local WDB policies.

■ 14. Add part 681 to read as follows:

PART 681—YOUTH ACTIVITIES UNDER TITLE I OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT

Subpart A—Standing Youth Committees

Sec.
681.100 What is a standing youth committee?
681.110 Who is included on a standing youth committee?
681.120 What does a standing youth committee do?

Subpart B—Eligibility for Youth Services

Sec.
681.200 Who is eligible for youth services?
681.210 Who is an "out-of-school youth"?
681.220 Who is an "in-school youth"?
681.230 What does "school" refer to in the "not attending or attending any school" in the out-of-school and in-school eligibility criteria?
681.240 When do local youth programs verify dropout status?
681.250 Who does the low-income eligibility requirement apply to?
681.260 How does the Department define "high poverty area" for the purposes of the special regulation for low-income youth in the Workforce Innovation and Opportunity Act?
681.270 May a local program use eligibility for free or reduced price lunches under the National School Lunch Program as a substitute for the income eligibility criteria under title I of the Workforce Innovation and Opportunity Act?
681.280 Is a youth with a disability eligible for youth services under the Workforce Innovation and Opportunity Act if his or her family income exceeds the income eligibility criteria?
681.290 How does the Department define the "basic skills deficient" criterion this part?
681.300 How does the Department define the "requires additional assistance to enter or complete an educational program, or to secure and hold employment" criterion in this part for OSY?
681.310 How does the Department define the "requires additional assistance to complete an educational program, or to secure and hold employment" criterion in this part for ISY?
681.320 Must youth participants enroll to participate in the youth program?

Subpart C—Youth Program Design, Elements, and Parameters

Sec.
681.400 What is the process used to select eligible youth providers?
681.410 Does the requirement that a State and local area expend at least 75 percent of youth funds to provide services to out-of-school youth apply to all youth funds?
681.420 How must Local Workforce Development Boards design Workforce Innovation and Opportunity Act youth programs?
681.430 May youth participate in both the Workforce Innovation and Opportunity Act (WIOA) youth and adult programs concurrently, and how do local program operators track concurrent enrollment in the WIOA youth and adult programs?
681.440 How does a local youth program determine if an 18 to 24 year old is enrolled in the Workforce Innovation and Opportunity Act (WIOA) youth program or the WIOA adult program?
681.450 For how long must a local Workforce Innovation and Opportunity Act youth program serve a participant?
681.460 What services must local programs offer to youth participants?
681.470 Does the Department require local programs to use Workforce Innovation and Opportunity Act funds for each of the 14 program elements?
681.480 What is a pre-apprenticeship program?
681.490 What is adult mentoring?
681.500 What is financial literacy education?
681.510 What is comprehensive guidance and counseling?
681.520 What are leadership development opportunities?

681.530 What are positive social and civic behaviors?
681.540 What is occupational skills training?
681.550 Are Individual Training Accounts permitted for youth participants?
681.560 What is entrepreneurial skills training and how is it taught?
681.570 What are supportive services for youth?
681.580 What are follow-up services for youth?
681.590 What is the work experience priority and how will local youth programs track the work experience priority?
681.600 What are work experiences?
681.610 Does the Workforce Innovation and Opportunity Act require Local Workforce Development Boards to offer summer employment opportunities in the local youth program?
681.620 How are summer employment opportunities administered?
681.630 What does education offered concurrently with and in the same context as workforce preparation activities and training for a specific occupation or occupational cluster mean?
681.640 Are incentive payments to youth participants permitted?
681.650 How can parents, youth, and other members of the community get involved in the design and implementation of local youth programs?

Subpart D—One-Stop Services to Youth

Sec.
681.700 What is the connection between the youth program and the one-stop delivery system?
681.710 Do Local Workforce Development Boards have the flexibility to offer services to area youth who are not eligible under the youth program through the one-stop centers?

Authority: Secs. 107, 121, 123, 129, 189, 503, Pub. L. 113–128, 128 Stat. 1425 (Jul. 22, 2014).

Subpart A—Standing Youth Committees

§ 681.100 What is a standing youth committee?

The Workforce Innovation and Opportunity Act (WIOA) eliminates the requirement for Local Workforce Development Boards (WDBs) to establish a youth council. However, the Department encourages Local WDBs to establish a standing committee to provide information and to assist with planning, operational, oversight, and other issues relating to the provision of services to youth. If the Local WDB does not designate a standing youth committee, it retains responsibility for all aspects of youth formula programs.

§ 681.110 Who is included on a standing youth committee?

(a) If a Local WDB decides to form a standing youth committee, the committee must include a member of the Local WDB, who chairs the committee, members of community-based organizations with a demonstrated record of success in serving eligible youth, and other individuals with appropriate expertise and experience who are not members of the Local WDB.

(b) The committee must reflect the needs of the local area. The committee members appointed for their experience and expertise may bring their expertise to help the committee address the employment, training, education, human and supportive service needs of eligible youth including out-of-school youth (OSY). Members may represent agencies such as secondary and postsecondary education, training, health, disability, mental health, housing, public assistance, and justice, or be representatives of philanthropic or economic and community development organizations, and employers. The committee may also include parents, participants, and youth.

(c) A Local WDB may designate an existing entity such as an effective youth council as the standing youth committee if it fulfills the requirements above in paragraph (a) of this section.

§ 681.120 What does a standing youth committee do?

Under the direction of the Local WDB, a standing youth committee may:

(a) Recommend policy direction to the Local WDB for the design, development, and implementation of programs that benefit all youth;

(b) Recommend the design of a comprehensive community workforce development system to ensure a full range of services and opportunities for all youth, including disconnected youth;

(c) Recommend ways to leverage resources and coordinate services among schools, public programs, and community-based organizations serving youth;

(d) Recommend ways to coordinate youth services and recommend eligible youth service providers;

(e) Provide on-going leadership and support for continuous quality improvement for local youth programs;

(f) Assist with planning, operational, and other issues relating to the provision of services to youth; and

(g) If so delegated by the Local WDB after consultation with the chief elected official (CEO), oversee eligible youth providers, as well as other youth program oversight responsibilities.

Subpart B—Eligibility for Youth Services

§ 681.200 Who is eligible for youth services?

Both in-school youth (ISY) and OSY are eligible for youth services.

§ 681.210 Who is an "out-of-school youth"?

An OSY is an individual who is:

(a) Not attending any school (as defined under State law);

(b) Not younger than age 16 or older than age 24 at time of enrollment. Because age eligibility is based on age at enrollment, participants may continue to receive services beyond the age of 24 once they are enrolled in the program; and

(c) One or more of the following:

(1) A school dropout;

(2) A youth who is within the age of compulsory school attendance, but has not attended school for at least the most recent complete school year calendar quarter. School year calendar quarter is based on how a local school district defines its school year quarters. In cases where schools do not use quarters, local programs must use calendar year quarters;

(3) A recipient of a secondary school diploma or its recognized equivalent who is a low-income individual and is either basic skills deficient or an English language learner;

(4) An offender;

(5) A homeless individual aged 16 to 24 who meets the criteria defined in sec. 41403(6) of the Violence Against Women Act of 1994 (42 U.S.C. 14043e–2(6)), a homeless child or youth aged 16 to 24 who meets the criteria defined in sec. 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)) or a runaway;

(6) An individual in foster care or who has aged out of the foster care system or who has attained 16 years of age and left foster care for kinship guardianship or adoption, a child eligible for assistance under sec. 477 of the Social Security Act (42 U.S.C. 677), or in an out-of-home placement;

(7) An individual who is pregnant or parenting;

(8) An individual with a disability; or

(9) A low-income individual who requires additional assistance to enter or complete an educational program or to secure or hold employment.

§ 681.220 Who is an "in-school youth"?

An ISY is an individual who is:

(a) Attending school (as defined by State law), including secondary and postsecondary school;

(b) Not younger than age 14 or (unless an individual with a disability who is

attending school under State law) older than age 21 at time of enrollment. Because age eligibility is based on age at enrollment, participants may continue to receive services beyond the age of 21 once they are enrolled in the program;

(c) A low-income individual; and

(d) One or more of the following:

(1) Basic skills deficient;

(2) An English language learner;

(3) An offender;

(4) A homeless individual aged 14 to 21 who meets the criteria defined in sec. 41403(6) of the Violence Against Women Act of 1994 (42 U.S.C. 14043e–2(6)), a homeless child or youth aged 14 to 21 who meets the criteria defined in sec. 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), or a runaway;

(5) An individual in foster care or who has aged out of the foster care system or who has attained 16 years of age and left foster care for kinship guardianship or adoption, a child eligible for assistance under sec. 477 of the Social Security Act (42 U.S.C. 677), or in an out-of-home placement;

(6) An individual who is pregnant or parenting;

(7) An individual with a disability; or

(8) An individual who requires additional assistance to complete an educational program or to secure or hold employment.

§ 681.230 What does "school" refer to in the "not attending or attending any school" in the out-of-school and in-school eligibility criteria?

In general, the applicable State law for secondary and postsecondary institutions defines "school." However, for purposes of WIOA, the Department does not consider providers of adult education under title II of WIOA, YouthBuild programs, the Job Corps program, high school equivalency programs, or dropout re-engagement programs to be schools. Therefore, in all cases except the one provided below, WIOA youth programs may consider a youth to be an OSY for purposes of WIOA youth program eligibility if he or she attend adult education provided under title II of WIOA, YouthBuild, Job Corps, high school equivalency programs, or dropout re-engagement programs regardless of the funding source of those programs. Youth attending high school equivalency programs funded by the public K–12 school system who are classified by the school system as still enrolled in school are an exception; they are considered ISY.

§ 681.240 When do local youth programs verify dropout status?

Local WIOA youth programs must verify a youth's dropout status at the time of WIOA youth program enrollment. An individual who is out of school at the time of enrollment, and subsequently placed in any school, is an OSY for the purposes of the 75 percent expenditure requirement for OSY throughout his/her participation in the program.

§ 681.250 Who does the low-income eligibility requirement apply to?

(a) For OSY, only those youth who are the recipient of a secondary school diploma or its recognized equivalent and are either basic skills deficient or an English language learner, and youth who require additional assistance to enter or complete an educational program or to secure or hold employment, must be low-income. All other OSY meeting OSY eligibility under § 681.210(c)(1), (2), (4), (5), (6), (7), and (8) are not required to be low-income.

(b) All ISY must be low-income to meet the ISY eligibility criteria, except those that fall under the low-income exception.

(c) WIOA allows a low-income exception where five percent of WIOA youth may be participants who ordinarily would be required to be low-income for eligibility purposes and meet all other eligibility criteria for WIOA youth except the low-income criteria. A program must calculate the five percent based on the percent of newly enrolled youth in the local area's WIOA youth program in a given program year who would ordinarily be required to meet the low-income criteria.

(d) In addition to the criteria in the definition of "low-income individual" in WIOA sec. 3(36), a youth is low-income if he or she receives or is eligible to receive a free or reduced price lunch under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 *et seq.* or if he or she lives in a high poverty area.

§ 681.260 How does the Department define "high poverty area" for the purposes of the special regulation for low-income youth in the Workforce Innovation and Opportunity Act?

A youth who lives in a high poverty area is automatically considered to be a low-income individual. A high poverty area is a Census tract, a set of contiguous Census tracts, an American Indian Reservation, Oklahoma Tribal Statistical Area (as defined by the U.S. Census Bureau), Alaska Native Village Statistical Area or Alaska Native Regional Corporation Area, Native Hawaiian Homeland Area, or other tribal land as defined by the Secretary in guidance or county that has a poverty rate of at least 25 percent as set every 5 years using American Community Survey 5-Year data.

§ 681.270 May a local program use eligibility for free or reduced price lunches under the National School Lunch Program as a substitute for the income eligibility criteria under title I of the Workforce Innovation and Opportunity Act?

Yes, WIOA sec. 3(36) defines a low-income individual to include an individual who receives (or is eligible to receive) a free or reduced price lunch under the Richard B. Russell National School Lunch Act.

§ 681.280 Is a youth with a disability eligible for youth services under the Workforce Innovation and Opportunity Act if his or her family income exceeds the income eligibility criteria?

Yes, for an individual with a disability, income level for eligibility purposes is based on the individual's own income rather than his or her family's income. WIOA sec. 3(36)(A)(vi) states that an individual with a disability whose own income meets the low-income definition in clause (ii) (income that does not exceed the higher of the poverty line or 70 percent of the lower living standard income level), but who is a member of a family whose income exceeds this income requirement is eligible for youth services. Furthermore, only ISY with a disability must be low income. OSY with a disability are not required to be low-income.

§ 681.290 How does the Department define the "basic skills deficient" criterion in this part?

(a) As used in § 681.210(c)(3), a youth is "basic skills deficient" if he or she:

(1) Have English reading, writing, or computing skills at or below the 8th grade level on a generally accepted standardized test; or

(2) Are unable to compute or solve problems, or read, write, or speak English at a level necessary to function on the job, in the individual's family, or in society.

(b) The State or Local WDB must establish its policy on paragraph (a)(2) of this section in its respective State or local plan.

(c) In assessing basic skills, local programs must use assessment instruments that are valid and appropriate for the target population, and must provide reasonable accommodation in the assessment process, if necessary, for individuals with disabilities.

§ 681.300 How does the Department define the "requires additional assistance to enter or complete an educational program, or to secure and hold employment" criterion in this part for OSY?

Either the State or the local level may establish definitions and eligibility documentation requirements for the "requires additional assistance to enter or complete an educational program, or to secure and hold employment" criterion of § 681.210(c)(9). In cases where the State WDB establishes State policy on this criterion, the State WDB must include the definition in the State Plan. In cases where the State WDB does not establish a policy, the Local WDB must establish a policy in its local plan if using this criterion.

§ 681.310 How does the Department define the "requires additional assistance to complete an educational program, or to secure and hold employment" criterion in this part for ISY?

(a) Either the State or the local level may establish definitions and eligibility documentation requirements for the "requires additional assistance to complete an educational program, or to secure and hold employment" criterion of § 681.220(d)(8). In cases where the State WDB establishes State policy on this criterion, the State WDB must include the definition in the State Plan. In cases where the State WDB does not establish a policy, the Local WDB must establish a policy in its local plan if using this criterion.

(b) In each local area, not more than five percent of the ISY newly enrolled in a given program year may be eligible based on the "requires additional assistance to complete an educational program or to secure or hold employment" criterion.

§ 681.320 Must youth participants enroll to participate in the youth program?

(a) Yes, to participate in youth programs, participants must enroll in the WIOA youth program.

(b) In order to be a participant in the WIOA youth program, all of the following must occur:

(1) An eligibility determination;

(2) The provision of an objective assessment;

(3) Development of an individual service strategy; and

(4) Participation in any of the 14 WIOA youth program elements.

Subpart C—Youth Program Design, Elements, and Parameters

§ 681.400 What is the process used to select eligible youth service providers?

(a) The grant recipient/fiscal agent has the option to provide directly some or all of the youth workforce investment activities.

(b) However, as provided in WIOA sec. 123, if a Local WDB chooses to award grants or contracts to youth service providers to carry out some or all of the youth workforce investment activities, the Local WDB must award such grants or contracts on a competitive basis, subject to the exception explained in paragraph (b)(4) of this section:

(1) The Local WDB must identify youth service providers based on criteria established in the State Plan (including such quality criteria established by the Governor for a training program that leads to a recognized postsecondary credential) and take into consideration the ability of the provider to meet performance accountability measures based on the primary indicators of performance for youth programs.

(2) The Local WDB must procure the youth service providers in accordance with the Uniform Guidance at 2 CFR parts 200 and 2900, in addition to applicable State and local procurement laws.

(3) If the Local WDB establishes a standing youth committee under § 681.100 it may assign the committee the function of selecting of grants or contracts.

(4) Where the Local WDB determines there are an insufficient number of eligible youth providers in the local area, such as a rural area, the Local WDB may award grants or contracts on a sole source basis.

§ 681.410 Does the requirement that a State and local area expend at least 75 percent of youth funds to provide services to out-of-school youth apply to all youth funds?

Yes. The 75 percent requirement applies to both statewide youth activities funds and local youth funds with 2 exceptions.

(a) Only statewide funds spent on direct services to youth are subject to the OSY expenditure requirement. Funds spent on statewide youth activities that do not provide direct services to youth, such as most of the required statewide youth activities listed in WIOA sec. 129(b)(1), are not subject to the OSY expenditure requirement. For example, administrative costs, monitoring, and technical assistance are not subject to OSY expenditure requirement; while funds spent on direct services to youth such as statewide demonstration projects, are subject to the OSY expenditure requirement.

(b) For a State that receives a small State minimum allotment under WIOA sec. 127(b)(1)(C)(iv)(II) for youth or WIOA sec. 132(b)(1)(B)(iv)(II) for adults, the State may submit a request to the Secretary to decrease the percentage to not less than 50 percent for a local area in the State, and the Secretary may approve such a request for that program year, if the State meets the following requirements:

(1) After an analysis of the ISY and OSY populations in the local area, the State determines that the local area will be unable to use at least 75 percent of the local area WIOA youth funds to serve OSY due to a low number of OSY; and

(2) The State submits to the Secretary, for the local area, a request including a proposed percentage decreased to not less than 50 percent to provide workforce investment activities for OSY.

(c) In the exercise of discretion afforded by WIOA sec. 129(a)(4), the Secretary has determined that requests to decrease the percentage of funds used to provide youth workforce investment activities for OSY will not be granted to States that received 90 percent of the allotment percentage for the past year. Therefore, when the Secretary receives such a request from a State, the request will be denied.

(d) For local area funds, the administrative costs of carrying out local workforce investment activities described in WIOA sec. 128(b)(4) are not subject to the OSY expenditure requirement. All other local area youth funds beyond the administrative costs are subject to the OSY expenditure requirement.

§ 681.420 How must Local Workforce Development Boards design Workforce Innovation and Opportunity Act youth programs?

(a) The design framework services of local youth programs must:

(1) Provide for an objective assessment of each youth participant that meets the requirements of WIOA sec. 129(c)(1)(A), and includes a review of the academic and occupational skill levels, as well as the service needs and strengths, of each youth for the purpose of identifying appropriate services and career pathways for participants and informing the individual service strategy;

(2) Develop, and update as needed, an individual service strategy based on the needs of each youth participant that is directly linked to one or more indicators of performance described in WIOA sec. 116(b)(2)(A)(ii), that identifies career pathways that include education and employment goals, that considers career planning and the results of the objective assessment and that prescribes

achievement objectives and services for the participant; and

(3) Provide case management of youth participants, including follow-up services.

(b) The local plan must describe the design framework for youth programs in the local area, and how the 14 program elements required in § 681.460 are to be made available within that framework.

(c) Local WDBs must ensure appropriate links to entities that will foster the participation of eligible local area youth. Such links may include connections to:

(1) Local area justice and law enforcement officials;

(2) Local public housing authorities;

(3) Local education agencies;

(4) Local human service agencies;

(5) WIOA title II adult education providers;

(6) Local disability-serving agencies and providers and health and mental health providers;

(7) Job Corps representatives; and

(8) Representatives of other area youth initiatives, such as YouthBuild, and including those that serve homeless youth and other public and private youth initiatives.

(d) Local WDBs must ensure that WIOA youth service providers meet the referral requirements in WIOA sec. 129(c)(3)(A) for all youth participants, including:

(1) Providing these participants with information about the full array of applicable or appropriate services available through the Local WDBs or other eligible providers, or one-stop partners; and

(2) Referring these participants to appropriate training and educational programs that have the capacity to serve them either on a sequential or concurrent basis.

(e) If a youth applies for enrollment in a program of workforce investment activities and either does not meet the enrollment requirements for that program or cannot be served by that program, the eligible training provider of that program must ensure that the youth is referred for further assessment, if necessary, or referred to appropriate programs to meet the skills and training needs of the youth.

(f) In order to meet the basic skills and training needs of applicants who do not meet the eligibility requirements of a particular program or who cannot be served by the program, each youth provider must ensure that these youth are referred:

(1) For further assessment, as necessary; and

(2) To appropriate programs, in accordance with paragraph (d)(2) of this section.

(g) Local WDBs must ensure that parents, youth participants, and other members of the community with experience relating to youth programs are involved in both the design and implementation of its youth programs.

(h) The objective assessment required under paragraph (a)(1) of this section or the individual service strategy required under paragraph (a)(2) of this section is not required if the program provider determines that it is appropriate to use a recent objective assessment or individual service strategy that was developed under another education or training program.

(i) The Local WDBs may implement a WIOA Pay-for-Performance contract strategy for program elements described at § 681.460, for which the Local WDB may reserve and use not more than 10 percent of the total funds allocated to the local area under WIOA sec. 128(b). For additional regulations on WIOA Pay-for-Performance contract strategies, see § 683.500 of this chapter.

§ 681.430 May youth participate in both the Workforce Innovation and Opportunity Act (WIOA) youth and adult programs concurrently, and how do local program operators track concurrent enrollment in the WIOA youth and adult programs?

(a) Yes, individuals who meet the respective program eligibility requirements may participate in adult and youth programs concurrently. Such individuals must be eligible under the youth or adult eligibility criteria applicable to the services received. Local program operators may determine, for these individuals, the appropriate level and balance of services under the youth and adult programs.

(b) Local program operators must identify and track the funding streams which pay the costs of services provided to individuals who are participating in youth and adult programs concurrently, and ensure no duplication of services.

(c) Individuals who meet the respective program eligibility requirements for WIOA youth title I and title II may participate in title I youth and title II concurrently.

§ 681.440 How does a local youth program determine if an 18 to 24 year old is enrolled in the Workforce Innovation and Opportunity Act (WIOA) youth program or the WIOA adult program?

A local program must determine the appropriate program for the participant based on the service needs of the participant and if the participant is career-ready based on an assessment of their occupational skills, prior work experience, employability, and the participant's needs.

§ 681.450 For how long must a local Workforce Innovation and Opportunity Act youth program serve a participant?

Local youth programs must provide service to a participant for the amount of time necessary to ensure successful preparation to enter postsecondary education and/or unsubsidized employment. While there is no minimum or maximum time a youth can participate in the WIOA youth program, programs must link participation to the individual service strategy and not the timing of youth service provider contracts or program years.

§ 681.460 What services must local programs offer to youth participants?

(a) Local programs must make each of the following 14 services available to youth participants:

(1) Tutoring, study skills training, instruction and evidence-based dropout prevention and recovery strategies that lead to completion of the requirements for a secondary school diploma or its recognized equivalent (including a recognized certificate of attendance or similar document for individuals with disabilities) or for a recognized postsecondary credential;

(2) Alternative secondary school services, or dropout recovery services, as appropriate;

(3) Paid and unpaid work experiences that have academic and occupational education as a component of the work experience, which may include the following types of work experiences:

(i) Summer employment opportunities and other employment opportunities available throughout the school year;

(ii) Pre-apprenticeship programs;

(iii) Internships and job shadowing; and

(iv) On-the-job training opportunities;

(4) Occupational skill training, which includes priority consideration for training programs that lead to recognized postsecondary credentials that align with in-demand industry sectors or occupations in the local area involved, if the Local WDB determines that the programs meet the quality criteria described in WIOA sec. 123;

(5) Education offered concurrently with and in the same context as workforce preparation activities and training for a specific occupation or occupational cluster;

(6) Leadership development opportunities, including community service and peer-centered activities encouraging responsibility and other positive social and civic behaviors;

(7) Supportive services, including the services listed in § 681.570;

(8) Adult mentoring for a duration of at least 12 months, that may occur both during and after program participation;

(9) Follow-up services for not less than 12 months after the completion of participation, as provided in § 681.580;

(10) Comprehensive guidance and counseling, which may include drug and alcohol abuse counseling, as well as referrals to counseling, as appropriate to the needs of the individual youth;

(11) Financial literacy education;

(12) Entrepreneurial skills training;

(13) Services that provide labor market and employment information about in-demand industry sectors or occupations available in the local area, such as career awareness, career counseling, and career exploration services; and

(14) Activities that help youth prepare for and transition to postsecondary education and training.

(b) Local programs have the discretion to determine what specific program services a youth participant receives, based on each participant's objective assessment and individual service strategy. Local programs are not required to provide every program service to each participant.

(c) When available, the Department encourages local programs to partner with existing local, State, or national entities that can provide program element(s) at no cost to the local youth program.

§ 681.470 Does the Department require local programs to use Workforce Innovation and Opportunity Act funds for each of the 14 program elements?

No. The Department does not require local programs to use WIOA youth funds for each of the program elements. Local programs may leverage partner resources to provide some of the readily available program elements. However, the local area must ensure that if a program element is not funded with WIOA title I youth funds, the local program has an agreement in place with a partner organization to ensure that the program element will be offered. The Local WDB must ensure that the program element is closely connected and coordinated with the WIOA youth program.

§ 681.480 What is a pre-apprenticeship program?

A pre-apprenticeship is a program designed to prepare individuals to enter and succeed in an apprenticeship program registered under the Act of August 16, 1937 (commonly known as the "National Apprenticeship Act"; 50 Stat. 664, chapter 663; 29 U.S.C. 50 *et. seq.*) (referred to in this part as a "registered apprenticeship" or "registered apprenticeship program") and includes the following elements:

(a) Training and curriculum that aligns with the skill needs of employers in the economy of the State or region involved;

(b) Access to educational and career counseling and other supportive services, directly or indirectly;

(c) Hands-on, meaningful learning activities that are connected to education and training activities, such as exploring career options, and understanding how the skills acquired through coursework can be applied toward a future career;

(d) Opportunities to attain at least one industry-recognized credential; and

(e) A partnership with one or more registered apprenticeship programs that assists in placing individuals who complete the pre-apprenticeship program in a registered apprenticeship program.

§ 681.490 What is adult mentoring?

(a) Adult mentoring for youth must:

(1) Last at least 12 months and may take place both during the program and following exit from the program;

(2) Be a formal relationship between a youth participant and an adult mentor that includes structured activities where the mentor offers guidance, support, and encouragement to develop the competence and character of the mentee; and

(3) While group mentoring activities and mentoring through electronic means are allowable as part of the mentoring activities, at a minimum, the local youth program must match the youth with an individual mentor with whom the youth interacts on a face-to-face basis.

(b) Mentoring may include workplace mentoring where the local program matches a youth participant with an employer or employee of a company.

§ 681.500 What is financial literacy education?

The financial literacy education program element may include activities which:

(a) Support the ability of participants to create budgets, initiate checking and savings accounts at banks, and make informed financial decisions;

(b) Support participants in learning how to effectively manage spending, credit, and debt, including student loans, consumer credit, and credit cards;

(c) Teach participants about the significance of credit reports and credit scores; what their rights are regarding their credit and financial information; how to determine the accuracy of a credit report and how to correct inaccuracies; and how to improve or maintain good credit;

(d) Support a participant's ability to understand, evaluate, and compare financial products, services, and opportunities and to make informed financial decisions;

(e) Educate participants about identity theft, ways to protect themselves from identify theft, and how to resolve cases of identity theft and in other ways understand their rights and protections related to personal identity and financial data;

(f) Support activities that address the particular financial literacy needs of non-English speakers, including providing the support through the development and distribution of multilingual financial literacy and education materials;

(g) Support activities that address the particular financial literacy needs of youth with disabilities, including connecting them to benefits planning and work incentives counseling;

(h) Provide financial education that is age appropriate, timely, and provides opportunities to put lessons into practice, such as by access to safe and affordable financial products that enable money management and savings; and

(i) Implement other approaches to help participants gain the knowledge, skills, and confidence to make informed financial decisions that enable them to attain greater financial health and stability by using high quality, age-appropriate, and relevant strategies and channels, including, where possible, timely and customized information, guidance, tools, and instruction.

§ 681.510 What is comprehensive guidance and counseling?

Comprehensive guidance and counseling provides individualized counseling to participants. This includes drug and alcohol abuse counseling, mental health counseling, and referral to partner programs, as appropriate. When referring participants to necessary counseling that cannot be provided by the local youth program or its service providers, the local youth program must coordinate with the organization it refers to in order to ensure continuity of service.

§ 681.520 What are leadership development opportunities?

Leadership development opportunities are opportunities that encourage responsibility, confidence, employability, self-determination, and other positive social behaviors such as:

(a) Exposure to postsecondary educational possibilities;

(b) Community and service learning projects;

(c) Peer-centered activities, including peer mentoring and tutoring;

(d) Organizational and team work training, including team leadership training;

(e) Training in decision-making, including determining priorities and problem solving;

(f) Citizenship training, including life skills training such as parenting and work behavior training;

(g) Civic engagement activities which promote the quality of life in a community; and

(h) Other leadership activities that place youth in a leadership role such as serving on youth leadership committees, such as a Standing Youth Committee.

§ 681.530 What are positive social and civic behaviors?

Positive social and civic behaviors are outcomes of leadership opportunities, which are incorporated by local programs as part of their menu of services. Positive social and civic behaviors focus on areas that may include the following:

(a) Positive attitudinal development;

(b) Self-esteem building;

(c) Openness to work with individuals from diverse backgrounds;

(d) Maintaining healthy lifestyles, including being alcohol- and drug-free;

(e) Maintaining positive social relationships with responsible adults and peers, and contributing to the well-being of one's community, including voting;

(f) Maintaining a commitment to learning and academic success;

(g) Avoiding delinquency; and

(h) Positive job attitudes and work skills.

§ 681.540 What is occupational skills training?

(a) The Department defines occupational skills training as an organized program of study that provides specific vocational skills that lead to proficiency in performing actual tasks and technical functions required by certain occupational fields at entry, intermediate, or advanced levels. Local areas must give priority consideration to training programs that lead to recognized postsecondary credentials that align with in-demand industry sectors or occupations in the local area. Such training must:

(1) Be outcome-oriented and focused on an occupational goal specified in the individual service strategy;

(2) Be of sufficient duration to impart the skills needed to meet the occupational goal; and

(3) Lead to the attainment of a recognized postsecondary credential.

(b) The chosen occupational skills training must meet the quality standards in WIOA sec. 123.

§ 681.550 Are Individual Training Accounts permitted for youth participants?

Yes. In order to enhance individual participant choice in their education and training plans and provide flexibility to service providers, the Department allows WIOA Individual Training Accounts (ITAs) for OSY, ages 16 to 24 using WIOA youth funds when appropriate.

§ 681.560 What is entrepreneurial skills training and how is it taught?

Entrepreneurial skills training provides the basics of starting and operating a small business.

(a) Such training must develop the skills associated with entrepreneurship. Such skills may include, but are not limited to, the ability to:

(1) Take initiative;

(2) Creatively seek out and identify business opportunities;

(3) Develop budgets and forecast resource needs;

(4) Understand various options for acquiring capital and the trade-offs associated with each option; and

(5) Communicate effectively and market oneself and one's ideas.

(b) Approaches to teaching youth entrepreneurial skills include, but are not limited to, the following:

(1) Entrepreneurship education that provides an introduction to the values and basics of starting and running a business. Entrepreneurship education programs often guide youth through the development of a business plan and also may include simulations of business start-up and operation.

(2) Enterprise development which provides supports and services that incubate and help youth develop their own businesses. Enterprise development programs go beyond entrepreneurship education by helping youth access small loans or grants that are needed to begin business operation and by providing more individualized attention to the development of viable business ideas.

(3) Experiential programs that provide youth with experience in the day-to-day operation of a business. These programs may involve the development of a youth-run business that young people participating in the program work in and manage. Or, they may facilitate placement in apprentice or internship positions with adult entrepreneurs in the community.

§ 681.570 What are supportive services for youth?

Supportive services for youth, as defined in WIOA sec. 3(59), are services that enable an individual to participate in WIOA activities. These services include, but are not limited to, the following:

(a) Linkages to community services;

(b) Assistance with transportation;

(c) Assistance with child care and dependent care;

(d) Assistance with housing;

(e) Needs-related payments;

(f) Assistance with educational testing;

(g) Reasonable accommodations for youth with disabilities;

(h) Legal aid services;

(i) Referrals to health care;

(j) Assistance with uniforms or other appropriate work attire and work-related tools, including such items as eyeglasses and protective eye gear;

(k) Assistance with books, fees, school supplies, and other necessary items for students enrolled in postsecondary education classes; and

(l) Payments and fees for employment and training-related applications, tests, and certifications.

§ 681.580 What are follow-up services for youth?

(a) Follow-up services are critical services provided following a youth's exit from the program to help ensure the youth is successful in employment and/or postsecondary education and training. Follow-up services may include regular contact with a youth participant's employer, including assistance in addressing work-related problems that arise.

(b) Follow-up services for youth also may include the following program elements:

(1) Supportive services;

(2) Adult mentoring;

(3) Financial literacy education;

(4) Services that provide labor market and employment information about in-demand industry sectors or occupations available in the local area, such as career awareness, career counseling, and career exploration services; and

(5) Activities that help youth prepare for and transition to postsecondary education and training.

(c) All youth participants must be offered an opportunity to receive follow-up services that align with their individual service strategies. Furthermore, follow-up services must be provided to all participants for a minimum of 12 months unless the participant declines to receive follow-up services or the participant cannot be located or contacted. Follow-up services

may be provided beyond 12 months at the State or Local WDB's discretion. The types of services provided and the duration of services must be determined based on the needs of the individual and therefore, the type and intensity of follow-up services may differ for each participant. Follow-up services must include more than only a contact attempted or made for securing documentation in order to report a performance outcome.

§ 681.590 What is the work experience priority and how will local youth programs track the work experience priority?

(a) Local youth programs must expend not less than 20 percent of the funds allocated to them to provide ISY and OSY with paid and unpaid work experiences that fall under the categories listed in § 681.460(a)(3) and further defined in § 681.600.

(b) Local WIOA youth programs must track program funds spent on paid and unpaid work experiences, including wages and staff costs for the development and management of work experiences, and report such expenditures as part of the local WIOA youth financial reporting. The percentage of funds spent on work experience is calculated based on the total local area youth funds expended for work experience rather than calculated separately for ISY and OSY. Local area administrative costs are not subject to the 20 percent minimum work experience expenditure requirement.

§ 681.600 What are work experiences?

(a) Work experiences are a planned, structured learning experience that takes place in a workplace for a limited period of time. Work experience may be paid or unpaid, as appropriate. A work experience may take place in the private for-profit sector, the non-profit sector, or the public sector. Labor standards apply in any work experience where an employee/employer relationship, as defined by the Fair Labor Standards Act or applicable State law, exists. Consistent with § 680.840 of this chapter, funds provided for work experiences may not be used to directly or indirectly aid in the filling of a job opening that is vacant because the former occupant is on strike, or is being locked out in the course of a labor dispute, or the filling of which is otherwise an issue in a labor dispute involving a work stoppage. Work experiences provide the youth participant with opportunities for career exploration and skill development.

(b) Work experiences must include academic and occupational education. The educational component may occur concurrently or sequentially with the work experience. Further academic and occupational education may occur inside or outside the work site.

(c) The types of work experiences include the following categories:

(1) Summer employment opportunities and other employment opportunities available throughout the school year;

(2) Pre-apprenticeship programs;

(3) Internships and job shadowing; and

(4) On-the-job training (OJT) opportunities as defined in WIOA sec. 3(44) and in § 680.700 of this chapter.

§ 681.610 Does the Workforce Innovation and Opportunity Act require Local Workforce Development Boards to offer summer employment opportunities in the local youth program?

No, WIOA does not require Local WDBs to offer summer youth employment opportunities as summer employment is no longer its own program element under WIOA. However, WIOA does require Local WDBs to offer work experience opportunities using at least 20 percent of their funding, which may include summer employment.

§ 681.620 How are summer employment opportunities administered?

Summer employment opportunities are a component of the work experience program element. If youth service providers administer the work experience program element, they must be selected by the Local WDB according to the requirements of WIOA sec. 123 and § 681.400, based on criteria contained in the State Plan. However, the summer employment administrator does not need to select the employers who are providing the employment opportunities through a competitive process.

§ 681.630 What does education offered concurrently with and in the same context as workforce preparation activities and training for a specific occupation or occupational cluster mean?

This program element reflects an integrated education and training model and describes how workforce preparation activities, basic academic skills, and hands-on occupational skills training are to be taught within the same time frame and connected to training in a specific occupation, occupational cluster, or career pathway.

§ 681.640 Are incentive payments to youth participants permitted?

Yes, incentive payments to youth participants are permitted for recognition and achievement directly tied to training activities and work experiences. The local program must have written policies and procedures in place governing the award of incentives and must ensure that such incentive payments are:

(a) Tied to the goals of the specific program;

(b) Outlined in writing before the commencement of the program that may provide incentive payments;

(c) Align with the local program's organizational policies; and

(d) Are in accordance with the requirements contained in 2 CFR part 200.

§ 681.650 How can parents, youth, and other members of the community get involved in the design and implementation of local youth programs?

Local WDBs and programs must provide opportunities for parents, participants, and other members of the community with experience working with youth to be involved in the design and implementation of youth programs. Parents, youth participants, and other members of the community can get involved in a number of ways, including serving on youth standing committees, if they exist and they are appointed by the Local WDB. They also can get involved by serving as mentors, serving as tutors, and providing input into the design and implementation of other program design elements. Local WDBs also must make opportunities available to successful participants to volunteer to help participants as mentors, tutors, or in other activities.

Subpart D—One-Stop Services to Youth

§ 681.700 What is the connection between the youth program and the one-stop delivery system?

(a) WIOA sec. 121(b)(1)(B)(i) requires that the youth program function as a required one-stop partner and fulfill the roles and responsibilities of a one-stop partner described in WIOA sec. 121(b)(1)(A).

(b) In addition to the provisions of part 678 of this chapter, connections between the youth program and the one-stop delivery system may include those that facilitate:

(1) The coordination and provision of youth activities;

(2) Linkages to the job market and employers;

(3) Access for eligible youth to the information and services required in § 681.460;

(4) Services for non-eligible youth such as basic labor exchange services, other self-service activities such as job searches, career exploration, use of one-

stop center resources, and referral as appropriate; and

(5) Other activities described in WIOA sec. 129(b)–(c).

(c) Local WDBs must either colocate WIOA youth program staff at one-stop centers and/or ensure one-stop centers and staff are trained to serve youth and equipped to advise youth to increase youth access to services and connect youth to the program that best aligns with their needs.

§ 681.710 Do Local Workforce Development Boards have the flexibility to offer services to area youth who are not eligible under the youth program through the one-stop centers?

Yes. However, Local WDBs must ensure one-stop centers fund services for non-eligible youth through programs authorized to provide services to such youth. For example, one-stop centers may provide basic labor exchange services under the Wagner-Peyser Act to any youth.

■ 15. Add part 682 to read as follows:

PART 682—STATEWIDE ACTIVITIES UNDER TITLE I OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT

Subpart A—General Description

Sec.

682.100 What are the statewide employment and training activities under title I of the Workforce Innovation and Opportunity Act?
682.110 How are statewide employment and training activities funded?

Subpart B—Required and Allowable Statewide Employment and Training Activities

Sec.

682.200 What are required statewide employment and training activities?
682.210 What are allowable statewide employment and training activities?
682.220 What are States' responsibilities in regard to evaluations?

Subpart C—Rapid Response Activities

Sec.

682.300 What is rapid response, and what is its purpose?
682.302 Under what circumstances must rapid response services be delivered?
682.305 How does the Department define the term "mass layoff" for the purposes of rapid response?
682.310 Who is responsible for carrying out rapid response activities?
682.320 What is layoff aversion, and what are appropriate layoff aversion strategies and activities?
682.330 What rapid response activities are required?
682.340 May other activities be undertaken as part of rapid response?
682.350 What is meant by "provision of additional assistance" in the Workforce Innovation and Opportunity Act?
682.360 What rapid response, layoff aversion, or other information will States be required to report to the Employment and Training Administration?
682.370 What are the statewide activities for which rapid response funds remaining unobligated after the first program year for which the funds were allotted may be used by the State?

Authority: Secs. 129, 134, 189, 503, Pub. L. 113–128, 128 Stat. 1425 (Jul. 22, 2014).

Subpart A—General Description

§ 682.100 What are the statewide employment and training activities under title I of the Workforce Innovation and Opportunity Act?

Statewide employment and training activities include those activities for adults and dislocated workers, as described in WIOA sec. 134(a), and statewide youth activities, as described in the Workforce Innovation and Opportunity Act (WIOA) sec. 129(b). They include both required and allowable activities. In accordance with the requirements of this subpart, the State may develop policies and strategies for use of statewide employment and training funds. Descriptions of these policies and strategies must be included in the State Plan.

§ 682.110 How are statewide employment and training activities funded?

(a) Except for the statewide rapid response activities described in paragraph (c) of this section, statewide employment and training activities are supported by funds reserved by the Governor under WIOA sec. 128(a).

(b) Funds reserved by the Governor for statewide workforce investment activities may be combined and used for any of the activities authorized in WIOA sec. 129(b), 134(a)(2)(B), or 134(a)(3)(A) (which are described in §§ 682.200 and 682.210), regardless of whether the funds were allotted through the youth, adult, or dislocated worker funding streams.

(c) Funds for statewide rapid response activities are reserved under WIOA sec.133(a)(2) and may be used to provide the activities authorized at WIOA sec. 134(a)(2)(A) (which are described in §§ 682.310 through 682.330).

Subpart B—Required and Allowable Statewide Employment and Training Activities

§ 682.200 What are required statewide employment and training activities?

Required statewide employment and training activities are:

(a) Required rapid response activities, as described in § 682.310;

(b) Disseminating by various means, as provided by WIOA sec. 134(a)(2)(B):

(1) The State list of eligible training providers (including those providing non-traditional training services), for adults and dislocated workers and eligible training providers of registered apprenticeship programs;

(2) Information identifying eligible providers of on-the-job training (OJT), customized training, incumbent worker training (see § 680.790 of this chapter), internships, paid or unpaid work experience opportunities (see § 680.180 of this chapter) and transitional jobs (see § 680.190 of this chapter);

(3) Information on effective outreach and partnerships with business;

(4) Information on effective service delivery strategies and promising practices to serve workers and job seekers;

(5) Performance information and information on the cost of attendance, including tuition and fees, consistent with the requirements of §§ 680.490 and 680.530 of this chapter;

(6) A list of eligible providers of youth activities as described in WIOA sec. 123; and

(7) Information of physical and programmatic accessibility for individuals with disabilities;

(c) States must assure that the information listed in paragraphs (b)(1) through (7) of this section is widely available;

(d) Conducting evaluations under WIOA sec. 116(e), consistent with the requirements found under § 682.220;

(e) Providing technical assistance to State entities and agencies, local areas, and one-stop partners in carrying out activities described in the State Plan, including coordination and alignment of data systems used to carry out the requirements of this Act;

(f) Assisting local areas, one-stop operators, one-stop partners, and eligible providers, including development of staff, including staff training to provide opportunities for individuals with barriers to employment to enter in-demand industry sectors or occupations and nontraditional occupations, and the development of exemplary program activities;

(g) Assisting local areas for carrying out the regional planning and service delivery efforts required under WIOA sec. 106(c);

(h) Assisting local areas by providing information on and support for the effective development, convening, and implementation of industry and sector partnerships;

(i) Providing technical assistance to local areas that fail to meet the adjusted

8410–01–279–7736—Skirt, Gabardine, Lined, Marine Corps, Women's, Blue, 10S
8410–01–279–7737—Skirt, Gabardine, Lined, Marine Corps, Women's, Blue, 10R
8410–01–279–7738—Skirt, Gabardine, Lined, Marine Corps, Women's, Blue, 10L
8410–01–279–7739—Skirt, Gabardine, Lined, Marine Corps, Women's, Blue, 12S
8410–01–279–7740—Skirt, Gabardine, Lined, Marine Corps, Women's, Blue, 12R
8410–01–279–7741—Skirt, Gabardine, Lined, Marine Corps, Women's, Blue, 12L
8410–01–279–7742—Skirt, Gabardine, Lined, Marine Corps, Women's, Blue, 14S
8410–01–279–7743—Skirt, Gabardine, Lined, Marine Corps, Women's, Blue, 14R
8410–01–279–7744—Skirt, Gabardine, Lined, Marine Corps, Women's, Blue, 14L
8410–01–279–7745—Skirt, Gabardine, Lined, Marine Corps, Women's, Blue, 16S
8410–01–279–7746—Skirt, Gabardine, Lined, Marine Corps, Women's, Blue, 16R
8410–01–279–7747—Skirt, Gabardine, Lined, Marine Corps, Women's, Blue, 16L
8410–01–279–7748—Skirt, Gabardine, Lined, Marine Corps, Women's, Blue, 18S
8410–01–279–7749—Skirt, Gabardine, Lined, Marine Corps, Women's, Blue, 18R
8410–01–279–7750—Skirt, Gabardine, Lined, Marine Corps, Women's, Blue, 18L
8410–01–279–7751—Skirt, Gabardine, Lined, Marine Corps, Women's, Blue, 20S
8410–01–279–7752—Skirt, Gabardine, Lined, Marine Corps, Women's, Blue, 20R
8410–01–279–7753—Skirt, Gabardine, Lined, Marine Corps, Women's, Blue, 20L

Contracting Activity: Defense Logistics Agency Troop Support

NSN(s)—Product Name(s):
7520–01–385–7362—Pencil, Mechanical, Side Action, Green Barrel, 0.7 mm
7520–01–354–2305—Pencil, Mechanical, Push Action, Red Barrel and Lead, Extra Bold Point (1.1 mm)

Mandatory Source(s) of Supply: San Antonio Lighthouse for the Blind, San Antonio, TX

Contracting Activity: General Services Administration, New York, NY

NSN(s)—Product Name(s):
7510–01–443–2121—Toner, Cartridges, New
7510–00–NIB–0633—Skilcraft Toner Cartridge
7510–00–NIB–0642—Skilcraft Toner Cartridge

Mandatory Source(s) of Supply: Alabama Industries for the Blind, Talladega, AL

Contracting Activity: General Services Administration, New York, NY

NSN(s)—Product Name(s):
7045–01–599–5322—Glare Shield for iPhone
7045–01–599–5271—Glare Shield for Blackberry Bold
7045–01–599–5273—Glare Shield for Blackberry Storm2
7045–01–599–5290—Glare Shield for Blackberry Curve2
7045–01–599–5275—Universal PDA Glare Shield
7045–01–599–5287—Privacy Shield for iPhone
7045–01–599–5276—Privacy Shield for Blackberry Bold
7045–01–599–5278—Privacy Shield for Blackberry Storm2
7045–01–599–5285—Privacy Shield for Blackberry Curve2
7045–01–599–5282—Privacy Shield for PDA, Universal

Mandatory Source(s) of Supply: Wiscraft, Inc., Milwaukee, WI

Contracting Activity: General Services Administration, New York, NY

NSN(s)—Product Name(s):
7110–00–194–1611—Rotary Drafting Stool—Faux Leather
7110–00–281–4469—Rotary Drafting Stool—Upholstered

Contracting Activity: General Services Administration, Philadelphia, PA

NSN(s)—Product Name(s):
7210–00–NIB–0160—Pillow, Medical, White, 26″ x 20″
7210–00–NIB–0161—Pillow, Medical, Blue, 26″ x 20″
7210–00–NIB–0162—Pillow, Bed, Flame Resistant, Pink, 26″ x 20″

Mandatory Source(s) of Supply: Blind Industries & Services of Maryland, Baltimore, MD

Contracting Activity: Department of Veterans Affairs

NSN(s)—Product Name(s):
5970–01–245–7042—Tape, Electrical Insulation, Black, 1″ W x 108 ft

Mandatory Source(s) of Supply: Cincinnati Association for the Blind, Cincinnati, OH
Blind Industries & Services of Maryland, Baltimore, MD

NSN(s)—Product Name(s):
5970–01–560–5355—Tape, Insulation, Electrical, High Voltage, Black, 2″ x 108′

Mandatory Source(s) of Supply: Blind Industries & Services of Maryland, Baltimore, MD

Contracting Activity: Defense Logistics Agency Aviation

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2016–19842 Filed 8–18–16; 8:45 am]

BILLING CODE 6353–01–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2010–0041]

Collection of Information; Proposed Extension of Approval; Comment Request—Publicly Available Consumer Product Safety Information Database

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. Chapter 35), the Consumer Product Safety Commission (CPSC or Commission) requests comments on a proposed extension of approval of a collection of information for the Publicly Available Consumer Product Safety Information Database. The Commission will consider all comments received in response to this notice before requesting an extension of approval of this collection of information from the Office of Management and Budget (OMB).

DATES: Submit written or electronic comments on the collection of information by October 18, 2016.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2010–0041, by any of the following methods:

You may submit comments, identified by Docket No. CPSC–2010–0041, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: *http://www.regulations.gov.* Follow the instructions for submitting comments. The Commission does not accept comments submitted by electronic mail (email), except through *www.regulations.gov.* The Commission encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Written Submissions: Submit written submissions by mail/hand delivery/courier to: Office of the Secretary, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to: *http://www.regulations.gov.* Do not submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to

levels of performance agreed to under § 677.210 of this chapter;

(j) Carrying out monitoring and oversight of activities for services to youth, adults, and dislocated workers under WIOA title I, and which may include a review comparing the services provided to male and female youth;

(k) Providing additional assistance to local areas that have a high concentration of eligible youth; and

(l) Operating a fiscal and management accountability information system, based on guidelines established by the Secretary.

§ 682.210 What are allowable statewide employment and training activities?

Allowable statewide employment and training activities may include:

(a) State administration of the adult, dislocated worker and youth workforce investment activities, consistent with the five percent administrative cost limitation at WIOA sec. 134(a)(3)(B) and § 683.205(a)(1) of this chapter;

(b) Developing and implementing innovative programs and strategies designed to meet the needs of all employers (including small employers) in the State, including the programs and strategies referenced in WIOA sec. 134(a)(3)(A)(i);

(c) Developing strategies for serving individuals with barriers to employment, and for coordinating programs and services among one-stop partners;

(d) Development or identification of education and training programs that have the characteristics referenced in WIOA sec. 134(a)(3)(A)(iii);

(e) Implementing programs to increase the number of individuals training for and placed in non-traditional employment;

(f) Conducting research and demonstrations related to meeting the employment and education needs of youth, adults and dislocated workers;

(g) Supporting the development of alternative, evidence-based programs, and other activities that enhance the choices available to eligible youth and which encourage youth to reenter and complete secondary education, enroll in postsecondary education and advanced training, progress through a career pathway, and enter into unsubsidized employment that leads to economic self-sufficiency;

(h) Supporting the provision of career services in the one-stop delivery system in the State as described in § 678.430 of this chapter and WIOA secs. 129(b)(2)(C) and 134(c)(2);

(i) Supporting financial literacy activities as described in § 681.500 of this chapter and WIOA sec. 129(b)(2)(D);

(j) Providing incentive grants to local areas for performance by the local areas on local performance accountability measures;

(k) Providing technical assistance to Local Workforce Development Boards (WDBs), chief elected officials, one-stop operators, one-stop partners, and eligible providers in local areas on the development of exemplary program activities and on the provision of technology to facilitate remote access to services provided through the one-stop delivery system in the State;

(l) Providing technical assistance to local areas that are implementing WIOA Pay-for-Performance contract strategies and conducting evaluations of such strategies. Technical assistance may include providing assistance with data collections, meeting data entry requirements, and identifying level of performance;

(m) Carrying out activities to facilitate remote access to training services provided through the one-stop delivery system;

(n) Activities that include:

(1) Activities to improve coordination of workforce investment activities, with economic development activities; and

(2) Activities to improve coordination of employment and training activities with child support services and activities, cooperative extension programs carried out by the Department of Agriculture, programs carried out by local areas for individuals with disabilities (including the programs identified in WIOA sec. 134(a)(3)(A)(viii)(II)(cc)), adult education and literacy activities including those provided by public libraries, activities in the correction systems to assist ex-offenders in reentering the workforce and financial literacy activities; and

(3) Developing and disseminating workforce and labor market information;

(o) Implementation of promising practices for workers and businesses as described in WIOA sec. 134(a)(3)(A)(x);

(p) Adopting, calculating, or commissioning for approval an economic self-sufficiency standard for the State that specifies the income needs of families, by family size, the number and ages of children in the family, and sub-State geographical considerations;

(q) Developing and disseminating common intake procedures and related items, including registration processes, across core and partner programs; and

(r) Coordinating activities with the child welfare system to facilitate provision of services for children and youth who are eligible for assistance under sec. 477 of the Social Security Act.

§ 682.220 What are States' responsibilities in regard to evaluations?

(a) As required by § 682.200(d), States must use funds reserved by the Governor for statewide activities to conduct evaluations of activities under the WIOA title I core programs in order to promote continuous improvement, research and test innovative services and strategies, and achieve high levels of performance and outcomes.

(b) Evaluations conducted under paragraph (a) of this section must:

(1) Be coordinated with and designed in conjunction with State and Local WDBs and with State agencies responsible for the administration of all core programs;

(2) When appropriate, include analysis of customer feedback and outcome and process measures in the statewide workforce development system;

(3) Use designs that employ the most rigorous analytical and statistical methods that are reasonably feasible, such as the use of control groups; and

(4) To the extent feasible, be coordinated with the evaluations provided for by the Secretary of Labor and the Secretary of Education under WIOA sec. 169 (regarding title I programs and other employment-related programs), WIOA sec. 242(c)(2)(D) (regarding adult education), sec. 12(a)(5), 14, and 107 of the Rehabilitation Act of 1973 (29 U.S.C. 709(a)(5), 711, 727) (applied with respect to programs carried out under title I of that Act (29 U.S.C. 720 *et seq.*)), and the investigations provided by the Secretary of Labor under sec. 10(b) of the Wagner-Peyser Act (29 U.S.C. 49i(b)).

(c) States must annually prepare, submit to the State WDB and Local WDBs in the State, and make available to the public (including by electronic means) reports containing the results, as available, of the evaluations described in paragraph (a) of this section.

(d) States must cooperate, to the extent practicable, in evaluations and related research projects conducted by the Secretaries of Labor and Education under the laws cited in paragraph (b)(4) of this section. Such cooperation must, at a minimum, meet the following requirements:

(1) The timely provision of:

(i) Data, in accordance with appropriate privacy protections established by the Secretary of Labor;

(ii) Responses to surveys;

(iii) Site visits; and

(iv) Data and survey responses from local subgrantees and State and Local WDBs, and assuring that subgrantees and WDBs allow timely site visits;

(2) Encouraging other one-stop partners at local level to cooperate in timely provision of data, survey responses and site visits as listed in paragraphs (d)(1)(i) through (iv) of this section; and

(3) If a State determines that timely cooperation in data provision as described in paragraph (d)(1) of this section is not practicable, the Governor must inform the Secretary in writing and explain the reasons why it is not practicable. In such circumstances, the State must cooperate with the Department in developing a plan or strategy to mitigate or overcome the problems preventing timely provision of data, survey responses, and site visits.

(e) In fulfilling the requirements under paragraphs (a) through (c) of this section, States are permitted, but not required, to:

(1) Conduct evaluations that jointly examine title I core program activities and activities under other core programs in WIOA titles II–IV, as determined through the processes associated with paragraph (b)(1) of this section;

(2) Conduct any type of evaluation similar to those authorized for, or conducted by, the Department of Labor or the Department of Education under the laws cited in paragraph (b)(4) of this section, including process and outcome studies, pilot and demonstration projects that have an evaluative component, analyses of administrative and programmatic data, impact and benefit-cost analyses, and use of rigorous designs to test the efficacy of various interventions; and

(3) Conduct evaluations over multiple program years, involving multiple phases and such tasks and activities as necessary for an evaluation, such as a literature or evidence review, feasibility study, planning, research, coordination, design, data collection, analysis, and report preparation, clearance, and dissemination.

(f) In funding evaluations conducted under paragraph (a) of this section, States are permitted, but not required to:

(1) Use funds from any WIOA title I–IV core program to conduct evaluations, as determined through the processes associated with paragraph (b)(1) of this section; and

(2) Use or combine funds, consistent with Federal and State law, regulation and guidance, from other public or private sources, to conduct evaluations relating to activities under the WIOA title I–IV core programs. Such projects may include those funded by the Department of Labor and other Federal agencies, among other sources.

Subpart C—Rapid Response Activities

§ 682.300 What is rapid response, and what is its purpose?

(a) Rapid response is described in §§ 682.300 through 682.370, and encompasses the strategies and activities necessary to:

(1) Plan for and respond to as quickly as possible following an event described in § 682.302; and

(2) Deliver services to enable dislocated workers to transition to new employment as quickly as possible.

(b) The purpose of rapid response is to promote economic recovery and vitality by developing an ongoing, comprehensive approach to identifying, planning for, responding to layoffs and dislocations, and preventing or minimizing their impacts on workers, businesses, and communities. A successful rapid response system includes:

(1) Informational and direct reemployment services for workers, including but not limited to information and support for filing unemployment insurance claims, information on the impacts of layoff on health coverage or other benefits, information on and referral to career services, reemployment-focused workshops and services, and training;

(2) Delivery of solutions to address the needs of businesses in transition, provided across the business lifecycle (expansion and contraction), including comprehensive business engagement and layoff aversion strategies and activities designed to prevent or minimize the duration of unemployment;

(3) Convening, brokering, and facilitating the connections, networks and partners to ensure the ability to provide assistance to dislocated workers and their families such as home heating assistance, legal aid, and financial advice; and

(4) Strategic planning, data gathering and analysis designed to anticipate, prepare for, and manage economic change.

§ 682.302 Under what circumstances must rapid response services be delivered?

Rapid response must be delivered when one or more of the following circumstances occur:

(a) Announcement or notification of a permanent closure, regardless of the number of workers affected;

(b) Announcement or notification of a mass layoff as defined in § 682.305;

(c) A mass job dislocation resulting from a natural or other disaster; or

(d) The filing of a Trade Adjustment Assistance (TAA) petition.

§ 682.305 How does the Department define the term "mass layoff" for the purposes of rapid response?

For the purposes of rapid response, the term "mass layoff" used throughout this subpart will have occurred when at least one of the following conditions have been met:

(a) A layoff meets the State's definition of mass layoff, as long as the definition does not exceed a minimum threshold of 50 affected workers;

(b) Where a State has not defined a minimum threshold for mass layoff meeting the requirements of paragraph (a) of this section, layoffs affecting 50 or more workers; or

(c) When a Worker Adjustment and Retraining Notification (WARN) Act notice has been filed, regardless of the number of workers affected by the layoff announced.

§ 682.310 Who is responsible for carrying out rapid response activities?

(a) Rapid response activities must be carried out by the State or an entity designated by the State, in conjunction with the Local WDBs, chief elected officials, and other stakeholders, as provided by WIOA secs. 133(a)(2) and 134(a)(2)(A).

(b) States must establish and maintain a rapid response unit to carry out statewide rapid response activities and to oversee rapid response activities undertaken by a designated State entity, Local WDB, or the chief elected officials for affected local areas, as provided under WIOA sec. 134(a)(2)(A)(i)(I).

§ 682.320 What is layoff aversion, and what are appropriate layoff aversion strategies and activities?

(a) Layoff aversion consists of strategies and activities, including those provided in paragraph (b) of this section and §§ 682.330 and 682.340, to prevent or minimize the duration of unemployment resulting from layoffs.

(b) Layoff aversion activities may include:

(1) Providing assistance to employers in managing reductions in force, which may include early identification of firms at risk of layoffs, assessment of the needs of and options for at-risk firms, and the delivery of services to address these needs, as provided by WIOA sec. 134(d)(1)(A)(ix)(II)(cc);

(2) Ongoing engagement, partnership, and relationship-building activities with businesses in the community, in order to create an environment for successful layoff aversion efforts and to enable the provision of assistance to dislocated workers in obtaining reemployment as soon as possible;

(3) Funding feasibility studies to determine if a company's operations

may be sustained through a buyout or other means to avoid or minimize layoffs;

(4) Developing, funding, and managing incumbent worker training programs or other worker upskilling approaches as part of a layoff aversion strategy or activity;

(5) Connecting companies to:

(i) Short-time compensation or other programs designed to prevent layoffs or to reemploy dislocated workers quickly, available under Unemployment Insurance programs;

(ii) Employer loan programs for employee skill upgrading; and

(iii) Other Federal, State, and local resources as necessary to address other business needs that cannot be funded with resources provided under this title;

(6) Establishing linkages with economic development activities at the Federal, State, and local levels, including Federal Department of Commerce programs and available State and local business retention and expansion activities;

(7) Partnering or contracting with business-focused organizations to assess risks to companies, propose strategies to address those risks, implement services, and measure impacts of services delivered;

(8) Conducting analyses of the suppliers of an affected company to assess their risks and vulnerabilities from a potential closing or shift in production of their major customer;

(9) Engaging in proactive measures to identify opportunities for potential economic transition and training needs in growing industry sectors or expanding businesses; and

(10) Connecting businesses and workers to short-term, on-the-job, or customized training programs and registered apprenticeships before or after layoff to help facilitate rapid reemployment.

§ 682.330 What rapid response activities are required?

Rapid response activities must include:

(a) Layoff aversion activities as described in § 682.320, as applicable.

(b) Immediate and on-site contact with the employer, representatives of the affected workers, and the local community, including an assessment of and plans to address the:

(1) Layoff plans and schedule of the employer;

(2) Background and probable assistance needs of the affected workers;

(3) Reemployment prospects for workers; and

(4) Available resources to meet the short and long-term assistance needs of the affected workers.

(c) The provision of information and access to unemployment compensation benefits and programs, such as Short-Time Compensation, comprehensive one-stop delivery system services, and employment and training activities, including information on the TAA program (19 U.S.C. 2271 *et seq.*), Pell Grants, the GI Bill, and other resources.

(d) The delivery of other necessary services and resources including workshops and classes, use of worker transition centers, and job fairs, to support reemployment efforts for affected workers.

(e) Partnership with the Local WDB(s) and chief elected official(s) to ensure a coordinated response to the dislocation event and, as needed, obtain access to State or local economic development assistance. Such coordinated response may include the development of an application for a national dislocated worker grant as provided under part 687 of this chapter.

(f) The provision of emergency assistance adapted to the particular layoff or disaster.

(g) As appropriate, developing systems and processes for:

(1) Identifying and gathering information for early warning of potential layoffs or opportunities for layoff aversion;

(2) Analyzing, and acting upon, data and information on dislocations and other economic activity in the State, region, or local area; and

(3) Tracking outcome and performance data and information related to the activities of the rapid response program.

(h) Developing and maintaining partnerships with other appropriate Federal, State and local agencies and officials, employer associations, technical councils, other industry business councils, labor organizations, and other public and private organizations, as applicable, in order to:

(1) Conduct strategic planning activities to develop strategies for addressing dislocation events and ensuring timely access to a broad range of necessary assistance; and

(2) Develop mechanisms for gathering and exchanging information and data relating to potential dislocations, resources available, and the customization of layoff aversion or rapid response activities, to ensure the ability to provide rapid response services as early as possible.

(i) Delivery of services to worker groups for which a petition for Trade Adjustment Assistance has been filed.

(j) The provision of additional assistance, as described in § 682.350, to local areas that experience disasters, mass layoffs, or other dislocation events when such events exceed the capacity of the local area to respond with existing resources as provided under WIOA sec. 134(a)(2)(A)(i)(II).

(k) Provision of guidance and financial assistance as appropriate, in establishing a labor-management committee if voluntarily agreed to by the employee's bargaining representative and management. The committee may devise and oversee an implementation strategy that responds to the reemployment needs of the workers. The assistance to this committee may include:

(1) The provision of training and technical assistance to members of the committee; and

(2) Funding the operating costs of a committee to enable it to provide advice and assistance in carrying out rapid response activities and in the design and delivery of WIOA-authorized services to affected workers.

§ 682.340 May other activities be undertaken as part of rapid response?

(a) Yes, in order to conduct layoff aversion activities, or to prepare for and respond to dislocation events, in addition to the activities required under § 682.330, a State or designated entity may devise rapid response strategies or conduct activities that are intended to minimize the negative impacts of dislocation on workers, businesses, and communities and ensure rapid reemployment for workers affected by layoffs.

(b) When circumstances allow, rapid response may provide guidance and/or financial assistance to establish community transition teams to assist the impacted community in organizing support for dislocated workers and in meeting the basic needs of their families, including heat, shelter, food, clothing and other necessities and services that are beyond the resources and ability of the one-stop delivery system to provide.

§ 682.350 What is meant by "provision of additional assistance" in the Workforce Innovation and Opportunity Act?

As stated in WIOA sec. 133(a)(2), a State may reserve up to 25 percent of its allotted dislocated worker funds for rapid response activities. Once the State has reserved adequate funds for rapid response activities, such as those described in §§ 682.310, 682.320, and 682.330, any of the remaining funds reserved may be provided to local areas that experience increases of unemployment due to natural disasters, mass layoffs or other events, for provision of direct career services to

participants if there are not adequate local funds available to assist the dislocated workers. States may wish to establish the policies or procedures governing the provision of additional assistance as described in § 682.340.

§ 682.360 What rapid response, layoff aversion, or other information will States be required to report to the Employment and Training Administration?

(a) Where a WIOA individual record exists for an individual served under programs reporting through the WIOA individual record, States must report information regarding the receipt of services under this subpart for such an individual. This information must be reported in the WIOA individual record.

(b) States must comply with these requirements as explained in guidance issued by the Department of Labor.

§ 682.370 What are the statewide activities for which rapid response funds remaining unobligated after the first program year for which the funds were allotted may be used by the State?

Funds reserved by the Governor for rapid response activities that remain unobligated after the first program year for which such funds were allotted may be used by the Governor to carry out statewide activities under §§ 682.200 and 682.210. Statewide activities for which these funds may be used include prioritizing the planning for and delivery of activities designed to prevent job loss, increasing the rate of reemployment, building relationships with businesses and other stakeholders, building and maintaining early warning networks and systems, and otherwise supporting efforts to allow long-term unemployed workers to return to work.

■ 16. Add part 683 to read as follows:

PART 683—ADMINISTRATIVE PROVISIONS UNDER TITLE I OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT

Subpart A—Funding and Closeout

Sec.

683.100 When do Workforce Innovation and Opportunity Act grant funds become available for obligation?
683.105 What award document authorizes the expenditure of funds under title I of the Workforce Innovation and Opportunity Act and the Wagner-Peyser Act?
683.110 What is the period of performance of Workforce Innovation and Opportunity Act title I and Wagner-Peyser Act funds?
683.115 What planning information must a State submit in order to receive a formula grant?
683.120 How are Workforce Innovation and Opportunity Act title I formula funds allocated to local areas?
683.125 What minimum funding provisions apply to Workforce Innovation and Opportunity Act adult, dislocated worker, and youth allocations?
683.130 Does a Local Workforce Development Board have the authority to transfer funds between the adult employment and training activities allocation and the dislocated worker employment and training activities allocation?
683.135 What reallotment procedures does the Secretary use?
683.140 What reallocation procedures must the Governors use?
683.145 What merit review and risk assessment does the Department conduct for Federal financial assistance awards made under the Workforce Innovation and Opportunity Act title I, subtitle D?
683.150 What closeout requirements apply to grants funded with Workforce Innovation and Opportunity Act title I and Wagner-Peyser Act funds?

Subpart B—Administrative Rules, Costs, and Limitations

Sec.

683.200 What general fiscal and administrative rules apply to the use of Workforce Innovation and Opportunity Act title I and Wagner-Peyser Act funds?
683.205 What administrative cost limitations apply to Workforce Innovation and Opportunity Act title I grants?
683.210 What audit requirements apply to the use of Workforce Innovation and Opportunity Act title I and Wagner-Peyser Act funds?
683.215 What Workforce Innovation and Opportunity Act title I functions and activities constitute the costs of administration subject to the administrative cost limitation?
683.220 What are the internal controls requirements for recipients and subrecipients of Workforce Innovation and Opportunity Act title I and Wagner-Peyser Act funds?
683.225 What requirements relate to the enforcement of the Military Selective Service Act?
683.230 Are there special rules that apply to veterans when income is a factor in eligibility determinations?
683.235 May Workforce Innovation and Opportunity Act title I funds be spent for construction?
683.240 What are the instructions for using real property with Federal equity?
683.245 Are employment generating activities, or similar activities, allowable under title I of the Workforce Innovation and Opportunity Act?
683.250 What other activities are prohibited under title I of the Workforce Innovation and Opportunity Act?
683.255 What are the limitations related to religious activities of title I of the Workforce Innovation and Opportunity Act?
683.260 What prohibitions apply to the use of Workforce Innovation and Opportunity Act title I funds to encourage business relocation?
683.265 What procedures and sanctions apply to violations of this part?
683.270 What safeguards are there to ensure that participants in Workforce Innovation and Opportunity Act employment and training activities do not displace other employees?
683.275 What wage and labor standards apply to participants in activities under title I of the Workforce Innovation and Opportunity Act?
683.280 What health and safety standards apply to the working conditions of participants in activities under title I of the Workforce Innovation and Opportunity Act?
683.285 What are a recipient's obligations to ensure nondiscrimination and equal opportunity, and what are a recipient's obligations with respect to religious activities?
683.290 Are there salary and bonus restrictions in place for the use of title I and Wagner-Peyser Act funds?
683.295 Is earning of profit allowed under the Workforce Innovation and Opportunity Act?

Subpart C—Reporting Requirements

Sec.

683.300 What are the reporting requirements for programs funded under the Workforce Innovation and Opportunity Act?

Subpart D—Oversight and Resolution of Findings

Sec.

683.400 What are the Federal and State monitoring and oversight responsibilities?
683.410 What are the oversight roles and responsibilities of recipients and subrecipients of Federal financial assistance awarded under title I of the Workforce Innovation and Opportunity Act and the Wagner-Peyser Act?
683.420 What procedures apply to the resolution of findings arising from audits, investigations, monitoring, and oversight reviews?
683.430 How does the Secretary resolve investigative and monitoring findings?
683.440 What is the Grant Officer resolution process?

Subpart E—Pay-for-Performance Contract Strategies

Sec.

683.500 What is a Workforce Innovation and Opportunity Act Pay-for-Performance contract strategy?
683.510 What is a Workforce Innovation and Opportunity Act Pay-for-Performance contract?
683.520 What funds can be used to support Workforce Innovation and Opportunity Act Pay-for-Performance contract strategies?
683.530 How long are funds used for Workforce Innovation and Opportunity Act Pay-for-Performance contract strategies available?
683.540 What is the State's role in assisting local areas in using Workforce Innovation and Opportunity Act Pay-for-Performance contract strategies?

Subpart F—Grievance Procedures, Complaints, and State Appeals Processes

Sec.
683.600 What local area, State, and direct recipient grievance procedures must be established?
683.610 What processes does the Secretary use to review grievances and complaints of Workforce Innovation and Opportunity Act title I recipients?
683.620 How are complaints and reports of criminal fraud and abuse addressed under the Workforce Innovation and Opportunity Act?
683.630 What additional appeal processes or systems must a State have for the Workforce Innovation and Opportunity Act program?
683.640 What procedures apply to the appeals of non-designation of local areas?
683.650 What procedures apply to the appeals of the Governor's imposition of sanctions for substantial violations or performance failures by a local area?

Subpart G—Sanctions, Corrective Actions, and Waiver of Liability

Sec.
683.700 When can the Secretary impose sanctions and corrective actions on recipients and subrecipients of title I Workforce Innovation and Opportunity Act funds?
683.710 Who is responsible for funds provided under title I of the Workforce Innovation and Opportunity Act and the Wagner-Peyser Act?
683.720 What actions are required to address the failure of a local area to comply with the applicable uniform administrative provisions?
683.730 When can the Secretary waive the imposition of sanctions?
683.740 What is the procedure to handle a recipient of title I Workforce Innovation and Opportunity Act funds' request for advance approval of contemplated corrective actions?
683.750 What procedure must be used for administering the offset/deduction provisions of the Workforce Innovation and Opportunity Act?

Subpart H—Administrative Adjudication and Judicial Review

Sec.
683.800 What actions of the Department may be appealed to the Office of Administrative Law Judges?
683.810 What rules of procedure apply to hearings conducted under this subpart?
683.820 What authority does the Administrative Law Judge have in ordering relief as an outcome of an administrative hearing?
683.830 When will the Administrative Law Judge issue a decision?
683.840 Is there an alternative dispute resolution process that may be used in place of an Office of Administrative Law Judges hearing?
683.850 Is there judicial review of a final order of the Secretary issued under WIOA?

Authority: Secs. 102, 116, 121, 127, 128, 132, 133, 147, 167, 169, 171, 181, 185, 189, 195, 503, Public Law 113–128, 128 Stat. 1425 (Jul. 22, 2014).

Subpart A—Funding and Closeout

§ 683.100 When do Workforce Innovation and Opportunity Act grant funds become available for obligation?

(a) WIOA *title I.* Except as provided in paragraph (b) of this section or in the applicable fiscal year appropriation, fiscal year appropriations for programs and activities carried out under title I are available for obligation on the basis of a program year. A program year begins on July 1 in the fiscal year for which the appropriation is made and ends on June 30 of the following year.

(b) *Youth funds.* Fiscal year appropriations for a program year's youth activities, authorized under chapter 2, subtitle B, title I of WIOA may be made available for obligation beginning on April 1 of the fiscal year for which the appropriation is made.

(c) *Wagner-Peyser Act employment service.* Fiscal year appropriations for activities authorized under sec. 6 of the Wagner-Peyser Act, 29 U.S.C. 49e, are available for obligation on the basis of a program year. A program year begins July 1 in the fiscal year for which the appropriation is made and ends on June 30 of the following year.

(d) *Discretionary grants.* Discretionary grant funds are available for obligation in accordance with the fiscal year appropriation.

§ 683.105 What award document authorizes the expenditure of funds under title I of the Workforce Innovation and Opportunity Act and the Wagner-Peyser Act?

(a) *Agreement.* All WIOA title I and Wagner-Peyser Act funds are awarded by grant or cooperative agreement, as defined in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards regulations at 2 CFR 200.51 and 200.24 respectively, or contract, as defined in 2 CFR 200.22. All grant or cooperative agreements are awarded by the Grant Officer through negotiation with the recipient (the non-Federal entity). The agreement describes the terms and conditions applicable to the award of WIOA title I and Wagner-Peyser Act funds and will conform to the requirements of 2 CFR 200.210. Contracts are issued by the Contracting Officer in compliance with the Federal Acquisition Regulations.

(b) *Grant funds awarded to States and outlying areas.* The Federal funds allotted to the States and outlying areas each program year in accordance with secs. 127(b) and 132(b) of WIOA will be obligated by grant agreement.

(c) *Native American programs.* Awards of grants, contracts, or cooperative agreements for the WIOA Native American program will be made to eligible entities on a competitive basis every 4 program years for a 4-year period, in accordance with the provisions of sec. 166 of WIOA.

(d) *Migrant and seasonal farmworker programs.* Awards of grants or contracts for the Migrant and Seasonal Farmworker Program will be made to eligible entities on a competitive basis every 4 program years for a 4-year period, in accordance with the provisions of sec. 167 of WIOA.

(e) *Awards for evaluation and research under sec. 169 of WIOA.* (1) Awards of grants, contracts, or cooperative agreements will be made to eligible entities for programs or activities authorized under WIOA sec. 169. These funds are for:

(i) Evaluations;

(ii) Research;

(iii) Studies;

(iv) Multi-State projects; and

(v) Dislocated worker projects.

(2) Awards of grants, contracts, or cooperative agreements under paragraphs (e)(1)(ii) through (iv) of this section in amounts that exceed $100,000 will be awarded on a competitive basis, except that a noncompetitive award may be made in the case of a project that is funded jointly with other public or private sector entities that provide a substantial portion of the assistance under the grant, contract, or cooperative agreement for the project.

(3) Awards of grants, contracts, or cooperative agreements for carrying out projects in paragraphs (e)(1)(ii) through (iv) of this section may not be awarded to the same organization for more than 3 consecutive years unless:

(i) Such grant, contract, or cooperative agreement is competitively reevaluated within such period;

(ii) The initial grant, contract, or cooperative agreement was issued on a non-competitive basis because it was for less than $100,000, and:

(A) The non-competitive continuation is for less than $100,000;

(B) The scope of work is essentially the same as the initial grant, contract, or cooperative agreement;

(C) Progress in meeting performance objectives is satisfactory; and

(D) Other terms and conditions established by the Department have been met; or

(iii) The initial grant, contract, or cooperative agreement was issued on a non-competitive basis because the project was funded jointly with other

public or private sector entities that provide a substantial portion of the assistance, and:

(A) The non-competitive continuation maintains a substantial portion of joint funding;

(B) The scope of work is essentially the same as the initial grant, contract, or cooperative agreement;

(C) Progress in meeting performance objectives is satisfactory; and

(D) Other terms and conditions established by the Department have been met.

(4) Entities with recognized expertise in the methods, techniques, and knowledge of workforce investment activities will be provided priority in awarding funds for the projects under paragraphs (e)(1)(ii) through (iv) of this section. The duration of such projects will be specified in the grant, contract, or cooperative agreement.

(5) A peer review process will be used to review and evaluate projects under this paragraph (e) for grants, contracts, or cooperative agreements that exceed $500,000, and to designate exemplary and promising programs.

(f) *Termination.* Each grant, cooperative agreement, or contract terminates as indicated in the terms of the agreement or when the period of performance has expired. The grants and cooperative agreements must be closed in accordance with the closeout provisions at 2 CFR 200.343 and 2 CFR part 2900 as applicable.

§ 683.110 What is the period of performance of Workforce Innovation and Opportunity Act title I and Wagner-Peyser Act funds?

(a) The statutory period of availability for expenditure for WIOA title I grants will be established as the period of performance for such grants unless otherwise provided in the grant agreement or cooperative agreement. All funds must be fully expended by the expiration of the period of performance or they risk losing their availability. Unless otherwise authorized in a grant or cooperative agreement or subsequent modification, recipients must expend funds with the shortest period of availability first.

(b) *Grant funds expended by States.* Funds allotted to States under WIOA secs. 127(b) and 132(b) for any program year are available for expenditure by the State receiving the funds only during that program year and the 2 succeeding program years as identified in § 683.100.

(c) *Grant funds expended by local areas as defined in WIOA sec. 106.* (1)(i) Funds allocated by a State to a local area under WIOA secs. 128(b) and 133(b), for any program year are available for expenditure only during that program year and the succeeding program year;

(ii) *Pay-for-Performance exception.* Funds used to carry out WIOA Pay-for-Performance contract strategies will remain available until expended in accordance with WIOA sec. 189(g)(2)(D).

(2) Funds which are not expended by a local area(s) in the 2-year period described in paragraph (c)(1)(i) of this section, must be returned to the State. Funds so returned are available for expenditure by State and local recipients and subrecipients only during the third program year of availability in accordance with WIOA secs. 128(c) and 132(c). These funds are available for only the following purposes:

(i) For statewide projects; or

(ii) For distribution to local areas which had fully expended their allocation of funds for the same program year within the 2-year period.

(d) *Native American programs.* Funds awarded by the Department under WIOA sec. 166(c) are available for expenditure for the period identified in the grant or contract award document, which will not exceed 4 years.

(e) *Migrant and seasonal farmworker programs.* Funds awarded by the Department under WIOA sec. 167 are available for expenditure for the period identified in the grant award document, which will not exceed 4 years.

(f) *Evaluations and research.* Funds awarded by the Department under WIOA sec. 169 are available for expenditure for any program or activity authorized under sec. 169 of WIOA and will remain available until expended or as specified in the award document.

(g) *Other programs under title I of WIOA, including secs. 170 and 171, and all other grants, contracts and cooperative agreements.* Funds are available for expenditure for a period of performance identified in the grant or contract agreement.

(h) *Wagner-Peyser Act.* Funds allotted to States for grants under secs. 3 and 15 of the Wagner-Peyser Act for any program year are available for expenditure by the State receiving the funds only during that program year and the 2 succeeding program years. The program year begins on July 1 of the fiscal year for which the appropriation is made.

§ 683.115 What planning information must a State submit in order to receive a formula grant?

Each State seeking financial assistance under subtitle B, chapter 2 (youth) or chapter 3 (adults and dislocated workers), of title I of WIOA, or under the Wagner-Peyser Act must submit a Unified State Plan under sec. 102 of WIOA or a Combined State Plan under WIOA sec. 103. The requirements for the plan content and the plan review process are described in secs. 102 and 103 of WIOA, sec. 8 of Wagner-Peyser Act, and §§ 676.100 through 676.145 of this chapter and §§ 652.211 through 652.214 of this chapter.

§ 683.120 How are Workforce Innovation and Opportunity Act title I formula funds allocated to local areas?

(a) *General.* The Governor must allocate WIOA formula funds allotted for services to youth, adults and dislocated workers in accordance with secs. 128 and 133 of WIOA and this section.

(1) State WDBs must assist Governors in the development of any youth or adult discretionary within-State allocation formulas.

(2) Within-State allocations must be made:

(i) In accordance with the allocation formulas contained in secs. 128(b) and 133(b) of WIOA and in the State Plan;

(ii) After consultation with chief elected officials and Local WDBs in each of the local areas; and

(iii) In accordance with sec. 182(e) of WIOA, available to local areas not later than 30 days after the date funds are made available to the State or 7 days after the date the local plan for the area is approved, whichever is later.

(b) *State reserve.* Of the WIOA formula funds allotted for services to youth, adults and dislocated workers, the Governor must reserve not more than 15 percent of the funds from each of these sources to carry out statewide activities. Funds reserved under this paragraph may be combined and spent on statewide activities under WIOA sec. 129(b) and statewide employment and training activities under WIOA sec. 134(a), for adults and dislocated workers, and youth activities, as described in §§ 682.200 and 682.210 of this chapter, without regard to the funding source of the reserved funds.

(c) *Youth allocation formula.* (1) Unless the Governor elects to distribute funds in accordance with the discretionary allocation formula described in paragraph (c)(2) of this section, the remainder of youth funds not reserved under paragraph (b) of this section must be allocated:

(i) 33⅓ percent on the basis of the relative number of unemployed individuals in areas of substantial unemployment in each local area, compared to the total number of unemployed individuals in all areas of substantial unemployment in the State;

(ii) 33⅓ percent on the basis of the relative excess number of unemployed individuals in each local area, compared to the total excess number of unemployed individuals in the State; and

(iii) 33⅓ percent on the basis of the relative number of disadvantaged youth in each local area, compared to the total number of disadvantaged youth in the State except for local areas as described in sec. 107(c)(1)(C) of WIOA where the allotment must be based on the greater of either the number of individuals aged 16 to 21 in families with an income below the low-income level for the area or the number of disadvantaged youth in the area.

(2) *Discretionary youth allocation formula.* In lieu of making the formula allocation described in paragraph (c)(1) of this section, the State may allocate youth funds under a discretionary formula. Under this discretionary formula, the State must allocate a minimum of 70 percent of youth funds not reserved under paragraph (b) of this section on the basis of the formula in paragraph (c)(1) of this section, and may allocate up to 30 percent on the basis of a formula that:

(i) Incorporates additional factors (other than the factors described in paragraph (c)(1) of this section) relating to:

(A) Excess youth poverty in urban, rural and suburban local areas; and

(B) Excess unemployment above the State average in urban, rural and suburban local areas; and

(ii) Was developed by the State WDB and approved by the Secretary of Labor as part of the State Plan.

(d) *Adult allocation formula.* (1) Unless the Governor elects to distribute funds in accordance with the discretionary allocation formula described in paragraph (d)(2) of this section, the remainder of adult funds not reserved under paragraph (b) of this section must be allocated:

(i) 33⅓ percent on the basis of the relative number of unemployed individuals in areas of substantial unemployment in each local area, compared to the total number of unemployed individuals in areas of substantial unemployment in the State;

(ii) 33⅓ percent on the basis of the relative excess number of unemployed individuals in each local area, compared to the total excess number of unemployed individuals in the State; and

(iii) 33⅓ percent on the basis of the relative number of disadvantaged adults in each local area, compared to the total number of disadvantaged adults in the State. Except for local areas as described in sec. 107(c)(1)(C) of WIOA where the allotment must be based on the higher of either the number of adults with an income below the low-income level for the area or the number of disadvantaged adults in the area.

(2) *Discretionary adult allocation formula.* In lieu of making the formula allocation described in paragraph (d)(1) of this section, the State may allocate adult funds under a discretionary formula, Under this discretionary formula, the State must allocate a minimum of 70 percent of adult funds not reserved under paragraph (b) of this section on the basis of the formula in paragraph (d)(1), and may allocate up to 30 percent on the basis of a formula that:

(i) Incorporates additional factors (other than the factors described in paragraph (d)(1) of this section) relating to:

(A) Excess poverty in urban, rural and suburban local areas; and

(B) Excess unemployment above the State average in urban, rural and suburban local areas; and

(ii) Was developed by the State WDB and approved by the Secretary of Labor as part of the State Plan.

(e) *Dislocated worker allocation formula.* (1) The remainder of dislocated worker funds not reserved under paragraph (b) of this section must be allocated on the basis of a formula prescribed by the Governor that distributes funds in a manner that addresses the State's dislocated worker needs. Funds so distributed must not be less than 60 percent of the State's formula allotment.

(2) The Governor's dislocated worker formula must use the most appropriate information available to the Governor, including information on:

(i) Insured unemployment data;

(ii) Unemployment concentrations;

(iii) Plant closings and mass layoff data;

(iv) Declining industries data;

(v) Farmer-rancher economic hardship data; and

(vi) Long-term unemployment data.

(3) The Governor may not amend the dislocated worker formula more than once for any program year.

(f) *Rapid response.* (1) Of the WIOA formula funds allotted for services to dislocated workers in sec. 132(b)(2)(B) of WIOA, the Governor must reserve not more than 25 percent of the funds for statewide rapid response activities described in WIOA sec. 134(a)(2)(A) and §§ 682.300 through 682.370 of this chapter.

(2) *Unobligated funds.* Funds reserved by a Governor for rapid response activities under sec. 133(a)(2) of WIOA, and sec. 133(a)(2) of the Workforce Investment Act (as in effect on the day before the date of enactment of WIOA), to carry out sec. 134(a)(2)(A) of WIOA that remain unobligated after the first program year for which the funds were allotted, may be used by the Governor to carry out statewide activities authorized under paragraph (b) of this section and §§ 682.200 and 682.210 of this chapter.

(g) *Special rule.* For the purpose of the formula in paragraphs (c)(1) and (d)(1) of this section, the State must, as appropriate and to the extent practicable, exclude college students and members of the Armed Forces from the determination of the number of disadvantaged youth and disadvantaged adults.

§ 683.125 What minimum funding provisions apply to Workforce Innovation and Opportunity Act adult, dislocated worker, and youth allocations?

(a) For funding authorized by secs. 128(b)(2), 133(b)(2)(A), and 133(b)(2)(B) of WIOA, which are youth, adult, and dislocated worker funds, a local area must not receive an allocation percentage for a fiscal year that is less than 90 percent of the average allocation percentage of the local area for the 2 preceding fiscal years.

(b) The Department's annual fiscal year appropriation provides funding for programs and activities described in paragraph (a) of this section under separate appropriations with various periods of availability. These periods of availability are described in § 683.100 as a program year. A program year for funds allocated under secs. 133(b)(2)(A) and 133(b)(2)(B) of WIOA begins on July 1 in the fiscal year for which the appropriation is made and ends on June 30 of the following year. A program year for funds available under WIOA sec. 128(b)(2) is available from April 1 of the fiscal year in which the appropriation is made and ends on June 30 of the following year. Therefore, when grantees are calculating the minimum funding percentage they must do so on a program year basis.

(c) When a new local area is designated under sec. 106 of WIOA the State must develop a methodology to apply the minimum funding provision specified in paragraph (a) of this section to local area allocations of WIOA youth, adult, and dislocated worker funds.

(d) Amounts necessary to increase allocations to local areas to comply with paragraph (a) of this section must be obtained by ratably reducing the allocations to be made to other local areas.

(e) If the amounts of WIOA funds appropriated in a fiscal year are not sufficient to provide the amount specified in paragraph (a) of this section to all local areas, the amounts allocated to each local area must be ratably reduced.

§ 683.130 Does a Local Workforce Development Board have the authority to transfer funds between the adult employment and training activities allocation and the dislocated worker employment and training activities allocation?

(a) A Local WDB may transfer up to 100 percent of a program year allocation for adult employment and training activities, and up to 100 percent of a program year allocation for dislocated worker employment and training activities between the two programs.

(b) Local WDBs may not transfer funds to or from the youth program.

(c) Before making any transfer described in paragraph (a) of this section, a Local WDB must obtain the Governor's written approval. The Governor's written approval must be based on criteria or factors that the Governor must establish in a written policy, such as the State Unified or Combined Plan or other written policy.

§ 683.135 What reallotment procedures does the Secretary use?

(a) The Secretary determines, during the second quarter of each program year, whether a State has obligated its required level of at least 80 percent of the funds allotted under secs. 127 and 132 of WIOA for programs serving youth, adults, and dislocated workers for the prior program year, as separately determined for each of the three funding streams. The amount to be recaptured from each State for reallotment, if any, is based on State obligations of the funds allotted to each State under secs. 127 and 132 of WIOA for programs serving youth, adults, or dislocated workers, less any amount reserved (up to five percent at the State level) for the costs of administration. The recapture amount, if any, is separately determined for each funding stream.

(b) The Secretary reallots youth, adult and dislocated worker funds among eligible States in accordance with the provisions of secs. 127(c) and 132(c) of WIOA, respectively. To be eligible to receive a reallotment of youth, adult, or dislocated worker funds under the reallotment procedures, a State must have obligated at least 80 percent of the prior program year's allotment, less any amount reserved for the costs of administration at the State level of youth, adult, or dislocated worker funds. A State's eligibility to receive a reallotment is separately determined for each funding stream.

(c) The term "obligation" is defined at 2 CFR 200.71.

(d) Obligations must be reported on the required Department of Labor (the Department) financial form, such as the ETA–9130 form, unless otherwise noted in guidance.

§ 683.140 What reallocation procedures must the Governors use?

(a) The Governor, after consultation with the State WDB, may reallocate youth, adult, and dislocated worker funds among local areas within the State in accordance with the provisions of secs. 128(c) and 133(c) of WIOA. If the Governor chooses to reallocate funds, the provisions in paragraphs (b) and (c) of this section apply.

(b) For the youth, adult and dislocated worker programs, the amount to be recaptured from each local area for purposes of reallocation, if any, must be based on the amount by which the prior year's unobligated balance of allocated funds exceeds 20 percent of that year's allocation for the program, less any amount reserved (up to 10 percent) for the costs of administration. Unobligated balances must be determined based on allocations adjusted for any allowable transfer between funding streams. The amount to be recaptured, if any, must be separately determined for each funding stream. The term "obligation" is defined at 2 CFR 200.71.

(c) To be eligible to receive youth, adult or dislocated worker funds under the reallocation procedures, a local area must have obligated at least 80 percent of the prior program year's allocation, less any amount reserved (up to 10 percent) for the costs of administration, for youth, adult, or dislocated worker activities, as separately determined. A local area's eligibility to receive a reallocation must be separately determined for each funding stream.

§ 683.145 What merit review and risk assessment does the Department conduct for Federal financial assistance awards made under Workforce Innovation and Opportunity Act title I, subtitle D?

(a) For competitive awards, the Department will design and execute a merit review process for applications as prescribed under 2 CFR 200.204 when issuing Federal financial assistance awards made under WIOA title I, subtitle D. This process will be described in the applicable funding opportunity announcement.

(b) Prior to issuing a Federal financial assistance award under WIOA title I, subtitle D, the Department will conduct a risk assessment to assess the organization's overall ability to administer Federal funds as required under 2 CFR 200.205. As part of this assessment, the Department may consider any information that has come to its attention and will consider the organization's history with regard to the management of other grants, including Department of Labor grants.

(c) In evaluating risks posed by applicants, the Department will consider the following:

(1) Financial stability;

(2) Quality of management systems and ability to meet the management standards prescribed in this part;

(3) History of performance. The applicant's record in managing Federal awards, if it is a prior recipient of Federal awards, including timeliness of compliance with applicable reporting requirements, conformance to the terms and conditions of previous Federal awards, and if applicable, the extent to which any previously awarded amounts will be expended prior to future awards;

(4) Reports and findings from audits; and

(5) The applicant's ability to implement effectively statutory, regulatory, or other requirements imposed on non-Federal entities.

§ 683.150 What closeout requirements apply to grants funded with Workforce Innovation and Opportunity Act title I and Wagner-Peyser Act funds?

(a) After the expiration of the period of performance, the Department will closeout the Federal award when it determines that all applicable administrative actions and all required work of the Federal award have been completed by the grant recipient. This section specifies the actions the grant recipient and the Department must take to complete this process.

(1) The grant recipient must submit, no later than 90 calendar days after the end date of the period of performance, all financial, performance, and other reports as required by the terms and conditions of the Federal award.

(2) The Department may approve extensions when requested by the grant recipient.

(b) Unless otherwise noted in the terms and conditions of the award or an extension, grant recipients must comply with 2 CFR 200.343(b) and 2900.15 in regards to closeout.

(c) The Department must make prompt payments to the grant recipient for allowable reimbursable costs under the Federal award being closed out.

(d) The grant recipient must promptly refund any balances of unobligated cash that the Department paid in advance or paid and that is not authorized to be retained by the grant recipient. See

Office of Management and Budget Circular A–129, 2 CFR 200.345, and 2 CFR part 2900 for requirements regarding unreturned amounts that become delinquent debts.

(e) Consistent with the terms and conditions of the Federal award, the Department must make a settlement for any upward or downward adjustments to the Federal share of costs after closeout reports are received.

(f) The grant recipient must account for any real and personal property acquired with Federal funds or received from the Federal government in accordance with 2 CFR 200.310 through 200.316, and 200.329.

(g) The Department should complete all closeout actions for Federal awards no later than 1 year after receipt and acceptance of all required final reports.

(h) The closeout of an award does not affect any of the following:

(1) The right of the Department to disallow costs and recover funds on the basis of a later audit or other review.

(2) The obligation of the grant recipient to return any funds due as a result of later refunds, corrections, or other transactions.

(3) Audit requirements as described in 2 CFR part 200, subpart F.

(4) Property management requirements in 2 CFR 200.310 through 200.316.

(5) Records retention as required in 2 CFR 200.333 through 200.337.

(i) After closeout of an award, a relationship created under the award may be modified or ended in whole or in part with the consent of the Department and the grant recipient, provided the responsibilities of the grant recipient referred to in 2 CFR 200.344(a) and 200.310 through 200.316 are considered, and provisions are made for continuing responsibilities of the grant recipient, as appropriate.

(j) Grant recipients that award WIOA funds to subrecipients must institute a timely closeout process after the end of performance to ensure a timely closeout in accordance with 2 CFR 200.343 and 200.344.

Subpart B—Administrative Rules, Costs, and Limitations

§ 683.200 What general fiscal and administrative rules apply to the use of Workforce Innovation and Opportunity Act title I and Wagner-Peyser Act funds?

(a) *Uniform Guidance.* Recipients and subrecipients of a Federal award under title I of WIOA and the Wagner-Peyser Act must follow the Uniform Guidance at 2 CFR parts 200, 215, 225, 230, including any exceptions identified by the Department at 2 CFR part 2900.

(1) Commercial organizations, for-profit entities, and foreign entities that are recipients and subrecipients of a Federal award must adhere to 2 CFR part 200, including any exceptions identified by the Department under 2 CFR part 2900;

(2) Commercial organizations, for-profit entities, and foreign entities that are contractors or subcontractors must adhere to the Federal Acquisition Regulations (FAR), including 48 CFR part 31.

(b) *Allowable costs and cost principles.* (1) Recipients and subrecipients of a Federal award under title I of WIOA and the Wagner-Peyser Act must follow the cost principles at subpart E and appendices III through IX of 2 CFR part 200, including any exceptions identified by the Department at 2 CFR part 2900.

(2) Unless specified in the grant agreement, for those items requiring prior approval in the Uniform Guidance (*e.g.,* selected items of cost, budget realignment), the authority to grant or deny approval is delegated to the Governor for programs funded under sec. 127 or 132 of WIOA or under the Wagner-Peyser Act.

(3) Costs of workforce councils, advisory councils, Native American Employment and Training Councils, and Local WDB committees established under title I of WIOA are allowable.

(c) *Uniform administrative requirements.* (1) Except as provided in paragraphs (c)(3) through (6) of this section, all recipients and subrecipients of a Federal award under title I of WIOA and under the Wagner-Peyser Act must follow 2 CFR part 200, including any exceptions identified by the Department at 2 CFR part 2900.

(2) Unless otherwise specified in the grant agreement, expenditures must be reported on accrual basis.

(3) In accordance with the requirements at 2 CFR 200.400(g), subrecipients may not earn or keep any profit resulting from Federal financial assistance, unless expressly authorized by the terms and conditions of the Federal award.

(4) In addition to the requirements at 2 CFR 200.317 through 200.326 (as appropriate), all procurement contracts between Local WDBs and units of State or local governments must be conducted only on a cost reimbursement basis.

(5) In addition to the requirements at 2 CFR 200.318, which address codes of conduct and conflict of interest the following applies:

(i) A State WDB member, Local WDB member, or WDB standing committee member must neither cast a vote on, nor participate in any decision-making capacity, on the provision of services by such member (or any organization which that member directly represents), nor on any matter which would provide any direct financial benefit to that member or that member's immediate family.

(ii) Neither membership on the State WDB, the Local WDB, or a WDB standing committee, nor the receipt of WIOA funds to provide training and related services, by itself, violates these conflict of interest provisions.

(iii) In accordance with the requirements at 2 CFR 200.112, recipients of Federal awards must disclose in writing any potential conflict of interest to the Department. Subrecipients must disclose in writing any potential conflict of interest to the recipient of grant funds.

(6) The addition method, described at 2 CFR 200.307, must be used for all program income earned under title I of WIOA and Wagner-Peyser Act grants. When the cost of generating program income has been charged to the program, the gross amount earned must be added to the program in which it was earned. However, the cost of generating program income must be subtracted from the amount earned to establish the net amount of program income available for use under the grants when these costs have not been charged to the program.

(7) Any excess of revenue over costs incurred for services provided by a governmental or non-profit entity must be included in program income.

(8) Interest income earned on funds received under title I of WIOA and the Wagner-Peyser Act must be included in program income.

(9) On a fee-for-service basis, employers may use local area services, facilities, or equipment funded under title I of WIOA to provide employment and training activities to incumbent workers:

(i) When the services, facilities, or equipment are not being used by eligible participants;

(ii) If their use does not affect the ability of eligible participants to use the services, facilities, or equipment; and

(iii) If the income generated from such fees is used to carry out programs authorized under this title.

(d) *Government-wide debarment and suspension, and government-wide drug-free workplace requirements.* All WIOA title I and Wagner-Peyser Act grant recipients and subrecipients must comply with the government-wide requirements for debarment and suspension, and the government-wide requirements for a drug-free workplace in accordance with the Drug-Free

Workplace Act of 1988, 41 U.S.C. 8103 *et seq.*, and 2 CFR part 182.

(e) *Restrictions on lobbying.* All WIOA title I and Wagner-Peyer grant recipients and subrecipients must comply with the restrictions on lobbying specified in WIOA sec. 195 and codified in the Department regulations at 29 CFR part 93.

(f) *Buy-American.* As stated in sec. 502 of WIOA, all funds authorized in title I of WIOA and the Wagner-Peyser Act must be expended in compliance with secs. 8301 through 8303 of the Buy American Act (41 U.S.C. 8301–8305).

(g) *Nepotism.* (1) No individual may be placed in a WIOA employment activity if a member of that person's immediate family is directly supervised by or directly supervises that individual.

(2) To the extent that an applicable State or local legal requirement regarding nepotism is more restrictive than this provision, such State or local requirement must be followed.

(h) *Mandatory disclosures.* All WIOA title I and Wagner-Peyser Act recipients of Federal awards must disclose as required at 2 CFR 200.113, in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures can result in any of the remedies described in 2 CFR 200.338 (Remedies for noncompliance), including suspension or debarment.

§ 683.205 What administrative cost limitations apply to Workforce Innovation and Opportunity Act title I grants?

(a) *State formula grants.* (1) As part of the 15 percent that a State may reserve for statewide activities, the State may spend up to 5 percent of the amount allotted under secs. 127(b)(1), 132(b)(1), and 132(b)(2) of WIOA for the administrative costs of statewide activities.

(2) Local area expenditures for administrative purposes under WIOA formula grants are limited to no more than 10 percent of the amount allocated to the local area under secs. 128(b) and 133(b) of WIOA.

(3) The 5 percent reserved for statewide administrative costs and the 10 percent reserved for local administrative costs may be used for administrative costs for any of the statewide youth workforce investment activities or statewide employment and training activities under secs. 127(b)(1), 128(b), 132(b), and 133(b) of WIOA.

(4) In a one-stop environment, administrative costs borne by other sources of funds, such as the Wagner-Peyser Act, are not included in the administrative cost limit calculation. Each program's administrative activities are chargeable to its own grant and subject to its own administrative cost limitations.

(5) Costs of negotiating a MOU or infrastructure funding agreement under title I of WIOA are excluded from the administrative cost limitations.

(b) *Discretionary grants.* Limits on administrative costs, if any, for programs operated under subtitle D of title I of WIOA will be identified in the grant or cooperative agreement.

§ 683.210 What audit requirements apply to the use of Workforce Innovation and Opportunity Act title I and Wagner-Peyser Act funds?

All recipients of WIOA title I and Wagner-Peyser Act funds that expend more than the minimum amounts specified in 2 CFR part 200, subpart F, in Federal awards during their fiscal year must have a program specific or single audit conducted in accordance with 2 CFR part 200, subpart F.

(a) *Commercial or for-profit.* Grant recipients and subrecipients of title I and Wagner-Peyser Act funds that are commercial or for-profit entities must adhere to the requirements contained in 2 CFR part 200, subpart F.

(b) *Subrecipients and contractors.* An auditee may simultaneously be a recipient, a subrecipient, and a contractor depending on the substance of its agreements with Federal awarding agencies and pass-through entities. Federal awards expended as a recipient or subrecipient are subject to audit requirements under 2 CFR part 200, subpart F.

(c) *Contractors.* The payments received for goods or services provided as a contractor are not Federal awards. Subrecipient and contractor determinations made under 2 CFR 200.330 must be considered in determining whether payments constitute a Federal award or a payment for goods and services provided as a contractor.

§ 683.215 What Workforce Innovation and Opportunity Act title I functions and activities constitute the costs of administration subject to the administrative cost limitation?

(a) The costs of administration are expenditures incurred by State and Local WDBs, Regions, direct grant recipients, including State grant recipients under subtitle B of title I of WIOA, and recipients of awards under subtitle D of title I, as well as local grant recipients, local grant subrecipients, local fiscal agents and one-stop operators that are associated with those specific functions identified in paragraph (b) of this section and which are not related to the direct provision of workforce investment services, including services to participants and employers. These costs can be both personnel and non-personnel and both direct and indirect.

(b) The costs of administration are the costs associated with performing the following functions:

(1) Performing the following overall general administrative functions and coordination of those functions under title I of WIOA:

(i) Accounting, budgeting, financial and cash management functions;

(ii) Procurement and purchasing functions;

(iii) Property management functions;

(iv) Personnel management functions;

(v) Payroll functions;

(vi) Coordinating the resolution of findings arising from audits, reviews, investigations and incident reports;

(vii) Audit functions;

(viii) General legal services functions;

(ix) Developing systems and procedures, including information systems, required for these administrative functions; and

(x) Fiscal agent responsibilities;

(2) Performing oversight and monitoring responsibilities related to WIOA administrative functions;

(3) Costs of goods and services required for administrative functions of the program, including goods and services such as rental or purchase of equipment, utilities, office supplies, postage, and rental and maintenance of office space;

(4) Travel costs incurred for official business in carrying out administrative activities; and

(5) Costs of information systems related to administrative functions (for example, personnel, procurement, purchasing, property management, accounting, and payroll systems) including the purchase, systems development and operating costs of such systems.

(c)(1) Awards to subrecipients or contractors that are solely for the performance of administrative functions are classified as administrative costs.

(2) Personnel and related non-personnel costs of staff that perform both administrative functions specified in paragraph (b) of this section and programmatic services or activities must be allocated as administrative or program costs to the benefitting cost objectives/categories.

(3) Specific costs charged to an overhead or indirect cost pool that can be identified directly as a program cost

the public. If furnished at all, such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to: *http://www.regulations.gov,* and insert the docket number CPSC–2010–0041, into the "Search" box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: For further information contact: Robert H. Squibb, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; (301) 504–7815, or by email to: *rsquibb@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

Section 212 of the Consumer Product Safety Improvement Act of 2008 (CPSIA) added section 6A to the Consumer Product Safety Act (CPSA), which requires the Consumer Product Safety Commission (CPSC or Commission) to establish and maintain a publicly available, searchable database on the safety of consumer products and other products or substances regulated by the Commission (Database). Among other things, section 6A of the CPSA requires the Commission to collect reports of harm from the public for potential publication in the publicly available Database, and to collect and publish comments about reports of harm from manufacturers.

The Commission announced that a proposed collection of information in conjunction with the Database, called the Publicly Available Consumer Product Safety Information Database, had been submitted to OMB for review and clearance under 44 U.S.C. 3501–3520 in a proposed rule published on May 24, 2010 (75 FR 29156). The Commission issued a final rule on the Database on December 9, 2010 (75 FR 76832). The final rule interprets various statutory requirements in section 6A of the CPSA pertaining to the information to be included in the Database and also establishes provisions regarding submitting reports of harm; providing notice of reports of harm to manufacturers; publishing reports of harm and manufacturer comments in the Database; and dealing with confidential and materially inaccurate information.

OMB approved the collection of information for the Database under control number 3041–0146. OMB's most recent extension of approval on December 2, 2013 will expire on December 31, 2016. Accordingly, the Commission now proposes to request an extension of approval of this collection of information.

B. Information Collected Through the Database

The primary purpose of this information collection is to populate the publicly searchable Database of consumer product safety information mandated by section 6A of the CPSA. The Database information collection has four components: Reports of harm, manufacturer comments, branding information, and the Small Batch Manufacturer Registry (SBMR).

Reports of Harm: Reports of harm communicate information regarding an injury, illness, or death, or any risk (as determined by CPSC) of injury, illness, or death, relating to the use of a consumer product. Reports can be submitted to the CPSC by consumers; local, state, or federal government agencies; health care professionals; child service providers; public safety entities; and others. Reports may be submitted in one of three ways: Via the CPSC Web site (*www.SaferProducts.gov*), by telephone via a CPSC call center, or by email, fax, or mail using the incident report form (available for download or printing via the CPSC Web site). Reports may also originate as a free-form letter or email. Submitters must consent to inclusion of their report of harm in the publicly searchable Database.

Manufacturer Comments: A manufacturer or private labeler may submit a comment related to a report of harm after the CPSC transmits the report to the manufacturer or private labeler identified in the report. Manufacturer comments may be submitted through the business portal, by email, mail, or fax. The business portal is a feature of the Database that allows manufacturers who register on the business portal to receive reports of harm and comment on such reports through the business portal. Use of the business portal expedites the receipt of reports of harm and business response times.

A manufacturer may request that the Commission designate information in a report of harm as confidential. Such a request may be made using the business portal, by email, by mail, or by fax. Additionally, any person or entity reviewing a report of harm or manufacturer comment, either before or after publication in the Database, may request that the report or comment, or portions of the report or comment, be excluded from the Database because it contains materially inaccurate information. Such a request may be made by manufacturers using the business portal, by email, mail or fax, and may be submitted by anyone else by email, mail, or fax.

Branding Information: Using the business portal, registered businesses may voluntarily submit branding information to assist CPSC in correctly and timely routing reports of harm involving their products to them. Brand names may be licensed to another entity for use in labeling consumer products manufactured by that entity. CPSC's understanding of licensing arrangements for consumer products ensures that the correct manufacturer is timely notified regarding a report of harm.

Small Batch Manufacturers Registry: The business portal also contains the SBMR, which is the online mechanism by which "small batch manufacturers" (as defined in the CPSA) can identify themselves to obtain relief from certain third party testing requirements for children's products. To register as a small batch manufacturer, a business must attest that the company's income level and the number of units of the covered product manufactured for which relief is sought both fall within the statutory limits to receive relief from third party testing.

C. Estimated Burden

1. Estimated Annual Burden for Respondents

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN FOR REPORTS OF HARM

Collection type	Number of respondents	Response frequency [1]	Total annual responses	Minutes per response	Total burden, in hours [2]
Reports of Harm—submitted through website	6,582	1.03	6,790	12	1,358
Reports of Harm—submitted by phone	2,632	1.01	2,643	10	441
Reports of Harm—submitted by mail, email, fax	780	6.67	5,206	20	1,735

are to be charged as a program cost. Documentation of such charges must be maintained.

(4) Except as provided at paragraph (c)(1) of this section, all costs incurred for functions and activities of subrecipients, other than those subrecipients listed in paragraph (a) of this section, and contractors are program costs.

(5) Continuous improvement activities are charged to administration or program category based on the purpose or nature of the activity to be improved. Documentation of such charges must be maintained.

(6) Costs of the following information systems including the purchase, systems development, and operational costs (*e.g.*, data entry) are charged to the program category:

(i) Tracking or monitoring of participant and performance information;

(ii) Employment statistics information, including job listing information, job skills information, and demand occupation information;

(iii) Performance and program cost information on eligible training providers, youth activities, and appropriate education activities;

(iv) Local area performance information; and

(v) Information relating to supportive services and unemployment insurance claims for program participants.

(d) Where possible, entities identified in paragraph (a) of this section must make efforts to streamline the services in paragraphs (b)(1) through (5) of this section to reduce administrative costs by minimizing duplication and effectively using information technology to improve services.

§ 683.220 What are the internal controls requirements for recipients and subrecipients of Workforce Innovation and Opportunity Act title I and Wagner-Peyser Act funds?

(a) Recipients and subrecipients of WIOA title I and Wagner-Peyser Act funds must have an internal control structure and written policies in place that provide safeguards to protect personally identifiable information, records, contracts, grant funds, equipment, sensitive information, tangible items, and other information that is readily or easily exchanged in the open market, or that the Department or the recipient or subrecipient considers to be sensitive, consistent with applicable Federal, State and local privacy and confidentiality laws. Internal controls also must include reasonable assurance that the entity is:

(1) Managing the award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award;

(2) Complying with Federal statutes, regulations, and the terms and conditions of the Federal awards;

(3) Evaluating and monitoring the recipient's and subrecipient's compliance with WIOA, regulations and the terms and conditions of Federal awards; and

(4) Taking prompt action when instances of noncompliance are identified.

(b) Internal controls should be in compliance with the guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States and the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). See 2 CFR 200.303.

§ 683.225 What requirements relate to the enforcement of the Military Selective Service Act?

The requirements relating to the enforcement of the Military Selective Service Act are found at WIOA sec. 189(h).

§ 683.230 Are there special rules that apply to veterans when income is a factor in eligibility determinations?

Yes, under 38 U.S.C. 4213, when past income is an eligibility determinant for Federal employment or training programs, any amounts received as military pay or allowances by any person who served on active duty, and certain other specified benefits must be disregarded for the veteran and for other individuals for whom those amounts would normally be applied in making an eligibility determination. This applies when determining if a person is a "low-income individual" for eligibility purposes (for example, in the WIOA youth, or NFJP programs). Also, it applies when income is used as a factor when a local area provides priority of service for "low-income individuals" with title I WIOA funds (*see* §§ 680.600 and 680.650 of this chapter). A veteran must still meet each program's eligibility criteria to receive services under the respective employment and training program.

§ 683.235 May Workforce Innovation and Opportunity Act title I funds be spent for construction?

WIOA title I funds must not be spent on construction, purchase of facilities or buildings, or other capital expenditures for improvements to land or buildings, except with the prior written approval of the Secretary.

§ 683.240 What are the instructions for using real property with Federal equity?

(a) *SESA properties.* Federal equity acquired in real property through grants to States awarded under title III of the Social Security Act or the Wagner-Peyser Act, including State Employment Security Agency (SESA) real property, is transferred to the States that used the grant to acquire such equity.

(1) The portion of any real property that is attributable to the Federal equity transferred under this section must be used to carry out activities authorized under WIOA, title III of the Social Security Act (Unemployment Compensation program), or the Wagner-Peyser Act.

(2) When such real property is no longer needed for the activities described in paragraph (a)(1) of this section, the States must request disposition instructions from the Grant Officer prior to disposition or sale of the property. The portion of the proceeds from the disposition of the real property that is attributable to the Federal equity transferred under this section must be used to carry out activities authorized under WIOA, title III of the Social Security Act, or the Wagner-Peyser Act.

(3) States must not use funds awarded under WIOA, title III of the Social Security Act, or the Wagner-Peyser Act to amortize the costs of real property that is purchased by any State on or after February 15, 2007, the date of enactment of the Revised Continuing Appropriations Resolution, 2007.

(4) Properties occupied by the Wagner-Peyser Act Employment Service must be colocated with one-stop centers.

(b) *Reed Act-funded properties.* Properties with Reed Act equity may be used for the one-stop service delivery system to the extent that the proportionate share of Reed Act equity is less than or equal to the proportionate share of occupancy by the Unemployment Compensation and Wagner-Peyser Act programs in such properties. When such real property is no longer needed for authorized purposes, the State must request disposition instructions from the Grant Officer prior to disposition or sale. The portion of the proceeds from the disposition or sale of the real property that is attributable to the Reed Act equity must be returned to the State's account in the Unemployment Trust Fund (UTF) and used in accordance with Department-issued guidance.

(c) *Job Training Partnership Act and Workforce Investment Act-funded properties.* Real property that was purchased with WIA funds or that was transferred to WIA now is transferred to

the WIOA title I programs and must be used for WIOA purposes. When such real property is no longer needed for the activities of WIOA, the recipient or subrecipient must seek instructions from the Grant Officer or State (in the case of a subrecipient) prior to disposition or sale.

§ 683.245 Are employment generating activities, or similar activities, allowable under title I of the Workforce Innovation and Opportunity Act?

(a) Under sec. 181(e) of WIOA, title I funds must not be spent on employment generating activities, investment in revolving loan funds, capitalization of businesses, investment in contract bidding resource centers, economic development activities, or similar activities, unless they are directly related to training for eligible individuals. For purposes of this prohibition, employer outreach and job development activities are directly related to training for eligible individuals.

(b) These employer outreach and job development activities may include:

(1) Contacts with potential employers for the purpose of placement of WIOA participants;

(2) Participation in business associations (such as chambers of commerce); joint labor management committees, labor associations, and resource centers;

(3) WIOA staff participation on economic development boards and commissions, and work with economic development agencies to:

(i) Provide information about WIOA programs;

(ii) Coordinate activities in a region or local area to promote entrepreneurial training and microenterprise services;

(iii) Assist in making informed decisions about community job training needs; and

(iv) Promote the use of first source hiring agreements and enterprise zone vouchering services;

(4) Active participation in local business resource centers (incubators) to provide technical assistance to small businesses and new businesses to reduce the rate of business failure;

(5) Subscriptions to relevant publications;

(6) General dissemination of information on WIOA programs and activities;

(7) The conduct of labor market surveys;

(8) The development of on-the-job training opportunities; and

(9) Other allowable WIOA activities in the private sector.

§ 683.250 What other activities are prohibited under title I of the Workforce Innovation and Opportunity Act?

(a) WIOA title I funds must not be spent on:

(1) The wages of incumbent employees during their participation in economic development activities provided through a statewide workforce development system.

(2) Public service employment, except as specifically authorized under title I of WIOA.

(3) Expenses prohibited under any other Federal, State or local law or regulation.

(4) Subawards or contracts with parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal programs or activities.

(5) Contracts with persons falsely labeling products made in America.

(b) WIOA formula funds available to States and local areas under title I, subtitle B must not be used for foreign travel.

§ 683.255 What are the limitations related to religious activities of title I of the Workforce Innovation and Opportunity Act?

(a) Section 188(a)(3) of WIOA prohibits the use of funds to employ participants to carry out the construction, operation, or maintenance of any part of any facility used for sectarian instruction or as a place for religious worship with the exception of maintenance of facilities that are not primarily used for instruction or worship and are operated by organizations providing services to WIOA participants.

(b) 29 CFR part 2, subpart D, governs the circumstances under which Department support, including WIOA title I financial assistance, may be used to employ or train participants in religious activities. Under that subpart, such assistance may be used for such employment or training only when the assistance is provided indirectly within the meaning of the Establishment Clause of the U.S. Constitution, and not when the assistance is provided directly. That subpart also contains requirements related to equal treatment in Department of Labor programs for religious organizations, and to protecting the religious liberty of Department of Labor social service providers and beneficiaries. (29 CFR part 2, subpart D—Equal Treatment in Department of Labor Programs for Religious Organizations, Protection of Religious Liberty of Department of Labor Social Service Providers and Beneficiaries).

§ 683.260 What prohibitions apply to the use of Workforce Innovation and Opportunity Act title I funds to encourage business relocation?

(a) *Prohibition.* Section 181(d) of WIOA states that funds must not be used or proposed to be used for:

(1) The encouragement or inducement of a business, or part of a business, to relocate from any location in the United States, if the relocation results in any employee losing his or her job at the original location;

(2) Customized training, skill training, on-the-job training, incumbent worker training, transitional employment, or company specific assessments of job applicants for or employees of any business or part of a business that has relocated from any location in the United States, until the company has operated at that location for 120 days, if the relocation has resulted in any employee losing his or her jobs at the original location.

(b) *Pre-award review.* To verify that a business establishment which is new or expanding is not, in fact, relocating employment from another area, standardized pre-award review criteria developed by the State must be completed and documented jointly by the local area and the business establishment as a prerequisite to WIOA assistance.

(1) The review must include names under which the establishment does business, including predecessors and successors in interest; the name, title, and address of the company official certifying the information, and whether WIOA assistance is sought in connection with past or impending job losses at other facilities, including a review of whether WARN notices relating to the employer have been filed.

(2) The review may include consultations with labor organizations and others in the affected local area(s).

§ 683.265 What procedures and sanctions apply to violations of this part?

(a) The Grant Officer will promptly review and take appropriate action on alleged violations of the provisions relating to:

(1) Construction (§ 683.235);

(2) Employment generating activities (§ 683.245);

(3) Other prohibited activities (§ 683.250);

(4) The limitation related to religious activities (§ 683.255); and

(5) The use of WIOA title I funds to encourage business relocation (§ 683.260).

(b) Procedures for the investigation and resolution of the violations are provided under the Grant Officer's resolution process at § 683.440.

(c) Sanctions and remedies are provided for under sec. 184(c) of WIOA for violations of the provisions relating to:

(1) Construction (§ 683.235);

(2) Employment generating activities (§ 683.245);

(3) Other prohibited activities (§ 683.250); and

(4) The limitation related to religious activities (§ 683.255(b)).

(d) Sanctions and remedies are provided for in sec. 181(d)(3) of WIOA for violations of § 683.260, which addresses business relocation.

(e) Violations of § 683.255(a) will be handled in accordance with the Department's nondiscrimination regulations implementing sec. 188 of WIOA, codified at 29 CFR part 38.

§ 683.270 What safeguards are there to ensure that participants in Workforce Innovation and Opportunity Act employment and training activities do not displace other employees?

(a) A participant in a program or activity authorized under title I of WIOA must not displace (including a partial displacement, such as a reduction in the hours of non-overtime work, wages, or employment benefits) any currently employed employee (as of the date of the participation).

(b) A program or activity authorized under title I of WIOA must not impair existing contracts for services or collective bargaining agreements. When a program or activity authorized under title I of WIOA would be inconsistent with a collective bargaining agreement, the appropriate labor organization and employer must provide written concurrence before the program or activity begins.

(c) A participant in a program or activity under title I of WIOA may not be employed in or assigned to a job if:

(1) Any other individual is on layoff from the same or any substantially equivalent job;

(2) The employer has terminated the employment of any regular, unsubsidized employee or otherwise caused an involuntary reduction in its workforce with the intention of filling the vacancy so created with the WIOA participant; or

(3) The job is created in a promotional line that infringes in any way on the promotional opportunities of currently employed workers as of the date of the participation.

(d) Regular employees and program participants alleging displacement may file a complaint under the applicable grievance procedures found at § 683.600.

§ 683.275 What wage and labor standards apply to participants in activities under title I of the Workforce Innovation and Opportunity Act?

(a) Individuals in on-the-job training or individuals employed in activities under title I of WIOA must be compensated at the same rates, including periodic increases, as trainees or employees who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills. Such rates must be in accordance with applicable law, but may not be less than the higher of the rate specified in sec. 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) or the applicable State or local minimum wage law.

(b) The reference in paragraph (a) of this section to sec. 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) is not applicable for individuals in territorial jurisdictions in which sec. 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) does not apply.

(c) Individuals in on-the-job training or individuals employed in programs and activities under title I of WIOA must be provided benefits and working conditions at the same level and to the same extent as other trainees or employees working a similar length of time and doing the same type of work.

(d) Allowances, earnings, and payments to individuals participating in programs under title I of WIOA are not considered as income for purposes of determining eligibility for and the amount of income transfer and in-kind aid furnished under any Federal or Federally-assisted program based on need, other than as provided under the Social Security Act (42 U.S.C. 301 *et seq.*).

§ 683.280 What health and safety standards apply to the working conditions of participants in activities under title I of the Workforce Innovation and Opportunity Act?

(a) Health and safety standards established under Federal and State law otherwise applicable to working conditions of employees are equally applicable to working conditions of participants engaged in programs and activities under title I of WIOA.

(b)(1) To the extent that a State workers' compensation law applies, workers' compensation must be provided to participants in programs and activities under title I of WIOA on the same basis as the compensation is provided to other individuals in the State in similar employment.

(2) If a State workers' compensation law applies to a participant in work experience, workers' compensation benefits must be available for injuries suffered by the participant in such work experience. If a State workers' compensation law does not apply to a participant in work experience, insurance coverage must be secured for injuries suffered by the participant in the course of such work experience.

§ 683.285 What are a recipient's obligations to ensure nondiscrimination and equal opportunity, and what are a recipient's obligations with respect to religious activities?

(a)(1) Recipients, as defined in 29 CFR 37.4, must comply with the nondiscrimination and equal opportunity provisions of WIOA sec. 188 and its implementing regulations, codified at 29 CFR part 38. Under that definition, the term "recipients" includes State and Local WDBs, one-stop operators, service providers, Job Corps contractors, and subrecipients, as well as other types of individuals and entities.

(2) Nondiscrimination and equal opportunity requirements and procedures, including complaint processing and compliance reviews, are governed by the regulations implementing sec. 188 of WIOA, codified at 29 CFR part 38, and are administered and enforced by the Department of Labor Civil Rights Center.

(3) Financial assistance provided under title I of WIOA may be used to meet a recipient's obligation to provide physical and programmatic accessibility and reasonable accommodation/modification in regard to the WIOA program, as required by sec. 504 of the Rehabilitation Act of 1973, as amended; the Americans with Disabilities Act of 1990, as amended; sec. 188 of WIOA; and the regulations implementing these statutory provisions.

(4) No person may discriminate against an individual who is a participant in a program or activity that receives funds under title I of WIOA, with respect to the terms and conditions affecting, or rights provided to, the individual, solely because of the status of the individual as a participant.

(5) Participation in programs and activities or receiving funds under title I of WIOA must be available to citizens and nationals of the United States, lawfully admitted permanent resident aliens, refugees, asylees, and parolees, and other immigrants authorized by the Secretary of Homeland Security or the Secretary's designee to work in the United States.

(b)(1) Title 29 CFR part 2, subpart D, governs the circumstances under which recipients may use Department support,

including WIOA title I and Wagner-Peyser Act financial assistance, to employ or train participants in religious activities. As explained in that subpart, such assistance may be used for such employment or training only when the assistance is provided indirectly within the meaning of the Establishment Clause of the U.S. Constitution, and not when the assistance is provided directly. As explained in that subpart, assistance provided through an Individual Training Account is generally considered indirect, and other mechanisms also may be considered indirect. *See also* § 683.255 and 29 CFR 37.6(f)(1).

(2) Title 29 CFR part 2, subpart D, also contains requirements related to equal treatment of religious organizations in Department of Labor programs, and to protection of religious liberty for Department of Labor social service providers and beneficiaries. Limitations on the employment of participants under WIOA title I to carry out the construction, operation, or maintenance of any part of any facility used or to be used for religious instruction or as a place of religious worship are described at 29 CFR 37.6(f)(2). *See also* WIOA sec. 188(a)(3).

§ 683.290 Are there salary and bonus restrictions in place for the use of title I of Workforce Innovation and Opportunity Act and Wagner-Peyser Act funds?

(a) No funds available under title I of WIOA or the Wagner-Peyser Act may be used by a recipient or subrecipient of such funds to pay the salary and bonuses of an individual, either as direct costs or indirect costs, at a rate in excess of the annual rate of basic pay prescribed for level II of the Executive Schedule under 5 U.S.C. 5313, which can be found at *https://www.opm.gov/*.

(b) In instances where funds awarded under title I of WIOA or the Wagner-Peyser Act pay only a portion of the salary or bonus, the WIOA title I or Wagner-Peyser Act funds may only be charged for the share of the employee's salary or bonus attributable to the work performed on the WIOA title I or Wagner-Peyser Act grant. That portion cannot exceed the proportional Executive level II rate. The restriction applies to the sum of salaries and bonuses charged as either direct costs or indirect costs under title I of WIOA and the Wagner-Peyser Act.

(c) The limitation described in paragraph (a) of this section will not apply to contractors (as defined in 2 CFR 200.23) providing goods and services. In accordance with 2 CFR 200.330, characteristics indicative of contractor are the following:

(1) Provides the goods and services within normal business operations;

(2) Provides similar goods or services to many different purchasers;

(3) Normally operates in a competitive environment;

(4) Provides goods or services that are ancillary to the operation of the Federal program; and

(5) Is not subject to compliance requirements of the Federal program as a result of the agreement, though similar requirements may apply for other reasons.

(d) If a State is a recipient of such funds, the State may establish a lower limit than is provided in paragraph (a) of this section for salaries and bonuses of those receiving salaries and bonuses from a subrecipient of such funds, taking into account factors including the relative cost of living in the State, the compensation levels for comparable State or local government employees, and the size of the organizations that administer the Federal programs involved.

(e) When an individual is working for the same recipient or subrecipient in multiple offices that are funded by title I of WIOA or the Wagner-Peyser Act, the recipient or subrecipient must ensure that the sum of the individual's salary and bonus does not exceed the prescribed limit in paragraph (a) of this section.

§ 683.295 Is earning of profit allowed under the Workforce Innovation and Opportunity Act?

(a)(1) Under secs. 121(d), 122(a) and 134(b) of WIOA, for-profit entities are eligible to be one-stop operators, service providers, and eligible training providers.

(2) Where for-profit entities are one-stop operators, service providers, and eligible training providers, and those entities are recipients of Federal financial assistance, the recipient or subrecipient and the for-profit entity must follow 2 CFR 200.323.

(b) For programs authorized by other sections of WIOA, 2 CFR 200.400(g) prohibits earning and keeping of profit in Federal financial assistance unless expressly authorized by the terms and conditions of the Federal award.

(c) Income earned by a public or private nonprofit entity may be retained by such entity only if such income is used to continue to carry out the program.

Subpart C—Reporting Requirements

§ 683.300 What are the reporting requirements for programs funded under the Workforce Innovation and Opportunity Act?

(a) *General.* All States and other direct grant recipients must report financial, participant, and other performance data in accordance with instructions issued by the Secretary. Reports, records, plans, or any other data required to be submitted or made available must, to the extent practicable, be submitted or made available through electronic means. Reports will not be required to be submitted more frequently than quarterly within a time period specified in the reporting instructions.

(b) *Subrecipient reporting.* (1) For the annual eligible training provider performance reports described in § 677.230 of this chapter and local area performance reports described in § 677.205 of this chapter, the State must require the template developed under WIOA sec. 116(d)(1) to be used.

(2) For financial reports and performance reports other than those described in paragraph (b)(1) of this section, a State or other grant recipient may impose different forms or formats, shorter due dates, and more frequent reporting requirements on subrecipients.

(3) If a State intends to impose different reporting requirements on subrecipients, it must describe those reporting requirements in its State WIOA Plan.

(c) *Financial reports.* (1) Each grant recipient must submit financial reports on a quarterly basis.

(2) Local WDBs will submit quarterly financial reports to the Governor.

(3) Each State will submit to the Secretary a summary of the reports submitted to the Governor pursuant to paragraph (c)(2) of this section.

(4) Reports must include cash on hand, obligations, expenditures, any income or profits earned, including such income or profits earned by subrecipients, indirect costs, recipient share of expenditures and any expenditures incurred (such as stand-in costs) by the recipient that are otherwise allowable except for funding limitations.

(5) Reported expenditures, matching funds, and program income, including any profits earned, must be reported on the accrual basis of accounting and cumulative by fiscal year of appropriation. If the recipient's accounting records are not normally kept on the accrual basis of accounting, the recipient must develop accrual

information through an analysis of the documentation on hand.

(d) *Performance reports.* (1) States must submit an annual performance report for each of the core workforce programs administered under WIOA as required by sec. 116(d) of WIOA and in accordance with part 677, subpart A, of this chapter.

(2) For all programs authorized under subtitle D of WIOA, each grant recipient must complete reports on performance indicators or goals specified in its grant agreement.

(e) *Due date.* (1) For the core programs, performance reports are due on the date set forth in guidance.

(2) Financial reports and all performance and data reports not described in paragraph (e)(1) of this section are due no later than 45 days after the end of each quarter unless otherwise specified in reporting instructions. Closeout financial reports are required no later than 90 calendar days after the expiration of a period of performance or period of fund availability (whichever comes first) and/or termination of the grant. If required by the terms and conditions of the grant, closeout performance reports are required no later than 90 calendar days after the expiration of a period of performance or period of fund availability (whichever comes first) and/or termination of the grant.

(f) *Format.* All reports whenever practicable should be collected, transmitted, and stored in open and machine readable formats.

(g) *Systems compatibility.* States and grant recipients will develop strategies for aligning data systems based upon guidelines issued by the Secretary of Labor and the Secretary of Education.

(h) *Additional reporting.* At the Grant Officer's or Secretary's discretion, reporting may be required more frequently of its grant recipients. Such requirement is consistent with 2 CFR parts 200 and 2900.

Subpart D—Oversight and Resolution of Findings

§ 683.400 What are the Federal and State monitoring and oversight responsibilities?

(a) The Secretary is authorized to monitor all recipients and subrecipients of all Federal financial assistance awarded and funds expended under title I of WIOA and the Wagner-Peyser Act to determine compliance with these statutes and Department regulations, and may investigate any matter deemed necessary to determine such compliance. Federal oversight will be conducted primarily at the recipient level.

(b) As funds allow, in each fiscal year, the Secretary also will conduct in-depth reviews in several States, including financial and performance monitoring, to assure that funds are spent in accordance with WIOA and the Wagner-Peyser Act.

(c)(1) Each recipient and subrecipient must monitor grant-supported activities in accordance with 2 CFR part 200.

(2) In the case of grants under secs. 128 and 133 of WIOA, the Governor must develop a State monitoring system that meets the requirements of § 683.410(b). The Governor must monitor Local WDBs and regions annually for compliance with applicable laws and regulations in accordance with the State monitoring system. Monitoring must include an annual review of each local area's compliance with 2 CFR part 200.

(d) Documentation of monitoring, including monitoring reports and audit work papers, conducted under paragraph (c) of this section, along with corrective action plans, must be made available for review upon request of the Secretary, Governor, or a representative of the Federal government authorized to request the information.

§ 683.410 What are the oversight roles and responsibilities of recipients and subrecipients of Federal financial assistance awarded under title I of the Workforce Innovation and Opportunity Act and the Wagner-Peyser Act?

(a) Each recipient and subrecipient of funds under title I of WIOA and under the Wagner-Peyser Act must conduct regular oversight and monitoring of its WIOA and Wagner-Peyser Act program(s) and those of its subrecipients and contractors as required under title I of WIOA and the Wagner-Peyser Act, as well as under 2 CFR part 200, including 2 CFR 200.327, 200.328, 200.330, 200.331, and Department exceptions at 2 CFR part 2900, in order to:

(1) Determine that expenditures have been made against the proper cost categories and within the cost limitations specified in WIOA and the regulations in this part;

(2) Determine whether there is compliance with other provisions of WIOA and the WIOA regulations and other applicable laws and regulations;

(3) Assure compliance with 2 CFR part 200; and

(4) Determine compliance with the nondiscrimination, disability, and equal opportunity requirements of sec. 188 of WIOA, including the Assistive Technology Act of 1998 (29 U.S.C. 3003).

(b) State roles and responsibilities for grants under secs. 128 and 133 of WIOA:

(1) The Governor is responsible for the development of the State monitoring system. The Governor must be able to demonstrate, through a monitoring plan or otherwise, that the State monitoring system meets the requirements of paragraph (b)(2) of this section.

(2) The State monitoring system must:

(i) Provide for annual on-site monitoring reviews of local areas' compliance with 2 CFR part 200, as required by sec. 184(a)(3) of WIOA;

(ii) Ensure that established policies to achieve program performance and outcomes meet the objectives of WIOA and the WIOA regulations;

(iii) Enable the Governor to determine if subrecipients and contractors have demonstrated substantial compliance with WIOA and Wagner-Peyser Act requirements;

(iv) Enable the Governor to determine whether a local plan will be disapproved for failure to make acceptable progress in addressing deficiencies, as required in sec. 108(e) of WIOA; and

(v) Enable the Governor to ensure compliance with the nondiscrimination, disability, and equal opportunity requirements of sec. 188 of WIOA, including the Assistive Technology Act of 1998 (29 U.S.C. 3003).

(3) The State must conduct an annual on-site monitoring review of each local area's compliance with 2 CFR part 200, as required by sec. 184(a)(4) of WIOA.

(4) The Governor must require that prompt corrective action be taken if any substantial violation of standards identified in paragraph (b)(2) or (3) of this section is found.

(5) The Governor must impose the sanctions provided in secs. 184(b)–(c) of WIOA in the event of a subrecipient's failure to take required corrective action required under paragraph (b)(4) of this section.

(6) The Governor may issue additional requirements and instructions to subrecipients on monitoring activities.

(7) The Governor must certify to the Secretary every 2 years that:

(i) The State has implemented 2 CFR part 200;

(ii) The State has monitored local areas to ensure compliance with 2 CFR part 200, including annual certifications and disclosures as outlined in 2 CFR 200.113, Mandatory Disclosures. Failure to do so may result in remedies described under 2 CFR 200.338, including suspension and debarment; and

(iii) The State has taken appropriate corrective action to secure such compliance.

§ 683.420 What procedures apply to the resolution of findings arising from audits, investigations, monitoring, and oversight reviews?

(a) *Resolution of subrecipient-level findings.* (1) The Governor or direct grant recipient is responsible for resolving findings that arise from the monitoring reviews, investigations, other Federal monitoring reviews, and audits (including under 2 CFR part 200) of subrecipients awarded funds through title I of WIOA or the Wagner-Peyser Act.

(i) A State or direct grant recipient must utilize the written monitoring and audit resolution, debt collection and appeal procedures that it uses for other Federal grant programs.

(ii) If a State or direct grant recipient does not have such written procedures, it must prescribe standards and procedures to be used for this grant program.

(2) For subrecipients awarded funds through a recipient of grant funds under subtitle D of title I of WIOA, the direct recipient of the grant funds must have written monitoring and resolution procedures in place that are consistent with 2 CFR part 200.

(b) *Resolution of State and other direct recipient-level findings.* (1) The Secretary is responsible for resolving findings that arise from Federal audits, monitoring reviews, investigations, incident reports, and audits under 2 CFR part 200 for direct recipients of Federal awards under title I of WIOA and the Wagner-Peyser Act, as amended by WIOA title III.

(2) The Secretary will use the Department audit resolution process, consistent with 2 CFR part 200 (and Department modifications at 2 CFR part 2900), and Grant Officer Resolution provisions of § 683.440, as appropriate.

(3) A final determination issued by a Grant Officer under this process may be appealed to the Department of Labor Office of Administrative Law Judges under the procedures at § 683.800.

(c) *Resolution of nondiscrimination findings.* Findings arising from investigations or reviews conducted under nondiscrimination laws will be resolved in accordance with WIOA sec. 188 of WIOA and the Department of Labor nondiscrimination regulations implementing sec. 188 of WIOA, codified at 29 CFR part 38.

§ 683.430 How does the Secretary resolve investigative and monitoring findings?

(a) As a result of an investigation, on-site visit, other monitoring, or an audit (*i.e.,* Single Audit, OIG Audit, GAO Audit, or other audit), the Secretary will notify the direct recipient of the Federal award of the findings of the investigation and give the direct recipient a period of time (not more than 60 days) to comment and to take appropriate corrective actions.

(1) *Adequate resolution.* The Grant Officer in conjunction with the Federal project officer, reviews the complete file of the monitoring review, monitoring report, or final audit report and the recipient's response and actions under paragraph (a) of this section. The Grant Officer's review takes into account the sanction provisions of secs. 184(b)–(c) of WIOA. If the Grant Officer agrees with the recipient's handling of the situation, the Grant Officer so notifies the recipient. This notification constitutes final agency action.

(2) *Inadequate resolution.* If the direct recipient's response and actions to resolve the findings are found to be inadequate, the Grant Officer will begin the Grant Officer resolution process under § 683.440.

(b) Audits from 2 CFR part 200 will be resolved through the Grant Officer resolution process, as discussed in § 683.440.

§ 683.440 What is the Grant Officer resolution process?

(a) *General.* When the Grant Officer is dissatisfied with the a recipient's disposition of an audit or other resolution of findings (including those arising out of site visits, incident reports or compliance reviews), or with the recipient's response to findings resulting from investigations or monitoring reports, the initial and final determination process as set forth in this section is used to resolve the matter.

(b) *Initial determination.* The Grant Officer makes an initial determination on the findings for both those matters where there is agreement and those where there is disagreement with the recipient's resolution, including the allowability of questioned costs or activities. This initial determination is based upon the requirements of WIOA, the Wagner-Peyser Act, and applicable regulations, and the terms and conditions of the grants or other agreements under the award.

(c) *Informal resolution.* Except in an emergency situation, when the Secretary invokes the authority described in sec. 184(e) of WIOA, the Grant Officer may not revoke a recipient's grant in whole or in part, nor institute corrective actions or sanctions, without first providing the recipient with an opportunity to present documentation or arguments to resolve informally those matters in dispute contained in the initial determination. The initial determination must provide for an informal resolution period of at least 60 days from issuance of the initial determination. If the matters are resolved informally, the Grant Officer must issue a final determination under paragraph (d) of this section which notifies the parties in writing of the nature of the resolution and may close the file.

(d) *Final determination.* (1) Upon completion of the informal resolution process, the Grant Officer provides each party with a written final determination by certified mail, return receipt requested. For audits of recipient-level entities and other recipients which receive WIOA funds directly from the Department, ordinarily, the final determination is issued not later than 180 days from the date that the Office of Inspector General (OIG) issues the final approved audit report to the Employment and Training Administration. For audits of subrecipients conducted by the OIG, ordinarily the final determination is issued not later than 360 days from the date the OIG issues the final approved audit report to ETA.

(2) A final determination under this paragraph (d) must:

(i) Indicate whether efforts to resolve informally matters contained in the initial determination have been unsuccessful;

(ii) List those matters upon which the parties continue to disagree;

(iii) List any modifications to the factual findings and conclusions set forth in the initial determination and the rationale for such modifications;

(iv) Establish a debt, if appropriate;

(v) Require corrective action, when needed;

(vi) Determine liability, method of restitution of funds, and sanctions; and

(vii) Offer an opportunity for a hearing in accordance with § 683.800.

(3) Unless a hearing is requested, a final determination under this paragraph (d) is final agency action and is not subject to further review.

Subpart E—Pay-for-Performance Contract Strategies

§ 683.500 What is a Workforce Innovation and Opportunity Act Pay-for-Performance contract strategy?

(a) A WIOA Pay-for-Performance contract strategy is a specific type of performance-based contract strategy that has four distinct characteristics:

(1) It is a strategy to use WIOA Pay-for-Performance contracts as they are described in § 683.510;

(2) It must include the identification of the workforce development problem and target populations for which a local area will pursue a WIOA Pay-for-Performance contract strategy; the outcomes the local area would hope to achieve through a Pay-for-Performance contract relative to baseline performance; and the acceptable cost to government associated with achieving these outcomes;

(3) It must include a strategy for independently validating the performance outcomes achieved under each contract within the strategy prior to payment occurring; and

(4) It must include a description of how the State or local area will reallocate funds to other activities under the contract strategy in the event a service provider does not achieve performance benchmarks under a WIOA Pay-for-Performance contract.

(b) Prior to the implementation of a WIOA Pay-for-Performance contract strategy, a local area must conduct a feasibility study to determine whether the intervention is suitable for a WIOA Pay-for-Performance contract strategy.

(c) The WIOA Pay-for-Performance contract strategy must be developed in accordance with guidance issued by the Secretary.

§ 683.510 What is a Workforce Innovation and Opportunity Act Pay-for-Performance contract?

(a) *Pay-for-Performance contract.* A WIOA Pay-for-Performance contract is a type of Performance-Based contract.

(b) *Applicability.* WIOA Pay-for-Performance contracts may only be entered into when they are a part of a WIOA Pay-for-Performance contract strategy described in § 683.500.

(c) *Cost-plus a percentage of cost contracts.* Use of cost plus a percentage of cost contracts is prohibited. (2 CFR 200.323.)

(d) *Services provided.* WIOA Pay-for-Performance contracts must be used to provide adult training services described in sec. 134(c)(3) of WIOA or youth activities described in sec. 129(c)(2) of WIOA.

(e) *Structure of payment.* WIOA Pay-for-Performance contracts must specify a fixed amount that will be paid to the service provider based on the achievement of specified levels of performance on the performance outcomes in sec. 116(b)(2)(A) of WIOA for target populations within a defined timetable. Outcomes must be independently validated, as described in paragraph (j) of this section and § 683.500, prior to disbursement of funds.

(f) *Eligible service providers.* WIOA Pay-for-Performance contracts may be entered into with eligible service providers, which may include local or national community-based organizations or intermediaries, community colleges, or other training providers that are eligible under sec. 122 or 123 of WIOA (as appropriate).

(g) *Target populations.* WIOA Pay-for-Performance contracts must identify target populations as specified by the Local WDB, which may include individuals with barriers to employment.

(h) *Bonus payments.* WIOA Pay-for-Performance contracts may include bonus payments for the contractor based on achievement of specified levels of performance. Bonus payments for achieving outcomes above and beyond those specified in the contract must be used by the service provider to expand capacity to provide effective training.

(i) *Performance reporting.* Performance outcomes achieved under the WIOA Pay-for-Performance contract, measured against the levels of performance specified in the contract, must be tracked by the local area and reported to the State pursuant to WIOA sec. 116(d)(2)(K) and § 677.160 of this chapter.

(j) *Validation.* WIOA Pay-for-Performance contracts must include independent validation of the contractor's achievement of the performance benchmarks specified in the contract. This validation must be based on high-quality, reliable, and verified data.

(k) *Guidance.* The Secretary may issue additional guidance related to use of WIOA Pay-for-Performance contracts.

§ 683.520 What funds can be used to support Workforce Innovation and Opportunity Act Pay-for-Performance contract strategies?

(a) For WIOA Pay-for-Performance contract strategies providing adult and dislocated worker training services, funds allocated under secs. 133(b)(2)–(3) of WIOA can be used. For WIOA Pay-for-Performance contract strategies providing youth activities, funds allocated under WIOA sec. 128(b) can be used.

(b) No more than 10 percent of the total local adult and dislocated worker allocations can be reserved and used on the implementation of WIOA Pay-for-Performance contract strategies for adult training services described in sec. 134(c)(3) of WIOA. No more than 10 percent of the local youth allocation can be reserved and used on the implementation of WIOA Pay-for-Performance contract strategies for youth training services and other activities described in secs. 129(c)(2) of WIOA.

§ 683.530 How long are funds used for Workforce Innovation and Opportunity Act Pay-for-Performance contract strategies available?

Section 189(g)(2)(D) of WIOA authorizes funds used for WIOA Pay-for-Performance contract strategies to be available until expended. Under WIOA sec. 3(47)(C), funds that are obligated but not expended due to a contractor not achieving the levels of performance specified in a WIOA Pay-for-Performance contract may be reallocated for further activities related to WIOA Pay-for-Performance contract strategies only. The Secretary will issue additional guidance related to the funds availability and reallocation.

§ 683.540 What is the State's role in assisting local areas in using Workforce Innovation and Opportunity Act Pay-for-Performance contract strategies?

(a) Using funds from the Governor's Reserve the State may:

(1) Provide technical assistance to local areas including assistance with structuring WIOA Pay-for-Performance contracting strategies, performance data collection, meeting performance data entry requirements, and identifying levels of performance.

(2) Conduct evaluations of local WIOA Pay-for-Performance contracting strategies, if appropriate.

(3) Conduct other activities that comply with limitations on the use of the Governor's Reserve.

(b) Using non-Federal funds, Governors may establish incentives for Local WDBs to implement WIOA Pay-for-Performance contract strategies as described in this subpart.

(c) In the case of a State in which local areas are implementing WIOA Pay-for-Performance contract strategies, the State must:

(1) Collect and report to the Department data on the performance of service providers entering into WIOA Pay-for-Performance contracts, measured against the levels of performance benchmarks specified in the contracts, pursuant to sec. 116(d)(2)(K) of WIOA and § 677.160 of this chapter and in accordance with any additional guidance issued by the Secretary.

(2) Collect and report to the Department State and/or local evaluations of the design and performance of the WIOA Pay-for-Performance contract strategies, and, where possible, the level of satisfaction with the strategies among employers and participants benefitting from the

strategies, pursuant to sec. 116(d)(2)(K) of WIOA and § 677.160 of this chapter, and in accordance with any guidance issued by the Secretary.

(3) Monitor local areas' use of WIOA Pay-for-Performance contract strategies to ensure compliance with § 683.500 and the contract specifications in § 683.510, and State procurement policies.

(4) Monitor local areas' expenditures to ensure that no more than 10 percent of a local area's adult and dislocated worker allotments and no more than 10 percent of a local area's youth allotment is reserved and used on WIOA Pay-for-Performance contract strategies.

(d) The Secretary will issue additional guidance on State roles in WIOA Pay-for-Performance contract strategies.

Subpart F—Grievance Procedures, Complaints, and State Appeals Processes

§ 683.600 What local area, State, and direct recipient grievance procedures must be established?

(a) Each local area, State, outlying area, and direct recipient of funds under title I of WIOA, except for Job Corps, must establish and maintain a procedure for participants and other interested parties to file grievances and complaints alleging violations of the requirements of title I of WIOA, according to the requirements of this section. The grievance procedure requirements applicable to Job Corps are set forth at §§ 686.960 and 686.965 of this chapter.

(b) Each local area, State, and direct recipient must:

(1) Provide information about the content of the grievance and complaint procedures required by this section to participants and other interested parties affected by the local workforce development system, including one-stop partners and service providers;

(2) Require that every entity to which it awards title I funds provide the information referred to in paragraph (b)(1) of this section to participants receiving title I-funded services from such entities; and

(3) Must make reasonable efforts to assure that the information referred to in paragraph (b)(1) of this section will be understood by affected participants and other individuals, including youth and those who are limited-English speaking individuals. Such efforts must comply with the language requirements of 29 CFR 37.35 regarding the provision of services and information in languages other than English.

(c) Local area procedures must provide:

(1) A process for dealing with grievances and complaints from participants and other interested parties affected by the local workforce development system, including one-stop partners and service providers;

(2) An opportunity for an informal resolution and a hearing to be completed within 60 days of the filing of the grievance or complaint;

(3) A process which allows an individual alleging a labor standards violation to submit the grievance to a binding arbitration procedure, if a collective bargaining agreement covering the parties to the grievance so provides; and

(4) An opportunity for a local level appeal to a State entity when:

(i) No decision is reached within 60 days; or

(ii) Either party is dissatisfied with the local hearing decision.

(d) State procedures must provide:

(1) A process for dealing with grievances and complaints from participants and other interested parties affected by the statewide Workforce Investment programs;

(2) A process for resolving appeals made under paragraph (c)(4) of this section;

(3) A process for remanding grievances and complaints related to the local Workforce Innovation and Opportunity Act programs to the local area grievance process; and

(4) An opportunity for an informal resolution and a hearing to be completed within 60 days of the filing of the grievance or complaint; and

(5) An opportunity for appeal to the Secretary under the circumstances described in § 683.610(a).

(e) Procedures of direct recipients must provide:

(1) A process for dealing with grievance and complaints from participants and other interested parties affected by the recipient's Workforce Innovation and Opportunity Act programs; and

(2) An opportunity for an informal resolution and a hearing to be completed within 60 days of the filing of the grievance or complaint.

(f) The remedies that may be imposed under local, State, and direct recipient grievance procedures are enumerated at WIOA sec. 181(c)(3).

(g)(1) The provisions of this section on grievance procedures do not apply to discrimination complaints brought under WIOA sec. 188 and/or 29 CFR part 38. Such complaints must be handled in accordance with the procedures set forth in that regulatory part.

(2) Questions about or complaints alleging a violation of the nondiscrimination provisions of WIOA sec. 188 may be directed or mailed to the Director, Civil Rights Center, U.S. Department of Labor, Room N4123, 200 Constitution Avenue NW., Washington, DC 20210, for processing.

(h) Nothing in this subpart precludes a grievant or complainant from pursuing a remedy authorized under another Federal, State, or local law.

§ 683.610 What processes does the Secretary use to review grievances and complaints of Workforce Innovation and Opportunity Act title I recipients?

(a) The Secretary investigates allegations arising through the grievance procedures described in § 683.600 when:

(1) A decision on a grievance or complaint under § 683.600(d) has not been reached within 60 days of receipt of the grievance or complaint or within 60 days of receipt of the request for appeal of a local level grievance and either party appeals to the Secretary; or

(2) A decision on a grievance or complaint under § 683.600(d) has been reached and the party to which such decision is adverse appeals to the Secretary.

(b) The Secretary must make a final decision on an appeal under paragraph (a) of this section no later than 120 days after receiving the appeal.

(c) Appeals made under paragraph (a)(2) of this section must be filed within 60 days of the receipt of the decision being appealed. Appeals made under paragraph (a)(1) of this section must be filed within 120 days of the filing of the grievance with the State, or the filing of the appeal of a local grievance with the State. All appeals must be submitted by certified mail, return receipt requested, to the Secretary, U.S. Department of Labor, 200 Constitution Ave. NW., Washington, DC 20210, Attention: ASET. A copy of the appeal must be simultaneously provided to the appropriate ETA Regional Administrator and the opposing party.

(d) Except for complaints arising under WIOA sec. 184(f) or sec. 188, grievances or complaints made directly to the Secretary will be referred to the appropriate State or local area for resolution in accordance with this section, unless the Department notifies the parties that the Department of Labor will investigate the grievance under the procedures at § 683.430. Discrimination complaints brought under WIOA sec. 184(f) or sec. 188 or 29 CFR part 38 will be referred to the Director of the Civil Rights Center.

(e) Complaints and grievances from participants receiving services under the

Wagner-Peyser Act will follow the procedures outlined at part 658 of this chapter.

§ 683.620 How are complaints and reports of criminal fraud and abuse addressed under the Workforce Innovation and Opportunity Act?

(a) Information and complaints involving criminal fraud, waste, abuse or other criminal activity must be reported immediately through the Department's Incident Reporting System to the Department of Labor Office of Inspector General, Office of Investigations, Room S5514, 200 Constitution Avenue NW., Washington, DC 20210, or to the corresponding Regional Inspector General for Investigations, with a copy simultaneously provided to the Employment and Training Administration. The Hotline number is 1–800–347–3756. The Web site is *http://www.oig.dol.gov/contact.htm.*

(b) Complaints of a non-criminal nature may be handled under the procedures set forth in § 683.600 or through the Department's Incident Reporting System.

§ 683.630 What additional appeal processes or systems must a State have for the Workforce Innovation and Opportunity Act program?

(a) Non-designation of local areas:

(1) The State must establish, and include in its State Plan, due process procedures which provide expeditious appeal to the State WDB for a unit of general local government (including a combination of such units) or grant recipient that requests, but is not granted, initial or subsequent designation of an area as a local area under WIOA sec. 106(b)(2) or 106(b)(3) and § 679.250 of this chapter.

(2) These procedures must provide an opportunity for a hearing and prescribe appropriate time limits to ensure prompt resolution of the appeal.

(3) If the appeal to the State WDB does not result in designation, the appellant may request review by the Secretary under § 683.640.

(b) Denial or termination of eligibility as a training provider:

(1) A State must establish procedures which allow providers of training services the opportunity to appeal:

(i) Denial of eligibility by a Local WDB or the designated State agency under WIOA sec. 122(b), 122(c), or 122(d).

(ii) Termination of eligibility or other action by a Local WDB or State agency under WIOA sec. 122(f); or

(iii) Denial of eligibility as a provider of on-the-job training (OJT) or customized training by a one-stop operator under WIOA sec. 122(h).

(2) Such procedures must provide an opportunity for a hearing and prescribe appropriate time limits to ensure prompt resolution of the appeal.

(3) A decision under this State appeal process may not be appealed to the Secretary.

(c) Testing and sanctioning for use of controlled substances.

(1) A State must establish due process procedures, in accordance with WIOA sec. 181(f), which provide expeditious appeal for:

(i) Participants in programs under title I, subtitle B of WIOA subject to testing for use of controlled substances, imposed under a State policy established under WIOA sec. 181(f)(1); and

(ii) Participants in programs under title I, subtitle B of WIOA who are sanctioned, in accordance with WIOA sec. 181(f)(2), after testing positive for the use of controlled substances, under the policy described in paragraph (c)(1)(i) of this section.

(2) A decision under this State appeal process may not be appealed to the Secretary.

§ 683.640 What procedures apply to the appeals of non-designation of local areas?

(a) A unit of general local government (including a combination of such units) or grant recipient whose appeal of the denial of a request for initial or subsequent designation as a local area to the State WDB has not resulted in such designation, may appeal the State WDB's denial to the Secretary.

(b) Appeals made under paragraph (a) of this section must be filed no later than 30 days after receipt of written notification of the denial from the State WDB, and must be submitted by certified mail, return receipt requested, to the Secretary, U.S. Department of Labor, 200 Constitution Ave. NW., Washington, DC 20210, Attention: ASET. A copy of the appeal must be simultaneously provided to the State WDB.

(c) The appellant must establish that it was not accorded procedural rights under the appeal process set forth in the State Plan, or establish that it meets the requirements for designation in WIOA sec. 106(b)(2) or 106(b)(3) and § 679.250 of this chapter.

(d) If the Secretary determines that the appellant has met its burden of establishing that it was not accorded procedural rights under the appeal process set forth in the State Plan, or that it meets the requirements for designation in WIOA sec. 106(b)(2) or 106(b)(3) and § 679.250 of this chapter, the Secretary may require that the area be designated as a local area. In making this determination, the Secretary may consider any comments submitted by the State WDB in response to the appeal made under paragraph (a) of this section.

(e) The Secretary must issue a written decision to the Governor and the appellant.

§ 683.650 What procedures apply to the appeals of the Governor's imposition of sanctions for substantial violations or performance failures by a local area?

(a) A local area which has been found in substantial violation of WIOA title I, and has received notice from the Governor that either all or part of the local plan will be revoked or that a reorganization will occur, may appeal such sanctions to the Secretary under WIOA sec. 184(b). The appeal must be filed no later than 30 days after receipt of written notification of the revoked plan or imposed reorganization.

(b) The sanctions described in paragraph (a) of this section do not become effective until:

(1) The time for appeal has expired; or

(2) The Secretary has issued the decision described in paragraph (e) of this section.

(c) A local area which has failed to meet local performance indicators for 3 consecutive program years, and has received the Governor's notice of intent to impose a reorganization plan, may appeal to the Governor to rescind or revise such plan, in accordance with § 677.225 of this chapter.

(d) Appeals to the Secretary made under paragraph (a) of this section must be submitted by certified mail, return receipt requested, to the Secretary, U.S. Department of Labor, 200 Constitution Ave. NW., Washington, DC 20210, Attention: ASET. A copy of the appeal must be simultaneously provided to the Governor.

(e) The Secretary will notify the Governor and the appellant in writing of the Secretary's decision under paragraph (a) of this section within 45 days after receipt of the appeal. In making this determination, the Secretary may consider any comments submitted by the Governor in response to the appeals.

Subpart G—Sanctions, Corrective Actions, and Waiver of Liability

§ 683.700 When can the Secretary impose sanctions and corrective actions on recipients and subrecipients of title I Workforce Innovation and Opportunity Act funds?

(a) *Applicability.* (1) Except for actions under WIOA secs. 116 and 188(a) or 29 CFR parts 31, 32, 35, and 38 and 49 CFR part 25, the Grant Officer must use the procedures outlined in § 683.440 before imposing a sanction on, or requiring corrective action by, recipients of funds under title I of WIOA.

(2) To impose a sanction or corrective action for a violation of WIOA sec. 188(a) the Department will use the procedures set forth in 29 CFR part 38.

(3) To impose a sanction or corrective action for a violation of WIOA sec. 116 the Department will use the procedures set forth in part 677 of this chapter.

(b) *States.* When a Grant Officer determines that the Governor has not fulfilled its requirements under 2 CFR part 200, an audit, or a monitoring compliance review set forth at sec. 184(a)(4) of WIOA and § 683.410, or has not taken corrective action to remedy a violation as required by WIOA secs. 184(a)(5) and 184(b)(1), the Grant Officer must require the Governor to impose the necessary corrective actions set forth at WIOA secs. 184(a)(5) and 184(b)(1), or may require repayment of funds under WIOA sec. 184(c). If the Secretary determines it is necessary to protect the funds or ensure the proper operation of a program or activity, the Secretary may immediately suspend or terminate financial assistance in accordance with WIOA sec. 184(e).

(c) *Local areas.* If the Governor fails to promptly take the actions specified in WIOA sec. 184(b)(1) when it determines that a local area has failed to comply with the requirements described in § 683.720(a), and that the local area has not taken the necessary corrective action, the Grant Officer may impose such actions directly against the local area.

(d) *Direct grant recipients.* When the Grant Officer determines that a direct grant recipient of subtitle D of title I of WIOA has not taken corrective action to remedy a substantial violation as the result of noncompliance with 2 CFR part 200, the Grant Officer may impose sanctions against the grant recipient.

(e) *Subrecipients.* The Grant Officer may impose a sanction directly against a subrecipient, as authorized in WIOA sec. 184(d)(3) and 2 CFR 200.338. In such a case, the Grant Officer will inform the direct grant recipient of the action.

§ 683.710 Who is responsible for funds provided under title I of the Workforce Innovation and Opportunity Act and the Wagner-Peyser Act?

(a) The recipient of the funds is responsible for all funds under its grant(s) awarded under WIOA title I and the Wagner-Peyser Act.

(b)(1) The local government's chief elected official(s) in a local area is liable for any misuse of the WIOA grant funds allocated to the local area under WIOA secs. 128 and 133, unless the chief elected official(s) reaches an agreement with the Governor to bear such liability.

(2) When a local workforce area or region is composed of more than one unit of general local government, the liability of the individual jurisdictions must be specified in a written agreement between the chief elected officials.

(3) When there is a change in the chief elected official(s), the Local WDB is required to inform the new chief elected official(s), in a timely manner, of their responsibilities and liabilities as well as the need to review and update any written agreements among the chief elected official(s).

(4) The use of a fiscal agent does not relieve the chief elected official, or Governor if designated under paragraph (b)(1) of this section, of responsibility for any misuse of grant funds allocated to the local area under WIOA secs. 128 and 133.

§ 683.720 What actions are required to address the failure of a local area to comply with the applicable uniform administrative provisions?

(a) If, as part of the annual on-site monitoring of local areas, the Governor determines that a local area is not in compliance with 2 CFR part 200, including the failure to make the required disclosures in accordance with 2 CFR 200.113 or the failure to disclose all violations of Federal criminal law involving fraud, bribery or gratuity violations, the Governor must:

(1) Require corrective action to secure prompt compliance; and

(2) Impose the sanctions provided for at WIOA sec. 184(b) if the Governor finds that the local area has failed to take timely corrective action.

(b) An action by the Governor to impose a sanction against a local area, in accordance with this section, may be appealed to the Secretary in accordance with § 683.650.

(c)(1) If the Secretary finds that the Governor has failed to monitor and certify compliance of local areas with the administrative requirements under WIOA sec. 184(a), or that the Governor has failed to take the actions promptly required upon a determination under paragraph (a) of this section, the Secretary must take the action described in § 683.700(b).

(2) If the Governor fails to take the corrective actions required by the Secretary under paragraph (c)(1) of this section, the Secretary may immediately suspend or terminate financial assistance under WIOA sec. 184(e).

§ 683.730 When can the Secretary waive the imposition of sanctions?

(a)(1) A recipient of title I funds may request that the Secretary waive the imposition of sanctions authorized under WIOA sec. 184.

(2) A Grant officer may approve the waiver described in paragraph (a)(1) of this section if the grant officer finds that the recipient has demonstrated substantial compliance with the requirements of WIOA sec. 184(d)(2).

(b)(1) When the debt for which a waiver request was established in a non-Federal resolution proceeding, the resolution report must accompany the waiver request.

(2) When the waiver request is made during the ETA Grant Officer resolution process, the request must be made during the informal resolution period described in § 683.440(c).

(c) A waiver of the recipient's liability must be considered by the Grant Officer only when:

(1) The misexpenditure of WIOA funds occurred at a subrecipient's level;

(2) The misexpenditure was not due to willful disregard of the requirements of title I of WIOA, gross negligence, failure to observe accepted standards of administration, and did not constitute fraud or failure to make the required disclosures in accordance with 2 CFR 200.113 addressing all violations of Federal criminal law involving fraud, bribery or gratuity violations (2 CFR part 180 and 31 U.S.C. 3321)

(3) If fraud did exist, was perpetrated against the recipient/subrecipients, and:

(i) The recipient/subrecipients discovered, investigated, reported, and cooperated in any prosecution of the perpetrator of the fraud; and

(ii) After aggressive debt collection action, it has been documented that further attempts at debt collection from the perpetrator of the fraud would be inappropriate or futile;

(4) The recipient has issued a final determination which disallows the misexpenditure, the recipient's appeal process has been exhausted, and a debt has been established; and

(5) The recipient provides documentation to demonstrate that it has substantially complied with the

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN FOR REPORTS OF HARM—Continued

Collection type	Number of respondents	Response frequency [1]	Total annual responses	Minutes per response	Total burden, in hours [2]
Total	9,994		14,639		3,534

[1] Frequency of responses is calculated by dividing the number of responses by the number of respondents.
[2] Numbers have been rounded.

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN FOR MANUFACTURER SUBMISSIONS

Collection type	Number of respondents	Response frequency [1]	Total annual responses	Minutes per response	Total burden, in hours [2]
Manufacturer Comments—submitted through Web site	532	6.23	3,317	117	6,468
Manufacturer Comments—submitted by mail, email, fax	283	1.22	346	147	848
Requests to Treat Information as Confidential—submitted through Web site	12	1.08	13	42	9
Requests to Treat Information as Confidential—submitted by mail, email, fax	0	n/a	0	72	0
Requests to Treat Information as Materially Inaccurate—submitted through Web site	131	1.82	238	165	655
Requests to Treat Information as Materially Inaccurate—submitted by mail, email, fax	79	1.06	84	195	273
Voluntary Brand Identification	829	1.48	1,228	10	205
Small Batch Manufacturer Identification	2,208	1	2,208	10	368
Total	4,074		7,434		8,826

Based on the data set forth in Tables 1 and 2 above, the annual reporting cost is estimated to be $719,381. This estimate is based on the sum of two estimated total figures for reports of harm and manufacturer submissions. The estimated number of respondents and responses are based on the actual responses received in FY 2015. We assume that the number of responses and respondents will be similar in future years.

Reports of Harm: Table 1 sets forth the data used to estimate the burden associated with submitting reports of harm. We had previously estimated the time associated with the electronic and telephone submission of reports of harm at 12 and 10 minutes, respectively, and because we have had no indication that these estimates are not appropriate or accurate, we used those figures for present purposes as well. We estimate that the time associated with a paper or PDF form would be 20 minutes, on average.

To estimate the costs for submitting reports of harm, we multiplied the estimated total burden hours associated with reports of harm (1,358 hours + 441 hours + 1,735 hours = 3,534 hours) by an estimated total compensation for all workers in private industry of $32.06 per hour,[3] which results in an estimated cost of $113,300 (3,534 hours × $32.06 per hour = $113,300).

Manufacturer Submissions: Table 2 sets forth the data used to estimate the burden associated with manufacturers' submissions to the Database. We observed that a large percentage of the general comments come from a few businesses and assumed that the experience of a business that submits many comments each year would be different from one that submits only a few. Accordingly, we divided all responding businesses into three groups, based on the number of general comments submitted in FY 2015; and then we selected several businesses from each group to contact. The first group we contacted consisted of businesses that submitted 50 or more comments in FY 2015, accounting for 31 percent of all general comments received. The second group we contacted included businesses that submitted six to 49 comments, accounting for 39 percent of all general comments received. The last group contacted included businesses that submitted no more than five comments, accounting for 30 percent of all general comments received.[4] We asked each company contacted how long it typically takes to research, compose, and enter a comment, a claim of materially inaccurate information, or a confidential information claim.

To estimate the burden associated with submitting a general comment through the business portal regarding a report of harm, we averaged the burden provided by each company within each group and then calculated a weighted average from the three groups, weighting each group by the proportion of comments received from that group. We found that the average time to submit a general comment regarding a report of harm is 117 minutes based on the data in Table 3 (((15 minutes + 45 minutes + 30 minutes + 15 minutes)/4 companies) * .31 + ((105 minutes + 45 minutes + 150 minutes + 15 minutes)/4 companies) * .39 + ((240 minutes + 60 minutes + 480 minutes)/3 companies) * .30 = 117 minutes).

[1] Frequency of response is calculated by dividing the number of responses by the number of respondents.

[2] Numbers have been rounded.

[3] U.S. Department of Labor, Bureau of Labor Statistics, Table 9 of the Employer Costs for Employee Compensation (ECEC), Private Industry, goods-producing and service-providing industries, by occupational group, June 2016 (data extracted on 06/23/2016 from *http://www.bls.gov/news.release/ecec.t09.htm*.

[4] In the last group one company was excluded as an outlier.

requirements of WIOA sec. 184(d)(2) and this section.

(d) The recipient will not be released from liability for misspent funds under the determination required by WIOA sec. 184(d) unless the Grant Officer determines that further collection action, either by the recipient or subrecipient(s), would be inappropriate or would prove futile.

§ 683.740 What is the procedure to handle a recipient of title I Workforce Innovation and Opportunity Act funds' request for advance approval of contemplated corrective actions?

(a) The recipient may request advance approval from the Grant Officer for contemplated corrective actions, including debt collection actions, which the recipient plans to initiate or to forego. The recipient's request must include a description and an assessment of all actions taken to collect the misspent funds.

(b) Based on the recipient's request, the Grant Officer may determine that the recipient may forego certain debt collection actions against a subrecipient when:

(1) The subrecipient meets the criteria set forth in WIOA sec. 184(d)(2);

(2) The misexpenditure of funds:

(i) Was not made by that subrecipient but by an entity that received WIOA funds from that subrecipient;

(ii) Was not a violation of WIOA sec. 184(d)(1), did not constitute fraud, or failure to disclose, in a timely manner, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award; or

(iii) If fraud did exist:

(A) It was perpetrated against the subrecipient;

(B) The subrecipient discovered, investigated, reported, and cooperated in any prosecution of the perpetrator of the fraud; and

(C) After aggressive debt collection action, it has been documented that further attempts at debt collection from the perpetrator of the fraud would be inappropriate or futile;

(3) A determination which disallows the misexpenditure and establishes a debt has been issued at the appropriate level; and,

(4) Further debt collection action by that subrecipient or the recipient would be either inappropriate or futile.

§ 683.750 What procedure must be used for administering the offset/deduction provisions of the Workforce Innovation and Opportunity Act?

(a)(1) For misexpenditures by direct recipients of title I and Wagner-Peyser Act formula funds the Grant Officer may determine that a debt, or a portion thereof, may be offset against amounts that are allotted to the recipient. Recipients must submit a written request for an offset to the Grant Officer. Generally, the Grant Officer will apply the offset against amounts that are available at the recipient level for administrative costs.

(2) The Grant Officer may approve an offset request, under paragraph (a)(1) of this section, if the misexpenditures were not due to willful disregard of the requirements of WIOA and regulations, fraud, gross negligence, failure to observe accepted standards of administration or a pattern of misexpenditure.

(b) For subrecipient misexpenditures that were not due to willful disregard of the requirements of WIOA and regulations, fraud, gross negligence, failure to observe accepted standards of administration or a pattern of misexpenditure, if the Grant Officer has required the State to repay or offset such amount, the State may deduct an amount equal to the misexpenditure from the subrecipient's allocation of the program year after the determination was made. Deductions are to be made from funds reserved for the administrative costs of the local programs involved, as appropriate.

(c) If offset is granted, the debt will not be fully satisfied until the Grant Officer reduces amounts allotted to the recipient by the amount of the misexpenditure.

(d) For recipients of funds under title I and Wagner-Peyser Act funds, a direct recipient may not make a deduction under paragraph (b) of this section until the State has taken appropriate corrective action to ensure full compliance within the local area with regard to appropriate expenditure of WIOA funds.

Subpart H—Administrative Adjudication and Judicial Review

§ 683.800 What actions of the Department may be appealed to the Office of Administrative Law Judges?

(a) An applicant for financial assistance under title I of WIOA who is dissatisfied by a determination not to award Federal financial assistance, in whole or in part, to such applicant; or a recipient, subrecipient, or a contractor against which the Grant Officer has directly imposed a sanction or corrective action under sec. 184 of WIOA, including a sanction against a State under part 677 of this chapter, may appeal to the U.S. Department of Labor, Office of Administrative Law Judges (OALJ) within 21 days of receipt of the final determination.

(b) Failure to request a hearing within 21 days of receipt of the final determination constitutes a waiver of the right to a hearing.

(c) A request for a hearing under this subpart must specifically state those issues or findings in the final determination upon which review is requested. Issues or findings in the final determination not specified for review, or the entire final determination when no hearing has been requested within the 21 days, are considered resolved and not subject to further review. Only alleged violations of WIOA, its regulations, the grant or other agreement under WIOA raised in the final determination and the request for hearing are subject to review.

(d) A request for a hearing must be transmitted by certified mail, return receipt requested, to the Chief Administrative Law Judge, U.S. Department of Labor, Suite 400, 800 K Street NW., Washington, DC 20001, with one copy to the Departmental official who issued the determination.

(e) The procedures in this subpart apply in the case of a complainant who has engaged in the alternative dispute resolution process set forth in § 683.840, if neither a settlement was reached nor a decision issued within the 60 days, except that the request for hearing before the OALJ must be filed within 15 days of the conclusion of the 60-day period provided in § 683.840. In addition to including the final determination upon which review is requested, the complainant must include a copy of any Stipulation of Facts and a brief summary of proceedings.

§ 683.810 What rules of procedure apply to hearings conducted under this subpart?

(a) *Rules of practice and procedure.* The rules of practice and procedure promulgated by the OALJ at subpart A of 29 CFR part 18, govern the conduct of hearings under this subpart. However, a request for hearing under this subpart is not considered a complaint to which the filing of an answer by the Department or a Department agency or official is required. Technical rules of evidence will not apply to hearings conducted pursuant to this part. However, rules or principles designed to assure production of the most credible evidence available and to subject testimony to cross-examination will apply.

(b) *Prehearing procedures.* In all cases, the Administrative Law Judge (ALJ) should encourage the use of

prehearing procedures to simplify and clarify facts and issues.

(c) *Subpoenas.* Subpoenas necessary to secure the attendance of witnesses and the production of documents or other items at hearings must be obtained from the ALJ and must be issued under the authority contained in WIOA sec. 183(c), incorporating 15 U.S.C. 49.

(d) *Timely submission of evidence.* The ALJ must not permit the introduction at the hearing of any documentation if it has not been made available for review by the other parties to the proceeding either at the time ordered for any prehearing conference, or, in the absence of such an order, at least 3 weeks prior to the hearing date.

(e) *Burden of production.* The Grant Officer has the burden of production to support her or his decision. This burden is satisfied once the Grant Officer prepares and files an administrative file in support of the decision which must be made part of the record. Thereafter, the party or parties seeking to overturn the Grant Officer's decision has the burden of persuasion.

§ 683.820 What authority does the Administrative Law Judge have in ordering relief as an outcome of an administrative hearing?

(a) In ordering relief the ALJ has the full authority of the Secretary under WIOA, except as described in paragraph (b) of this section.

(b) In grant selection appeals of awards funded under WIOA title I, subtitle D:

(1) If the Administrative Law Judge rules, under § 683.800, that the appealing organization should have been selected for an award, the matter must be remanded to the Grant Officer. The Grant Officer must, within 10 working days, determine whether the organization continues to meet the requirements of the applicable solicitation, whether the funds which are the subject of the ALJ's decision will be awarded to the organization, and the timing of the award. In making this determination, the Grant Officer must take into account disruption to participants, disruption to grantees, and the operational needs of the program.

(2) If the Administrative Law Judge rules that additional application review is required, the Grant Officer must implement that review and, if a new organization is selected, follow the steps laid out in paragraph (b)(1) of this section to determine whether the grant funds will be awarded to that organization.

(3) In the event that the Grant Officer determines that the funds will not be awarded to the appealing organization for the reasons discussed in paragraph (b)(1) of this section, an organization which does not have an approved Negotiated Indirect Cost Rate Agreement will be awarded its reasonable application preparation costs.

(4) If funds are awarded to the appealing organization, the Grant Officer will notify the current grantee within 10 days. In addition, the appealing organization is not entitled to the full grant amount but only will receive the funds remaining in the grant that have not been obligated by the current grantee through its operation of the grant and its subsequent closeout.

(5) In the event that an organization, other than the appealing organization, is adversely effected by the Grant Officer's determination upon completion of the additional application review under paragraph (b)(2) of this section, that organization may appeal that decision to the Office of Administrative Law Judges by following the procedures set forth in § 683.800.

(6) Any organization selected and/or funded under WIOA title I, subtitle D, is subject to having its award removed if an ALJ decision so orders. As part of this process, the Grant Officer will provide instructions on transition and closeout to both the newly selected grantee and to the grantee whose position is affected or which is being removed. All awardees must agree to the provisions of this paragraph (b) as a condition of accepting a grant award.

§ 683.830 When will the Administrative Law Judge issue a decision?

(a) The ALJ should render a written decision not later than 90 days after the closing of the record.

(b) The decision of the ALJ constitutes final agency action unless, within 20 days of the decision, a party dissatisfied with the ALJ's decision has filed a petition for review with the Administrative Review Board (ARB) (established under Secretary's Order No. 02–2012), specifically identifying the procedure, fact, law or policy to which exception is taken. Any exception not specifically raised in the petition is deemed to have been waived. A copy of the petition for review also must be sent to the opposing party and if an applicant or recipient, to the Grant Officer and the Grant Officer's Counsel at the time of filing. Unless the ARB, within 30 days of the filing of the petition for review, notifies the parties that the case has been accepted for review, the decision of the ALJ constitutes final agency action. Any case accepted by the ARB must be decided within 180 days of acceptance. If not so decided, the decision of the ALJ constitutes final agency action.

§ 683.840 Is there an alternative dispute resolution process that may be used in place of an Office of Administrative Law Judges hearing?

(a) The parties to a complaint which has been filed according to the requirements of § 683.800 may choose to waive their rights to an administrative hearing before the OALJ. Instead, they may choose to transfer the settlement of their dispute to an individual acceptable to all parties who will conduct an informal review of the stipulated facts and render a decision in accordance with applicable law. A written decision must be issued within 60 days after submission of the matter for informal review.

(b) The waiver of the right to request a hearing before the OALJ described in paragraph (a) of this section will automatically be revoked if a settlement has not been reached or a written decision has not been issued within the 60 days provided in paragraph (a) of this section.

(c) The decision rendered under this informal review process will be treated as a final decision of an Administrative Law Judge under WIOA sec. 186(b).

§ 683.850 Is there judicial review of a final order of the Secretary issued under WIOA?

(a) Any party to a proceeding which resulted in a Secretary's final order under WIOA sec. 186 in which the Secretary awards, declines to award, or only conditionally awards financial assistance or with respect to a corrective action or sanction imposed under WIOA sec. 184 may obtain a review in the United States Court of Appeals having jurisdiction over the applicant or recipient of funds involved, by filing a review petition within 30 days of the issuance of the Secretary's final order in accordance with WIOA sec. 187.

(b) The court has jurisdiction to make and enter a decree affirming, modifying, or setting aside the order of the Secretary, in whole or in part.

(c) No objection to the Secretary's order may be considered by the court unless the objection was specifically urged, in a timely manner, before the Secretary. The review is limited to questions of law, and the findings of fact of the Secretary are conclusive if supported by substantial evidence.

(d) The judgment of the court is final, subject to certiorari review by the United States Supreme Court.

■ 17. Add part 684 to read as follows:

PART 684—INDIAN AND NATIVE AMERICAN PROGRAMS UNDER TITLE I OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT

Subpart A—Purposes and Policies

Sec.
684.100 What is the purpose of the programs established to serve Indians and Native Americans under of the Workforce Innovation and Opportunity Act?
684.110 How must Indian and Native American programs be administered?
684.120 What obligation does the Department have to consult with the Indian and Native American program grantee community in developing rules, regulations, and standards of accountability for Indian and Native American programs?
684.130 What definitions apply to terms used in this part?

Subpart B—Service Delivery Systems Applicable to Section 166 Programs

Sec.
684.200 What are the requirements to apply for a Workforce Innovation and Opportunity Act grant?
684.210 What priority for awarding grants is given to eligible organizations?
684.220 What is the process for applying for a Workforce Innovation and Opportunity Act grant?
684.230 What appeal rights are available to entities that are denied a grant award?
684.240 Are there any other ways in which an entity may be awarded a Workforce Innovation and Opportunity Act grant?
684.250 Can an Indian and Native American program grantee's grant award be terminated?
684.260 Does the Department have to award a grant for every part of the country?
684.270 How are Workforce Innovation and Opportunity Act funds allocated to Indian and Native American program grantees?

Subpart C—Services to Customers

Sec.
684.300 Who is eligible to receive services under the Indian and Native American program?
684.310 What are Indian and Native American program grantee allowable activities?
684.320 Are there any restrictions on allowable activities?
684.330 What is the role of Indian and Native American program grantees in the one-stop delivery system?
684.340 What policies govern payments to participants, including wages, training allowances or stipends, or direct payments for supportive services?
684.350 What will the Department do to strengthen the capacity of Indian and Native American program grantees to deliver effective services?

Subpart D—Supplemental Youth Services

Sec.
684.400 What is the purpose of the supplemental youth services program?
684.410 What entities are eligible to receive supplemental youth services funding?
684.420 What are the planning requirements for receiving supplemental youth services funding?
684.430 What individuals are eligible to receive supplemental youth services?
684.440 How is funding for supplemental youth services determined?
684.450 How will supplemental youth services be provided?
684.460 What performance indicators are applicable to the supplemental youth services program?

Subpart E—Services to Communities

Sec.
684.500 What services may Indian and Native American program grantees provide to or for employers under the Workforce Innovation and Opportunity Act?
684.510 What services may Indian and Native American program grantees provide to the community at large under the Workforce Innovation and Opportunity Act?
684.520 Must Indian and Native American program grantees give preference to Indian and Native American entities in the selection of contractors or service providers?
684.530 What rules govern the issuance of contracts and/or subgrants?

Subpart F—Accountability for Services and Expenditures

Sec.
684.600 To whom is the Indian and Native American program grantee accountable for the provision of services and the expenditure of Indian and Native American funds?
684.610 How is this accountability documented and fulfilled?
684.620 What performance indicators are in place for the Indian and Native American program?
684.630 What are the requirements for preventing fraud and abuse under the WIOA?
684.640 What grievance systems must an Indian and Native American program grantee provide?
684.650 Can Indian and Native American program grantees exclude segments of the eligible population?

Subpart G—Section 166 Planning/Funding Process

Sec.
684.700 What is the process for submitting a 4-year plan?
684.710 What information must be included in the 4-year plans as part of the competitive application?
684.720 When must the 4-year plan be submitted?
684.730 How will the Department review and approve such plans?
684.740 Under what circumstances can the Department or the Indian and Native American program grantee modify the terms of the grantee's plan(s)?

Subpart H—Administrative Requirements

Sec.
684.800 What systems must an Indian and Native American program grantee have in place to administer an Indian and Native American program?
684.810 What types of costs are allowable expenditures under the Indian and Native American program?
684.820 What rules apply to administrative costs under the Indian and Native American program?
684.830 Does the Workforce Innovation and Opportunity Act administrative cost limit for States and local areas apply to WIOA grants?
684.840 How must Indian and Native American program grantees classify costs?
684.850 What cost principles apply to Indian and Native American funds?
684.860 What audit requirements apply to Indian and Native American grants?
684.870 What is "program income" and how is it regulated in the Indian and Native American program?

Subpart I—Miscellaneous Program Provisions

Sec.
684.900 Does the Workforce Innovation and Opportunity Act provide regulatory and/or statutory waiver authority?
684.910 What information is required in a waiver request?
684.920 What provisions of law or regulations may not be waived?
684.930 May Indian and Native American program grantees combine or consolidate their employment and training funds?
684.940 What is the role of the Native American Employment and Training Council?
684.950 Does the Workforce Innovation and Opportunity Act provide any additional assistance to unique populations in Alaska and Hawaii?

Authority: Secs. 134, 166, 189, 503, Public Law 113–128, 128 Stat. 1425 (Jul. 22, 2014).

Subpart A—Purposes and Policies

§ 684.100 What is the purpose of the programs established to serve Indians and Native Americans under the Workforce Innovation and Opportunity Act?

(a) The purpose of WIOA Indian and Native American (INA) programs in sec. 166 is to support employment and training activities for INAs in order to:

(1) Develop more fully the academic, occupational, and literacy skills of such individuals;

(2) Make such individuals more competitive in the workforce and to equip them with entrepreneurial skills necessary for successful self-employment; and

(3) Promote the economic and social development of INA communities in accordance with the goals and values of such communities.

(b) The principal means of accomplishing these purposes is to enable tribes and Native American organizations to provide employment

and training services to INAs and their communities. Services should be provided in a culturally appropriate manner, consistent with the principles of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 *et seq.*).

§ 684.110 How must Indian and Native American programs be administered?

(a) INA programs will be administered to maximize the Federal commitment to support the growth and development of INAs and their communities as determined by representatives of such communities.

(b) In administering these programs, the Department will follow the Congressional declaration of policy set forth in the Indian Self-Determination and Education Assistance Act, at 25 U.S.C. 450a, as well as the Department of Labor's "American Indian and Alaska Native Policies."

(c) The regulations in this part are not intended to abrogate the trust responsibilities of the Federal government to Federally recognized tribes in any way.

(d) The Department will administer INA programs through a single organizational unit and consistent with the requirements in sec. 166(i) of WIOA. The Division of Indian and Native American Programs (DINAP) within the Employment and Training Administration (ETA) is designated as this single organizational unit as required by sec. 166(i)(1) of WIOA.

(e) The Department will establish and maintain administrative procedures for the selection, administration, monitoring, and evaluation of INA employment and training programs authorized under this Act.

§ 684.120 What obligation does the Department have to consult with the Indian and Native American grantee community in developing rules, regulations, and standards of accountability for Indian and Native American programs?

The Department's primary consultation vehicle for INA programs is the Native American Employment and Training Council. In addition, the Department will consult with the INA program grantee community in developing policies for the INA programs, actively seeking and considering the views of INA program grantees prior to establishing INA program policies and regulations. The Department will follow the Department of Labor's tribal consultation policy and Executive Order 13175 of November 6, 2000.

§ 684.130 What definitions apply to terms used in this part?

In addition to the definitions found in secs. 3 and 166 of WIOA, and § 675.300 of this chapter, the following definitions apply:

Alaska Native-Controlled Organization means an organization whose governing board is comprised of 51 percent or more of individuals who are Alaska Native as defined in secs. 3(b) and 3(r) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(b), (r)).

Carry-in means the total amount of funds unobligated by a grantee at the end of a program year. If the amount of funds unobligated by a grantee at the end of a program year is more than 20 percent of the grantee's "total funds available" for that program year, such excess amount is considered "excess carry-in."

DINAP means the Division of Indian and Native American Programs within the Employment and Training Administration of the U.S. Department of Labor.

Governing body means a body of representatives who are duly elected, appointed by duly elected officials, or selected according to traditional tribal means. A governing body must have the authority to provide services to and to enter into grants on behalf of the organization that selected or designated it.

Grant Officer means a U.S. Department of Labor official authorized to obligate Federal funds.

High-poverty area means a Census tract, a set of contiguous Census tracts, an American Indian Reservation, Oklahoma Tribal Statistical Area, Alaska Native Village Statistical Area, or Alaska Native Regional Corporation Area, Native Hawaiian Homeland Area or county where the poverty rate for the INA population is at least 25 percent of the total INA population of such area using the most recent ACS 5-Year data. Alternatively, high-poverty also can mean, a Census tract, a set of contiguous Census tracts, an American Indian Reservation, Oklahoma Tribal Statistical Area, Alaska Native Village Statistical Area, or Alaska Native Regional Corporation Area, Native Hawaiian Homeland Area or county where the poverty rate for the total population is at least 25 percent of such area using the most recent ACS 5-Year data. INA program grantees may use either definition when determining if a Census tract is a high-poverty area.

INA program grantee means an entity which is formally selected under subpart B of this part to operate an INA program and which has a grant agreement.

Incumbent grantee means an entity that is currently receiving a grant under sec. 166 of WIOA.

Indian and Native American or INA means, for the purpose of this part, an individual that is an American Indian, Native American, Native Hawaiian, or Alaska Native.

Indian-Controlled Organization means an organization whose governing board is comprised of 51 percent or more individuals who are members of one or more Federally recognized tribes. Incumbent grantees who were receiving INA funding as of October 18, 2016 and met the 51 percent threshold with the inclusion of members of "State recognized tribes" continue to be eligible for WIOA sec. 166 funds as an Indian-Controlled Organization, as long as they have been continuously funded under WIOA as recipients of INA program grantees since October 18, 2016. Tribal Colleges and Universities meet the definition of Indian-Controlled Organization for the purposes of this regulation.

Native Hawaiian-Controlled Organization means an organization whose governing board is comprised of 51 percent or more individuals who are Native Hawaiian as defined in sec. 7207 of the Native Hawaiian Education Act (20 U.S.C. 7517).

Total funds available means all funds that a grantee had "available" at the beginning of a program year.

Underemployed means an individual who is working part-time but desires full-time employment, or who is working in employment not commensurate with the individual's demonstrated level of educational and/or skill achievement.

Subpart B—Service Delivery Systems Applicable to Section 166 Programs

§ 684.200 What are the requirements to apply for a Workforce Innovation and Opportunity Act grant?

(a) To be eligible to apply for a WIOA, sec. 166 grant, an entity must have legal status as a government or as an agency of a government, private non-profit corporation, or a consortium whose members all qualify as one of these entities.

(b) A new entity (which is not an incumbent grantee) must have a population within the designated geographic service area which would receive at least $100,000 under the funding formula found at § 684.270(b), including any amounts received for supplemental youth services under the funding formula at § 684.440(a).

(c) Incumbent grantees which do not meet this dollar threshold and were

receiving INA funding of less than $100,000 as of October 18, 2016 will be grandfathered into the program and are eligible to be awarded less than $100,000 so long as the grantees have continuously received less than $100,000 since October 18, 2016.

(d) The Department will make an exception to the $100,000 minimum for applicants that apply for WIOA funding through Public Law 102–477, the Indian, Employment, Training, and Related Services demonstration program, if all resources to be consolidated under the Public Law 102–477 plan total at least $100,000, with at least $20,000 derived from sec. 166 funds. However, incumbent Public Law 102–477 grantees that were receiving INA funding of less than $20,000 as of October 18, 2016 will be grandfathered into the program and are eligible to be awarded less than $20,000 so long as the grantees have continuously received less than $20,000 since October 18, 2016.

(e) To be eligible to apply as a consortium, each member of the consortium must meet the requirements of paragraph (a) of this section and must:

(1) Be in close proximity to one another, but may operate in more than one State;

(2) Have an administrative unit legally authorized to run the program and to commit the other members to contracts, grants, and other legally-binding agreements; and

(3) Be jointly and individually responsible for the actions and obligations of the consortium, including debts.

(f) Entities eligible under paragraph (a)(1) of this section are:

(1) Federally recognized Indian tribes;

(2) Tribal organizations, as defined in 25 U.S.C. 450b;

(3) Alaska Native-controlled organizations;

(4) Native Hawaiian-controlled organizations;

(5) Indian-controlled organizations serving INAs; and

(6) A consortium of eligible entities which meets the legal requirements for a consortium described in paragraph (b) of this section.

(g) State-recognized tribal organizations that meet the definition of an Indian-controlled organization are eligible to apply for WIOA sec. 166 grant funds. State-recognized tribes that do not meet this definition but were grantees under WIA as of July 1, 2015 will be grandfathered into WIOA as Indian-controlled organizations provided they meet the definition of Indian-controlled organization in § 684.130.

§ 684.210 What priority for awarding grants is given to eligible organizations?

(a) Federally recognized Indian tribes, Alaska Native entities, or a consortium of such entities will have priority to receive grants under this part for those geographic service areas in which they have legal jurisdiction, such as an Indian reservation, Oklahoma Tribal Service Area (OTSA), or Alaska Native Village Service Area (ANVSA).

(b) If the Department decides not to make an award to an Indian tribe or Alaska Native entity that has legal jurisdiction over a service area, it will consult with such tribe or Alaska Native entity that has jurisdiction before selecting another entity to provide services for such areas.

(c) The priority described in paragraphs (a) and (b) of this section does not apply to service areas outside the legal jurisdiction of an Indian tribe or Alaska Native entity.

§ 684.220 What is the process for applying for a Workforce Innovation and Opportunity Act grant?

(a) Entities seeking a WIOA sec. 166 grant, including incumbent grantees, will be provided an opportunity to apply for a WIOA sec. 166 grant every 4 years through a competitive grant process.

(b) As part of the competitive application process, applicants will be required to submit a 4-year plan as described at § 684.710. The requirement to submit a 4-year plan does not apply to entities that have been granted approval to transfer their WIOA funds to the Department of the Interior pursuant to Public Law 102–477.

§ 684.230 What appeal rights are available to entities that are denied a grant award?

Any entity that is denied a grant award for which it applied in whole or in part may appeal the denial to the Office of the Administrative Law Judges using the procedures at § 683.800 of this chapter or the alternative dispute resolution procedures at § 683.840 of this chapter. The Grant Officer will provide an entity whose request for a grant award was denied, in whole or in part, with a copy of the appeal procedures.

§ 684.240 Are there any other ways in which an entity may be awarded a Workforce Innovation and Opportunity Act grant?

Yes. For areas that would otherwise go unserved, the Grant Officer may designate an entity, which has not submitted a competitive application, but which meets the qualifications for a grant award, to serve the particular geographic area. Under such circumstances, DINAP will seek the views of INA leaders in the community that would otherwise go unserved before making the decision to designate the entity that would serve the community. DINAP will inform the Grant Officer of the INA leaders' views. The Grant Officer will accommodate views of INA leaders in such areas to the extent possible.

§ 684.250 Can an Indian and Native American grantee's grant award be terminated?

(a) Yes, the Grant Officer can terminate a grantee's award for cause, or the Secretary or another Department of Labor official confirmed by the Senate can terminate a grantee's award in emergency circumstances where termination is necessary to protect the integrity of Federal funds or ensure the proper operation of the program under sec. 184(e) of WIOA.

(b) The Grant Officer may terminate a grantee's award for cause only if there is a substantial or persistent violation of the requirements in WIOA or the WIOA regulations. The grantee must be provided with written notice 60 days before termination, stating the specific reasons why termination is proposed. The appeal procedures at § 683.800 of this chapter apply.

§ 684.260 Does the Department have to award a grant for every part of the country?

No, if there are no entities meeting the requirements for a grant award in a particular area, or willing to serve that area, the Department will not award funds for that service area. The funds that otherwise would have been allocated to that area under § 684.270 will be distributed to other INA program grantees, or used for other program purposes such as technical assistance and training (TAT). Unawarded funds used for TAT are in addition to, and not subject to the limitations on, amounts reserved under § 684.270(e). Areas which are unserved by the INA program may be restored during a subsequent grant award cycle, when and if a current grantee or other eligible entity applies for a grant award to serve that area.

§ 684.270 How are Workforce Innovation and Opportunity Act funds allocated to Indian and Native American program grantees?

(a) Except for reserved funds described in paragraph (e) of this section and funds used for other program purposes under § 684.260, all funds available for WIOA sec. 166(d)(2)(A)(i) comprehensive

workforce investment services program at the beginning of a program year will be allocated to INA program grantees for the geographic service area(s) awarded to them through the grant competition.

(b) Each INA program grantee will receive the sum of the funds calculated using the following formula:

(1) One-quarter of the funds available will be allocated on the basis of the number of unemployed American Indian, Alaska Native, and Native Hawaiian individuals in the grantee's geographic service area(s) compared to all such unemployed persons in the United States.

(2) Three-quarters of the funds available will be allocated on the basis of the number of American Indian, Alaska Native, and Native Hawaiian individuals in poverty in the grantee's geographic service area(s) as compared to all such persons in poverty in the United States.

(3) The data and definitions used to implement these formulas are provided by the U.S. Bureau of the Census.

(c) In years immediately following the use of new data in the formula described in paragraph (b) of this section, based upon criteria to be described in the Funding Opportunity Announcement (FOA), the Department may utilize a hold harmless factor to reduce the disruption in grantee services which would otherwise result from changes in funding levels. This factor will be determined in consultation with the grantee community and the Native American Employment and Training Council.

(d) The Department may reallocate funds from one INA program grantee to another if a grantee is unable to serve its area for any reason, such as audit or debt problems, criminal activity, internal (political) strife, failure to adhere to or meet grant terms and conditions, or lack of ability or interest. If a grantee has excess carry-in for a program year, the Department also may readjust the awards granted under the funding formula so that an amount that equals the previous program year's carry-in will be allocated to another INA program grantee(s).

(e) The Department may reserve up to one percent of the funds appropriated under WIOA sec. 166(d)(2)(A)(i) for any program year for TAT purposes. It will consult with the Native American Employment and Training Council in planning how the TAT funds will be used, designating activities to meet the unique needs of the INA communities served by the INA program. INA program grantees also will have access to resources available to other Department programs to the extent permitted under other law.

Subpart C—Services to Customers

§ 684.300 Who is eligible to receive services under the Indian and Native American program?

(a) A person is eligible to receive services under the INA program if that person is:

(1) An Indian, as determined by a policy of the INA program grantee. The grantee's definition must at least include anyone who is a member of a Federally-recognized tribe; or

(2) An Alaska Native, as defined in WIOA sec. 166(b)(1); or

(3) A Native Hawaiian, as defined in WIOA sec. 166(b)(3).

(b) The person also must be any one of the following:

(1) Unemployed; or

(2) Underemployed, as defined in § 684.130; or

(3) A low-income individual, as defined in sec. 3(36) of WIOA; or

(4) The recipient of a bona fide lay-off notice which has taken effect in the last 6 months or will take effect in the following 6-month period, who is unlikely to return to a previous industry or occupation, and who is in need of retraining for either employment with another employer or for job retention with the current employer; or

(5) An individual who is employed, but is determined by the grantee to be in need of employment and training services to obtain or retain employment that allows for self-sufficiency.

(c) If applicable, male applicants also must register or be registered for the Selective Service.

§ 684.310 What are Indian and Native American program grantee allowable activities?

(a) Generally, INA program grantees must make efforts to provide employment and training opportunities to eligible individuals (as described in § 684.300) who can benefit from, and who are most in need of, such opportunities. In addition, INA program grantees must make efforts to develop programs that contribute to occupational development, upward mobility, development of new careers, and opportunities for nontraditional employment.

(b) Allowable activities for INA program grantees are any services consistent with the purposes of this part that are necessary to meet the needs of INAs preparing to enter, reenter, or retain unsubsidized employment leading to self-sufficiency.

(c) Examples of career services, which may be delivered in partnership with the one-stop delivery system, are described in sec. 134(c)(2) of WIOA and § 678.430 of this chapter.

(d) Follow-up services, including counseling and supportive services for up to 12 months after the date of exit to assist participants in obtaining and retaining employment.

(e) Training services include the activities described in WIOA sec. 134(c)(3)(D).

(f) Allowable activities specifically designed for youth, as listed in sec. 129 of WIOA, include:

(1) Tutoring, study skills training, instruction, and evidence-based dropout prevention and recovery strategies that lead to completion of the requirements for a secondary school diploma or its recognized equivalent (including a recognized certificate of attendance or similar document for individuals with disabilities) or for a recognized postsecondary credential;

(2) Alternative secondary school services, or dropout recovery services, as appropriate;

(3) Paid and unpaid work experiences that have as a component academic and occupational education, which may include:

(i) Summer employment opportunities and other employment opportunities available throughout the school year;

(ii) Pre-apprenticeship programs;

(iii) Internships and job shadowing; and

(iv) On-the-job training opportunities;

(4) Occupational skill training, which must include priority consideration for training programs that lead to recognized postsecondary credentials that are aligned with in-demand industry sectors or occupations in the local area involved;

(5) Education offered concurrently with and in the same context as workforce preparation activities and training for a specific occupation or occupational cluster;

(6) Leadership development opportunities, which may include community service and peer-centered activities encouraging responsibility and other positive social and civic behaviors, as appropriate;

(7) Supportive services as defined in WIOA sec. 3(59);

(8) Adult mentoring for the period of participation and a subsequent period, for a total of not less than 12 months;

(9) Follow-up services for not less than 12 months after the completion of participation, as appropriate;

(10) Comprehensive guidance and counseling, which may include drug and alcohol abuse counseling and referral, as appropriate;

(11) Financial literacy education;

(12) Entrepreneurial skills training;

(13) Services that provide labor market and employment information about in-demand industry sectors or occupations available in the local area, such as career awareness, career counseling, and career exploration services; and

(14) Activities that help youth prepare for and transition to postsecondary education and training.

(g) In addition, allowable activities include job development and employment outreach, including:

(1) Support of the Tribal Employment Rights Office (TERO) program;

(2) Negotiation with employers to encourage them to train and hire participants;

(3) Establishment of linkages with other service providers to aid program participants;

(4) Establishment of management training programs to support tribal administration or enterprises; and

(5) Establishment of linkages with remedial education, such as adult basic education, basic literacy training, and training programs for limited English proficient (LEP) individuals, as necessary.

(h) Participants may be enrolled in more than one activity at a time and may be sequentially enrolled in multiple activities.

(i) Services may be provided to a participant in any sequence based on the particular needs of the participant.

§ 684.320 Are there any restrictions on allowable activities?

(a) Training services must be directly linked to an in-demand industry sector or occupation in the service area, or in another area to which a participant receiving such services is willing to relocate.

(b) INA program grantees must provide on-the-job training (OJT) services consistent with the definition provided in WIOA sec. 3(44) and other limitations in WIOA. Individuals in OJT must:

(1) Be compensated at the same rates, including periodic increases, as trainees or employees who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills; and

(2) Be provided benefits and working conditions at the same level and to the same extent as other trainees or employees working a similar length of time and doing the same type of work.

(c) In addition, OJT contracts under this title must not be entered into with employers who have:

(1) Received payments under previous contracts under WIOA or the Workforce Investment Act of 1998 and have exhibited a pattern of failing to provide OJT participants with continued, long-term employment as regular employees with wages and employment benefits (including health benefits) and working conditions at the same level and to the same extent as other employees working a similar length of time and doing the same type of work; or

(2) Have exhibited a pattern of violating paragraphs (b)(1) and/or (2) of this section.

(d) INA program grantees are prohibited from using funds to encourage the relocation of a business, as described in WIOA sec. 181(d) and § 683.260 of this chapter.

(e) INA program grantees must only use WIOA funds for activities that are in addition to those that would otherwise be available to the INA population in the area in the absence of such funds.

(f) INA program grantees must not spend funds on activities that displace currently employed individuals, impair existing contracts for services, or in any way affect union organizing.

(g) Under § 683.255 of this chapter, sectarian activities involving WIOA financial assistance or participants are limited in accordance with the provisions of sec. 188(a)(3) of WIOA.

§ 684.330 What is the role of Indian and Native American program grantees in the one-stop delivery system?

(a) In those local areas where an INA program grantee conducts field operations or provides substantial services, the INA program grantee is a required partner in the local one-stop delivery system and is subject to the provisions relating to such partners described in part 678 of this chapter. Consistent with those provisions, a Memorandum of Understanding (MOU) between the INA program grantee and the Local Workforce Development Board (WDB) over the operation of the one-stop center(s) in the Local WDB's workforce development area also must be executed. Where the Local WDB is an alternative entity under § 679.150 of this chapter, the INA program grantee must negotiate with the alternative entity on the terms of its MOU and the scope of its on-going role in the local workforce development system, as specified in §§ 678.420 and 678.500 through 678.510 of this chapter. In local areas with a large concentration of potentially eligible INA participants, which are in an INA program grantee's service area but in which the grantee does not conduct operations or provide substantial services, the INA program grantee should encourage such individuals to participate in the one-stop delivery system in that area in order to receive WIOA services.

(b) At a minimum, the MOU must contain the provisions listed in WIOA sec. 121(c) and:

(1) The exchange of information on the services available and accessible through the one-stop delivery system and the INA program;

(2) As necessary to provide referrals and case management services, the exchange of information on INA participants in the one-stop delivery system and the INA program; and

(3) Arrangements for the funding of services provided by the one-stop(s), consistent with the requirements that no expenditures may be made with INA program funds for individuals who are not eligible or for services not authorized under this part.

(c) Where the INA program grantee has failed to enter into a MOU with the Local WDB, the INA program grantee must describe in its 4-year plan the good-faith efforts made in order to negotiate an MOU with the Local WDB.

(d) Pursuant to WIOA sec. 121(h)(2)(D)(iv), INA program grantees will not be subject to the funding of the one-stop infrastructure unless otherwise agreed upon in the MOU under subpart C of part 678 of this chapter.

§ 684.340 What policies govern payments to participants, including wages, training allowances or stipends, or direct payments for supportive services?

(a) INA program grantees may pay training allowances or stipends to participants for their successful participation in and completion of education or training services (except such allowance may not be provided to participants in OJT). Allowances or stipends may not exceed the Federal or State minimum wage, whichever is higher.

(b) INA program grantees may not pay a participant in a training activity when the person fails to participate without good cause.

(c) If a participant in a WIOA-funded activity, including participants in OJT, is involved in an employer-employee relationship, that participant must be paid wages and fringe benefits at the same rates as trainees or employees who have similar training, experience and skills and which are not less than the higher of the applicable Federal, State, or local minimum wage.

(d) In accordance with the policy described in the 4-year plan submitted as part of the competitive process, INA program grantees may pay incentive bonuses to participants who meet or exceed individual employability or training goals established in writing in the individual employment plan.

(e) INA program grantees must comply with other restrictions listed in WIOA secs. 181 through 195, which apply to all programs funded under title I of WIOA, including the provisions on labor standards in WIOA sec. 181(b).

§ 684.350 What will the Department do to strengthen the capacity of Indian and Native American program grantees to deliver effective services?

The Department will provide appropriate TAT, as necessary, to INA program grantees. This TAT will assist INA program grantees to improve program performance and improve the quality of services to the target population(s), as resources permit.

Subpart D—Supplemental Youth Services

§ 684.400 What is the purpose of the supplemental youth services program?

The purpose of this program is to provide supplemental employment and training and related services to low-income INA youth on or near Indian reservations and in Oklahoma, Alaska, or Hawaii.

§ 684.410 What entities are eligible to receive supplemental youth services funding?

Entities eligible to receive supplemental youth services funding are limited to: Those tribal, Alaska Native, Native Hawaiian and Oklahoma tribal grantees funded under WIOA sec. 166(d)(2)(A)(i) or other grantees serving those areas, and entities serving the populations specified in § 684.400 that received funding under sec. 166(d)(2)(A)(ii) of the Workforce Investment Act.

§ 684.420 What are the planning requirements for receiving supplemental youth services funding?

Applicants eligible to apply for supplemental youth funding must describe the supplemental youth services they intend to provide in the 4-year plan that they will submit as part of the competitive application process. The information on youth services will be incorporated into the overall 4-year plan, which is more fully described in §§ 684.700 and 684.710, and is required for both adult and youth funds. As indicated in § 684.710(c), additional planning information required for applicants requesting supplemental youth funding will be provided in the FOA. The Department envisions that the strategy for youth funds will not be extensive; however, grantees will be required to provide the number of youth it plans to serve and projected performance outcomes. The Department also supports youth activities that preserve INA culture and will support strategies that promote INA values.

§ 684.430 What individuals are eligible to receive supplemental youth services?

(a) Participants in supplemental youth services activities must be:

(1) American Indian, Alaska Native or Native Hawaiian as determined by the INA program grantee according to § 684.300(a);

(2) Between the age of 14 and 24; and

(3) A low-income individual as defined at WIOA sec. 3(36) except up to five percent of the participants during a program year in an INA youth program may not be low-income individuals provided they meet the eligibility requirements of paragraphs (a)(1) and (2) of this section.

(b) For the purpose of this section, the term "low-income," used with respect to an individual, also includes a youth living in a high-poverty area.

§ 684.440 How is funding for supplemental youth services determined?

(a) Supplemental youth funding will be allocated to eligible INA program grantees on the basis of the relative number of INA youth between the ages of 14 and 24 living in poverty in the grantee's geographic service area compared to the number of INA youth between the ages of 14 and 24 living in poverty in all eligible geographic service areas. The Department reserves the right to redefine the supplemental youth funding stream in future program years, in consultation with the Native American Employment and Training Council, as program experience warrants and as appropriate data become available.

(b) The data used to implement this formula are provided by the U.S. Bureau of the Census.

(c) The hold harmless factor described in § 684.270(c) also applies to supplemental youth services funding. This factor also will be determined in consultation with the grantee community and the Native American Employment and Training Council.

(d) The reallocation provisions of § 684.270(d) also apply to supplemental youth services funding.

(e) Any supplemental youth services funds not allotted to a grantee or refused by a grantee may be used for the purposes outlined in § 684.270(e), as described in § 684.260. Any such funds are in addition to, and not subject to the limitations on, amounts reserved under § 684.270(e).

§ 684.450 How will supplemental youth services be provided?

(a) INA program grantees may offer supplemental services to youth throughout the school year, during the summer vacation, and/or during other breaks during the school year at their discretion.

(b) The Department encourages INA program grantees to work with local educational agencies to provide academic credit for youth activities whenever possible.

(c) INA program grantees may provide participating youth with the activities referenced in § 684.310(e).

§ 684.460 What performance indicators are applicable to the supplemental youth services program?

(a) Pursuant to WIOA secs. 166(e)(5) and 166(h), the performance indicators at WIOA sec. 116(b)(2)(A)(ii) apply to the INA youth program, which must include:

(1) The percentage of program participants who are in education or training activities, or in unsubsidized employment, during the second quarter after exit from the program;

(2) The percentage of program participants who are in education or training activities, or in unsubsidized employment, during the fourth quarter after exit from the program;

(3) The median earnings of program participants who are in unsubsidized employment during the second quarter after exit from the program;

(4) The percentage of program participants who obtain a recognized postsecondary credential, or a secondary school diploma or its recognized equivalent (subject to WIOA sec. 116(b)(2)(A)(iii)) during participation in or within 1 year after exit from the program;

(5) The percentage of program participants who, during a program year, are in an education or training program that leads to a recognized postsecondary credential or employment and who are achieving measurable skill gains toward such a credential or employment; and

(6) The indicators of effectiveness in serving employers established under WIOA sec. 116(b)(2)(A)(iv).

(b) In addition to the performance indicators in paragraphs (a)(1) through (6) of this section, the Secretary, in consultation with the Native American Employment and Training Council, must develop a set of performance indicators and standards that is in addition to the primary indicators of performance that are applicable to the INA program under this section.

Subpart E—Services to Communities

§ 684.500 What services may Indian and Native American grantees provide to or for employers under the Workforce Innovation and Opportunity Act?

(a) INA program grantees may provide a variety of services to employers in their areas. These services may include:

(1) Workforce planning which involves the recruitment of current or potential program participants, including job restructuring services;

(2) Recruitment and assessment of potential employees, with priority given to potential employees who are or who might become eligible for program services;

(3) Pre-employment training;

(4) Customized training;

(5) OJT;

(6) Post-employment services, including training and support services to encourage job retention and upgrading;

(7) Work experience for public or private sector work sites; and

(8) Other innovative forms of worksite training.

(b) In addition to the services listed in paragraph (a) of this section, other grantee-determined services (as described in the grantee's 4-year plan), which are intended to assist eligible participants to obtain or retain employment also may be provided to or for employers.

§ 684.510 What services may Indian and Native American grantees provide to the community at large under the Workforce Innovation and Opportunity Act?

(a) INA program grantees may provide services to the INA communities in their service areas by engaging in program development and service delivery activities which:

(1) Strengthen the capacity of Indian-controlled institutions to provide education and work-based learning services to INA youth and adults, whether directly or through other INA institutions such as tribal colleges;

(2) Increase the community's capacity to deliver supportive services, such as child care, transportation, housing, health, and similar services needed by clients to obtain and retain employment;

(3) Use program participants engaged in education, training, work experience, or similar activities to further the economic and social development of INA communities in accordance with the goals and values of those communities; and

(4) Engage in other community-building activities described in the INA program grantee's 4-year plan.

(b) INA program grantees should develop their 4-year plan in conjunction with, and in support of, strategic tribal planning and community development goals.

§ 684.520 Must Indian and Native American program grantees give preference to Indian and Native American entities in the selection of contractors or service providers?

Yes, INA program grantees must give as much preference as possible to Indian organizations and to Indian-owned economic enterprises, as defined in sec. 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452), when awarding any contract or subgrant.

§ 684.530 What rules govern the issuance of contracts and/or subgrants?

In general, INA program grantees must follow the rules of Uniform Administrative Requirements, Cost Principles, & Audit Requirements for Federal Awards when awarding contracts and/or subgrants under WIOA sec. 166. These requirements are codified at 2 CFR part 200, subpart E (and Department modifications at 2 CFR part 2900), and covered in WIOA regulations at § 683.200 of this chapter. These rules do not apply to OJT contract awards.

Subpart F—Accountability for Services and Expenditures

§ 684.600 To whom is the Indian and Native American program grantee accountable for the provision of services and the expenditure of Indian and Native American funds?

(a) The INA program grantee is responsible to the INA community to be served by INA funds.

(b) The INA program grantee also is responsible to the Department of Labor, which is charged by law with ensuring that all WIOA funds are expended:

(1) According to applicable laws and regulations;

(2) For the benefit of the identified INA client group; and

(3) For the purposes approved in the grantee's plan and signed grant document.

§ 684.610 How is this accountability documented and fulfilled?

(a) Each INA program grantee must establish its own internal policies and procedures to ensure accountability to the INA program grantee's governing body, as the representative of the INA community(ies) served by the INA program. At a minimum, these policies and procedures must provide a system for governing body review and oversight of program plans and measures and standards for program performance.

(b) Accountability to the Department is accomplished in part through on-site program reviews (monitoring), which strengthen the INA program grantee's capability to deliver effective services and protect the integrity of Federal funds.

(c) In addition to audit information, as described at § 684.860 and program reviews, accountability to the Department is documented and fulfilled by the submission of quarterly financial and program reports, and compliance with the terms and conditions of the grant award.

§ 684.620 What performance indicators are in place for the Indian and Native American program?

(a) Pursuant to WIOA secs. 166(e)(5) and 166(h), the performance indicators at WIOA sec. 116(b)(2)(A)(i) apply to the INA program which must include:

(1) The percentage of program participants who are in unsubsidized employment during the second quarter after exit from the program;

(2) The percentage of program participants who are in unsubsidized employment during the fourth quarter after exit from the program;

(3) The median earnings of program participants who are in unsubsidized employment during the second quarter after exit from the program;

(4) The percentage of program participants who obtain a recognized postsecondary credential, or a secondary school diploma or its recognized equivalent (subject to WIOA sec. 116(b)(2)(A)(iii)) during participation in or within 1 year after exit from the program;

(5) The percentage of program participants who, during a program year, are in an education or training program that leads to a recognized postsecondary credential or employment and who are achieving measurable skill gains toward such a credential or employment; and

(6) The indicators of effectiveness in serving employers established under WIOA sec. 116(b)(2)(A)(iv).

(b) In addition to the performance indicators at WIOA sec. 116(b)(2)(A)(i), the Department, in consultation with the Native American Employment and Training Council, must develop a set of performance indicators and standards that are applicable to the INA program.

§ 684.630 What are the requirements for preventing fraud and abuse under the WIOA?

(a) INA program grantees must establish such fiscal control and fund accounting procedures as may be necessary to assure the proper disbursal of, and accounting for, Federal funds. Such procedures must ensure that all

financial transactions are conducted and records maintained in accordance with generally accepted accounting principles.

(b) Each INA program grantee must have rules to prevent conflict of interest by its governing body. These conflict of interest rules must include a rule prohibiting any member of any governing body or council associated with the INA program grantee from voting on any matter which would provide a direct financial benefit to that member, or to a member of his or her immediate family, in accordance with § 683.200(c)(5)(iii) of this chapter and 2 CFR parts 200 and 2900.

(c) Officers or agents of the INA program grantee must not solicit or personally accept gratuities, favors, or anything of monetary value from any actual or potential contractor, subgrantee, vendor, or participant. This rule also must apply to officers or agents of the grantee's contractors and/or subgrantees. This prohibition does not apply to:

(1) Any rebate, discount, or similar incentive provided by a vendor to its customers as a regular feature of its business; and

(2) Items of nominal monetary value distributed consistent with the cultural practices of the INA community served by the grantee.

(d) No person who selects program participants or authorizes the services provided to them may select or authorize services to any participant who is such a person's spouse, parent, sibling, or child unless:

(1)(i) The participant involved is a low-income individual; or

(ii) The community in which the participant resides has a population of less than 1,000 INAs combined; and

(2) The INA program grantee has adopted and implemented the policy described in the 4-year plan to prevent favoritism on behalf of such relatives.

(e) INA program grantees are subject to the provisions of 41 U.S.C. 8702 relating to kickbacks.

(f) No assistance provided under WIOA may involve political activities.

(g) INA program grantees must comply with the restrictions on lobbying activities pursuant to sec. 195 of WIOA and the restrictions on lobbying codified in the Department regulations at 29 CFR part 93.

(h) The provisions of 18 U.S.C. 665 and 666 prohibiting embezzlement apply to programs under WIOA.

(i) Recipients of financial assistance under WIOA sec. 166 are prohibited from discriminatory practices as outlined at WIOA sec. 188, and the regulations implementing WIA sec. 188, at 29 CFR part 38. However, this does not affect the legal requirement that all INA participants be INAs. Also, INA program grantees are not obligated to serve populations outside the geographic boundaries for which they receive funds. However, INA program grantees are not precluded from serving eligible individuals outside their geographic boundaries if the INA program grantee chooses to do so.

§ 684.640 What grievance systems must an Indian and Native American program grantee provide?

INA program grantees must establish grievance procedures consistent with the requirements of WIOA sec. 181(c) and § 683.600 of this chapter.

§ 684.650 Can Indian and Native American grantees exclude segments of the eligible population?

(a) No, INA program grantees cannot exclude segments of the eligible population except as otherwise provided in this part. INA program grantees must document in their 4-year plan that a system is in place to afford all members of the eligible population within the service area for which the grantee was designated an equitable opportunity to receive WIOA services and activities.

(b) Nothing in this section restricts the ability of INA program grantees to target subgroups of the eligible population (for example, the disabled, substance abusers, TANF recipients, or similar categories), as outlined in an approved 4-year plan. However, it is unlawful to target services to subgroups on grounds prohibited by WIOA sec. 188 and 29 CFR part 38, including tribal affiliation (which is considered national origin). Outreach efforts, on the other hand, may be targeted to any subgroups.

Subpart G—Section 166 Planning/Funding Process

§ 684.700 What is the process for submitting a 4-year plan?

Every 4 years, INA program grantees must submit a 4-year strategy for meeting the needs of INAs in accordance with WIOA sec. 166(e). This plan will be part of, and incorporated with, the 4-year competitive process described in WIOA sec. 166(c) and § 684.220. Accordingly, specific requirements for the submission of a 4-year plan will be provided in a FOA and will include the information described at § 684.710.

§ 684.710 What information must be included in the 4-year plans as part of the competitive application?

(a) The 4-year plan, which will be submitted as part of the competitive process, must include the information required at WIOA secs. 166(e)(2)–(5) which are:

(1) The population to be served;

(2) The education and employment needs of the population to be served and the manner in which the activities to be provided will strengthen the ability of the individuals served to obtain or retain unsubsidized employment leading to self-sufficiency;

(3) A description of the activities to be provided and the manner in which such activities are to be integrated with other appropriate activities; and

(4) A description of the performance indicators and expected levels of performance.

(b) The 4-year plan also must include any additional information requested in the FOA.

(c) INA program grantees receiving supplemental youth funds will be required to provide additional information (at a minimum the number of youth it plans to serve and the projected performance outcomes) in the 4-year plan that describes a strategy for serving low-income, INA youth. Additional information required for supplemental youth funding will be identified in the FOA.

§ 684.720 When must the 4-year plan be submitted?

The 4-year plans will be submitted as part of the competitive FOA process described at § 684.220. Accordingly, the due date for the submission of the 4-year plan will be specified in the FOA.

§ 684.730 How will the Department review and approve such plans?

(a) It is the Department's intent to approve a grantee's 4-year strategic plan before the date on which funds for the program become available unless:

(1) The planning documents do not contain the information specified in the regulations in this part and/or the FOA; or

(2) The services which the INA program grantee proposes are not permitted under WIOA or applicable regulations.

(b) After competitive grant selections have been made, the DINAP office will assist INA program grantees in resolving any outstanding issues with the 4-year plan. However, the Department may delay funding to grantees until all issues have been resolved. If the issues with the application of an incumbent grantee cannot be solved, the Department will

TABLE 3—ESTIMATED BURDEN TO ENTER A GENERAL COMMENT IN THE DATABASE

Group	Company	General comments (minutes)
Group 1	A	15
(>=50 comments)	B	45
	C	30
	D	15
Group 2	A	105
(6–49 comments)	B	45
	C	150
	D	15
Group 3	A	240
(>=5 comments)	B	60
	C	480

Registered businesses generally submit comments through our Web site. Unregistered businesses submit comments by mail, email, or fax. We estimate that for unregistered businesses, submitting comments takes a little longer because we often must ask the businesses to amend their submissions to include the required certifications. Thus, we estimated that on average, comments submitted by mail, email, or fax take 30 minutes longer than those submitted through our Web site (117 minutes + 30 minutes = 147 minutes).

The submission of a claim of materially inaccurate information is a relatively rare event for all respondents. Accordingly, we averaged all responses together. Eight of the businesses contacted had submitted claims of materially inaccurate information. We found that the average time to submit a claim that a report of harm contains a material inaccuracy is 165 minutes ((30 minutes + 90 minutes + 45 minutes + 90 minutes + 60 minutes + 660 minutes + 45 minutes + 300 minutes)/8 companies = 165 minutes).

Registered businesses generally submit claims through the business portal. Unregistered businesses submit claims by mail, email, or fax. We estimate that submitting claims by mail, email, or fax takes a little longer because we often must ask the businesses to amend their submission to include the required certifications. Thus, we estimated that on average, claims submitted by mail, email, or fax take 30 minutes longer than those submitted through our Web site (165 minutes + 30 minutes = 195 minutes).

The submission of a claim of confidential information is a relatively rare event for all respondents; accordingly, we averaged all responses together. Five of the businesses contacted had submitted claims of confidential information. We found that the average time to submit a claim that a report of harm contains confidential information is 42 minutes ((45 minutes + 15 minutes + 60 minutes + 30 minutes + 60 minutes)/5 companies = 42 minutes).

Registered businesses generally submit confidential information claims through the business portal. Unregistered businesses submit confidential information claims by mail, email, or fax. We estimate that submitting claims in this way takes a little longer because we often must ask the businesses to amend their submission to include the required certifications. Thus, we estimate that a confidential information claim submitted by mail, email, or fax would take 30 minutes longer than those submitted through our Web site (42 minutes + 30 minutes = 72 minutes).

For voluntary brand identification, we estimate that a response would take 10 minutes on average. Most responses consist only of the brand name and a product description. In many cases a business will submit multiple entries in a brief period of time and we can see from the date and time stamps on these records that an entry often takes less than two minutes. CPSC staff enters the same data in a similar form based on our own research, and that experience was also factored into our estimate.

For small batch manufacturer identification, we estimate that a response would take 10 minutes on average. The form consists of three check boxes and the information should be readily accessible to the respondent.

The responses summarized in Table 2 are generally submitted by manufacturers. To avoid underestimating the cost associated with the collection of this data, we assigned the higher hourly wage associated with a manager or professional in goods-producing industries to these tasks. To estimate the cost of manufacturer submissions we multiplied the estimated total burden hours in Table 2 (8,826 hours) by an estimated total compensation for a manager or professional in goods-producing industries of $68.67 per hour,[5] which results in an estimated cost of $606,081 (8,826 hours × $68.67 per hour = $606,081).

Therefore, the total estimated annual cost to respondents is $719,381 ($113,300 burden for reports of harm + $606,081 burden for manufacturer submissions = $719,381).

2. Estimated Annual Burden on Government

We estimate the annualized cost to the CPSC to be $954,531. This figure is based on the costs for four categories of work for the Database: Reports of Harm, Materially Inaccurate Information Claims, Manufacturer Comments, and Small Batch Identification. Each category is described below. No government cost is associated with Voluntary Brand Identification because this information is entered directly into the Database by the manufacturer with no processing required by the government. The information assists the government in directing reports of harm to the correct manufacturer. We did not attempt to calculate separately the government cost for claims of confidential information because the number of claims is so small. The time to process these claims is included with claims of materially inaccurate information.

Reports of Harm: The Reports of Harm category includes many different tasks. Some costs related to this category are from two data entry contracts. Tasks related to these contracts include clerical coding of the report, such as

[5] U.S. Department of Labor, Bureau of Labor Statistics, Table 9 of the Employer Costs for Employee Compensation (ECEC), Private Industry, goods-producing and service-providing industries, by occupational group, June 2016 (data extracted on 06/23/2016 from *http://www.bls.gov/news.release/ecec.t09.htm*.

reallocate funds from the grantee to other grantees that have an approved 4-year plan. The Grant Officer may delay executing a grant agreement and obligating funds to an entity selected through the competitive process until all the required documents—including the 4-year plan—are in place and satisfactory.

(c) The Department may approve a portion of the plan and disapprove other portions.

(d) The grantee also has the right to appeal a nonselection decision or a decision by the Department to deny or reallocate funds based on unresolved issues with the applicant's application or 4-year plan. Such an appeal would go to the Office of the Administrative Law Judges under procedures at § 683.800 or § 683.840 of this chapter in the case of a nonelection.

§ 684.740 Under what circumstances can the Department or the Indian and Native American grantee modify the terms of the grantee's plan(s)?

(a) The Department may unilaterally modify the INA program grantee's plan to add funds or, if required by Congressional action, to reduce the amount of funds available for expenditure.

(b) The INA program grantee may request approval to modify its plan to add, expand, delete, or diminish any service allowable under the regulations in this part. The INA program grantee may modify its plan without our approval, unless the modification reduces the total number of participants to be served annually under the grantee's program by a number which exceeds 25 percent of the participants previously proposed to be served, or by 25 participants, whichever is larger.

Subpart H—Administrative Requirements

§ 684.800 What systems must an Indian and Native American program grantee have in place to administer an Indian and Native American program?

(a) Each INA program grantee must have a written system describing the procedures the grantee uses for:

(1) The hiring and management of personnel paid with program funds;

(2) The acquisition and management of property purchased with program funds;

(3) Financial management practices;

(4) A participant grievance system which meets the requirements in sec. 181(c) of WIOA and § 683.600 of this chapter; and

(5) A participant records system.

(b) Participant records systems must include:

(1) A written or computerized record containing all the information used to determine the person's eligibility to receive program services;

(2) The participant's signature certifying that all the eligibility information he or she provided is true to the best of his/her knowledge; and

(3) The information necessary to comply with all program reporting requirements.

§ 684.810 What types of costs are allowable expenditures under the Indian and Native American program?

Rules relating to allowable costs under WIOA are covered in §§ 683.200 through 683.215 of this chapter.

§ 684.820 What rules apply to administrative costs under the Indian and Native American program?

The definition and treatment of administrative costs are covered in §§ 683.205(b) and 683.215 of this chapter.

§ 684.830 Does the Workforce Innovation and Opportunity Act administrative cost limit for States and local areas apply to WIOA grants?

No, under § 683.205(b) of this chapter, limits on administrative costs for sec. 166 grants will be negotiated with the grantee and identified in the grant award document.

§ 684.840 How must Indian and Native American program grantees classify costs?

Cost classification is covered in the WIOA regulations at §§ 683.200 through 683.215 of this chapter. For purposes of the INA program, program costs also include costs associated with other activities such as TERO, and supportive services, as defined in WIOA sec. 3(59).

§ 684.850 What cost principles apply to Indian and Native American funds?

The cost principles at 2 CFR part 200, subpart E, Uniform Administrative Requirements, Cost Principles, & Audit Requirements for Federal Awards, and the Department's modifications to 2 CFR part 200, subpart E, at 2 CFR part 2900, apply to INA program grantees.

§ 684.860 What audit requirements apply to Indian and Native American grants?

(a) WIOA sec. 166 grantees must follow the audit requirements at 2 CFR part 200, subpart F, Uniform Administrative Requirements, Cost Principles, & Audit Requirements for Federal Awards, and the Department's modifications to 2 CFR part 200 at 2 CFR part 2900.

(b) Grants made and contracts and cooperative agreements entered into under sec. 166 of WIOA are subject to the requirements of chapter 75 of subtitle V of title 31, United States Code, and charging of costs under this section are subject to appropriate circulars issued by the Office of Management and Budget and to 2 CFR part 200 and the Department's modifications to 2 CFR part 200 at 2 CFR part 2900.

§ 684.870 What is "program income" and how is it regulated in the Indian and Native American program?

(a) Program income is regulated by WIOA sec. 194(7)(A), §§ 683.200(c)(6) through (8) and 683.300(c)(5) of this chapter, and the applicable rules in 2 CFR parts 200 and 2900.

(b) For grants made under this part, program income does not include income generated by the work of a work experience participant in an enterprise, including an enterprise owned by an INA entity, whether in the public or private sector.

(c) Program income does not include income generated by the work of an OJT participant in an establishment under paragraph (b) of this section.

Subpart I—Miscellaneous Program Provisions

§ 684.900 Does the Workforce Innovation and Opportunity Act provide regulatory and/or statutory waiver authority?

Yes, WIOA sec. 166(i)(3) permits waivers of any statutory or regulatory requirement of title I of WIOA that are inconsistent with the specific needs of the INA program grantee (except for the areas cited in § 684.920). Such waivers may include those necessary to facilitate WIOA support of long-term community development goals.

§ 684.910 What information is required in a waiver request?

(a) To request a waiver, an INA program grantee must submit a waiver request indicating how the waiver will improve the grantee's WIOA program activities. The waiver process will be generally consistent with, but not identical to, the waiver requirements under sec. 189(i)(3)(B) of WIOA. INA program grantees may submit a waiver request as part of the 4-year strategic plan.

(b) A waiver may be requested at the beginning of a 4-year grant award cycle or anytime during a 4-year award cycle. However, all waivers expire at the end of the 4-year award cycle. INA program grantees seeking to continue an existing waiver in a new 4-year grant cycle must submit a new waiver request in accordance with paragraph (a) of this section.

§ 684.920 What provisions of law or regulations may not be waived?

Requirements relating to:

(a) Wage and labor standards;

(b) Worker rights;

(c) Participation and protection of workers and participants;

(d) Grievance procedures;

(e) Judicial review; and

(f) Non-discrimination may not be waived.

§ 684.930 May Indian and Native American program grantees combine or consolidate their employment and training funds?

Yes. INA program grantees may consolidate their employment and training funds under WIOA with assistance received from related programs in accordance with the provisions of the Public Law 102–477, the Indian Employment, Training, and Related Services Demonstration Act of 1992, as amended by Public Law 106–568, the Omnibus Indian Advancement Act of 2000 (25 U.S.C. 3401 *et seq.*). WIOA funds consolidated under Public Law 102–477 are administered by Department of the Interior (DOI). Accordingly, the administrative oversight for funds transferred to DOI, including the reporting of financial expenditures and program outcomes are the responsibility of DOI. However, the Department must review the initial 477 plan and ensure that all Departmental programmatic and financial obligations have been met before WIOA funds are approved to be transferred to DOI and consolidated with other related programs. The initial plan must meet the statutory requirements of WIOA. After approval of the initial plan, all subsequent plans that are renewed or updated from the initial plan may be approved by DOI without further review by the Department.

§ 684.940 What is the role of the Native American Employment and Training Council?

The Native American Employment and Training Council is a body composed of representatives of the grantee community which advises the Secretary on the operation and administration of the INA employment and training program. WIOA sec. 166(i)(4) continues the Council essentially as it is currently constituted. The Department continues to support the Council.

§ 684.950 Does the Workforce Innovation and Opportunity Act provide any additional assistance to unique populations in Alaska and Hawaii?

Yes. Notwithstanding any other provision of law, the Secretary is authorized to award grants, on a competitive basis, to entities with demonstrated experience and expertise in developing and implementing programs for the unique populations who reside in Alaska or Hawaii, including public and private nonprofit organizations, tribal organizations, American Indian tribal colleges or universities, institutions of higher education, or consortia of such organizations or institutions, to improve job training and workforce investment activities for such unique populations.

■ 18. Add part 685 to read as follows:

PART 685—NATIONAL FARMWORKER JOBS PROGRAM UNDER TITLE I OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT

Subpart A—Purpose and Definitions

Sec.
685.100 What is the purpose of the National Farmworker Jobs Program and the other services and activities established under the Workforce Innovation and Opportunity Act?
685.110 What definitions apply to this program?
685.120 How does the Department administer the National Farmworker Jobs Program?
685.130 How does the Department assist grantees to serve eligible migrant and seasonal farmworkers?
685.140 What Workforce Innovation and Opportunity Act (WIOA) regulations apply to the programs authorized under WIOA?

Subpart B—The Service Delivery System for the National Farmworker Jobs Program

Sec.
685.200 Who is eligible to receive a National Farmworker Jobs Program grant?
685.210 How does an eligible entity become a grantee?
685.220 What is the role of the grantee in the one-stop delivery system?
685.230 Can a grantee's designation be terminated?
685.240 How does the Department use funds appropriated under the Workforce Innovation and Opportunity Act for the National Farmworker Jobs Program?

Subpart C—The National Farmworker Jobs Program Services to Eligible Migrant and Seasonal Farmworkers

Sec.
685.300 What are the general responsibilities of grantees?
685.310 What are the basic components of a National Farmworker Jobs Program service delivery strategy?
685.320 Who is eligible to receive services under the National Farmworker Jobs Program?
685.330 How are services delivered to eligible migrant and seasonal farmworkers?
685.340 What career services may grantees provide to eligible migrant and seasonal farmworkers?
685.350 What training services may grantees provide to eligible migrant and seasonal farmworkers?
685.360 What housing services may grantees provide to eligible migrant and seasonal farmworkers?
685.370 What services may grantees provide to eligible migrant and seasonal farmworkers youth participants aged 14–24?
685.380 What related assistance services may be provided to eligible migrant and seasonal farmworkers?
685.390 When may eligible migrant and seasonal farmworkers receive related assistance?

Subpart D—Performance Accountability, Planning, and Waiver Provisions

Sec.
685.400 What are the indicators of performance that apply to the National Farmworker Jobs Program?
685.410 What planning documents must a grantee submit?
685.420 What information is required in the grantee program plan?
685.430 Under what circumstances are the terms of the grantee's program plan modified by the grantee or the Department?
685.440 How are costs classified under the National Farmworker Jobs Program?
685.450 What is the Workforce Innovation and Opportunity Act administrative cost limit for National Farmworker Jobs Program grants?
685.460 Are there regulatory and/or statutory waiver provisions that apply to the Workforce Innovation and Opportunity Act?
685.470 How can grantees request a waiver?

Subpart E—Supplemental Youth Workforce Investment Activity Funding Under the Workforce Innovation and Opportunity Act

Sec.
685.500 What is supplemental youth workforce investment activity funding?
685.510 What requirements apply to grants funded by the Workforce Innovation and Opportunity Act?
685.520 What is the application process for obtaining a grant funded by the Workforce Innovation and Opportunity Act?
685.530 What planning documents are required for grants funded by the Workforce Innovation and Opportunity Act?
685.540 How are funds allocated to grants funded by the Workforce Innovation and Opportunity Act?
685.550 Who is eligible to receive services through grants funded by the Workforce Innovation and Opportunity Act?

Authority: Secs. 167, 189, 503, Public Law 113–128, 128 Stat. 1425 (Jul. 22, 2014).

Subpart A—Purpose and Definitions

§ 685.100 What is the purpose of the National Farmworker Jobs Program and the other services and activities established under the Workforce Innovation and Opportunity Act?

The purpose of the NFJP and the other services and activities established under WIOA sec. 167 is to strengthen the ability of eligible migrant and seasonal farmworkers (MSFWs) and their dependents to obtain or retain unsubsidized employment, stabilize their unsubsidized employment and achieve economic self-sufficiency, including upgraded employment in agriculture. This part provides the regulatory requirements applicable to the expenditure of WIOA secs. 167 and 127(a)(1) funds for such programs, services, and activities.

§ 685.110 What definitions apply to this program?

In addition to the definitions found in § 675.300 of this chapter, the following definitions apply to programs under this part:

Allowances means direct payments made to participants during their enrollment to enable them to participate in the career services described in WIOA sec. 134(c)(2)(A)(xii) or training services as appropriate.

Dependent means an individual who:

(1) Was claimed as a dependent on the eligible MSFW's Federal income tax return for the previous year; or

(2) Is the spouse of the eligible MSFW; or

(3) If not claimed as a dependent for Federal income tax purposes, is able to establish:

(i) A relationship as the eligible MSFW's;

(A) Child, grandchild, great grandchild, including legally adopted children;

(B) Stepchild;

(C) Brother, sister, half-brother, half-sister, stepbrother, or stepsister;

(D) Parent, grandparent, or other direct ancestor but not foster parent;

(E) Foster child;

(F) Stepfather or stepmother;

(G) Uncle or aunt;

(H) Niece or nephew;

(I) Father-in-law, mother-in-law, son-in-law; or

(J) Daughter-in-law, brother-in-law, or sister-in-law; and

(ii) The receipt of over half of his/her total support from the eligible MSFW's family during the eligibility determination period.

Eligibility determination period means any consecutive 12-month period within the 24-month period immediately preceding the date of application for the MSFW program by the applicant MSFW.

Eligible migrant farmworker means an eligible seasonal farmworker as defined in WIOA sec. 167(i)(3) whose agricultural labor requires travel to a job site such that the farmworker is unable to return to a permanent place of residence within the same day; and dependents of the migrant farmworker, as described in WIOA sec. 167(i)(2).

Eligible migrant and seasonal farmworker means an eligible migrant farmworker or an eligible seasonal farmworker, also referred to in this regulation as an "*eligible MSFW,*" as defined in WIOA sec. 167(i).

Eligible MSFW youth means an eligible MSFW aged 14–24 who is individually eligible or is a dependent of an eligible MSFW. The term *eligible MSFW youth* is a subset of the term *eligible MSFW* defined in this section.

Eligible seasonal farmworker means a low-income individual who for 12 consecutive months out of the 24 months prior to application for the program involved, has been primarily employed in agricultural or fish farming labor that is characterized by chronic unemployment or underemployment; and faces multiple barriers to economic self-sufficiency; and dependents of the seasonal farmworker as described in WIOA sec. 167(i)(3).

Emergency assistance is a form of "related assistance" and means assistance provided by grantees that addresses immediate needs of eligible MSFWs and their dependents. An applicant's self-certification is accepted as sufficient documentation of eligibility for emergency assistance.

Family, for the purpose of reporting housing assistance grantee indicators of performance as described in in § 685.400, means the eligible MSFW(s) and all the individuals identified under the definition of *dependent* in this section who are living together in one physical residence.

Farmwork means work while employed in the occupations described in § 651.10 of this chapter.

Grantee means an entity to which the Department directly awards a WIOA grant to carry out programs to serve eligible MSFWs in a service area, with funds made available under WIOA sec. 167 or 127(a)(1).

Housing assistance means housing services which contribute to safe and sanitary temporary and permanent housing constructed, supplied, or maintained with NFJP funding.

Lower living standard income level means the income level as defined in WIOA sec. 3(36)(B).

Low-income individual means an individual as defined in WIOA sec. 3(36)(A).

MOU means Memorandum of Understanding.

National Farmworker Jobs Program (NFJP) is the Department of Labor-administered workforce investment program for eligible MSFWs established by WIOA sec. 167 as a required partner of the one-stop delivery system and includes both career services and training grants, and housing grants.

Recognized postsecondary credential means a credential as defined in WIOA sec. 3(52).

Related assistance means short-term forms of direct assistance designed to assist eligible MSFWs retain or stabilize their agricultural employment. Examples of related assistance may include, but are not limited to, services such as transportation assistance or providing work clothing.

Self-certification means an eligible MSFW's signed attestation that the information he/she submits to demonstrate eligibility for the NFJP is true and accurate.

Service area means the geographical jurisdiction, which may be comprised of one or more designated State or sub-State areas, in which a WIOA sec. 167 grantee is designated to operate.

Supportive services means the services defined in WIOA sec. 3(59).

Technical assistance means the guidance provided to grantees and grantee staff by the Department to improve the quality of the program and the delivery of program services to eligible MSFWs.

§ 685.120 How does the Department administer the National Farmworker Jobs Program?

The Department's Employment and Training Administration (ETA) administers NFJP activities required under WIOA sec. 167 for eligible MSFWs. As described in § 685.210, the Department designates grantees using procedures consistent with standard Federal government competitive procedures.

§ 685.130 How does the Department assist grantees to serve eligible migrant and seasonal farmworkers?

The Department provides guidance, administrative support, technical assistance, and training to grantees for the purposes of program implementation, and program performance management to enhance services and promote continuous improvement in the employment outcomes of eligible MSFWs.

§ 685.140 What Workforce Innovation and Opportunity Act (WIOA) regulations apply to the programs authorized under WIOA?

The regulations that apply to programs authorized under WIOA sec. 167 include but are not limited to:

(a) The regulations found in this part;

(b) The general administrative requirements found in part 683 of this chapter, including the regulations concerning Complaints, Investigations and Hearings found at part 683, subparts D through H, of this chapter, which cover programs under WIOA sec. 167;

(c) Uniform Guidance at 2 CFR part 200 and the Department's exceptions at 2 CFR part 2900 pursuant to the effective dates in 2 CFR parts 200 and 2900;

(d) The regulations on partnership responsibilities contained in parts 679 (Statewide and Local Governance) and 678 (the One-Stop System) of this chapter; and

(e) The Department's regulations at 29 CFR part 38, which implement the nondiscrimination provisions of WIOA sec. 188.

Subpart B—The Service Delivery System for the National Farmworker Jobs Program

§ 685.200 Who is eligible to receive a National Farmworker Jobs Program grant?

To be eligible to receive a grant under this section, an entity must have:

(a) An understanding of the problems of eligible MSFWs;

(b) A familiarity with the agricultural industries and the labor market needs of the proposed service area; and

(c) The ability to demonstrate a capacity to administer and deliver effectively a diversified program of workforce investment activities, including youth workforce investment activities, and related assistance for eligible MSFWs.

§ 685.210 How does an eligible entity become a grantee?

To become a grantee and receive a grant under this subpart, an applicant must respond to a Funding Opportunity Announcement (FOA). Under the FOA, grantees will be selected using standard Federal government competitive procedures. The entity's proposal must include a program plan, which is a 4-year strategy for meeting the needs of eligible MSFWs in the proposed service area, and a description of the entities experience working with the broader workforce delivery system. Unless specified otherwise in the FOA, grantees may serve eligible MSFWs, including eligible MSFW youth, under the grant. An applicant whose application for funding as a grantee under this section is denied in whole or in part may request an administrative review under § 683.800 of this chapter.

§ 685.220 What is the role of the grantee in the one-stop delivery system?

In those local areas where the grantee operates its NFJP as described in its grant agreement, the grantee is a required one-stop partner, and is subject to the provisions relating to such partners described in part 678 of this chapter. Consistent with those provisions, the grantee and Local Workforce Development Board (WDB) must develop and enter into an MOU which meets the requirements of § 678.500 of this chapter, and which sets forth their respective responsibilities for providing access to the full range of NFJP services through the one-stop delivery system to eligible MSFWs.

§ 685.230 Can a grantee's designation be terminated?

Yes, a grantee's designation may be terminated by the Department for cause:

(a) In emergency circumstances when such action is necessary to protect the integrity of Federal funds or to ensure the proper operation of the program. Any grantee so terminated will be provided with written notice and an opportunity for a hearing within 30 days after the termination; or

(b) By the Department's Grant Officer, if the recipient materially fails to comply with the terms and conditions of the award. In such a case, the Grant Officer will follow the administrative regulations at § 683.440 of this chapter.

§ 685.240 How does the Department use funds appropriated under the Workforce Innovation and Opportunity Act for the National Farmworker Jobs Program?

At least 99 percent of the funds appropriated each year for WIOA sec. 167 activities must be allocated to service areas, based on the distribution of the eligible MSFW population determined under a formula established by the Secretary. The Department will award grants pursuant to § 685.210 for the provision of services to eligible MSFWs within each service area. The Department will use a percentage of the funds allocated for State service areas for housing grants, specified in a FOA issued by the Department. The Department will use up to one percent of the appropriated funds for discretionary purposes, such as technical assistance to eligible entities and other activities prescribed by the Secretary.

Subpart C—The National Farmworker Jobs Program Services to Eligible Migrant and Seasonal Farmworkers

§ 685.300 What are the general responsibilities of grantees?

(a) The Department awards career services and training grants and housing grants through the FOA process described in § 685.210. Career services and training grantees are responsible for providing appropriate career services, training, and related assistance to eligible MSFWs. Housing grantees are responsible for providing housing assistance to eligible MSFWs.

(b) Grantees will provide these services in accordance with the service delivery strategy meeting the requirements of § 685.310 and as described in their approved program plan described in § 685.420. These services must reflect the needs of the MSFW population in the service area and include the services that are necessary to achieve each participant's employment goals or housing needs.

(c) Grantees are responsible for coordinating services, particularly outreach to MSFWs, with the State Workforce Agency as defined in § 651.10 of this chapter and the State's Monitor Advocate.

(d) Grantees are responsible for fulfilling the responsibilities of one-stop partners described in § 678.420 of this chapter.

§ 685.310 What are the basic components of a National Farmworker Jobs Program service delivery strategy?

The NFJP service delivery strategy must include:

(a) A customer-focused case management approach;

(b) The provision of workforce investment activities to eligible MSFWs which include career services and training, as described in WIOA secs. 167(d) and 134, and part 680 of this chapter;

(c) The provision of youth workforce investment activities described in WIOA sec. 129 and part 681 of this chapter may be provided to eligible MSFW youth;

(d) The arrangements under the MOUs with the applicable Local WDBs for the delivery of the services available through the one-stop delivery system to MSFWs; and

(e) Related assistance services.

§ 685.320 Who is eligible to receive services under the National Farmworker Jobs Program?

Eligible migrant farmworkers (including eligible MSFW youth) and eligible seasonal farmworkers (including eligible MSFW youth) as defined in

§ 685.110 are eligible for services funded by the NFJP.

§ 685.330 How are services delivered to eligible migrant and seasonal farmworkers?

To ensure that all services are focused on the customer's needs, services are provided through a case-management approach emphasizing customer choice and may include: Appropriate career services and training; related assistance, which includes emergency assistance; and supportive services, which includes allowance payments. The basic services and delivery of case-management activities are further described in §§ 685.340 through 685.390.

§ 685.340 What career services may grantees provide to eligible migrant and seasonal farmworkers?

(a) Grantees may provide the career services described in WIOA secs. 167(d) and 134(c)(2), and part 680 of this chapter to eligible MSFWs.

(b) Grantees may provide other services identified in the approved program plan.

(c) The delivery of career services to eligible MSFWs by the grantee and through the one-stop delivery system must be discussed in the required MOU between the Local WDB and the grantee.

§ 685.350 What training services may grantees provide to eligible migrant and seasonal farmworkers?

(a) Grantees may provide the training activities described in WIOA secs. 167(d) and 134(c)(3)(D), and part 680 of this chapter to eligible MSFWs. These activities include, but are not limited to, occupational-skills training and on-the-job training (OJT). Eligible MSFWs are not required to receive career services prior to receiving training services.

(1) When providing OJT services NFJP grantees may reimburse employers for the extraordinary costs of training by up to 50 percent of the wage rate of the participant for OJT.

(2) Grantees also may increase the OJT reimbursement rate up to 75 percent of the wage rate of a participant under certain conditions, provided that such reimbursement is being provided consistent with the reimbursement rates used under WIOA sec. 134(c)(3)(H)(i) for the local area(s) in which the grantee operates its program.

(b) Training services must be directly linked to an in-demand industry sector or occupation in the service area, or in another area to which an eligible MSFW receiving such services is willing to relocate.

(c) Training activities must encourage the attainment of recognized postsecondary credentials as defined in § 685.110 when appropriate for an eligible MSFW.

§ 685.360 What housing services may grantees provide to eligible migrant and seasonal farmworkers?

(a) Housing grantees must provide housing services to eligible MSFWs.

(b) Career services and training grantees may provide housing services to eligible MSFWs as described in their program plan.

(c) Housing services may include the following:

(1) Permanent housing that is owner-occupied, or occupied on a permanent, year-round basis (notwithstanding ownership) as the eligible MSFW's primary residence to which he/she returns at the end of the work or training day.

(i) Types of permanent housing may include rental units, single family homes, duplexes, and other multi-family structures, dormitories, group homes, and other housing types that provide short-term, seasonal, or year-round housing opportunities in permanent structures. Modular structures, manufactured housing, or mobile units placed on permanent foundations and supplied with appropriate utilities, and other infrastructure also are considered permanent housing.

(ii) Permanent housing services include but are not limited to: Investments in development services, project management, and resource development to secure acquisition, construction/renovation and operating funds, property management services, and program management. New construction, purchase of existing structures, and rehabilitation of existing structures, as well as the infrastructure, utilities, and other improvements necessary to complete or maintain those structures also may be considered part of managing permanent housing.

(2) Temporary housing that is not owner-occupied and is used by MSFWs whose employment requires occasional travel outside their normal commuting area.

(i) Types of temporary housing may include: Housing units intended for temporary occupancy located in permanent structures, such as rental units in an apartment complex or in mobile structures that provide short-term, seasonal housing opportunities; temporary structures that may be moved from site to site, dismantled and re-erected when needed for farmworker occupancy, closed during the off-season, or handled through other similar arrangements; off-farm housing operated independently of employer interest in, or control of, the housing; or on-farm housing located on property owned by an agricultural employer and operated by an entity such as an agricultural employer or a nonprofit organization; and other housing types that provide short-term, seasonal, or temporary housing opportunities in temporary structures.

(ii) Temporary housing services include but are not limited to: Managing temporary housing which may involve property management of temporary housing facilities, case management, and referral services, and emergency housing payments, including vouchers and cash payments for rent/lease and utilities.

(d) Permanent housing developed with NFJP funds must be promoted and made widely available to eligible MSFWs, but occupancy is not restricted to eligible MSFWs. Temporary housing services must only be provided to eligible MSFWs.

(e) Except as provided in paragraph (f) of this section, NFJP funds used for housing assistance must ensure the provision of safe and sanitary temporary and permanent housing that meets the Federal housing standards at part 654 of this chapter (ETA housing for farmworkers) or 29 CFR 1910.10 (OSHA housing standards).

(f) When NFJP grantees provide temporary housing assistance that allows the participant to select the housing, including vouchers and cash payments for rent, lease, and utilities, NFJP grantees are not required to ensure that such housing meets the Federal housing standards at part 654 of this chapter or 29 CFR 1910.10.

§ 685.370 What services may grantees provide to eligible migrant and seasonal farmworkers youth participants aged 14–24?

(a) Based on an evaluation and assessment of the needs of eligible MSFW youth, grantees may provide activities and services that include but are not limited to:

(1) Career services and training as described in §§ 685.340 and 685.350;

(2) Youth workforce investment activities specified in WIOA sec. 129;

(3) Life skills activities which may include self- and interpersonal skills development;

(4) Community service projects; and

(5) Other activities and services that conform to the use of funds for youth activities described in part 681 of this chapter.

(b) Grantees may provide these services to any eligible MSFW youth, regardless of the participant's eligibility for WIOA title I youth activities as described in WIOA sec. 129(a).

§ 685.380 What related assistance services may be provided to eligible migrant and seasonal farmworkers?

Related assistance may include short-term direct services and activities. Examples include emergency assistance, as defined in § 685.110, and those activities identified in WIOA sec. 167(d), such as: English language and literacy instruction; pesticide and worker safety training; housing (including permanent housing), as described in § 685.360 and as provided in the approved program plan; and school dropout prevention and recovery activities. Related assistance may be provided to eligible MSFWs not enrolled in career services, youth services, or training services.

§ 685.390 When may eligible migrant and seasonal farmworkers receive related assistance?

Eligible MSFWs may receive related assistance services when the grantee identifies and documents the need for the related assistance, which may include a statement by the eligible MSFW.

Subpart D—Performance Accountability, Planning, and Waiver Provisions

§ 685.400 What are the indicators of performance that apply to the National Farmworker Jobs Program?

(a) For grantees providing career services and training, the Department will use the indicators of performance common to the adult and youth programs, described in WIOA sec. 116(b)(2)(A).

(b) For grantees providing career services and training, the Department will reach agreement with individual grantees on the levels of performance for each of the primary indicators of performance, taking into account economic conditions, characteristics of the individuals served, and other appropriate factors, and using, to the extent practicable, the statistical adjustment model under WIOA sec. 116(b)(3)(A)(viii). Once agreement on the levels of performance for each of the primary indicators of performance is reached with individual grantees, the Department will incorporate the adjusted levels of performance in the grant plan. For the purposes of performance reporting, eligible MSFWs who receive any career services, youth services, training, or certain related assistance are considered participants as defined in § 677.150 of this chapter and must be included in performance calculations for the indicators of performance. Eligible MSFWs who receive only those services identified in § 677.150(a)(3)(ii) or (iii) of this chapter are not included in performance calculations for the indicators of performance described in WIOA sec. 116(b)(2)(A).

(c) For grantees providing housing services only, grantees will use the total number of eligible MSFWs served and the total number of eligible MSFW families served as indicators of performance. Additionally, grantees providing permanent housing development activities will use the total number of individuals served and the total number of families served as indicators of performance.

(d) The Department may develop additional performance indicators with appropriate levels of performance for evaluating programs that serve eligible MSFWs and which reflect the State service area economy, local demographics of eligible MSFWs, and other appropriate factors. If additional performance indicators are developed, the levels of performance for these additional indicators must be negotiated with the grantee and included in the approved program plan.

(e) Grantees may develop additional performance indicators and include them in the program plan or in periodic performance reports.

§ 685.410 What planning documents must a grantee submit?

Each grantee receiving WIOA sec. 167 program funds must submit to the Department a comprehensive program plan and a projection of participant services and expenditures in accordance with instructions issued by the Secretary.

§ 685.420 What information is required in the grantee program plan?

A grantee's 4-year program plan must describe:

(a) The service area that the applicant proposes to serve;

(b) The population to be served and the education and employment needs of the MSFW population to be served;

(c) The manner in which proposed services to eligible MSFWs will strengthen their ability to obtain or retain unsubsidized employment or stabilize their unsubsidized employment, including upgraded employment in agriculture;

(d) The related assistance and supportive services to be provided and the manner in which such assistance and services are to be integrated and coordinated with other appropriate services;

(e) The performance accountability measures that will be used to assess the performance of the entity in carrying out the NFJP program activities, including the expected levels of performance for the primary indicators of performance described in § 685.400;

(f) The availability and accessibility of local resources, such as supportive services, services provided through one-stop delivery systems, and education and training activities, and how the resources can be made available to the population to be served;

(g) The plan for providing services including strategies and systems for outreach, career planning, assessment, and delivery through one-stop delivery systems;

(h) The methods the grantee will use to target its services on specific segments of the eligible population, as appropriate; and

(i) Such other information as required by the Secretary in instructions issued under § 685.410.

§ 685.430 Under what circumstances are the terms of the grantee's program plan modified by the grantee or the Department?

(a) Plans must be modified to reflect the funding level for each year of the grant. The Department will provide instructions annually on when to submit modifications for each year of funding, which will generally be no later than June 1 prior to the start of the subsequent year of the grant cycle.

(b) The grantee must submit a request to the Department for any proposed modifications to its plan to add, delete, expand, or reduce any part of the program plan or allowable activities. The Department will consider the cost principles, uniform administrative requirements, and terms and conditions of award when reviewing modifications to program plans.

(c) If the grantee is approved for a regulatory waiver under §§ 685.460 and 685.470, the grantee must submit a modification of its grant plan to reflect the effect of the waiver.

§ 685.440 How are costs classified under the National Farmworker Jobs Program?

(a) Costs are classified as follows:

(1) Administrative costs, as defined in § 683.215 of this chapter; and

(2) Program costs, which are all other costs not defined as administrative.

(b) Program costs must be classified and reported in the following categories:

(1) Related assistance (including emergency assistance);

(2) Supportive services; and

(3) All other program services.

§ 685.450 What is the Workforce Innovation and Opportunity Act administrative cost limit for National Farmworker Jobs Program grants?

Under § 683.205(b) of this chapter, limits on administrative costs for

programs operated under subtitle D of WIOA title I will be identified in the grant or contract award document. Administrative costs will not exceed 15 percent of total grantee funding.

§ 685.460 Are there regulatory and/or statutory waiver provisions that apply to the National Farmworker Jobs Program?

(a) The statutory waiver provision at WIOA sec. 189(i) and discussed in § 679.600 of this chapter does not apply to any NFJP grant under WIOA sec. 167.

(b) Grantees may request waiver of any regulatory provisions only when such regulatory provisions are:

(1) Not required by WIOA;

(2) Not related to wage and labor standards, non-displacement protection, worker rights, participation and protection of workers and participants, and eligibility of participants, grievance procedures, judicial review, nondiscrimination, allocation of funds, procedures for review and approval of plans; and

(3) Not related to the basic purposes of WIOA, described in § 675.100 of this chapter.

§ 685.470 How can grantees request a waiver?

To request a waiver, a grantee must submit to the Department a waiver plan that:

(a) Describes the goals of the waiver, the expected programmatic outcomes, and how the waiver will improve the provision of program activities;

(b) Is consistent with any guidelines the Department establishes;

(c) Describes the data that will be collected to track the impact of the waiver; and

(d) Includes a modified program plan reflecting the effect of the requested waiver.

Subpart E—Supplemental Youth Workforce Investment Activity Funding Under the Workforce Innovation and Opportunity Act

§ 685.500 What is supplemental youth workforce investment activity funding?

Pursuant to WIOA sec. 127(a)(1), if Congress appropriates more than $925 million for WIOA youth workforce investment activities in a fiscal year, 4 percent of the excess amount must be used by the Department to provide workforce investment activities for eligible MSFW youth under WIOA sec. 167.

§ 685.510 What requirements apply to grants funded by the Workforce Innovation and Opportunity Act?

The requirements in subparts A through D of this part apply to grants funded by WIOA sec. 127(a)(1), except that grants described in this subpart must be used only for workforce investment activities for eligible MSFW youth, as described in § 685.370 and WIOA sec. 167(d) (including related assistance and supportive services).

§ 685.520 What is the application process for obtaining a grant funded by the Workforce Innovation and Opportunity Act?

The Department will issue a separate FOA for grants funded by WIOA sec. 127(a)(1). The selection will be made in accordance with the procedures described in § 685.210, except that the Department reserves the right to provide priority to applicants that are WIOA sec. 167 grantees.

§ 685.530 What planning documents are required for grants funded by the Workforce Innovation and Opportunity Act?

The required planning documents will be described in the FOA.

§ 685.540 How are funds allocated to grants funded by the Workforce Innovation and Opportunity Act?

The allocation of funds will be based on the comparative merits of the applications, in accordance with criteria set forth in the FOA.

§ 685.550 Who is eligible to receive services through grants funded by the Workforce Innovation and Opportunity Act?

Eligible MSFW youth as defined in § 685.110 are eligible to receive services through grants funded by WIOA sec. 127(a)(1).

■ 19. Add part 686 to read as follows:

PART 686—THE JOB CORPS UNDER TITLE I OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT

Subpart A—Scope and Purpose

Sec.

686.100 What is the scope of this part?
686.110 What is the Job Corps program?
686.120 What definitions apply to this part?

Subpart B—Site Selection and Protection and Maintenance of Facilities

Sec.

686.200 How are Job Corps center locations and sizes determined?
686.210 How are center facility improvements and new construction handled?
686.220 Who is responsible for the protection and maintenance of center facilities?

Subpart C—Funding and Selection of Center Operators and Service Providers

Sec.

686.300 What entities are eligible to receive funds to operate centers and provide training and operational support services?
686.310 How are entities selected to receive funding to operate centers?
686.320 What if a current center operator is deemed to be an operator of a high-performing center?
686.330 What is the length of an agreement entered into by the Secretary for operation of a Job Corps center and what are the conditions for renewal of such an agreement?
686.340 How are entities selected to receive funding to provide outreach and admission, career transition and other operations support services?
686.350 What conditions apply to the operation of a Civilian Conservation Center?
686.360 What are the requirements for award of contracts and payments to Federal agencies?

Subpart D—Recruitment, Eligibility, Screening, Selection and Assignment, and Enrollment

Sec.

686.400 Who is eligible to participate in the Job Corps program?
686.410 Are there additional factors which are considered in selecting an eligible applicant for enrollment?
686.420 Are there any special requirements for enrollment related to the Military Selective Service Act?
686.430 What entities conduct outreach and admissions activities for the Job Corps program?
686.440 What are the responsibilities of outreach and admissions providers?
686.450 How are applicants who meet eligibility and selection criteria assigned to centers?
686.460 What restrictions are there on the assignment of eligible applicants for nonresidential enrollment in Job Corps?
686.470 May an individual who is determined to be ineligible or an individual who is denied enrollment appeal that decision?
686.480 At what point is an applicant considered to be enrolled in Job Corps?
686.490 How long may a student be enrolled in Job Corps?

Subpart E—Program Activities and Center Operations

Sec.

686.500 What services must Job Corps centers provide?
686.505 What types of training must Job Corps centers provide?
686.510 Are entities other than Job Corps center operators permitted to provide academic and career technical training?
686.515 What are advanced career training programs?
686.520 What responsibilities do the center operators have in managing work-based learning?
686.525 Are students permitted to hold jobs other than work-based learning opportunities?
686.530 What residential support services must Job Corps center operators provide?
686.535 Are Job Corps centers required to maintain a student accountability system?

686.540 Are Job Corps centers required to establish behavior management systems?
686.545 What is Job Corps' zero tolerance policy?
686.550 How does Job Corps ensure that students receive due process in disciplinary actions?
686.555 What responsibilities do Job Corps centers have in assisting students with child care needs?
686.560 What are the center's responsibilities in ensuring that students' religious rights are respected?
686.565 Is Job Corps authorized to conduct pilot and demonstration projects?

Subpart F—Student Support

Sec.
686.600 Are students provided with government-paid transportation to and from Job Corps centers?
686.610 When are students authorized to take leaves of absence from their Job Corps centers?
686.620 Are Job Corps students eligible to receive cash allowances and performance bonuses?
686.630 Are student allowances subject to Federal payroll taxes?
686.640 Are students provided with clothing?

Subpart G—Career Transition and Graduate Services

Sec.
686.700 What are a Job Corps center's responsibilities in preparing students for career transition services?
686.710 What career transition services are provided for Job Corps enrollees?
686.720 Who provides career transition services?
686.730 What are the responsibilities of career transition service providers?
686.740 What services are provided for program graduates?
686.750 Are graduates provided with transition allowances?
686.760 What services are provided to former enrollees?

Subpart H—Community Connections

Sec.
686.800 How do Job Corps centers and service providers become involved in their local communities?
686.810 What is the makeup of a workforce council and what are its responsibilities?
686.820 How will Job Corps coordinate with other agencies?

Subpart I—Administrative and Management Provisions

Sec.
686.900 Are damages caused by the acts or omissions of students eligible for payment under the Federal Tort Claims Act?
686.905 Are loss and damages that occur to persons or personal property of students at Job Corps centers eligible for reimbursement?
686.910 If a student is injured in the performance of duty as a Job Corps student, what benefits may the student receive?
686.915 When is a Job Corps student considered to be in the performance of duty?
686.920 How are students protected from unsafe or unhealthy situations?
686.925 What are the requirements for criminal law enforcement jurisdiction on center property?
686.930 Are Job Corps operators and service providers authorized to pay State or local taxes on gross receipts?
686.935 What are the financial management responsibilities of Job Corps center operators and other service providers?
686.940 Are center operators and service providers subject to Federal audits?
686.945 What are the procedures for management of student records?
686.950 What procedures apply to disclosure of information about Job Corps students and program activities?
686.955 What are the reporting requirements for center operators and operational support service providers?
686.960 What procedures are available to resolve complaints and disputes?
686.965 How does Job Corps ensure that complaints or disputes are resolved in a timely fashion?
686.970 How does Job Corps ensure that centers or other service providers comply with the Workforce Innovation and Opportunity Act and the WIOA regulations?
686.975 How does Job Corps ensure that contract disputes will be resolved?
686.980 How does Job Corps resolve disputes between the U.S. Department of Labor and the U.S. Department of Agriculture regarding the operation of Job Corps centers?
686.985 What Department of Labor equal opportunity and nondiscrimination regulations apply to Job Corps?

Subpart J—Performance

Sec.
686.1000 How is the performance of the Job Corps program assessed?
686.1010 What are the primary indicators of performance for Job Corps centers and the Job Corps program?
686.1020 What are the indicators of performance for Job Corps outreach and admissions providers?
686.1030 What are the indicators of performance for Job Corps career transition service providers?
686.1040 What information will be collected for use in the Annual Report?
686.1050 How are the expected levels of performance for Job Corps centers, outreach and admissions providers and career transition service providers established?
686.1060 How are center rankings established?
686.1070 How and when will the Secretary use performance improvement plans?

Authority: Secs. 142, 144, 146, 147, 159, 189, 503, Pub. L. 113–128, 128 Stat. 1425 (Jul. 22, 2014).

Subpart A—Scope and Purpose

§ 686.100 What is the scope of this part?

The regulations in this part outline the requirements that apply to the Job Corps program. More detailed policies and procedures are contained in a Policy and Requirements Handbook issued by the Secretary. Throughout this part, "instructions (procedures) issued by the Secretary" and similar references refer to the Policy and Requirements Handbook and other Job Corps directives.

§ 686.110 What is the Job Corps program?

Job Corps is a national program that operates in partnership with States and communities, Local Workforce Development Boards (WDBs), Youth Standing Committees where established, one-stop centers and partners, and other youth programs to provide academic, career and technical education, service-learning, and social opportunities primarily in a residential setting, for low-income young people. The objective of Job Corps is to support responsible citizenship and provide young people with the skills they need to lead to successful careers that will result in economic self-sufficiency and opportunities for advancement in in-demand industry sectors or occupations or the Armed Forces, or to enrollment in postsecondary education.

§ 686.120 What definitions apply to this part?

The following definitions apply to this part:

Absent Without Official Leave (AWOL) means an adverse enrollment status to which a student is assigned based on extended, unapproved absence from his/her assigned center or off-center place of duty. Students do not earn Job Corps allowances while in AWOL status.

Applicable Local WDB means a Local WDB that:

(1) Works with a Job Corps center and provides information on local employment opportunities and the job skills and credentials needed to obtain the opportunities; and

(2) Serves communities in which the graduates of the Job Corps seek employment.

Applicable one-stop center means a one-stop center that provides career transition services, such as referral, assessment, recruitment, and placement, to support the purposes of the Job Corps.

Capital improvement means any modification, addition, restoration or other improvement:

(1) Which increases the usefulness, productivity, or serviceable life of an

existing site, facility, building, structure, or major item of equipment;

(2) Which is classified for accounting purposes as a "fixed asset;" and

(3) The cost of which increases the recorded value of the existing building, site, facility, structure, or major item of equipment and is subject to depreciation.

Career technical training means career and technical education and training.

Career transition service provider means an organization acting under a contract or other agreement with Job Corps to provide career transition services for graduates and, to the extent possible, for former students.

Civilian Conservation Center (CCC) means a center operated on public land under an agreement between the Department of Labor (the Department) and the Department of Agriculture, which provides, in addition to other training and assistance, programs of work-based learning to conserve, develop, or manage public natural resources or public recreational areas or to develop community projects in the public interest.

Contract center means a Job Corps center operated under a contract with the Department.

Contracting officer means an official authorized to enter into contracts or agreements on behalf of the Department.

Enrollee means an individual who has voluntarily applied for, been selected for, and enrolled in the Job Corps program, and remains with the program, but has not yet become a graduate. Enrollees also are referred to as "students" in this part.

Enrollment means the process by which an individual formally becomes a student in the Job Corps program.

Former enrollee means an individual who has voluntarily applied for, been selected for, and enrolled in the Job Corps program, but left the program prior to becoming a graduate.

Graduate means an individual who has voluntarily applied for, been selected for, and enrolled in the Job Corps program and who, as a result of participation in the program, has received a secondary school diploma or recognized equivalent, or has completed the requirements of a career technical training program that prepares individuals for employment leading to economic self-sufficiency or entrance into postsecondary education or training.

Individual with a disability means an individual with a disability as defined in sec. 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102).

Interagency agreement means a formal agreement between the Department and another Federal agency administering and operating centers. The agreement establishes procedures for the funding, administration, operation, and review of those centers as well as the resolution of any disputes.

Job Corps means the Job Corps program established within the Department of Labor and described in sec. 143 of the Workforce Innovation and Opportunity Act (WIOA).

Job Corps center means a facility and an organizational entity, including all of its parts, providing Job Corps training and designated as a Job Corps center, as described in sec. 147 of WIOA.

Job Corps Director means the chief official of the Job Corps or a person authorized to act for the Job Corps Director.

Low-income individual means an individual who meets the definition in WIOA sec. 3(36).

National Office means the national office of Job Corps.

National training contractor means a labor union, union-affiliated organization, business organization, association, or a combination of such organizations, which has a contract with the national office to provide career technical training, career transition services, or other services.

Operational support services means activities or services required to support the operation of Job Corps, including:

(1) Outreach and admissions services;

(2) Contracted career technical training and off-center training;

(3) Career transition services;

(4) Continued services for graduates;

(5) Certain health services; and

(6) Miscellaneous logistical and technical support.

Operator means a Federal, State or local agency, or a contractor selected under this subtitle to operate a Job Corps center under an agreement or contract with the Department.

Outreach and admissions provider means an organization that performs recruitment services, including outreach activities, and screens and enrolls youth under a contract or other agreement with Job Corps.

Participant, as used in this part, includes both graduates and enrollees and former enrollees that have completed their career preparation period. It also includes all enrollees and former enrollees who have remained in the program for at least 60 days.

Placement means student employment, entry into the Armed Forces, or enrollment in other training or education programs following separation from Job Corps.

Regional appeal board means the board designated by the Regional Director to consider student appeals of disciplinary discharges.

Regional Director means the chief Job Corps official of a regional office or a person authorized to act for the Regional Director.

Regional office means a regional office of Job Corps.

Regional Solicitor means the chief official of a regional office of the Department of Labor Office of the Solicitor, or a person authorized to act for the Regional Solicitor.

Separation means the action by which an individual ceases to be a student in the Job Corps program, either voluntarily or involuntarily.

Service provider means an entity selected under this subtitle to provide operational support services described in this subtitle to a Job Corps center.

Student means an individual enrolled in the Job Corps.

Unauthorized goods means:

(1) Firearms and ammunition;

(2) Explosives and incendiaries;

(3) Knives;

(4) Homemade weapons;

(5) All other weapons and instruments used primarily to inflict personal injury;

(6) Stolen property;

(7) Drugs, including alcohol, marijuana, depressants, stimulants, hallucinogens, tranquilizers, and drug paraphernalia except for drugs and/or paraphernalia that are prescribed for medical reasons; and

(8) Any other goods prohibited by the Secretary, center director, or center operator in a student handbook.

Subpart B—Site Selection and Protection and Maintenance of Facilities

§ 686.200 How are Job Corps center locations and sizes determined?

(a) The Secretary must approve the location and size of all Job Corps centers based on established criteria and procedures.

(b) The Secretary establishes procedures for making decisions concerning the establishment, relocation, expansion, or closing of contract centers.

§ 686.210 How are center facility improvements and new construction handled?

The Secretary establishes procedures for requesting, approving, and initiating capital improvements and new construction on Job Corps centers.

§ 686.220 Who is responsible for the protection and maintenance of center facilities?

(a) The Secretary establishes procedures for the protection and maintenance of contract center facilities owned or leased by the Department of Labor, that are consistent with the current Federal Property Management Regulations.

(b) The U.S. Department of Agriculture, when operating Civilian Conservation Centers (CCC) on public land, is responsible for the protection and maintenance of CCC facilities.

(c) The Secretary issues procedures for conducting periodic facility surveys of centers to determine their condition and to identify needs such as correction of safety and health deficiencies, rehabilitation, and/or new construction.

Subpart C—Funding and Selection of Center Operators and Service Providers

§ 686.300 What entities are eligible to receive funds to operate centers and provide training and operational support services?

(a) *Center operators.* Entities eligible to receive funds under this subpart to operate centers include:

(1) Federal, State, and local agencies;

(2) Private organizations, including for-profit and non-profit corporations;

(3) Indian tribes and organizations; and

(4) Area career and technical education or residential career and technical schools.

(b) *Service providers.* Entities eligible to receive funds to provide outreach and admissions, career transition services and other operational support services are local or other entities with the necessary capacity to provide activities described in this part to a Job Corps center, including:

(1) Applicable one-stop centers and partners;

(2) Organizations that have a demonstrated record of effectiveness in serving at-risk youth and placing them into employment, including community action agencies; business organizations, including private for-profit and non-profit corporations; and labor organizations; and

(3) Child welfare agencies that are responsible for children and youth eligible for benefits and services under sec. 477 of the Social Security Act (42 U.S.C. 677).

§ 686.310 How are entities selected to receive funding to operate centers?

(a) The Secretary selects eligible entities to operate contract centers on a competitive basis in accordance with applicable statutes and regulations. In selecting an entity, ETA issues requests for proposals (RFPs) for the operation of all contract centers according to the Federal Acquisition Regulation (48 CFR chapter 1) and Department of Labor Acquisition Regulation (48 CFR chapter 29). ETA develops RFPs for center operators in consultation with the Governor, the center workforce council (if established), and the Local WDB for the workforce development area in which the center is located.

(b) The RFP for each contract center describes uniform specifications and standards, as well as specifications and requirements that are unique to the operation of the specific center.

(c) The contracting officer selects and funds Job Corps contract center operators on the basis of an evaluation of the proposals received using criteria established by the Secretary, and set forth in the RFP. The criteria include the following:

(1) The offeror's ability to coordinate the activities carried out through the Job Corps center with activities carried out under the appropriate State and local workforce investment plans;

(2) The offeror's ability to offer career technical training that has been proposed by the workforce council and the degree to which the training reflects employment opportunities in the local areas in which most of the enrollees intend to seek employment;

(3) The degree to which the offeror demonstrates relationships with the surrounding communities, including employers, labor organizations, State WDBs, Local WDBs, applicable one-stop centers, and the State and region in which the center is located;

(4) The offeror's past performance, if any, relating to operating or providing activities to a Job Corps center, including information regarding the offeror in any reports developed by the Office of the Inspector General of the Department of Labor and the offeror's demonstrated effectiveness in assisting individuals in achieving the indicators of performance for eligible youth described in sec. 116(b)(2)(A)(ii) of WIOA, listed in § 686.1010; and

(5) The offeror's ability to demonstrate a record of successfully assisting at-risk youth to connect to the workforce, including providing them with intensive academics and career technical training.

(d) In order to be eligible to operate a Job Corps center, the offeror also must submit the following information at such time and in such manner as required by the Secretary:

(1) A description of the program activities that will be offered at the center and how the academics and career technical training reflect State and local employment opportunities, including opportunities in in-demand industry sectors and occupations recommended by the workforce council;

(2) A description of the counseling, career transition, and support activities that will be offered at the center, including a description of the strategies and procedures the offeror will use to place graduates into unsubsidized employment or education leading to a recognized postsecondary credential upon completion of the program;

(3) A description of the offeror's demonstrated record of effectiveness in placing at-risk youth into employment and postsecondary education, including past performance of operating a Job Corps center and as appropriate, the entity's demonstrated effectiveness in assisting individuals in achieving the indicators of performance for eligible youth described in sec. 116(b)(2)(A)(ii) of WIOA, listed in § 686.1010;

(4) A description of the relationships that the offeror has developed with State WDBs, Local WDBs, applicable one-stop centers, employers, labor organizations, State and local educational agencies, and the surrounding communities in which the center is located;

(5) A description of the offeror's ability to coordinate the activities carried out through the Job Corps center with activities carried out under the appropriate State Plan and local plans;

(6) A description of the strong fiscal controls the offeror has in place to ensure proper accounting of Federal funds and compliance with the Financial Management Information System established by the Secretary under sec. 159(a) of WIOA;

(7) A description of the steps to be taken to control costs in accordance with the Financial Management Information System established by the Secretary;

(8) A detailed budget of the activities that will be supported using Federal funds provided under this part and non-Federal resources;

(9) An assurance the offeror is licensed to operate in the State in which the center is located;

(10) An assurance that the offeror will comply with basic health and safety codes, including required disciplinary measures and Job Corps' Zero Tolerance Policy; and

(11) Any other information on additional selection factors required by the Secretary.

identifying the type of consumer product reported and the appropriate associated hazard, as well as performing quality control on the data in the report. Contractor A spends an estimated 5,267 hours per year performing these tasks. With an hourly rate of $33.31 for contractor services, the annual cost to the government of contract A is $175,444. Contractor B spends an estimated 2,539 hours per year performing these tasks. With an hourly rate of $58.09 for contractor services, the annual cost to the government of contract B is $147,491.

The Reports of Harm category also includes sending consent requests for reports when necessary, processing that consent when received, determining whether a product is out of CPSC's jurisdiction, and confirming that pictures and attachments do not have any personally identifiable information. The Reports category also entails notifying manufacturers when one of their products is reported, completing a risk of harm determination form for every report eligible for publication, referring some reports to a Subject Matter Expert (SME) within the CPSC for a determination on whether the reports meet the requirement of having a risk of harm, and determining whether a report meets all the statutory and regulatory requirements for publication. Detailed costs are:

TABLE 4—ESTIMATED COSTS FOR REPORTS OF HARM TASK

Grade level	Number of hours (annual)	Total compensation per hour	Total annual cost
Contract A	5,267	$33.31	$175,444
Contract B	2,539	58.09	147,491
7	200	34.78	6,956
9	300	42.69	12,807
12	5,528	61.91	342,238
13	428	73.37	31,402
14	1,068	86.99	92,905
Total	15,330		809,243

Materially Inaccurate Information (MII) Claims: The MII claims category includes reviewing and responding to claims, participating in meetings where the claims are discussed, and completing a risk of harm determination on reports when a company alleges that a report does not describe a risk of harm.

TABLE 5—ESTIMATED COSTS FOR MII CLAIMS TASK

Grade level	Number of hours (annual)	Total compensation per hour	Total annual cost
12	275	$61.91	$17,025
13	167	73.37	12,253
14	323	86.99	28,098
15	50	101.99	5,100
SES	50	109.97	5,499
Total	865		67,975.00

Manufacturer Comments: The Comments category includes reviewing and accepting or rejecting comments.

TABLE 6—ESTIMATED COSTS FOR MANUFACTURER COMMENTS TASK

Grade level	Number of hours (annual)	Total compensation per hour	Total annual cost
12	62	$61.91	$3,838
13	109	73.37	7,997
Total	171		11,835

Small Batch Manufacturer Identification: The Small Batch Manufacturer Identification category includes time spent posting the list of small batch registrations, as well as answering manufacturers' questions on registering as a Small Batch company and what the implications to that company of small batch registration.

§ 686.320 What if a current center operator is deemed to be an operator of a high-performing center?

(a) If an offeror meets the requirements as an operator of a high-performing center as applied to a particular Job Corps center, that operator will be allowed to compete in any competitive selection process carried out for an award to operate that center.

(b) An offeror is considered to be an operator of a high-performing center if the Job Corps center operated by the offeror:

(1) Is ranked among the top 20 percent of Job Corps centers for the most recent preceding program year according to the rankings calculated under § 686.1060; and

(2) Meets the expected levels of performance established under § 686.1050 with respect to each of the primary indicators of performance for Job Corps centers:

(i) For the period of the most recent preceding 3 program years for which information is available at the time the determination is made, achieved an average of 100 percent, or higher, of the expected level of performance for the indicator; and

(ii) For the most recent preceding program year for which information is available at the time the determination is made, achieved 100 percent, or higher, of the expected level of performance established for the indicator.

(c) If any of the program years described in paragraphs (b)(2)(i) and (ii) of this section precedes the implementation of the establishment of the expected levels of performance under § 686.1050 and the application of the primary indicators of performance for Job Corps centers identified in § 686.1010, an entity is considered an operator of a high-performing center during that period if the Job Corps center operated by the entity:

(1) Meets the requirements of paragraph (b)(2) of this section with respect to such preceding program years using the performance of the Job Corps center regarding the national goals or targets established by the Office of the Job Corps under the previous performance accountability system for—

(i) The 6-month follow-up placement rate of graduates in employment, the military, education, or training;

(ii) The 12-month follow-up placement rate of graduates in employment, the military, education, or training;

(iii) The 6-month follow-up average weekly earnings of graduates;

(iv) The rate of attainment of secondary school diplomas or their recognized equivalent;

(v) The rate of attainment of completion certificates for career technical training;

(vi) Average literacy gains; and

(vii) Average numeracy gains; or

(2) Is ranked among the top five percent of Job Corps centers for the most recent preceding program year according to the rankings calculated under § 686.1060.

§ 686.330 What is the length of an agreement entered into by the Secretary for operation of a Job Corps center and what are the conditions for renewal of such an agreement?

(a) Agreements are for not more than a 2-year period. The Secretary may exercise any contractual option to renew the agreement in 1-year increments for not more than 3 additional years.

(b) The Secretary will establish procedures for evaluating the option to renew an agreement that includes: An assessment of the factors described in paragraph (c) of this section; a review of contract performance and financial reporting compliance; a review of the program management and performance data described in §§ 686.1000 and 686.1010; an assessment of whether the center is on a performance improvement plan as described § 686.1070 and if so, whether the center is making measureable progress in completing the actions described in the plan; and an evaluation of the factors described in paragraph (d) of this section.

(c) The Secretary only will renew the agreement of an entity to operate a Job Corps center if the entity:

(1) Has a satisfactory record of integrity and business ethics;

(2) Has adequate financial resources to perform the agreement;

(3) Has the necessary organization, experience, accounting and operational controls, and technical skills; and

(4) Is otherwise qualified and eligible under applicable laws and regulations, including that the contractor is not under suspension or debarred from eligibility for Federal contractors.

(d) The Secretary will not renew an agreement for an entity to operate a Job Corps center for any additional 1-year period if, for both of the 2 most recent preceding program years for which information is available at the time the determination is made, or if a second program year is not available, the preceding year for which information is available, such center:

(1) Has been ranked in the lowest 10 percent of Job Corps centers according to the rankings calculated under § 686.1060; and

(2) Failed to achieve an average of 50 percent or higher of the expected level of performance established under § 686.1050 with respect to each of the primary indicators of performance for eligible youth described in sec. 116(b)(2)(A)(ii) of WIOA, listed in § 686.1010.

(e)(1) Information will be considered to be available for a program year for purposes of paragraph (d) of this section if for each of the primary indicators of performance, all of the students included in the cohort being measured either began their participation under the current center operator or, if they began their participation under the previous center operator, were on center for at least 6 months under the current operator. If an operator assumes operation of a center that meets the criteria under paragraphs (d)(1) and (2) of this section, the first contractual option year will not be denied based on the application of paragraph (d) of this section provided that the operator otherwise meets the requirements for renewal described in paragraphs (a) through (c) of this section.

(2) If complete information for any of the indicators of performance described in paragraph (d)(2) of this section is not available for either of the 2 program years described in paragraph (d) of this section, the Secretary will review partial program year data from the most recent program year for those indicators, if at least two quarters of data are available, when making the determination required under paragraph (d)(2) of this section.

(f) If any of the program years described in paragraph (d) of this section precede the implementation of the establishment of the expected levels of performance under § 686.1050 and the application of the primary indicators of performance for Job Corps centers described in § 686.1010, the evaluation described in paragraph (d) of this section will be based on whether in its operation of the center the entity:

(1) Is ranked among the lowest 10 percent of Job Corps centers for the most recent preceding program year according to the ranking calculated under § 686.1060; and

(2) Meets the requirement of paragraph (d)(2) of this section with respect to such preceding program years using the performance of the Job Corps center regarding the national goals or targets established by the Office of the Job Corps under the previous performance accountability system for—

(i) The 6-month follow-up placement rate of graduates in employment, the military, education, or training;

(ii) The 12-month follow-up placement rate of graduates in employment, the military, education, or training;

(iii) The 6-month follow-up average weekly earnings of graduates;

(iv) The rate of attainment of secondary school diplomas or their recognized equivalent;

(v) The rate of attainment of completion certificates for career technical training;

(vi) Average literacy gains; and

(vii) Average numeracy gains.

(g) The Secretary can exercise an option to renew the agreement with an entity notwithstanding the requirements in paragraph (d) of this section for no more than 2 additional years if the Secretary determines that a renewal would be in the best interest of the Job Corps program, taking into account factors including:

(1) Significant improvements in program performance in carrying out a performance improvement plan;

(2) That the performance is due to circumstances beyond the control of the entity, such as an emergency or disaster;

(3) A significant disruption in the operations of the center, including in the ability to continue to provide services to students, or significant increase in the cost of such operations; or

(4) A significant disruption in the procurement process with respect to carrying out a competition for the selection of a center operator.

(h) If the Secretary does make an exception and exercises the option to renew per paragraph (g) of this section, the Secretary will provide a detailed explanation of the rationale for exercising the option to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate.

§ 686.340 How are entities selected to receive funding to provide outreach and admission, career transition and other operations support services?

(a) The Secretary selects eligible entities to provide outreach and admission, career transition, and operational services on a competitive basis in accordance with applicable statutes and regulations. In selecting an entity, ETA issues requests for proposals (RFP) for operational support services according to the Federal Acquisition Regulation (48 CFR chapter 1) and Department of Labor Acquisition Regulation (48 CFR chapter 29). ETA develops RFPs for operational support services in consultation with the Governor, the center workforce council (if established), and the Local WDB for the workforce development area in which the center is located.

(b) The RFP for each support service contract describes uniform specifications and standards, as well as specifications and requirements that are unique to the specific required operational support services.

(c) The contracting officer selects and funds operational support service contracts on the basis of an evaluation of the proposals received using criteria established by the Secretary and set forth in the RFP. The criteria may include the following, as applicable:

(1) The ability of the offeror to coordinate the activities carried out in relation to the Job Corps center with related activities carried out under the appropriate State Plan and local plans;

(2) The ability of the entity to offer career technical training that has been proposed by the workforce council and the degree to which the training reflects employment opportunities in the local areas in which most of the students intend to seek employment;

(3) The degree to which the offeror demonstrates relationships with the surrounding communities, including employers, labor organizations, State WDBs, Local WDBs, applicable one-stop centers, and the State and region in which the services are provided;

(4) The offeror's past performance, if any, relating to providing services to a Job Corps center, including information regarding the offeror in any reports developed by the Office of the Inspector General of the Department of Labor and the offeror's demonstrated effectiveness in assisting individuals in achieving the indicators of performance for eligible youth described in sec. 116(b)(2)(A)(ii) of WIOA, listed in § 686.1010;

(5) The offeror's ability to demonstrate a record of successfully assisting at-risk youth to connect to the workforce; and

(6) Any other information on additional selection factors required by the Secretary.

§ 686.350 What conditions apply to the operation of a Civilian Conservation Center?

(a) The Secretary of Labor may enter into an agreement with the Secretary of Agriculture to operate Job Corps centers located on public land, which are called Civilian Conservation Centers (CCCs). Located primarily in rural areas, in addition to academics, career technical training, and workforce preparation skills training, CCCs provide programs of work experience to conserve, develop, or manage public natural resources or public recreational areas or to develop community projects in the public interest.

(b) When the Secretary of Labor enters into an agreement with the Secretary of Agriculture for the funding, establishment, and operation of CCCs, provisions are included to ensure that the Department of Agriculture complies with the regulations under this part.

(c) Enrollees in CCCs may provide assistance in addressing national, State, and local disasters, consistent with current child labor laws. The Secretary of Agriculture must ensure that enrollees are properly trained, equipped, supervised, and dispatched consistent with the standards for the conservation and rehabilitation of wildlife established under the Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq.*).

(d) The Secretary of Agriculture must designate a Job Corps National Liaison to support the agreement between the Departments of Labor and Agriculture to operate CCCs.

(e) The Secretary of Labor, in consultation with the Secretary of Agriculture, may select an entity to operate a CCC in accordance with the requirements of § 686.310 if the Secretary of Labor determines appropriate.

(f) The Secretary of Labor has the discretion to close CCCs if the Secretary determines appropriate.

§ 686.360 What are the requirements for award of contracts and payments to Federal agencies?

(a) The requirements of the Federal Property and Administrative Services Act of 1949, as amended; the Federal Grant and Cooperative Agreement Act of 1977; the Federal Acquisition Regulation (48 CFR chapter 1); and the Department of Labor Acquisition Regulation (48 CFR chapter 29) apply to the award of contracts and to payments to Federal agencies.

(b) Job Corps funding of Federal agencies that operate CCCs are made by a transfer of obligational authority from the Department to the respective operating agency.

Subpart D—Recruitment, Eligibility, Screening, Selection and Assignment, and Enrollment

§ 686.400 Who is eligible to participate in the Job Corps program?

(a) To be eligible to participate in the Job Corps, an individual must be:

(1) At least 16 and not more than 24 years of age at the time of enrollment, except that:

(i) The Job Corps Director may waive the maximum age limitation described in paragraph (a)(1) of this section, and

the requirement in paragraph (a)(1)(ii) of this section for an individual with a disability if he or she is otherwise eligible according to the requirements listed in this section and § 686.410; and

(ii) Not more than 20 percent of individuals enrolled nationwide may be individuals who are aged 22 to 24 years old;

(2) A low-income individual;

(3) An individual who is facing one or more of the following barriers to education and employment:

(i) Is basic skills deficient, as defined in WIOA sec. 3;

(ii) Is a school dropout;

(iii) Is homeless as defined in sec. 41403(6) of the Violence Against Women Act of 1994 (42 U.S.C. 14043e-2(6)); is a homeless child or youth, as defined in sec. 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)); or is a runaway, an individual in foster care; or an individual who was in foster care and has aged out of the foster care system.

(iv) Is a parent; or

(v) Requires additional education, career technical training, or workforce preparation skills in order to obtain and retain employment that leads to economic self-sufficiency; and

(4) Meets the requirements of § 686.420, if applicable.

(b) Notwithstanding paragraph (a)(2) of this section, a veteran is eligible to become an enrollee if the individual:

(1) Meets the requirements of paragraphs (a)(1) and (3) of this section; and

(2) Does not meet the requirement of paragraph (a)(2) of this section because the military income earned by the individual within the 6-month period prior to the individual's application for Job Corps prevents the individual from meeting that requirement.

§ 686.410 Are there additional factors which are considered in selecting an eligible applicant for enrollment?

Yes, in accordance with procedures issued by the Secretary, an eligible applicant may be selected for enrollment only if:

(a) A determination is made, based on information relating to the background, needs, and interests of the applicant, that the applicant's educational and career and technical needs can best be met through the Job Corps program;

(b) A determination is made that there is a reasonable expectation the applicant can participate successfully in group situations and activities, and is not likely to engage in actions that would potentially:

(1) Prevent other students from receiving the benefit of the program;

(2) Be incompatible with the maintenance of sound discipline; or

(3) Impede satisfactory relationships between the center to which the student is assigned and surrounding local communities;

(c) The applicant is made aware of the center's rules, what the consequences are for failure to observe the rules, and agrees to comply with such rules, as described in procedures issued by the Secretary;

(d) The applicant has not been convicted of a felony consisting of murder, child abuse, or a crime involving rape or sexual assault. Other than these felony convictions, no one will be denied enrollment in Job Corps solely on the basis of contact with the criminal justice system. All applicants must submit to a background check conducted according to procedures established by the Secretary and in accordance with applicable State and local laws. If the background check finds that the applicant is on probation, parole, under a suspended sentence, or under the supervision of any agency as a result of court action or institutionalization, the court or appropriate supervising agency may certify in writing that it will approve of the applicant's participation in Job Corps, and provide full release from its supervision, and that the applicant's participation and release does not violate applicable laws and regulations; and

(e) Suitable arrangements are made for the care of any dependent children for the proposed period of enrollment.

§ 686.420 Are there any special requirements for enrollment related to the Military Selective Service Act?

(a) Yes, each male applicant 18 years of age or older must present evidence that he has complied with sec. 3 of the Military Selective Service Act (50 U.S.C. App. 451 *et seq.*) if required; and

(b) When a male student turns 18 years of age, he must submit evidence to the center that he has complied with the requirements of the Military Selective Service Act (50 U.S.C. App. 451 *et seq.*).

§ 686.430 What entities conduct outreach and admissions activities for the Job Corps program?

The Secretary makes arrangements with outreach and admissions providers to perform Job Corps recruitment, screening and admissions functions according to standards and procedures issued by the Secretary. Entities eligible to receive funds to provide outreach and admissions services are identified in § 686.300.

§ 686.440 What are the responsibilities of outreach and admissions providers?

(a) Outreach and admissions agencies are responsible for:

(1) Developing outreach and referral sources;

(2) Actively seeking out potential applicants;

(3) Conducting personal interviews with all applicants to identify their needs and eligibility status; and

(4) Identifying youth who are interested and likely Job Corps participants.

(b) Outreach and admissions providers are responsible for completing all Job Corps application forms and determining whether applicants meet the eligibility and selection criteria for participation in Job Corps as provided in §§ 686.400 and 686.410.

(c) The Secretary may decide that determinations with regard to one or more of the eligibility criteria will be made by the National Director or his or her designee.

§ 686.450 How are applicants who meet eligibility and selection criteria assigned to centers?

(a) Each applicant who meets the application and selection requirements of §§ 686.400 and 686.410 is assigned to a center based on an assignment plan developed by the Secretary in consultation with the operators of Job Corps centers. The assignment plan identifies a target for the maximum percentage of students at each center who come from the State or region nearest the center, and the regions surrounding the center. The assignment plan is based on an analysis of the following non-exclusive list of factors that will be analyzed in consultation with center operators:

(1) The number of eligible individuals in the State and region where the center is located and the regions surrounding where the center is located;

(2) The demand for enrollment in Job Corps in the State and region where the center is located and in surrounding regions;

(3) The size and enrollment level of the center, including the education, training, and supportive services provided through the center; and

(4) The performance of the Job Corps center relating to the expected levels of performance for indicators described in WIOA sec. 159(c)(1), and whether any actions have been taken with respect to the center under secs. 159(f)(2) and 159(f)(3) of WIOA.

(b) Eligible applicants are assigned to the center that offers the type of career technical training selected by the individual, and among the centers that

offer such career technical training, is closest to the home of the individual. The Secretary may waive this requirement if:

(1) The enrollee would be unduly delayed in participating in the Job Corps program because the closest center is operating at full capacity; or

(2) The parent or guardian of the enrollee requests assignment of the enrollee to another Job Corps center due to circumstances in the community that would impair prospects for successful completion by the enrollee.

(c) If a parent or guardian objects to the assignment of a student under the age of 18 to a center other than the center closest to home that offers the desired career technical training, the Secretary must not make such an assignment.

§ 686.460 What restrictions are there on the assignment of eligible applicants for nonresidential enrollment in Job Corps?

No more than 20 percent of students enrolled in Job Corps nationwide may be nonresidential students.

§ 686.470 May an individual who is determined to be ineligible or an individual who is denied enrollment appeal that decision?

(a) A person who is determined to be ineligible to participate in Job Corps under § 686.400 or a person who is not selected for enrollment under § 686.410 may appeal the determination to the outreach and admissions agency within 60 days of the determination. The appeal will be resolved according to the procedures in §§ 686.960 and 686.965. If the appeal is denied by the outreach/admissions contractor or the center, the person may appeal the decision in writing to the Regional Director within 60 days of the date of the denial. The Regional Director will decide within 60 days whether to reverse or approve the appealed decision. The decision by the Regional Director is the Department's final decision.

(b) If an applicant believes that he or she has been determined ineligible or not selected for enrollment based upon a factor prohibited by sec. 188 of WIOA, the individual may proceed under the applicable Department nondiscrimination regulations implementing WIOA sec. 188 at 29 CFR part 38.

(c) An applicant who is determined to be ineligible or a person who is denied enrollment must be referred to the appropriate one-stop center or other local service provider.

§ 686.480 At what point is an applicant considered to be enrolled in Job Corps?

(a) To be considered enrolled as a Job Corps student, an applicant selected for enrollment must physically arrive at the assigned Job Corps center on the appointed date. However, applicants selected for enrollment who arrive at their assigned centers by government furnished transportation are considered to be enrolled on their dates of departure by such transportation.

(b) Center operators must document the enrollment of new students according to procedures issued by the Secretary.

§ 686.490 How long may a student be enrolled in Job Corps?

(a) Except as provided in paragraph (b) of this section, a student may remain enrolled in Job Corps for no more than 2 years.

(b)(1) An extension of a student's enrollment may be authorized in special cases according to procedures issued by the Secretary;

(2) A student's enrollment in an advanced career training program may be extended in order to complete the program for a period not to exceed 1 year;

(3) An extension of a student's enrollment may be authorized in the case of a student with a disability who would reasonably be expected to meet the standards for a Job Corps graduate if allowed to participate in the Job Corps for not more than 1 additional year; and

(4) An enrollment extension may be granted to a student who participates in national service, as authorized by a Civilian Conservation Center, for the amount of time equal to the period of national service.

Subpart E—Program Activities and Center Operations

§ 686.500 What services must Job Corps centers provide?

(a) Job Corps centers must provide an intensive, well-organized, and fully supervised program including:

(1) Educational activities, including:

(i) Career technical training;

(ii) Academic instruction;

(iii) Employability and skills training; and

(iv) Independent learning and living skills development.

(2) Work-based learning and experience;

(3) Residential support services; and

(4) Other services as required by the Secretary.

(b) In addition, centers must provide students with access to the career services described in secs. 134(c)(2)(A)(i)–(xi) of WIOA.

§ 686.505 What types of training must Job Corps centers provide?

(a) Job Corps centers must provide students with a career technical training program that is:

(1) Aligned with industry-recognized standards and credentials and with program guidance; and

(2) Linked to employment opportunities in in-demand industry sectors and occupations both in the area in which the center is located and, if practicable, in the area the student plans to reside after graduation.

(b) Each center must provide education programs, including: An English language acquisition program, high school diploma or high school equivalency certification program, and academic skills training necessary for students to master skills in their chosen career technical training programs.

(c) Each center must provide programs for students to learn and practice employability and independent learning and living skills including: job search and career development, interpersonal relations, driver's education, study and critical thinking skills, financial literacy and other skills specified in program guidance.

(d) All Job Corps training programs must be based on industry and academic skills standards leading to recognized industry and academic credentials, applying evidence-based instructional approaches, and resulting in:

(1) Students' employment in unsubsidized, in-demand jobs with the potential for advancement opportunities;

(2) Enrollment in advanced education and training programs or apprenticeships, including registered apprenticeship; or

(3) Enlistment in the Armed Services.

(e) Specific career technical training programs offered by individual centers must be approved by the Regional Director according to policies issued by the Secretary.

(f) Center workforce councils described in § 686.810 must review appropriate labor market information, identify in-demand industry sectors and employment opportunities in local areas where students will look for employment, determine the skills and education necessary for those jobs, and as appropriate, recommend changes in the center's career technical training program to the Secretary.

(g) Each center must implement a system to evaluate and track the progress and achievements of each student at regular intervals.

(h) Each center must develop a training plan that must be available for

review and approval by the appropriate Regional Director.

§ 686.510 Are entities other than Job Corps center operators permitted to provide academic and career technical training?

(a) The Secretary may arrange for the career technical and academic education of Job Corps students through local public or private educational agencies, career and technical educational institutions or technical institutes, or other providers such as business, union or union-affiliated organizations with demonstrated effectiveness, as long as the entity can provide education and training substantially equivalent in cost and quality to that which the Secretary could provide through other means.

(b) Entities providing these services will be selected in accordance with the requirements of § 686.310.

§ 686.515 What are advanced career training programs?

(a) The Secretary may arrange for programs of advanced career training (ACT) for selected students, which may be provided through the eligible training providers identified in WIOA sec. 122 in which the students continue to participate in the Job Corps program for a period not to exceed 1 year in addition to the period of participation to which these students would otherwise be limited.

(b) Students participating in an ACT program are eligible to receive:

(1) All of the benefits provided to a residential Job Corps student; or

(2) A monthly stipend equal to the average value of the benefits described in paragraph (b)(1) of this section.

(c) Any operator may enroll more students than otherwise authorized by the Secretary in an ACT program if, in accordance with standards developed by the Secretary, the operator demonstrates:

(1) Participants in such a program have achieved a satisfactory rate of completion and placement in training-related jobs; and

(2) For the most recently preceding 2 program years, the operator has, on average, met or exceeded the expected levels of performance under WIOA sec. 159(c)(1) for each of the primary indicators described in WIOA sec. 116(b)(2)(A)(ii), listed in § 686.1010.

§ 686.520 What responsibilities do the center operators have in managing work-based learning?

(a) The center operator must emphasize and implement work-based learning programs for students through center program activities, including career and technical skills training, and through arrangements with employers. Work-based learning must be under actual working conditions and must be designed to enhance the employability, responsibility, and confidence of the students. Work-based learning usually occurs in tandem with students' career technical training.

(b) The center operator must ensure that students are assigned only to workplaces that meet the safety standards described in § 686.920.

§ 686.525 Are students permitted to hold jobs other than work-based learning opportunities?

Yes, a center operator may authorize a student to participate in gainful leisure time employment, as long as the employment does not interfere with required scheduled activities.

§ 686.530 What residential support services must Job Corps center operators provide?

Job Corps center operators must provide the following services according to procedures issued by the Secretary:

(a) A center-wide quality living and learning environment that supports the overall training program and includes a safe, secure, clean and attractive physical and social environment, 7 days a week, 24 hours a day;

(b) An ongoing, structured personal counseling program for students provided by qualified staff;

(c) A quality, safe and clean food service, to provide nutritious meals for students;

(d) Medical services, through provision or coordination of a wellness program which includes access to basic medical, dental and mental health services, as described in the Policy and Requirements Handbook, for all students from the date of enrollment until separation from the Job Corps program;

(e) A recreation/avocational program that meets the needs of all students;

(f) A student leadership program and an elected student government; and

(g) A student welfare association for the benefit of all students that is funded by non-appropriated funds that come from sources such as snack bars, vending machines, disciplinary fines, donations, and other fundraising activities, and is run by an elected student government, with the help of a staff advisor.

§ 686.535 Are Job Corps centers required to maintain a student accountability system?

Yes, each Job Corps center must establish and implement an effective system to account for and document the daily whereabouts, participation, and status of students during their Job Corps enrollment. The system must enable center staff to detect and respond to instances of unauthorized or unexplained student absence. Each center must operate its student accountability system according to requirements and procedures issued by the Secretary.

§ 686.540 Are Job Corps centers required to establish behavior management systems?

(a) Yes, each Job Corps center must establish and maintain its own student incentives system to encourage and reward students' accomplishments.

(b) The Job Corps center must establish and maintain a behavior management system, based on a behavior management plan, according to standards of conduct and procedures established by the Secretary. The behavior management plan must be approved by the Job Corps regional office and reviewed annually. The behavior management system must include a zero tolerance policy for violence and drugs as described in § 686.545. All criminal incidents will be promptly reported to local law enforcement.

§ 686.545 What is Job Corps' zero tolerance policy?

(a) All center operators must comply with Job Corps' zero tolerance policy as established by the Secretary. Job Corps has a zero tolerance policy for infractions including but not limited to:

(1) Acts of violence, as defined by the Secretary;

(2) Use, sale, or possession of a controlled substance, as defined at 21 U.S.C. 802;

(3) Abuse of alcohol;

(4) Possession of unauthorized goods; or

(5) Other illegal or disruptive activity.

(b) As part of this policy, all students must be tested for drugs as a condition of participation.

(c) The zero tolerance policy specifies the offenses that result in the separation of students from the Job Corps. The center director is expressly responsible for determining when there is a violation of this policy.

§ 686.550 How does Job Corps ensure that students receive due process in disciplinary actions?

The center operator must ensure that all students receive due process in disciplinary proceedings according to procedures developed by the Secretary. These procedures must include center fact-finding and behavior review boards, a code of sanctions under which the penalty of separation from Job Corps

might be imposed, and procedures for students to submit an appeal to a Job Corps regional appeal board following a center's decision to discharge involuntarily the student from Job Corps.

§ 686.555 What responsibilities do Job Corps centers have in assisting students with child care needs?

(a) Job Corps centers are responsible for coordinating with outreach and admissions agencies to assist applicants, whenever feasible, with making arrangements for child care. Prior to enrollment, a program applicant with dependent children who provides primary or custodial care must certify that suitable arrangements for child care have been established for the proposed period of enrollment.

(b) Child development programs may be located at Job Corps centers with the approval of the Secretary.

§ 686.560 What are the center's responsibilities in ensuring that students' religious rights are respected?

(a) Centers must ensure that a student has the right to worship or not worship as he or she chooses.

(b) Students who believe their religious rights have been violated may file complaints under the procedures set forth in 29 CFR part 38.

(c) Requirements related to equal treatment of religious organizations in Department of Labor programs, and to protection of religious liberty of Department of Labor social service providers and beneficiaries, are found at subpart D of 29 CFR part 2. *See also* §§ 683.255 and 683.285 of this chapter; 29 CFR part 38.

§ 686.565 Is Job Corps authorized to conduct pilot and demonstration projects?

Yes, the Secretary may undertake experimental, research and demonstration projects related to the Job Corps program according to WIOA sec. 156(a), provided that such projects are developed, approved, and conducted in accordance with policies and procedures developed by the Secretary.

Subpart F—Student Support

§ 686.600 Are students provided with government-paid transportation to and from Job Corps centers?

Yes, Job Corps provides for the transportation of students between their homes and centers as described in policies and procedures issued by the Secretary.

§ 686.610 When are students authorized to take leaves of absence from their Job Corps centers?

(a) Job Corps students are eligible for annual leaves, emergency leaves and other types of leaves of absence from their assigned centers according to criteria and requirements issued by the Secretary. Additionally, enrollees in Civilian Conservation Centers may take leave to provide assistance in addressing national, State, and local disasters, consistent with current laws and regulations, including child labor laws and regulations.

(b) Center operators and other service providers must account for student leave according to procedures issued by the Secretary.

§ 686.620 Are Job Corps students eligible to receive cash allowances and performance bonuses?

(a) Yes, according to criteria and rates established by the Secretary, Job Corps students receive cash living allowances, performance bonuses, and allotments for care of dependents. Graduates receive post-separation transition allowances according to § 686.750.

(b) In the event of a student's death, any amount due under this section is paid according to the provisions of 5 U.S.C. 5582 governing issues such as designation of beneficiary, order of precedence, and related matters.

§ 686.630 Are student allowances subject to Federal payroll taxes?

Yes, Job Corps student allowances are subject to Federal payroll tax withholding and social security taxes. Job Corps students are considered to be Federal employees for purposes of Federal payroll taxes.

§ 686.640 Are students provided with clothing?

Yes, Job Corps students are provided cash clothing allowances and/or articles of clothing, including safety clothing, when needed for their participation in Job Corps and their successful entry into the work force. Center operators and other service providers must issue clothing and clothing assistance to students according to rates, criteria, and procedures issued by the Secretary.

Subpart G—Career Transition and Graduate Services

§ 686.700 What are a Job Corps center's responsibilities in preparing students for career transition services?

Job Corps centers must assess and counsel students to determine their competencies, capabilities, and readiness for career transition services.

§ 686.710 What career transition services are provided for Job Corps enrollees?

Job Corps career transition services focus on placing program graduates in:

(a) Full-time jobs that are related to their career technical training and career pathway that lead to economic self-sufficiency;

(b) Postsecondary education;

(c) Advanced training programs, including registered apprenticeship programs; or

(d) The Armed Forces.

§ 686.720 Who provides career transition services?

The one-stop delivery system must be used to the maximum extent practicable in placing graduates and former enrollees in jobs. Multiple other resources also may provide post-program services, including but not limited to Job Corps career transition service providers under a contract or other agreement with the Department of Labor, and State vocational rehabilitation agencies for individuals with disabilities.

§ 686.730 What are the responsibilities of career transition service providers?

(a) Career transition service providers are responsible for:

(1) Contacting graduates;

(2) Assisting them in improving skills in resume preparation, interviewing techniques and job search strategies;

(3) Identifying job leads or educational and training opportunities through coordination with Local WDBs, one-stop operators and partners, employers, unions and industry organizations;

(4) Placing graduates in jobs, registered apprenticeship, the Armed Forces, or postsecondary education or training, or referring former students for additional services in their local communities as appropriate; and

(5) Providing placement services for former enrollees according to procedures issued by the Secretary.

(b) Career transition service providers must record and submit all Job Corps placement information according to procedures established by the Secretary.

§ 686.740 What services are provided for program graduates?

According to procedures issued by the Secretary, career transition and support services must be provided to program graduates for up to 12 months after graduation.

§ 686.750 Are graduates provided with transition allowances?

Yes, graduates receive post-separation transition allowances according to policies and procedures established by

the Secretary. Transition allowances are incentive-based to reflect a graduate's attainment of academic credentials and those associated with career technical training such as industry-recognized credentials.

§ 686.760 What services are provided to former enrollees?

(a) Up to 3 months of employment services, including career services offered through a one-stop center, may be provided to former enrollees.

(b) According to procedures issued by the Secretary, other career transition services as determined appropriate may be provided to former enrollees.

Subpart H—Community Connections

§ 686.800 How do Job Corps centers and service providers become involved in their local communities?

(a) The director of each Job Corps center must ensure the establishment and development of mutually beneficial business and community relationships and networks. Establishing and developing networks includes relationships with:

(1) Local and distant employers;

(2) Applicable one-stop centers and Local WDBs:

(3) Entities offering apprenticeship opportunities, including registered apprenticeships, and youth programs;

(4) Labor-management organizations and local labor organizations;

(5) Employers and contractors that support national training programs and initiatives; and

(6) Community-based organizations, non-profit organizations, and intermediaries providing workforce development-related services.

(b) Each Job Corps center also must establish and develop relationships with members of the community in which it is located. Members of the community must be informed of the projects of the Job Corps center and changes in the rules, procedures, or activities of the center that may affect the community. Events of mutual interest to the community and the Job Corps center must be planned to create and maintain community relations and community support.

§ 686.810 What is the makeup of a workforce council and what are its responsibilities?

(a) Each Job Corps center must establish a workforce council, according to procedures established by the Secretary. The workforce council must include:

(1) Non-governmental and private sector employers;

(2) Representatives of labor organizations (where present) and of employees;

(3) Job Corps enrollees and graduates; and

(4) In the case of a single-State local area, the workforce council must include a representative of the State WDB constituted under § 679.110 of this chapter.

(b) A majority of the council members must be business owners, chief executives or chief operating officers of nongovernmental employers or other private sector employers, or their designees, who have substantial management, hiring or policy responsibility and who represent businesses with employment opportunities in the local area and the areas in which students will seek employment.

(c) The workforce council may include, or otherwise provide for consultation with, employers from outside the local area who are likely to hire a significant number of enrollees from the Job Corps center.

(d) The workforce council must:

(1) Work with all applicable Local WDBs and review labor market information to determine and provide recommendations to the Secretary regarding the center's career technical training offerings, including identification of emerging occupations suitable for training;

(2) Review all relevant labor market information, including related information in the State Plan or the local plan, to:

(i) Recommend in-demand industry sectors or occupations in the area in which the center operates;

(ii) Determine employment opportunities in the areas in which enrollees intend to seek employment;

(iii) Determine the skills and education necessary to obtain the identified employment; and

(iv) Recommend to the Secretary the type of career technical training that must be implemented at the center to enable enrollees to obtain the employment opportunities identified; and

(3) Meet at least once every 6 months to reevaluate the labor market information, and other relevant information, to determine and recommend to the Secretary any necessary changes in the career technical training provided at the center.

§ 686.820 How will Job Corps coordinate with other agencies?

(a) The Secretary issues guidelines for the national office, regional offices, Job Corps centers and operational support providers to use in developing and maintaining cooperative relationships with other agencies and institutions, including law enforcement, educational institutions, communities, and other employment and training programs and agencies.

(b) The Secretary develops polices and requirements to ensure linkages with the one-stop delivery system to the greatest extent practicable, as well as with other Federal, State, and local programs, and youth programs funded under title I of WIOA. These linkages enhance services to youth who face multiple barriers to employment and must include, where appropriate:

(1) Referrals of applicants and students;

(2) Participant assessment;

(3) Pre-employment and work maturity skills training;

(4) Work-based learning;

(5) Job search, occupational, and basic skills training; and

(6) Provision of continued services for graduates.

(c) Job Corps is identified as a required one-stop partner. Wherever practicable, Job Corps centers and operational support contractors must establish cooperative relationships and partnerships with one-stop centers and other one-stop partners, Local WDBs, and other programs for youth.

Subpart I—Administrative and Management Provisions

§ 686.900 Are damages caused by the acts or omissions of students eligible for payment under the Federal Tort Claims Act?

Yes, students are considered Federal employees for purposes of the FTCA. (28 U.S.C. 2671 *et seq.*) Claims for such damage must be filed pursuant to the procedures found in 29 CFR part 15, subpart D.

§ 686.905 Are loss and damages that occur to persons or personal property of students at Job Corps centers eligible for reimbursement?

Yes, the Job Corps may pay students for valid claims under the procedures found in 29 CFR part 15, subpart D.

§ 686.910 If a student is injured in the performance of duty as a Job Corps student, what benefits may the student receive?

(a) Job Corps students are considered Federal employees for purposes of the Federal Employees' Compensation Act (FECA) as specified in sec. 157(a)(3) of WIOA. (29 U.S.C. 2897(a)(3))

(b) Job Corps students may be entitled to benefits under FECA as provided by

5 U.S.C. 8143 for injuries occurring in the performance of duty.

(c) Job Corps students must meet the same eligibility tests for FECA benefits that apply to all other Federal employees. The requirements for FECA benefits may be found at 5 U.S.C. 8101, *et seq.* and part 10 of this title. The Department of Labor's Office of Workers' Compensation Programs (OWCP) administers the FECA program; all FECA determinations are within the exclusive authority of the OWCP, subject to appeal to the Employees' Compensation Appeals Board.

(d) Whenever a student is injured, develops an occupationally related illness, or dies while in the performance of duty, the procedures of the OWCP, at part 10 of this title, must be followed. To assist OWCP in determining FECA eligibility, a thorough investigation of the circumstances and a medical evaluation must be completed and required forms must be timely filed by the center operator with the Department's OWCP. Additional information regarding Job Corps FECA claims may be found in OWCP's regulations and procedures available on the Department's Web site located at *https://www.dol.gov/*.

§ 686.915 When is a Job Corps student considered to be in the performance of duty?

(a) Performance of duty is a determination that must be made by the OWCP under FECA, and is based on the individual circumstances in each claim.

(b) In general, residential students may be considered to be in the "performance of duty" when:

(1) They are on center under the supervision and control of Job Corps officials;

(2) They are engaged in any authorized Job Corps activity;

(3) They are in authorized travel status; or

(4) They are engaged in any authorized offsite activity.

(c) Non-resident students are generally considered to be "in performance of duty" as Federal employees when they are engaged in any authorized Job Corps activity, from the time they arrive at any scheduled center activity until they leave the activity. The standard rules governing coverage of Federal employees during travel to and from work apply. These rules are described in guidance issued by the Secretary.

(d) Students are generally considered to be not in the performance of duty when:

(1) They are Absent Without Leave (AWOL);

(2) They are at home, whether on pass or on leave;

(3) They are engaged in an unauthorized offsite activity; or

(4) They are injured or ill due to their own willful misconduct, intent to cause injury or death to oneself or another, or through intoxication or illegal use of drugs.

§ 686.920 How are students protected from unsafe or unhealthy situations?

(a) The Secretary establishes procedures to ensure that students are not required or permitted to work, be trained, reside in, or receive services in buildings or surroundings or under conditions that are unsanitary or hazardous. Whenever students are employed or in training for jobs, they must be assigned only to jobs or training which observe applicable Federal, State and local health and safety standards.

(b) The Secretary develops procedures to ensure compliance with applicable Department of Labor Occupational Safety and Health Administration regulations and Wage and Hour Division regulations.

§ 686.925 What are the requirements for criminal law enforcement jurisdiction on center property?

(a) All Job Corps property which would otherwise be under exclusive Federal legislative jurisdiction is considered under concurrent jurisdiction with the appropriate State and locality with respect to criminal law enforcement. Concurrent jurisdiction extends to all portions of the property, including housing and recreational facilities, in addition to the portions of the property used for education and training activities.

(b) Centers located on property under concurrent Federal-State jurisdiction must establish agreements with Federal, State and local law enforcement agencies to enforce criminal laws.

(c) The Secretary develops procedures to ensure that any searches of a student's person, personal area, or belongings for unauthorized goods follow applicable right-to-privacy laws.

§ 686.930 Are Job Corps operators and service providers authorized to pay State or local taxes on gross receipts?

(a) A private for-profit or a non-profit Job Corps service provider is not liable, directly or indirectly, to any State or subdivision for any gross receipts taxes, business privilege taxes measured by gross receipts, or any similar taxes in connection with any payments made to or by such service provider for operating a center or other Job Corps program or activity. The service provider is not liable to any State or subdivision to collect or pay any sales, excise, use, or similar tax imposed upon the sale to or use by such deliverer of any property, service, or other item in connection with the operation of a center or other Job Corps program or activity.

(b) If a State or local authority compels a center operator or other service provider to pay such taxes, the center operator or service provider may pay the taxes with Federal funds, but must document and report the State or local requirement according to procedures issued by the Secretary.

§ 686.935 What are the financial management responsibilities of Job Corps center operators and other service providers?

(a) Center operators and other service providers must manage Job Corps funds using financial management information systems that meet the specifications and requirements of the Secretary.

(b) These financial management systems must:

(1) Provide accurate, complete, and current disclosures of the costs of their Job Corps activities;

(2) Ensure that expenditures of funds are necessary, reasonable, allocable, and allowable in accordance with applicable cost principles;

(3) Use account structures specified by the Secretary;

(4) Ensure the ability to comply with cost reporting requirements and procedures issued by the Secretary; and

(5) Maintain sufficient cost data for effective planning, monitoring, and evaluation of program activities and for determining the allowability of reported costs.

§ 686.940 Are center operators and service providers subject to Federal audits?

(a) Yes, Center operators and service providers are subject to Federal audits.

(b) The Secretary arranges for the survey, audit, or evaluation of each Job Corps center and service provider at least once every 3 years, by Federal auditors or independent public accountants. The Secretary may arrange for more frequent audits.

(c) Center operators and other service providers are responsible for giving full cooperation and access to books, documents, papers and records to duly appointed Federal auditors and evaluators.

§ 686.945 What are the procedures for management of student records?

The Secretary issues guidelines for a system for maintaining records for each student during enrollment and for disposition of such records after separation.

§ 686.950 What procedures apply to disclosure of information about Job Corps students and program activities?

(a) The Secretary develops procedures to respond to requests for information or records or other necessary disclosures pertaining to students.

(b) Department disclosure of Job Corps information must be handled according to the Freedom of Information Act and according to Department regulations at 29 CFR part 70.

(c) Job Corps contractors are not "agencies" for Freedom of Information Act purposes. Therefore, their records are not subject to disclosure under the Freedom of Information Act or 29 CFR part 70.

(d) The regulations at 29 CFR part 71 apply to a system of records covered by the Privacy Act of 1974 maintained by the Department or to a similar system maintained by a contractor, such as a screening agency, contract center operator, or career transition service provider on behalf of the Job Corps.

§ 686.955 What are the reporting requirements for center operators and operational support service providers?

The Secretary establishes procedures to ensure the timely and complete reporting of necessary financial and program information to maintain accountability. Center operators and operational support service providers are responsible for the accuracy and integrity of all reports and data they provide.

§ 686.960 What procedures are available to resolve complaints and disputes?

(a) Each Job Corps center operator and service provider must establish and maintain a grievance procedure for filing complaints and resolving disputes from applicants, students and/or other interested parties about its programs and activities. A hearing on each complaint or dispute must be conducted within 30 days of the filing of the complaint or dispute. A decision on the complaint must be made by the center operator or service provider, as appropriate, within 60 days after the filing of the complaint, and a copy of the decision must be immediately served, by first-class mail, on the complainant and any other party to the complaint. Except for complaints under § 686.470 or complaints alleging fraud or other criminal activity, complaints may be filed within 1 year of the occurrence that led to the complaint.

(b) The procedure established under paragraph (a) of this section must include procedures to process complaints alleging violations of sec. 188 of WIOA, consistent with Department nondiscrimination regulations implementing sec. 188 of WIOA at 29 CFR part 38 and § 686.985.

§ 686.965 How does Job Corps ensure that complaints or disputes are resolved in a timely fashion?

(a) If a complaint is not resolved by the center operator or service provider in the time frames described in § 686.960, the person making the complaint may request that the Regional Director determine whether reasonable cause exists to believe that WIOA or regulations for this part of WIOA have been violated. The request must be filed with the Regional Director within 60 days from the date that the center operator or service provider should have issued the decision.

(b) Following the receipt of a request for review under paragraph (a) of this section, the Regional Director must determine within 60 days whether there has been a violation of WIOA or the WIOA regulations. If the Regional Director determines that there has been a violation of WIOA or WIOA regulations, (s)he may direct the operator or service provider to remedy the violation or direct the service provider to issue a decision to resolve the dispute according to the service provider's grievance procedures. If the service provider does not comply with the Regional Director's decision within 30 days, the Regional Director may impose a sanction on the center operator or service provider for violating WIOA or WIOA regulations, and/or for failing to issue a decision. Decisions imposing sanctions upon a center operator or service provider may be appealed to the Department of Labor Office of Administrative Law Judges under § 683.800 or § 683.840 of this chapter.

§ 686.970 How does Job Corps ensure that centers or other service providers comply with the Workforce Innovation and Opportunity Act and the WIOA regulations?

(a) If the Department receives a complaint or has reason to believe that a center or other service provider is failing to comply with the requirements of WIOA or WIOA regulations, the Regional Director must investigate the allegation and determine within 90 days after receiving the complaint or otherwise learning of the alleged violation, whether such allegation or complaint is true.

(b) As a result of such a determination, the Regional Director may:

(1) Direct the center operator or service provider to handle a complaint through the grievance procedures established under § 686.960; or

(2) Investigate and determine whether the center operator or service provider is in compliance with WIOA and WIOA regulations. If the Regional Director determines that the center or service provider is not in compliance with WIOA or WIOA regulations, the Regional Director may take action to resolve the complaint under § 686.965(b), or will report the incident to the Department of Labor Office of the Inspector General, as described in § 683.620 of this chapter.

§ 686.975 How does Job Corps ensure that contract disputes will be resolved?

A dispute between the Department and a Job Corps contractor will be handled according to the Contract Disputes Act and applicable regulations.

§ 686.980 How does Job Corps resolve disputes between the U.S. Department of Labor and the U.S. Department of Agriculture regarding the operation of Job Corps centers?

Disputes between the U.S. Department of Labor and the U.S. Department of Agriculture regarding operating a center will be handled according to the interagency agreement between the two agencies.

§ 686.985 What Department of Labor equal opportunity and nondiscrimination regulations apply to Job Corps?

Nondiscrimination requirements, procedures, complaint processing, and compliance reviews are governed by, as applicable, provisions of the following Department of Labor regulations:

(a) Regulations implementing sec. 188 of WIOA for programs receiving Federal financial assistance under WIOA found at 29 CFR part 38;

(b) Title 29 CFR part 33 for programs conducted by the Department of Labor; and

(c) Title 41 CFR chapter 60 for entities that have a Federal government contract.

Subpart J—Performance

§ 686.1000 How is the performance of the Job Corps program assessed?

(a) The performance of the Job Corps program as a whole, and the performance of individual centers, outreach and admissions providers, and career transition service providers, is assessed in accordance with the regulations in this part and procedures and standards issued by the Secretary, through a national performance management system, including the Outcome Measurement System (OMS).

(b) The national performance management system will include measures that reflect the primary

indicators of performance described in § 686.1010, the information needed to complete the Annual Report described in § 686.1040, and any other information the Secretary determines is necessary to manage and evaluate the effectiveness of the Job Corps program. The Secretary will issue annual guidance describing the performance management system and outcome measurement system.

(c) Annual performance assessments based on the measures described in paragraph (b) of this section are done for each center operator and other service providers, including outreach and admissions providers and career transition providers.

§ 686.1010 What are the primary indicators of performance for Job Corps centers and the Job Corps program?

The primary indicators of performance for eligible youth are described in sec. 116(b)(2)(A)(ii) of WIOA. They are:

(a) The percentage of program participants who are in education or training activities, or in unsubsidized employment, during the second quarter after exit from the program;

(b) The percentage of program participants who are in education or training activities, or in unsubsidized employment, during the fourth quarter after exit from the program;

(c) The median earnings of program participants who are in unsubsidized employment during the second quarter after exit from the program;

(d) The percentage of program participants who obtain a recognized postsecondary credential, or a secondary school diploma or its recognized equivalent during participation in or within 1 year after exit from the program. Program participants who obtain a secondary school diploma or its recognized equivalent will be included in the percentage only if they also have obtained or retained employment, or are in an education or training program leading to a recognized postsecondary credential, within 1 year after exit from the program;

(e) The percentage of program participants who, during a program year, are in an education or training program that leads to a recognized postsecondary credential or employment and who are achieving measurable skill gains toward such a credential or employment; and

(f) The indicators of effectiveness in serving employers established by the Secretaries of Education and Labor, pursuant to sec. 116(b)(2)(A)(iv) of WIOA.

§ 686.1020 What are the indicators of performance for Job Corps outreach and admissions providers?

The Secretary establishes performance indicators for outreach and admission service providers serving the Job Corps program. They include, but are not limited to:

(a) The number of enrollees recruited, compared to the established goals for such recruitment, and the number of enrollees who remain committed to the program for 90 days after enrollment;

(b) The percentage and number of former enrollees, including the number dismissed under the zero tolerance policy described in sec. 152(b) of WIOA and § 686.545;

(c) The maximum attainable percent of enrollees at the Job Corps center that reside in the State in which the center is located, and the maximum attainable percentage of enrollees at the Job Corps center that reside in the State in which the center is located and in surrounding regions, as compared to the percentage targets established by the Secretary for the center for each of those measures;

(d) The cost per enrollee, calculated by comparing the number of enrollees at the center in a program year to the total budget for such center in the same program year; and

(e) Additional indicators of performance, as necessary.

§ 686.1030 What are the indicators of performance for Job Corps career transition service providers?

The Secretary establishes performance indicators for career transition service providers serving the Job Corps program. These include, but are not limited to, the following:

(a) The primary indicators of performance for eligible youth in WIOA sec. 116(b)(2)(A)(ii), as listed in § 686.1010;

(b) The number of graduates who entered the Armed Forces;

(c) The number of graduates who entered registered apprenticeship programs;

(d) The number of graduates who entered unsubsidized employment related to the career technical training received through the Job Corps program;

(e) The number of graduates who entered unsubsidized employment not related to the education and training received through the Job Corps program;

(f) The percentage and number of graduates who enter postsecondary education;

(g) The average wage of graduates who entered unsubsidized employment:

(1) On the first day of such employment; and

(2) On the day that is 6 months after such first day; and

(h) Additional indicators of performance, as necessary.

§ 686.1040 What information will be collected for use in the Annual Report?

The Secretary will collect and submit in the Annual Report described in sec. 159(c)(4) of WIOA, which will include the following information on each Job Corps center, and the Job Corps program as a whole:

(a) Information on the performance, based on the performance indicators described § 686.1010, as compared to the expected level of performance established under § 686.1050 for each performance indicator;

(b) Information on the performance of outreach service providers and career transition service providers on the performance indicators established under §§ 686.1020 and 686.1030, as compared to the expected levels of performance established under § 686.1050 for each of those indicators;

(c) The number of enrollees served;

(d) Demographic information on the enrollees served, including age, race, gender, and education and income level;

(e) The number of graduates of a Job Corps center;

(f) The number of graduates who entered the Armed Forces;

(g) The number of graduates who entered registered apprenticeship programs;

(h) The number of graduates who received a regular secondary school diploma;

(i) The number of graduates who received a State recognized equivalent of a secondary school diploma;

(j) The number of graduates who entered unsubsidized employment related to the career technical training received through the Job Corps program and the number who entered unsubsidized employment not related to the education and training received;

(k) The percentage and number of former enrollees, including the number dismissed under the zero tolerance policy described in § 686.545;

(l) The percentage and number of graduates who enter postsecondary education;

(m) The average wage of graduates who enter unsubsidized employment:

(1) On the first day of such employment; and

(2) On the day that is 6 months after such first day;

(n) The maximum attainable percent of enrollees at a Job Corps center that reside in the State in which the center is located, and the maximum attainable percentage of enrollees at a Job Corps center that reside in the State in which the center is located and in surrounding

TABLE 7—ESTIMATED COSTS FOR SMALL BATCH TASK

Grade level	Number of hours (annual)	Total compensation per hour	Total annual cost
15	642	$101.99	$65,478
Total	642		$65,478

We estimate the annualized cost to the CPSC of $954,531 by adding the four categories of work related to the Database summarized in Tables 4 through 7 (Reports of Harm ($809,243) + MII Claims ($67,975) + Manufacturer Comments ($11,835) + Small Batch Identification ($65,478) = $954,531).

This information collection renewal request based on an estimated 12,360 burden hours per year for the Database is a decrease of 7,485 hours since this collection of information was last approved by OMB in 2013. The decrease in burden is due primarily to the fact that the number of incoming reports of harm has decreased, and the number of claims based on those reports has decreased as well. While comments did not decline significantly, they did shift to the more efficient online submissions. We note a large increase in small batch manufacturer activity, which has been rising steadily for years. However, this increase was not large enough to offset the decreases in other areas.

D. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

- Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;
- Whether the estimated burden of the proposed collection of information is accurate;
- Whether the quality, utility, and clarity of the information to be collected could be enhanced; and
- Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: February 16, 2016.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2016–19811 Filed 8–18–16; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Board of Visitors of the U.S. Air Force Academy; Notice of Meeting

AGENCY: U.S. Air Force Academy Board of Visitors, Department of Defense.

ACTION: Meeting notice.

SUMMARY: In accordance with 10 U.S.C. Section 9355, the U.S. Air Force Academy (USAFA) Board of Visitors (BoV) will hold a meeting at the Center for Character and Leadership Development Building, U.S. Air Force Academy, Colorado Springs, CO on Sept 7 & 8, 2016. On Wednesday, Sept 7, the meeting will begin at 1300 and conclude at 1600. On Thursday, Sept 8, the meeting will begin at 8:00 a.m. and conclude at 1515. The purpose of this meeting is to review morale and discipline, social climate, curriculum, instruction, infrastructure, fiscal affairs, academic methods, and other matters relating to the Academy. Specific topics for this meeting include a Superintendent's Update; USAFA Non-Profits Update; Religious Respect Update; USAFA Academics Update; USAFA's Climate Assessment Survey Results. Public attendance at this USAFA BoV meeting shall be accommodated on a first-come, first-served basis up to the reasonable and safe capacity of the meeting room. In addition, any member of the public wishing to provide input to the USAFA BoV should submit a written statement in accordance with 41 CFR Section 102–3.140(c) and section 10(a)(3) of the Federal Advisory Committee Act and the procedures described in this paragraph. Written statements must address the following details: The issue, discussion, and a recommended course of action. Supporting documentation may also be included as needed to establish the appropriate historical context and provide any necessary background information. Written statements can be submitted to the Designated Federal Officer (DFO) at the Air Force address detailed below at any time. However, if a written statement is not received at least 10 calendar days before the first day of the meeting which is the subject of this notice, then it may not be provided to or considered by the BoV until its next open meeting. The DFO will review all timely submissions with the BoV Chairman and ensure they are provided to members of the BoV before the meeting that is the subject of this notice. If after review of timely submitted written comments and the BoV Chairman and DFO deem appropriate, they may choose to invite the submitter of the written comments to orally present the issue during an open portion of the BoV meeting that is the subject of this notice. Members of the BoV may also petition the Chairman to allow specific personnel to make oral presentations before the BoV. In accordance with 41 CFR Section 102–3.140(d), any oral presentations before the BoV shall be in accordance with agency guidelines provided pursuant to a written invitation and this paragraph. Direct questioning of BoV members or meeting participants by the public is not permitted except with the approval of the DFO and Chairman. For the benefit of the public, rosters that list the names of BoV members and any releasable materials presented during the open portions of this BoV meeting shall be made available upon request.

FOR FURTHER INFORMATION CONTACT: For additional information or to attend this BoV meeting, contact Major James Kuchta, Accessions and Training Division, AF/A1PT, 1040 Air Force Pentagon, Washington, DC 20330, (703) 695–4066, *James.L.Kuchta.mil@mail.mil.*

Henry Williams,

Acting Air Force Federal Register Officer.

[FR Doc. 2016–19783 Filed 8–18–16; 8:45 am]

BILLING CODE 5001–10–P

regions, as compared to the percentage targets established by the Secretary for the center for each of those measures;

(o) The cost per enrollee, which is calculated by comparing the number of enrollees at the center in a program year to the total budget for such center in the same program year;

(p) The cost per graduate, which is calculated by comparing the number of graduates of the center in a program year compared to the total budget for such center in the same program year;

(q) Information regarding the state of Job Corps buildings and facilities, including a review of requested construction, rehabilitation, and acquisition projects, by each Job Corps center, and a review of new facilities under construction;

(r) Available information regarding the national and community service activities of enrollees, particularly those enrollees at Civilian Conservation Centers; and

(s) Any additional information required by the Secretary.

§ 686.1050 How are the expected levels of performance for Job Corps centers, outreach and admissions providers and career transition service providers established?

(a) The Secretary establishes expected levels of performance for Job Corps centers, outreach and admissions providers and career transition service providers and the Job Corps program relating to each of the primary indicators of performance described in §§ 686.1010, 686.1020, and 686.1030.

(b) As described in § 686.1000, the Secretary will issue annual guidance describing the national performance management system and outcomes measurement system, which will communicate the expected levels of performance for each primary indicator of performance for each center, and each indicator of performance for each outreach and admission provider, and for each career transition service provider. Such guidance also will describe how the expected levels of performance were calculated.

§ 686.1060 How are center rankings established?

(a) The Secretary calculates annual rankings of center performance based on the performance management system described in § 686.1000 as part of the annual performance assessment described in § 686.1000(c).

(b) The Secretary will issue annual guidance that communicates the methodology for calculating the performance rankings for the year.

§ 686.1070 How and when will the Secretary use performance improvement plans?

(a) The Secretary establishes standards and procedures for developing and implementing performance improvement plans.

(1) The Secretary will develop and implement a performance improvement plan for a center when that center fails to meet the expected levels of performance described in § 686.1050.

(i) The Secretary will consider a center to have failed to meet the expected level of performance if the center:

(A) Is ranked among the lowest 10 percent of Job Corps centers for the most recent preceding program year according to the rankings calculated under § 686.1060; and

(B) The center fails to achieve an average of 90 percent of the expected level of performance for all of the primary indicators.

(ii) For any program year that precedes the implementation of the establishment of the expected levels of performance under § 686.1050 and the application of the primary indicators of performance for Job Corps centers identified in § 686.1010, the Secretary will consider a center to have failed to meet the expected levels of performance if the center:

(A) Is ranked among the lowest 10 percent of Job Corps centers for the most recent preceding program year according to the rankings calculated under § 686.1060; and

(B) The center's composite OMS score for the program year is 88 percent or less of the year's OMS national average.

(2) The Secretary also may develop and implement additional performance improvement plans, which will require improvements for a Job Corps center that fails to meet criteria established by the Secretary other than the expected levels of performance.

(b) A performance improvement plan will require action be taken to correct identified performance issues within 1 year of the implementation of the plan, and it will identify criteria that must be met for the center to complete the performance improvement plan.

(1) The center operator must implement the actions outlined in the performance improvement plan.

(2) If the center fails to take the steps outlined in the performance improvement plan or fails to meet the criteria established to complete the performance improvement plan after 1 year, the center will be considered to have failed to improve performance under a performance improvement plan detailed in paragraph (a) of this section.

(i) Such a center will remain on a performance improvement plan and the Secretary will take action as described in paragraph (c) of this section.

(ii) If a Civilian Conservation Center fails to meet expected levels of performance relating to the primary indicators of performance specified in § 686.1010, or fails to improve performance under a performance improvement plan detailed in paragraph (a) of this section after 3 program years, the Secretary, in consultation with the Secretary of Agriculture, must select an entity to operate the Civilian Conservation Center on a competitive basis, in accordance with the requirements of § 686.310.

(c) Under a performance improvement plan, the Secretary may take the following actions, as necessary:

(1) Providing technical assistance to the center;

(2) Changing the management staff of a center;

(3) Changing the career technical training offered at the center;

(4) Replacing the operator of the center;

(5) Reducing the capacity of the center;

(6) Relocating the center; or

(7) Closing the center in accordance with the criteria established under § 686.200(b).

■ 20. Add part 687 to read as follows:

PART 687—NATIONAL DISLOCATED WORKER GRANTS

Sec.

687.100 What are the types and purposes of National Dislocated Worker Grants under the Workforce Innovation and Opportunity Act?
687.110 What are major economic dislocations or other events which may qualify for a National Dislocated Worker Grant?
687.120 Who is eligible to apply for National Dislocated Worker Grants?
687.130 When must applications for National Dislocated Worker Grants be submitted to the Department?
687.140 What activities are applicants expected to conduct before a National Dislocated Worker Grant application is submitted?
687.150 What are the requirements for submitting applications for National Dislocated Worker Grants?
687.160 What is the timeframe for the Department to issue decisions on National Dislocated Worker Grant applications?
687.170 Who is eligible to be served under National Dislocated Worker Grants?
687.180 What are the allowable activities under National Dislocated Worker Grants?
687.190 How do statutory and regulatory waivers apply to National Dislocated Worker Grants?

687.200 What are the program and administrative requirements that apply to National Dislocated Worker Grants?

Authority: Secs. 170, 189, 503, Pub. L. 113–128, 128 Stat. 1425 (Jul. 22, 2014).

§ 687.100 What are the types and purposes of National Dislocated Worker Grants under the Workforce Innovation and Opportunity Act?

There are two types and purposes of National Dislocated Worker Grants (DWGs) under sec. 170 of WIOA: Employment Recovery DWGs and Disaster Recovery DWGs.

(a) Employment Recovery DWGs provide employment and training activities for dislocated workers and other eligible populations. They are intended to expand service capacity temporarily at the State and local levels, by providing time-limited funding assistance in response to major economic dislocations or other events that affect the U.S. workforce that cannot be accommodated with WIOA formula funds or other relevant existing resources.

(b) Disaster Recovery DWGs allow for the creation of disaster relief employment to assist with clean-up and recovery efforts from emergencies or major disasters and the provision of employment and training activities, in accordance with § 687.180(b).

§ 687.110 What are major economic dislocations or other events which may qualify for a National Dislocated Worker Grant?

(a) Qualifying events for Employment Recovery DWGs include:

(1) Plant closures or mass layoffs affecting 50 or more workers from one employer in the same area;

(2) Closures and realignments of military installations;

(3) Plant closures or layoffs that have significantly increased the total number of unemployed individuals in a community;

(4) Situations where higher-than-average demand for employment and training activities for dislocated members of the Armed Forces, dislocated spouses of members of the Armed Forces on active duty (as defined in 10 U.S.C. 101(d)(1)), or members of the Armed Forces described in § 687.170(a)(1)(iii), exceeds State and local resources for providing such activities; and

(5) Other events, as determined by the Secretary.

(b) Qualifying events for Disaster Recovery DWGs include:

(1) Emergencies or major disasters, as defined in paragraphs (1) and (2), respectively, of sec. 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(1) and (2)) which have been declared eligible for public assistance by the Federal Emergency Management Agency (FEMA);

(2) An emergency or disaster situation of national significance, natural or man-made, that could result in a potentially large loss of employment, as declared or otherwise recognized and issued in writing by the chief official of a Federal Agency with jurisdiction over the Federal response to the emergency or disaster situation; and

(3) Situations where a substantial number of workers from a State, tribal area, or outlying area in which an emergency or disaster has occurred relocate to another State, tribal area, or outlying area.

§ 687.120 Who is eligible to apply for National Dislocated Worker Grants?

(a) For Employment Recovery DWGs, the following entities are eligible to apply:

(1) States or outlying areas, or a consortium of States;

(2) Local Workforce Development Boards (WDBs), or a consortium of WDBs;

(3) An entity described in sec. 166(c) of WIOA (relating to Indian and Native American programs);

(4) Other entities determined to be appropriate by the Governor of the State or outlying area involved; and

(5) Other entities that demonstrate to the Secretary the capability to respond effectively to circumstances relating to particular dislocations.

(b) For Disaster Recovery DWGs, the following entities are eligible to apply:

(1) States;

(2) Outlying areas; and

(3) Indian tribal governments as defined by the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(6)).

§ 687.130 When must applications for National Dislocated Worker Grants be submitted to the Department?

(a) Applications for Employment Recovery DWGs may be submitted at any time during the year and must be submitted to respond to eligible events as soon as possible when:

(1) The applicant receives a notification of a mass layoff or a closure as a result of a Worker Adjustment and Retraining Notification (WARN) Act notice, a general announcement, or some other means, or in the case of applications to address situations described in § 687.110(a)(4), when higher-than-average demand for employment and training activities for those members of the Armed Forces and military spouses exceeds State and local resources for providing such activities;

(2) Worker need and interest in services has been determined through Rapid Response, or other means, and is sufficient to justify the need for a DWG; and

(3) A determination has been made, in collaboration with the applicable local area, that State and local formula funds are inadequate to provide the level of services needed by the affected workers.

(b) Applications for Disaster Recovery DWGs to respond to an emergency or major disaster must be submitted as soon as possible when:

(1) As described in § 687.110(b)(1), FEMA has declared that the affected area is eligible for public assistance;

(2) A situation as described in § 687.110(b)(2) occurs. The applications must indicate the applicable Federal agency declaration, describe the impact on the local and/or State economy, and describe the proposed activities; or

(3) A situation as described in § 687.110(b)(3) occurs, and interest in services has been determined and is sufficient to justify the need for a DWG.

§ 687.140 What activities are applicants expected to conduct before a National Dislocated Worker Grant Application is submitted?

Prior to submitting an application for DWG funds, applicants must:

(a) For Employment Recovery DWGs:

(1) Collect information to identify the needs and interests of the affected workers through rapid response activities (described in § 682.330 of this chapter), or other means;

(2) Provide appropriate services to eligible workers including other rapid response activities, based on information gathered as described in paragraph (a)(1) of this section; and

(3) Coordinate with the Local WDB and chief elected official(s) of the local area(s) in which the proposed DWG project is to operate.

(b) For Disaster DWGs:

(1) Conduct a preliminary assessment of the clean-up and humanitarian needs of the affected areas;

(2) Reasonably ascertain that there is a sufficient population of eligible individuals to conduct the planned work; and

(3) Coordinate with the Local WDB and chief elected official(s) of the local area(s) in which the proposed project is to operate.

§ 687.150 What are the requirements for submitting applications for National Dislocated Worker Grants?

The Department will publish guidance on the requirements for submitting applications for DWGs.

Requirements may vary depending on the DWG. A project implementation plan must be submitted after receiving the DWG award, unless otherwise specified.

§ 687.160 What is the timeframe for the Department to issue decisions on National Dislocated Worker Grant applications?

The Department will issue a final decision on a DWG application within 45 calendar days of receipt of an application that meets the requirements of this part. Applicants are encouraged to review their DWG application submissions carefully and consult with the appropriate Employment and Training Administration Regional Office to ensure their applications meet the requirements established in this part and those that may be set forth in guidance.

§ 687.170 Who is eligible to be served under National Dislocated Worker Grants?

(a) For Employment Recovery DWGs:

(1) In order to receive employment and training activities, an individual must be:

(i) A dislocated worker within the meaning of sec. 3(15) of WIOA;

(ii) A person who is either:

(A) A civilian employee of the Department of Defense or the Department of Energy employed at a military installation that is being closed or will undergo realignment within 24 months after the date of determination of eligibility; or

(B) An individual employed in a non-managerial position with a Department of Defense contractor determined by the Secretary of Defense to be at risk of termination from employment as a result of reductions in defense expenditures and whose employer is converting from defense to non-defense applications in order to prevent worker layoffs; or

(iii) A member of the Armed Forces who:

(A) Was on active duty or full-time National Guard duty;

(B) Is involuntarily separated from active duty or full-time National Guard duty (as defined in 10 U.S.C. 1141), or is separated from active duty or full-time National Guard duty pursuant to a special separation benefits program under 10 U.S.C. 1174a, or the voluntary separation incentive program under 10 U.S.C. 1175;

(C) Is not entitled to retired or retained pay incident to the separation described in paragraph (a)(1)(iii)(B) of this section; and

(D) Applies for employment and training assistance under this part before the end of the 180-day period beginning on the date of the separation described in paragraph (a)(1)(iii)(B) of this section.

(iv) For Employment Recovery DWGs awarded for situations described in § 687.110(a)(4), a person who is:

(A) A dislocated member of the Armed Forces or member of the Armed Forces described in paragraph (a)(1)(iii) of this section; or

(B) The dislocated spouse of a member of the Armed Forces on active duty (as defined in 10 U.S.C. 101(d)(1)).

(2) [Reserved]

(b) For Disaster Recovery DWGs:

(1) In order to be eligible to receive disaster relief employment under sec. 170(b)(1)(B)(i) of WIOA, an individual must be:

(i) A dislocated worker;

(ii) A long-term unemployed individual;

(iii) An individual who is temporarily or permanently laid off as a consequence of the emergency or disaster; or

(iv) An individual who is self-employed and becomes unemployed or significantly underemployed as a result of the emergency or disaster.

(2) In order to be eligible to receive employment and training activities and in rare instances, disaster relief employment under sec. 170(b)(1)(B)(ii) of WIOA, an individual must have relocated or evacuated from an area as a result of a disaster that has been declared or otherwise recognized, and be:

(i) A dislocated worker;

(ii) A long-term unemployed individual;

(iii) An individual who is temporarily or permanently laid off as a consequence of the emergency or disaster; or

(iv) An individual who is self-employed and becomes unemployed or significantly underemployed as a result of the emergency or disaster.

(c) For Disaster Recovery DWG funds, individuals described in paragraph (b)(2) of this section are eligible to receive services provided with DWG funds in the State, tribal area, or outlying area in which the disaster occurred or the State, tribal area, or outlying area to which they have relocated. In certain cases determined by the Secretary, individuals described in paragraph (b)(2) of this section are eligible to receive services in both the State, tribal area, or outlying area in which the disaster occurred and the State, tribal area, or outlying area to which they have relocated.

§ 687.180 What are the allowable activities under National Dislocated Worker Grants?

(a) For Employment Recovery DWGs:

(1) Employment and training assistance, including those activities authorized at secs. 134(c) through (d) and 170(b)(1) of WIOA. The services to be provided in a particular project are negotiated between the Department and the grantee, taking into account the needs of the target population covered by the grant, and may be changed through grant modifications, if necessary.

(2) DWGs may provide for supportive services, including needs-related payments (subject to the restrictions in sec. 134(d)(3) of WIOA, where applicable, and the terms and conditions of the grant) to help workers who require such assistance to participate in the activities provided for in the grant. Generally, the terms of a grant must be consistent with local policies governing such financial assistance under its formula funds (including the payment levels and duration of payments). The terms of the grant agreement may diverge from established local policies, in the following instances:

(i) If unemployed dislocated workers served by the project are not able to meet the 13 or 8 weeks enrollment in training requirement established by sec. 134(d)(3)(B) of WIOA because of the lack of formula or DWG funds in the State or local area at the time of the dislocation, such individuals may be eligible for needs-related payments if they are enrolled in training by the end of the 6th week following the date of the DWG award; or

(ii) Under other circumstances as specified in guidance governing DWG application requirements.

(b) For Disaster DWGs: Funds provided under sec. 170(b)(1)(B) of WIOA can support a different array of activities, depending on the circumstances surrounding the situation for which the grant was awarded:

(1) For DWGs serving individuals in an emergency or disaster area declared eligible for public assistance by FEMA, disaster relief employment is authorized to support projects that provide food, clothing, shelter, and other humanitarian assistance for emergency and disaster victims, and projects regarding demolition, cleaning, repair, renovation, and reconstruction of damaged and destroyed structures, facilities, and lands located within the disaster area and in offshore areas related to the emergency or disaster in coordination with the Administrator of FEMA. Employment and training activities also may be provided, as appropriate. An individual's disaster relief employment is limited to 12 months or less for work related to

recovery from a single emergency or disaster. The Secretary may extend an individual's disaster relief employment for up to an additional 12 months, if it is requested and sufficiently justified by an entity described in § 687.120(b).

(2) For DWGs serving individuals who have relocated from an emergency or disaster area, only employment and training activities will be authorized, except where disaster relief employment is appropriate.

(3) For DWGs awarded to States for events that have designations from Federal agencies (other than FEMA) that recognize an emergency or disaster situation as one of national significance that could result in a potentially large loss of employment, disaster relief employment and/or employment and training activities may be authorized, depending on the circumstances associated with the specific event.

(c) Disaster Recovery DWG funds may be expended through public and private agencies and organizations engaged in the activities described in this paragraph (b) of this section.

§ 687.190 How do statutory and regulatory waivers apply to National Dislocated Worker Grants?

(a) For DWGs, utilization of statutory or regulatory waivers is limited to waivers already approved by the Department under sec. 189(i) of WIOA, separate from the DWG process. WIOA sec. 189(i) gives the Department the authority to waive provisions under subtitles A, B, and/or E of WIOA; requirements of DWGs in WIOA subtitle D cannot and will not be waived.

(b) A grant application must include a description of the approved waiver and request that the waiver be applied to the DWG. The Department will consider such requests as part of the overall DWG application review and decision process; however, applicants may not use this process to request new waivers.

(c) If during the operation of a DWG, the grantee wishes to utilize a statutory or regulatory waiver that the Department has already approved under sec. 189(i), but it was not included in the grantee's original DWG application, the grantee must submit a grant modification that describes the waiver and requests application of the waiver to the DWG. Grantees may not use this process to request new waivers.

§ 687.200 What are the program and administrative requirements that apply to National Dislocated Worker Grants?

(a) Unless otherwise authorized in a DWG agreement, the financial and administrative rules contained in part 683 of this chapter apply to awards under this part.

(b) Exceptions include:

(1) Funds provided in response to a disaster may be used for temporary job creation in areas declared eligible for public assistance by FEMA, and, in some instances, areas impacted by an emergency or disaster situation of national significance, as provided in § 687.110(b)(2), and subject to the limitations of sec. 170(d) of WIOA, this part, and any guidance issued by the Department;

(2) Per sec. 170(d)(4) of WIOA, in extremely limited instances, as determined by the Secretary or the Secretary's designee, any Disaster Recovery DWG funds that are available for expenditure under any grant awarded under this part may be used for additional disasters or situations of national significance experienced by an entity described in § 687.120(b) in the same program year the funds were awarded;

(3) DWG funds may be used to pay an appropriate level of administrative costs based on the design and complexity of the project. The Department will negotiate administrative costs with the applicant as part of the application review and grant award and modification processes. Administrative cost limits will be calculated against the amount of the grant awarded;

(4) The period of availability for expenditure of funds under a DWG is specified in the grant agreement;

(5) The Department may establish supplemental reporting, monitoring, and oversight requirements for DWGs. The requirements will be identified in the grant application instructions or the grant document; and

(6) The Department may negotiate and fund projects under terms other than those specified in this part where it can be clearly demonstrated that such adjustments will achieve a greater positive benefit for the workers and/or communities being assisted.

■ 21. Add part 688 to read as follows:

PART 688—PROVISIONS GOVERNING THE YOUTHBUILD PROGRAM

Subpart A—Purpose and Definitions

Sec.
688.100 What is YouthBuild?
688.110 What are the purposes of the YouthBuild program?
688.120 What definitions apply to this part?

Subpart B—Funding and Grant Applications

Sec.
688.200 How are YouthBuild grants funded and administered?
688.210 How does an eligible entity apply for grant funds to operate a YouthBuild program?
688.220 How are eligible entities selected to receive grant funds?
688.230 What are the minimum requirements to apply for YouthBuild funds?
688.240 How are eligible entities notified of approval for grant funds?

Subpart C—Program Requirements

Sec.
688.300 Who is an eligible participant?
688.310 Are there special rules that apply to veterans?
688.320 What eligible activities may be funded under the YouthBuild program?
688.330 What level of training qualifies a construction project as a qualifying work site under the YouthBuild program?
688.340 What timeframes apply to participation?
688.350 What timeframes must be devoted to education and workforce investment or other activities?
688.360 What timeframes apply to follow-up services?
688.370 What are the requirements for exit from the YouthBuild program?
688.380 What is the role of the YouthBuild grantee in the one-stop delivery system?

Subpart D—Performance Indicators

Sec.
688.400 What are the performance indicators for YouthBuild grants?
688.410 What are the required levels of performance for the performance indicators?
688.420 What are the reporting requirements for YouthBuild grantees?
688.430 What are the due dates for quarterly reporting?

Subpart E—Administrative Rules, Costs, and Limitations

Sec.
688.500 What administrative regulations apply to the YouthBuild program?
688.510 How may grantees provide services under the YouthBuild program?
688.520 What cost limits apply to the use of YouthBuild program funds?
688.530 What are the cost-sharing or matching requirements of the YouthBuild program?
688.540 What are considered to be leveraged funds?
688.550 How are the costs associated with real property treated in the YouthBuild program?
688.560 What participant costs are allowable under the YouthBuild program?
688.570 Does the Department allow incentive payments in the YouthBuild program?
688.580 What effect do payments to YouthBuild participants have on eligibility for other Federal needs-based benefits?
688.590 What program income requirements apply under the YouthBuild program?
688.600 Are YouthBuild programs subject to the Davis-Bacon Act labor standards?
688.610 What are the recordkeeping requirements for YouthBuild programs?

Subpart F—Additional Requirements

Sec.
688.700 What are the safety requirements for the YouthBuild program?
688.710 What are the reporting requirements for youth safety?
688.720 What environmental protection laws apply to the YouthBuild program?
688.730 What requirements apply to YouthBuild housing?

Authority: Secs. 171, 189, 503, Pub. L. 113–128, 128 Stat. 1425 (Jul. 22, 2014).

Subpart A—Purpose and Definitions

§ 688.100 What is YouthBuild?

(a) YouthBuild is a workforce development program that provides employment, education, leadership development, and training opportunities to disadvantaged and low-income youth between the ages of 16 and 24, most of whom are secondary school drop outs and are either a member of a low-income family, a foster care youth, a youth who is homeless, an offender, a youth with a disability, a child of an incarcerated parent, or a migrant youth.

(b) Program participants receive education services that may lead to either a high school diploma or its State-recognized equivalent. Further, they receive occupational skills training and are encouraged to pursue postsecondary education or additional training, including registered apprenticeship and pre-apprenticeship programs. The program is designed to create a skilled workforce either in the construction industry, through the rehabilitation and construction of housing for homeless and low-income individuals and families, as well as public facilities, or in other in-demand industries or occupations. The program also benefits the larger community because it provides increased access to affordable housing.

§ 688.110 What are the purposes of the YouthBuild program?

The overarching goal of the YouthBuild program is to provide disadvantaged and low-income youth the opportunity to obtain education and employment skills in local in-demand jobs to achieve economic self-sufficiency. Additionally, the YouthBuild program has as goals to:

(a) Enable disadvantaged youth to obtain the education and employment skills necessary to achieve economic self-sufficiency through employment in in-demand occupations and pursuit of postsecondary education and training opportunities;

(b) Provide disadvantaged youth with opportunities for meaningful work and service to their communities;

(c) Foster the development of employment and leadership skills and commitment to community development among youth in low-income communities;

(d) Expand the supply of permanent affordable housing for homeless individuals and families, homeless youth, and low-income families by utilizing the talents of disadvantaged youth. The program seeks to increase the number of affordable and transitional housing units available to decrease the rate of homelessness in communities with YouthBuild programs; and

(e) Improve the quality and energy efficiency of community and other non-profit and public facilities, including those that are used to serve homeless and low-income families.

§ 688.120 What definitions apply to this part?

In addition to the definitions at sec. 3 of the Workforce Innovation and Opportunity Act (WIOA) and § 675.300 of this chapter, the following definitions apply:

Adjusted income means, with respect to a family, the amount (as determined by the Housing Development Agency) of the income of the members of the family residing in a dwelling unit or the persons on a lease, after any income exclusions as follows:

(1) *Mandatory exclusions.* In determining adjusted income, a Housing Development Agency must exclude from the annual income of a family the following amounts:

(i) *Elderly and disabled families.* $400 for any elderly or disabled family.

(ii) *Medical expenses.* The amount by which three percent of the annual family income is exceeded by the sum of:

(A) Unreimbursed medical expenses of any elderly family or disabled family;

(B) Unreimbursed medical expenses of any family that is not covered under paragraph (1)(ii)(A) of this definition, except that this paragraph (1)(ii)(B) only applies to the extent approved in appropriation Acts; and

(C) Unreimbursed reasonable attendant care and auxiliary apparatus expenses for each handicapped member of the family, to the extent necessary to enable any member of such family (including such handicapped member) to be employed.

(iii) *Child care expenses.* Any reasonable child care expenses necessary to enable a member of the family to be employed or to further his or her education.

(iv) *Minors, students, and persons with disabilities.* $480 for each member of the family residing in the household (other than the head of the household or his or her spouse) who is less than 18 years of age or is attending school or vocational training on a full-time basis, or who is 18 years of age or older and is a person with disabilities.

(v) *Child support payments.* Any payment made by a member of the family for the support and maintenance of any child who does not reside in the household, except that the amount excluded under this clause may not exceed $480 for each child for whom such payment is made; except that this clause only applies to the extent approved in appropriations Acts.

(vi) *Spousal support expenses.* Any payment made by a member of the family for the support and maintenance of any spouse or former spouse who does not reside in the household, except that the amount excluded under this clause must not exceed the lesser of the amount that such family member has a legal obligation to pay, or $550 for each individual for whom such payment is made; except that this clause only applies to the extent approved in appropriations Acts.

(vii) *Earned income of minors.* The amount of any earned income of a member of the family who is not:

(A) 18 years of age or older; and

(B) The head of the household (or the spouse of the head of the household).

(2) *Permissive exclusions for public housing.* In determining adjusted income, a Housing Development Agency may, at the discretion of the agency, establish exclusions from the annual income of a family residing in a public housing dwelling unit. Such exclusions may include the following amounts:

(i) *Excessive travel expenses.* Excessive travel expenses in an amount not to exceed $25 per family per week, for employment or education-related travel.

(ii) *Earned income.* An amount of any earned income of the family, established at the discretion of the Housing Development Agency, which may be based on:

(A) All earned income of the family,

(B) The amount earned by particular members of the family;

(C) The amount earned by families having certain characteristics; or

(D) The amount earned by families or members during certain periods or from certain sources.

(iii) *Others.* Such other amounts for other purposes, as the Housing Development Agency may establish.

Applicant means an eligible entity that has submitted an application under § 688.210.

Basic skills deficient means an individual:

(1) Who is a youth, and who has English reading, writing, or computing skills at or below the eighth grade level on a generally accepted standardized test; or

(2) Who is a youth or adult, and who is unable to compute or solve problems, or read, write, or speak English, at a level necessary to function on the job, in the individual's family, or in society.

Community or other public facility means those facilities which are either privately owned by non-profit organizations, including faith-based and community-based organizations, and publicly used for the benefit of the community, or publicly owned and publicly used for the benefit of the community.

Construction Plus means the inclusion of occupational skills training for YouthBuild participants in in-demand occupations other than construction.

Eligible entity means a public or private non-profit agency or organization (including a consortium of such agencies or organizations), including:

(1) A community-based organization;

(2) A faith-based organization;

(3) An entity carrying out activities under this title, such as a Local Workforce Development Board (WDB);

(4) A community action agency;

(5) A State or local Housing Development Agency;

(6) An Indian tribe or other agency primarily serving Indians;

(7) A community development corporation;

(8) A State or local youth service or conservation corps; and

(9) Any other entity eligible to provide education or employment training under a Federal program (other than the program carried out under this section).

English language learner, when used with respect to a participant, means an eligible individual who has limited ability in reading, writing, speaking, or comprehending the English language, and:

(1) Whose native language is a language other than English; or

(2) Who lives in a family or community environment where a language other than English is the dominant language.

Exit, as used in § 688.400, has the same meaning as in § 677.150(c) of this chapter.

Follow-up services include:

(1) The leadership development and supportive service activities listed in §§ 681.520 and 681.570 of this chapter;

(2) Regular contact with a youth participant's employer, including assistance in addressing work-related problems that arise;

(3) Assistance in securing better paying jobs, career development, and further education;

(4) Work-related peer support groups;

(5) Adult mentoring; and

(6) Services necessary to ensure the success of youth participants in employment and/or postsecondary education.

Homeless child or youth means an individual who lacks a fixed, regular, and adequate nighttime residence and includes a child or youth who:

(1) Is sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason;

(2) Is living in a motel, hotel, trailer park, or campground due to the lack of alternative adequate accommodations;

(3) Is living in an emergency or transitional shelter, is abandoned in a hospital, or is awaiting foster care placement;

(4) Has a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;

(5) Is living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; or

(6) Is a migratory child living in circumstances described in this definition.

Homeless individual means an individual who lacks a fixed, regular, and adequate nighttime residence and includes an individual who:

(1) Is sharing the housing of other persons due to loss of housing, economic hardship, or similar reason;

(2) Is living in a motel, hotel, trailer park, or campground due to the lack of alternative adequate accommodations;

(3) Is living in an emergency or transitional shelter;

(4) Is abandoned in a hospital, or is awaiting foster care placement;

(5) Has a primary nighttime residence that is a public or private place not designed for or ordinarily used as regular sleeping accommodation for human beings; or

(6) Is a migratory child living in circumstances described in this definition.

Housing Development Agency means any agency of a Federal, State or local government, or any private non-profit organization, that is engaged in providing housing for homeless individuals or low-income families.

Income, as defined in the United States Housing Act of 1937 (42 U.S.C. 1437a(b)(2)), means income is from all sources of each member of the household, as determined in accordance with the criteria prescribed by the Secretary of Labor, in consultation with the Secretary of Agriculture, except that any amounts not actually received by the family and any amounts which would be eligible for exclusion under sec. 1382b(a)(7) of the United States Housing Act of 1937, may not be considered as income under this definition.

In-Demand Industry Sector or Occupation means:

(1) An industry sector that has a substantial current or potential impact (including through jobs that lead to economic self-sufficiency and opportunities for advancement) on the State, regional, or local economy, as appropriate, and that contributes to the growth or stability of other supporting business, or the growth of other industry sectors; or

(2) An occupation that currently has or is projected to have a number of positions (including positions that lead to economic self-sufficiency and opportunities for advancement) in an industry sector so as to have a significant impact on the State, regional, or local economy, as appropriate.

Indian, as defined in the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b), means a person who is a member of an Indian tribe.

Indian tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688; 43 U.S.C. 1601 *et seq.*), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Individual with a disability means an individual with a disability as defined in sec. 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102).

Low-income family means a family whose income does not exceed 80 percent of the median income for the area unless the Secretary determines that a higher or lower ceiling is warranted. This definition includes families consisting of one person as defined by 42 U.S.C. 1437a(b)(3).

Migrant youth means a youth, or a youth who is the dependent of someone who, during the previous 12 months, has:

(1) Worked at least 25 days in agricultural labor that is characterized

by chronic unemployment or underemployment;

(2) Made at least $800 from agricultural labor that is characterized by chronic unemployment or underemployment, if at least 50 percent of his or her income came from such agricultural labor;

(3) Was employed at least 50 percent of his or her total employment in agricultural labor that is characterized by chronic unemployment or underemployment; or

(4) Was employed in agricultural labor that requires travel to a jobsite such that the farmworker is unable to return to a permanent place of residence within the same day.

Needs-based payments means additional payments beyond regular stipends for program participation that are based on defined needs that enable a youth to participate in the program.

Occupational skills training means an organized program of study that provides specific vocational skills that lead to proficiency in performing actual tasks and technical functions required by certain occupational fields at entry, intermediate, or advanced levels. Occupational skills training includes training programs that lead to recognized postsecondary credentials that align with in-demand industry sectors or occupations in the local area. Such training must:

(1) Be outcome-oriented and focused on an occupational goal specified in the individual service strategy;

(2) Be of sufficient duration to impart the skills needed to meet the occupational goal; and

(3) Result in attainment of a recognized postsecondary credential.

Offender means an adult or juvenile who:

(1) Is or has been subject to any stage of the criminal justice process, and who may benefit from WIOA services; or

(2) Requires assistance in overcoming artificial barriers to employment resulting from a record of arrest or conviction.

Participant means an individual who has been determined eligible to participate in the YouthBuild program, and who enrolls in the program and receives services or training described in § 688.320.

Pre-apprenticeship, as defined in § 681.480 of this chapter, means a program designed to prepare individuals to enter and succeed in an apprenticeship program registered under the Act of August 16, 1937 (commonly known as the "National Apprenticeship Act"; 50 Stat. 664, chapter 663; 29 U.S.C. 50 *et seq.*) (referred to in this part as a "registered apprenticeship" or "registered apprenticeship program") and includes the following elements:

(1) Training and curriculum that aligns with the skill needs of employers in the economy of the State or region involved;

(2) Access to educational and career counseling and other supportive services, directly or indirectly;

(3) Hands-on, meaningful learning activities that are connected to education and training activities, such as exploring career options, and understanding how the skills acquired through coursework can be applied toward a future career;

(4) Opportunities to attain at least one industry-recognized credential; and

(5) A partnership with one or more registered apprenticeship programs that assists in placing individuals who complete the pre-apprenticeship program in a registered apprenticeship program.

(6) YouthBuild programs that receive funding under this part are considered pre-apprenticeship programs under this definition.

Recognized postsecondary credential means a credential consisting of an industry-recognized certificate or certification, a certificate of completion of a registered apprenticeship, a license recognized by the State involved or Federal government, or an associate or baccalaureate degree.

Registered apprenticeship program means an apprenticeship program that:

(1) Is registered under the Act of August 16, 1937 (commonly known as the "National Apprenticeship Act" (50 Stat. 664; 20 U.S.C. 50 *et seq.*)); and

(2) Meets such other criteria as the Secretary may establish.

School dropout means an individual who no longer attends any school and who has not received a secondary school diploma or its State-recognized equivalent.

Secondary school means a nonprofit institutional day or residential school, including a public secondary charter school, that provides secondary education, as determined under State law, except that the term does not include any education beyond grade 12.

Section 3 means a program described in sec. 3 of the Housing and Urban Development Act of 1968, as amended by the Housing and Community Development Act of 1992.

Supportive services for youth, as defined in § 681.570 of this chapter, are services that enable an individual to participate in WIOA activities. These services include, but are not limited to, the following:

(1) Linkages to community services;

(2) Assistance with transportation;

(3) Assistance with child care and dependent care;

(4) Referrals to child support;

(5) Assistance with housing;

(6) Needs-related payments;

(7) Assistance with educational testing;

(8) Reasonable accommodations for youth with disabilities;

(9) Referrals to health care;

(10) Assistance with uniforms or other appropriate work attire and work-related tools, including such items as eyeglasses and protective eye gear;

(11) Assistance with books, fees, school supplies, and other necessary items for students enrolled in postsecondary education classes; and

(12) Payments and fees for employment and training-related applications, tests, and certifications.

Transitional housing means housing provided to ease the movement of individuals and families experiencing homelessness to permanent housing within 24 months or such longer period.

YouthBuild program means any program that receives assistance under this part and provides disadvantaged youth with opportunities for employment, education, leadership development, service to the community, and training through the rehabilitation (which, for purposes of this part, includes energy efficiency enhancements) or construction of housing for homeless individuals and low-income families, and public facilities.

Youth in foster care, as defined in § 681.210 of this chapter, means an individual in foster care or who has aged out of the foster care system or who has attained 16 years of age and left foster care for kinship, guardianship, or adoption; or a child eligible for assistance under sec. 477 of the Social Security Act (42 U.S.C. 677), or in an out-of-home placement.

Subpart B—Funding and Grant Applications

§ 688.200 How are YouthBuild grants funded and administered?

The Secretary uses funds authorized for appropriation under WIOA sec. 171(i) to administer YouthBuild as a national program under title I, subtitle D of WIOA. YouthBuild grants are awarded to eligible entities, as defined in § 688.120, through the competitive selection process described in § 688.210.

§ 688.210 How does an eligible entity apply for grant funds to operate a YouthBuild program?

The Secretary announces the availability of grant funds through a

Funding Opportunity Announcement (FOA). The FOA contains instructions for what the Department requires in the grant application, describes eligibility requirements, the rating criteria that the Department will use in reviewing grant applications, and special reporting requirements to operate a YouthBuild project. The FOA, along with the requisite forms needed to apply for grant funds, can be found at *http://www.doleta.gov/grants/find_grants.cfm.*

§ 688.220 How are eligible entities selected to receive grant funds?

In order to receive funds under the YouthBuild program, an eligible entity must meet selection criteria established by the Secretary which include:

(a) The qualifications or potential capabilities of an applicant;

(b) An applicant's potential to develop a successful YouthBuild program;

(c) The need for an applicant's proposed program, as determined by the degree of economic distress of the community from which participants would be recruited (measured by indicators such as poverty, youth unemployment, and the number of individuals who have dropped out of secondary school) and of the community in which the housing and community and public facilities proposed to be rehabilitated or constructed are located (measured by indicators such as incidence of homelessness, shortage of affordable housing, and poverty);

(d) The commitment of an applicant to provide skills training, leadership development, counseling and case management, and education to participants;

(e) The focus of a proposed program on preparing youth for local in-demand sectors or occupations, or postsecondary education and training opportunities;

(f) The extent of an applicant's coordination of activities to be carried out through the proposed program with:

(1) Local WDBs, one-stop center operators, and one-stop partners participating in the operation of the one-stop delivery system involved, or the extent of the applicant's good faith efforts, as determined by the Secretary, in achieving such coordination;

(2) Public education, criminal justice, housing and community development, national service, or postsecondary education or other systems that relate to the goals of the proposed program; and

(3) Employers in the local area;

(g) The extent to which a proposed program provides for inclusion of tenants who were previously homeless individuals or families in the rental of housing provided through the program;

(h) The commitment of additional resources to the proposed program (in addition to the funds made available through the grant) by:

(1) An applicant;

(2) Recipients of other Federal, State, or local housing and community development assistance who will sponsor any part of the rehabilitation, construction, operation and maintenance, or other housing and community development activities undertaken as part of the proposed program; or

(3) Entities carrying out other Federal, State, or local activities or activities conducted by Indian tribes, including vocational education programs, adult and language instruction educational programs, and job training using funds provided under WIOA;

(i) An applicant's ability to enter partnerships with:

(1) Education and training providers including:

(i) The kindergarten through twelfth grade educational system;

(ii) Adult education programs;

(iii) Community and technical colleges;

(iv) Four-year colleges and universities;

(v) Registered apprenticeship programs; and

(vi) Other training entities;

(2) Employers, including professional organizations and associations. An applicant will be evaluated on the extent to which employers participate in:

(i) Defining the program strategy and goals;

(ii) Identifying needed skills and competencies;

(iii) Designing training approaches and curricula;

(iv) Contributing financial support; and

(v) Hiring qualified YouthBuild graduates;

(3) The workforce development system which may include:

(i) State and Local WDBs;

(ii) State workforce agencies; and

(iii) One-stop centers and their partner programs;

(4) The juvenile and adult justice systems, and the extent to which they provide:

(i) Support and guidance for YouthBuild participants with court involvement;

(ii) Assistance in the reporting of recidivism rates among YouthBuild participants; and

(iii) Referrals of eligible participants through diversion or reentry from incarceration;

(5) Faith-based and community organizations, and the extent to which they provide a variety of grant services such as:

(i) Case management;

(ii) Mentoring;

(iii) English as a Second Language courses; and

(iv) Other comprehensive supportive services, when appropriate;

(j) The applicant's potential to serve different regions, including rural areas and States that may not have previously received grants for YouthBuild programs; and

(k) Such other factors as the Secretary determines to be appropriate for purposes of evaluating an applicant's potential to carry out the proposed program in an effective and efficient manner.

(l) The weight to be given to these factors will be described in a FOA issued under § 688.210.

§ 688.230 What are the minimum requirements to apply for YouthBuild funds?

At minimum, applications for YouthBuild funds must include the following elements:

(a) Labor market information for the relevant labor market area, including both current data (as of the date of submission of the application) and projections on career opportunities in construction and in-demand industry sectors or occupations;

(b) A request for the grant, specifying the amount of the grant requested and its proposed uses;

(c) A description of the applicant and a statement of its qualifications, including a description of the applicant's relationship with Local WDBs, one-stop operators, employers, local unions, entities carrying out registered apprenticeship programs, other community groups, and the applicant's past experience with rehabilitation or construction of housing or public facilities (including experience with programs through the U.S. Department of Housing and Urban Development (HUD) under sec. 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u)), and with youth education and employment training programs);

(d) A description of the proposed site for the proposed program;

(e) A description of the educational and job training activities, work opportunities, postsecondary education and training opportunities, and other services that will be provided to participants, and how those activities, opportunities, and services will prepare youth for employment in in-demand

industry sectors or occupations in the labor market area described in paragraph (a) of this section;

(1) A description of the proposed activities to be undertaken under the grant related to rehabilitation or construction, and, in the case of an applicant requesting approval from the Secretary to carry out additional activities related to in-demand industry sectors or occupations, a description of such additional activities.

(2) The anticipated schedule for carrying out all activities proposed under paragraph (f) of this section;

(f) A description of the manner in which eligible youth will be recruited and selected as participants, including a description of arrangements that will be made with Local WDBs, one-stop operators, faith and community-based organizations, State education agencies or local education agencies (including agencies of Indian tribes), public assistance agencies, the courts of jurisdictions, agencies that serve youth who are homeless individuals (including those that operate shelters), foster care agencies, and other appropriate public and private agencies;

(g) A description of the special outreach efforts that will be undertaken to recruit eligible young women (including young women with dependent children) as participants;

(h) A description of the specific role of employers in the proposed program, such as their role in developing the proposed program and assisting in service provision and placement activities;

(i) A description of how the proposed program will be coordinated with other Federal, State, and local activities conducted by Indian tribes, such as workforce investment activities, career and technical education and training programs, adult and language instruction educational programs, activities conducted by public schools, activities conducted by community colleges, national service programs, and other job training provided with funds available under WIOA, in particular how programs will coordinate with local Workforce Development funds outlined in WIOA sec. 129(c)(2);

(j) Assurances that there will be a sufficient number of adequately trained supervisory personnel in the proposed program;

(k) A description of the level of performance to be achieved with respect to primary indicators of performance for eligible youth as described in § 688.410;

(l) The organization's past performance under a grant issued by the Secretary to operate a YouthBuild program;

(m) A description of the applicant's relationship with local building trade unions regarding their involvement in training to be provided through the proposed program, the relationship of the proposed program to established registered apprenticeship programs and employers, the ability of the applicant to grant an industry-recognized certificate or certification through the program, and the quality of the program leading to the certificate or certification;

(n) A description of activities that will be undertaken to develop leadership skills of participants;

(o) A detailed budget and description of the system of fiscal controls, and auditing and accounting procedures, that will be used to ensure fiscal soundness for the proposed program;

(p) A description of the commitments for any additional resources (in addition to funds made available through the grant) to be made available to the proposed program from:

(1) The applicant;

(2) Recipients of other Federal, State, or local housing and community development assistance that will sponsor any part of the rehabilitation or construction, operation or maintenance, or other housing and community development activities undertaken as part of the proposed program; or

(3) Entities carrying out other Federal, State or local activities conducted by Indian tribes, including career and technical education and training programs, and job training provided with funds under WIOA;

(q) Information identifying and describing of, the financing proposed for any:

(1) Rehabilitation of the property involved;

(2) Acquisition of the property; or

(3) Construction of the property;

(r) Information identifying and describing of, the entity that will manage and operate the property;

(s) Information identifying and describing of, the data collection systems to be used;

(t) A certification, by a public official responsible for the housing strategy for the State or unit of general local government within which the proposed program is located, that the proposed program is consistent with the housing strategy;

(u) A certification that the applicant will comply with requirements of the Fair Housing Act (42 U.S.C. 3601 *et seq.*) and will affirmatively further fair housing; and

(v) Any additional requirements that the Secretary determines are appropriate.

§ 688.240 How are eligible entities notified of approval for grant funds?

The Secretary will, to the extent practicable, notify each eligible entity applying for funds no later than 5 months from the date the application is received, whether the application is approved or disapproved. In the event additional funds become available, the Employment and Training Administration (ETA) reserves the right to use such funds to select additional grantees from applications submitted in response to a FOA.

Subpart C—Program Requirements

§ 688.300 Who is an eligible participant?

(a) *Eligibility criteria.* Except as provided in paragraph (b) of this section, an individual is eligible to participate in a YouthBuild program if the individual is:

(1) Not less than age 16 and not more than age 24 on the date of enrollment;

(2) A school dropout or an individual who has dropped out of school and has subsequently reenrolled; and

(3) Is one or more of the following:

(i) A member of a low-income family;

(ii) A youth in foster care;

(iii) An offender;

(iv) A youth who is an individual with a disability;

(v) The child of a current or formerly incarcerated parent; or

(vi) A migrant youth.

(b) *Exceptions.* Not more than 25 percent of the participants in a program, under this section, may be individuals who do not meet the requirements of paragraph (a)(2) or (3) of this section, if such individuals:

(1) Are basic skills deficient, as defined in § 688.120, despite attainment of a secondary school diploma or its recognized State equivalent (including recognized certificates of attendance or similar documents for individuals with disabilities); or

(2) Have been referred by a local secondary school for participation in a YouthBuild program leading to the attainment of a secondary school diploma if such referral is to a YouthBuild program offering a secondary school diploma.

§ 688.310 Are there special rules that apply to veterans?

Special rules for determining income for veterans are found in § 683.230 of this chapter and for the priority of service provisions for qualified persons are found in 20 CFR part 1010. Those special rules apply to covered persons who are eligible to participate in the YouthBuild program.

§ 688.320 What eligible activities may be funded under the YouthBuild program?

Grantees may provide one or more of the following education and workforce investment and other activities to YouthBuild participants:

(a) Eligible education and workforce activities including:

(1) Work experience and skills training (coordinated, to the maximum extent feasible, with registered apprenticeship programs), including:

(i) Supervision and training for participants in the rehabilitation or construction of housing, including residential housing for homeless individuals or low-income families, or transitional housing for homeless individuals and in additional in-demand industry sectors or occupations in the region in which the program operates (as approved by the Secretary);

(ii) Supervision and training for participants in the rehabilitation or construction of community and other public facilities, except that not more than 15 percent of grant funds-appropriated to carry out this section may be used for this activity; and

(iii) Supervision and training for participants in in-demand industry sectors or occupations in the region in which the program operates, if such activity is approved by the Secretary;

(2) Occupational skills training;

(3) Other paid and unpaid work experiences, including internships and job shadowing;

(4) Services and activities designed to meet the educational needs of participants, including:

(i) Basic skills instruction and remedial education;

(ii) Language instruction educational programs for participants who are English language learners;

(iii) Secondary education services and activities, including tutoring, study skills training, and school dropout prevention and recovery activities, designed to lead to the attainment of a secondary school diploma or its recognized equivalent (including recognized certificates of attendance or similar documents for individuals with disabilities);

(iv) Counseling and assistance in obtaining postsecondary education and required financial aid; and

(v) Alternative secondary school services;

(5) Counseling services and related activities, such as comprehensive guidance and counseling on drug and alcohol abuse, referrals to mental health services, and referrals to victim services;

(6) Activities designed to develop employment and leadership skills, which may include community service and peer-centered activities encouraging responsibility, interpersonal skills, and other positive social behaviors, and activities related to youth policy committees that participate in decision-making related to the program;

(7)(i) Supportive services and needs-based payments necessary to enable individuals to participate in the program and to assist individuals, for a period of time not to exceed 12 months after the completion of training, in obtaining or retaining employment or applying for and transitioning to postsecondary education or training;

(ii) To provide needs-based payments, a grantee must have a written policy which:

(A) Establishes participant eligibility for such payments;

(B) Establishes the amounts to be provided;

(C) Describes the required documentation and criteria for payments; and

(D) Applies consistently to all program participants; and

(8) Job search and assistance;

(b) Payment of the administrative costs of the applicant, including recruitment and selection of participants, except that not more than 10 percent of the amount awarded under § 688.210 may be used for such costs;

(c) Adult mentoring;

(d) Provision of wages, stipends, or benefits to participants in the program;

(e) Ongoing training and technical assistance that is related to developing and carrying out the program; and

(f) Follow-up services.

§ 688.330 What level of training qualifies a construction project as a qualifying work site under the YouthBuild program?

At a minimum, in order to qualify as a work site for the purposes of the YouthBuild program, a work site must:

(a) Provide participants with the opportunity to have hands-on training and experience in two or more modules, each within a different skill area, in a construction skills training program that offers an industry-recognized credential;

(b) Be built or renovated for low-income individuals or families;

(c) Have a restrictive covenant in place that only allows for rental or resale to low-income participants as required by § 688.730; and

(d) Adhere to the allowable construction and other capital asset costs applicable to the YouthBuild program.

§ 688.340 What timeframes apply to participation?

An eligible individual selected for participation in the program must be offered full-time participation in the program for not less than 6 months and not more than 24 months.

§ 688.350 What timeframes must be devoted to education and workforce investment or other activities?

YouthBuild grantees must structure programs so that participants in the program are offered:

(a) Education and related services and activities designed to meet educational needs, such as those specified in § 688.320(a)(4) through (7), during at least 50 percent of the time during which they participate in the program; and

(b) Workforce and skills development activities, such as those specified in § 688.320(a)(1) through (3), during at least 40 percent of the time during which they participate in the program.

(c) The remaining 10 percent of the time of participation may be used for the activities described in paragraphs (a) and (b) of this section and/or for leadership development and community service activities.

§ 688.360 What timeframes apply to follow-up services?

Grantees must provide follow-up services to all YouthBuild participants for a period of 12 months after a participant successfully exits a YouthBuild program.

§ 688.370 What are the requirements for exit from the YouthBuild program?

At a minimum, to be a successful exit, the Department of Labor requires that:

(a) Participants receive hands-on construction training or hands-on training in another industry or occupation, in the case of Construction Plus grantees; and

(b) Participants meet the exit policies established by the grantee.

(1) Such policies must describe the program outcomes and/or individual goals that must be met by each participant in order to successfully complete the program; and

(2) Grantees must apply the policies consistently to determine when a successful exit has occurred.

§ 688.380 What is the role of the YouthBuild grantee in the one-stop delivery system?

In those local areas where the grantee operates its YouthBuild program, the grantee is a required partner of the local one-stop delivery system and is subject to the provisions relating to such partners described in part 678 of this chapter.

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Senior Executive Service Performance Review Board Memberships

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice.

SUMMARY: This notice announces the membership of the Defense Nuclear Facilities Safety Board (DNFSB) Senior Executive Service (SES) Performance Review Board (PRB).

DATES: August 19, 2016.

ADDRESSES: Send comments concerning this notice to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., Suite 700, Washington, DC 20004–2001.

FOR FURTHER INFORMATION CONTACT: Deborah Biscieglia by telephone at (202) 694–7041.

SUPPLEMENTARY INFORMATION: 5 U.S.C. 4314(c)(1) through (5) requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards. The PRB shall review and evaluate the initial summary rating of a senior executive's performance, the executive's response, and the higher level official's comments on the initial summary rating. In addition, the PRB will review and recommend executive performance bonuses and pay increases.

The DNFSB is a small, independent Federal agency; therefore, the members of the DNFSB SES Performance Review Board listed in this notice are drawn from the SES ranks of other agencies. The following persons comprise a standing roster to serve as members of the Defense Nuclear Facilities Safety Board SES Performance Review Board:

Christopher E. Aiello, Special Advisor to the Deputy to the Chairman and Chief Financial Officer, Federal Deposit Insurance Corporation;

David M. Capozzi, Executive Director, United States Access Board;

Cedric R. Hendricks, Associate Director for the Office of Legislative, Intergovernmental and Public Affairs, Court Services and Offender Supervision Agency;

Barry S. Socks, Chief Operating Officer, National Capital Planning Commission;

Dr. Michael L. Van Woert, Director, National Science Board Office, National Science Foundation.

Dated: July 28, 2016.

Joyce L. Connery,

Chairman.

[FR Doc. 2016–18963 Filed 8–18–16; 8:45 am]

BILLING CODE 3670–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2016–ICCD–0067]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Fund for the Improvement of Postsecondary Education (FIPSE) Annual Performance Report

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before September 19, 2016.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2016–ICCD–0067. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E–347, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Stacey Slijepcevic, 202–453–6150.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Fund for the Improvement of Postsecondary Education (FIPSE) Annual Performance Report.

OMB Control Number: 1840–0793.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 100.

Total Estimated Number of Annual Burden Hours: 4,000.

Abstract: The Fund for the Improvement of Postsecondary Education (FIPSE) works to improve postsecondary education through grants to postsecondary educational institutions and agencies. Such grants are awarded to non-profit organizations on the basis of competitively reviewed applications submitted to FIPSE under the First in the World (FITW) Program. This collection includes a performance report for use with FITW programs 84.116F and 84.116X. We request clearance of one annual performance report for FITW programs 84.116F and 84.116X that will serve the dual purpose of an annual and final performance report. In this collection there is one (1) form, the annual performance report for FITW programs that includes a FITW program burden statement. The collection of the requested data in the performance report is necessary for the evaluation and assessment of FITW-funded programs and for assessment of continuation funding for each grantee.

Dated: August 15, 2016.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–19772 Filed 8–18–16; 8:45 am]

BILLING CODE 4000–01–P

Subpart D—Performance Indicators

§ 688.400 What are the performance indicators for YouthBuild grants?

The performance indicators for YouthBuild grants include:

(a) The percentage of program participants who are in education and training activities, or in unsubsidized employment, during the second quarter after exit from the program;

(b) The percentage of program participants who are in education or training activities, or in unsubsidized employment, during the fourth quarter after exit from the program;

(c) The median earnings of program participants who are in unsubsidized employment during the second quarter after exit from the program;

(d) The percentage of program participants who obtain a recognized postsecondary credential or secondary school diploma or its recognized equivalent (and for those achieving the secondary diploma or its recognized equivalent, such participants also have obtained or retained employment or are in an education or training program leading to a recognized postsecondary credential within 1 year after exit from the program);

(e) The percentage of program participants who, during a program year, are in an education and training program that leads to a recognized postsecondary credential or employment and who are achieving measurable skill gains toward such a credential or employment;

(f) The indicator of effectiveness in serving employers described at § 677.155(c)(6) of this chapter; and

(g) Other indicators of performance as may be required by the Secretary.

§ 688.410 What are the required levels of performance for the performance indicators?

(a) The Secretary must annually establish expected levels of performance for YouthBuild programs relating to each of the primary indicators of performance. The expected levels of performance for each of the performance indicators are national standards that are provided in separately issued guidance. Short-term or other performance indicators will be provided in separately issued guidance or as part of the FOA or grant agreement. Performance level expectations will be based on available YouthBuild data and data from similar WIOA youth programs and may change from one grant competition to another. The expected national levels of performance will take into account the extent to which the levels promote continuous improvement in performance.

(b) The levels of performance established will at a minimum:

(1) Be expressed in an objective, quantifiable, and measurable form; and

(2) Indicate continuous improvement in performance.

§ 688.420 What are the reporting requirements for YouthBuild grantees?

Each grantee must provide such reports as are required by the Secretary in separately issued guidance, including:

(a) The quarterly performance report;

(b) The quarterly narrative progress report;

(c) The financial report; and

(d) Such other reports as may be required by the grant agreement.

§ 688.430 What are the due dates for quarterly reporting?

(a) Quarterly reports are due no later than 45 days after the end of the reporting quarter, unless otherwise specified in the reporting guidance issued under § 688.420; and

(b) A final financial report is required 90 days after the expiration of a funding period or the termination of grant support.

Subpart E—Administrative Rules, Costs, and Limitations

§ 688.500 What administrative regulations apply to the YouthBuild program?

Each YouthBuild grantee must comply with the following:

(a) The regulations found in this part;

(b) The general administrative requirements found in part 683 of this chapter, except those that apply only to the WIOA title I, subtitle B program and those that have been modified by this section;

(c) The Department's regulations on government-wide requirements, which include:

(1) The regulations codifying the Office of Management and Budget's (OMB) government-wide grants requirements at 2 CFR parts 200 and 2900, as applicable;

(2) The Department's regulations at 29 CFR part 38, which implement the nondiscrimination provisions of WIOA sec. 188;

(3) The Department's regulations at 29 CFR parts 93, 94, and 98 relating to restrictions on lobbying, drug free workplace, and debarment and suspension; and

(4) The audit requirements of the Office of Management and Budget at 2 CFR parts 200 and 2900, as applicable; and

(d) Relevant State and local educational standards.

§ 688.510 How may grantees provide services under the YouthBuild program?

Each recipient of a grant under the YouthBuild program may provide the services and activities described in these regulations either directly or through subgrants, contracts, or other arrangements with local educational agencies, postsecondary educational institutions, State or local housing development agencies, other public agencies, including agencies of Indian tribes, or private organizations.

§ 688.520 What cost limits apply to the use of YouthBuild program funds?

(a) Administrative costs for programs operated under YouthBuild are limited to 10 percent of the grant award. The definition of administrative costs can be found in § 683.215 of this chapter.

(b) The cost of supervision and training for participants involved in the rehabilitation or construction of community and other public facilities is limited to no more than 15 percent of the grant award.

§ 688.530 What are the cost-sharing or matching requirements of the YouthBuild program?

(a) In addition to the rules described in paragraphs (b) through (f) of this section, the cost-sharing or matching requirements applicable to a YouthBuild grant will be addressed in the grant agreement.

(b) The value of construction materials used in the YouthBuild program is an allowable cost for the purposes of the required non-Federal share or match.

(c) The value of land acquired for the YouthBuild program is not an allowable cost-sharing or match.

(d) Federal funds may not be used as cost-sharing or match resources except as provided by Federal law.

(e) The value of buildings acquired for the YouthBuild program is an allowable match, provided that the following conditions apply:

(1) The purchase cost of buildings used solely for training purposes is allowable; and

(2) For buildings used for training and other purposes, the allowable amount is determined based on the proportionate share of the purchase price related to direct training activities.

(f) Grantees must follow the requirements of Uniform Guidance at 2 CFR parts 200 and 2900 in the accounting, valuation, and reporting of the required non-Federal share.

§ 688.540 What are considered to be leveraged funds?

(a) Leveraged funds may be used to support allowable YouthBuild program

activities and consist of payments made for allowable costs funded by both non-YouthBuild Federal, and non-Federal, resources which include:

(1) Costs which meet the criteria for cost-sharing or match in § 688.530 and are in excess of the amount of cost-sharing or match resources required;

(2) Costs which would meet the criteria in § 688.530 except that they are paid for with other Federal resources; and

(3) Costs which benefit the grant program and are otherwise allowable under the cost principles but are not allowable under the grant because of some statutory, regulatory, or grant provision, whether paid for with Federal or non-Federal resources.

(b) The use of leveraged funds must be reported in accordance with Departmental instructions.

§ 688.550 How are the costs associated with real property treated in the YouthBuild program?

(a) As provided in paragraphs (b) and (c) of this section, the costs of the following activities associated with real property are allowable solely for the purpose of training YouthBuild participants:

(1) Rehabilitation of existing structures for use by homeless individuals and families or low-income families or for use as transitional housing;

(2) Construction of buildings for use by homeless individuals and families or low-income families or for use as transitional housing; and

(3) Construction or rehabilitation of community or other public facilities, except, as provided in § 688.520(b), only 15 percent of the grant award is allowable for such construction and rehabilitation.

(b) The costs for acquisition of buildings that are used for activities described in paragraph (a) of this section are allowable with prior grant officer approval and only under the following conditions:

(1) The purchase cost of buildings used solely for training purposes is allowable; and

(2) For buildings used for training and other purposes, the allowable amount is determined based on the proportionate share of the purchase cost related to direct training.

(c) The following costs are allowable to the extent allocable to training YouthBuild participants in the construction and rehabilitation activities specified in paragraph (a) of this section:

(1) Trainees' tools and clothing including personal protective equipment (PPE);

(2) On-site trainee supervisors;

(3) Construction management;

(4) Relocation of buildings; and

(5) Clearance and demolition.

(d) Architectural fees, or a proportionate share thereof, are allowable when such fees can be related to items such as architectural plans or blueprints on which participants will be trained.

(e) The following costs are unallowable:

(1) The costs of acquisition of land; and

(2) Brokerage fees.

§ 688.560 What participant costs are allowable under the YouthBuild program?

Allowable participant costs include:

(a) The costs of payments to participants engaged in eligible work-related YouthBuild activities;

(b) The costs of payments provided to participants engaged in non-work-related YouthBuild activities;

(c) The costs of needs-based payments;

(d) The costs of supportive services; and

(e) The costs of providing additional benefits to participants or individuals who have exited the program and are receiving follow-up services, which may include:

(1) Tuition assistance for obtaining college education credits;

(2) Scholarships to a registered apprenticeship or technical education program; and

(3) Employer- or Government-sponsored health programs.

§ 688.570 Does the Department allow incentive payments in the YouthBuild program?

(a) Grantees are permitted to provide incentive payments to youth participants for recognition and achievement directly tied to training activities and work experiences. Grantees must tie the incentive payments to the goals of the specific grant program and outline such goals in writing prior to starting the program that makes incentive payments.

(b) Prior to providing incentive payments, the organization must have written policies and procedures in place governing the awarding of incentives, and the incentives provided under the grant must align with these organizational policies.

(c) All incentive payments must comply with the requirements in Uniform Guidance at 2 CFR part 200.

§ 688.580 What effect do payments to YouthBuild participants have on eligibility for other Federal needs-based benefits?

Under § 683.275(d) of this chapter, the Department does not consider allowances, earnings, and payments to individuals participating in programs under title I of WIOA as income for purposes of determining eligibility for and the amount of income transfer and in-kind aid furnished under any Federal or Federally-assisted program based on need other than as provided under the Social Security Act (42 U.S.C. 301).

§ 688.590 What program income requirements apply under the YouthBuild program?

(a) Except as provided in paragraph (b) of this section, program income requirements, as specified in the applicable Uniform Administrative Requirements at 2 CFR parts 200 and 2900, apply to YouthBuild grants.

(b) Revenue from the sale of buildings rehabilitated or constructed under the YouthBuild program to homeless individuals and families and low-income families is not considered program income. Grantees are encouraged to use that revenue for the long-term sustainability of the YouthBuild program.

§ 688.600 Are YouthBuild programs subject to the Davis-Bacon Act labor standards?

(a) YouthBuild programs and grantees are subject to Davis-Bacon labor standards requirements under the circumstances set forth in paragraph (b) of this section. In those instances where a grantee is subject to Davis-Bacon requirements, the grantee must follow applicable requirements in the Department's regulations at 29 CFR parts 1, 3, and 5, including the requirements contained in the Davis-Bacon contract provisions set forth in 29 CFR 5.5.

(b) YouthBuild participants are subject to Davis-Bacon Act labor standards when they perform Davis-Bacon-covered laborer or mechanic work, defined at 29 CFR 5.2(m), on Federal or Federally-assisted projects that are subject to the Davis-Bacon Act labor standards. The Davis-Bacon prevailing wage requirements apply to hours worked on the site of the work.

(c) YouthBuild participants who are not registered and participating in a training program approved by the ETA must be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.

§ 688.610 What are the recordkeeping requirements for YouthBuild programs?

(a) Grantees must follow the recordkeeping requirements specified in the Uniform Administrative Requirements, at 29 CFR 95.53 and 97.42, as appropriate.

(b) Grantees must maintain such additional records related to the use of buildings constructed or rehabilitated with YouthBuild funds as specified in the grant agreement or in the Department's guidance.

Subpart F—Additional Requirements

§ 688.700 What are the safety requirements for the YouthBuild program?

(a) YouthBuild Grantees must comply with § 683.280 of this chapter, which applies Federal and State health and safety standards to the working conditions under WIOA-funded projects and programs. These health and safety standards include "hazardous orders" governing child labor at 29 CFR part 570.

(b) YouthBuild grantees are required to:

(1) Provide comprehensive safety training for youth working on YouthBuild construction projects;

(2) Have written, jobsite-specific safety plans overseen by an on-site supervisor with authority to enforce safety procedures;

(3) Provide necessary personal protective equipment to youth working on YouthBuild projects; and

(4) Submit required injury incident reports.

§ 688.710 What are the reporting requirements for youth safety?

YouthBuild grantees must ensure that YouthBuild program sites comply with the Occupational Safety and Health Administration's (OSHA) reporting requirements in 29 CFR part 1904. A YouthBuild grantee is responsible for sending a copy of OSHA's injury incident report form to the ETA within 7 days of any reportable injury suffered by a YouthBuild participant. The injury incident report form is available from OSHA and can be downloaded at *http://www.osha.gov/recordkeeping/RKforms.html.* Reportable injuries include those that result in death, days away from work, restricted work or transfer to another job, medical treatment beyond first aid, or loss of consciousness.

§ 688.720 What environmental protection laws apply to the YouthBuild program?

YouthBuild program grantees are required, where applicable, to comply with all environmental protection statutes and regulations.

§ 688.730 What requirements apply to YouthBuild housing?

(a) YouthBuild grantees must ensure that all residential housing units which are constructed or rehabilitated using YouthBuild funds must be available solely for:

(1) Sale to homeless individuals and families or low-income families;

(2) Rental by homeless individuals and families or low-income families;

(3) Use as transitional or permanent housing for the purpose of assisting in the movement of homeless individuals and families to independent living. In the case of transitional housing, the unit(s) must be occupied no more than 24 months by the same individual(s); or

(4) Rehabilitation of homes for low-income homeowners.

(b) For rentals of residential units located on the property which are constructed or rehabilitated using YouthBuild funds:

(1) The property must maintain at least a 90 percent level of occupancy for low-income families. The income test will be conducted only at the time of entry for each available unit or rehabilitation of occupant-owned home. If the grantee cannot find a qualifying tenant to lease the unit, the unit may be leased to a family whose income is above the income threshold to qualify as a low-income family but below the median income for the area. Leases for tenants with higher incomes will be limited to not more than 2 years. The leases provided to tenants with higher incomes are not subject to the termination clause that is described in paragraph (b)(2) of this section.

(2) The property owner must not terminate the tenancy or refuse to renew the lease of a tenant occupying a residential rental housing unit constructed or rehabilitated using YouthBuild funds except for serious or repeated violations of the terms and conditions of the lease, for violation of applicable Federal, State, or local laws, or for good cause. Any termination or refusal to renew the lease must be preceded by not less than a 30-day written notice to the tenant specifying the grounds for the action. The property owner may waive the written notice requirement for termination in dangerous or egregious situations involving the tenant.

(c) All transitional or permanent housing for homeless individuals or families or low-income families must be safe and sanitary. The housing must meet all applicable State and local housing codes and licensing requirements in the jurisdiction in which the housing is located.

(d) For sales or rentals of residential housing units constructed or rehabilitated using YouthBuild funds, YouthBuild grantees must ensure that owners of the property record a restrictive covenant at the time that an occupancy permit is issued against such property which includes the use restrictions set forth in paragraphs (a), (b), and (c) of this section and incorporates the following definitions at § 688.120: Homeless individual, Low-income family, and Transitional housing. The term of the restrictive covenant must be at least 5 years from the time of the issuance of the occupancy permit, unless a time period of more than 5 years has been established by the grantee. The Department advises that any additional stipulations imposed by a grantee or property owner be clearly stated in the covenant.

(e) Any conveyance document prepared in the 5-year period of the restrictive covenant must inform the buyer of the property that all residential housing units constructed or rehabilitated using YouthBuild funds are subject to the restrictions set forth in paragraphs (a) through (d) of this section.

Signed at Washington, DC, this 29th day of June 2016.

Thomas E. Perez,

Secretary of Labor.

[FR Doc. 2016–15975 Filed 8–8–16; 11:15 am]

BILLING CODE 4510–FR–P; 4510–FT–P

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LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List August 4, 2016

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC16–16–000]

Commission Information Collection Activities (FERC–577); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, FERC–577 (Natural Gas Facilities: Environmental Review and Compliance).

DATES: Comments on the collection of information are due October 18, 2016.

ADDRESSES: You may submit comments (identified by Docket No. IC16–16–000) by either of the following methods:

- *eFiling at Commission's Web site: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: FERC–577, Gas Pipeline Certificates: Environmental Impact Statement.

OMB Control No.: 1902–0128.

Type of Request: Three-year extension of the FERC–577 information collection requirements with no changes to the current reporting requirements.

Abstract: The FERC–577 information collection contains the Commission's information collections pertaining to 18 CFR Parts: 2, 157, 284, and 380. These regulations implement National Environmental Policy Act (NEPA) and include the environmental compliance conditions portions of the same regulations. The FERC–577 also includes the reporting requirements for landowner notifications. These requirements are contained within 18 CFR Parts: 2.55(b), 157.203(d), 380.15, and 2.55(a).

Type of Respondents: Gas pipelines.

Estimate of Annual Burden:[1] The Commission estimates the annual public reporting burden and cost (rounded) for the information collection as:

FERC–577

[Natural gas facilities: environmental review and compliance]

	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden & cost per response[2] (4)	Total annual burden hours & total annual cost (3) * (4) = (5)	Cost per respondent ($) (5) ÷ (1)
Gas Pipeline Certificates[3]	92	16	1,472	193.518 hrs.; $14,417	284,858 hrs.; $21,221,824	$230,672
Landowner Notification[4]	165	144	23,760	2 hrs.; $149	47,520 hrs.; $3,540,240	21,456
Total			25,232		332,378 hrs.; 24,762,064	

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: August 15, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–19777 Filed 8–18–16; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9028–6]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7146 or *http://www.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements (EIS)
Filed 08/08/2016 Through 08/12/2016
Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *http://www.epa.gov/compliance/nepa/eisdata.html.*

EIS No. 20160186, Final, USFWS, NAT, National Wildlife Refuge System Revision of Regulations Governing Non-Federal Oil and Gas Rights,

[1] The Commission defines burden as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

[2] The estimates for cost per response are derived using the following formula: Average Burden Hours per Response * $74.50 per Hour = Average Cost per Response. The Commission staff believes that the industry's level and skill set are comparable to FERC, so the FERC 2016 average hourly cost (for salary plus benefits) of $74.50 per hour is used.

[3] Requirements are found in 18 CFR Parts: 157, 284, 2, and 380.

[4] Requirements are found in 18 CFR Parts: 2.55(b), 157.203(d), 380.15, and 2.55(a).

Review Period Ends: 09/19/2016, Contact: Scott Covington 703–358–2427

EIS No. 20160187, Draft, Caltrans, CA, Northwest SR–138 Corridor, Comment Period Ends: 10/03/2016, Contact: Natalie Hill 213–897–0841

Amended Notices

EIS No. 20160168, Draft, NSA, MD, East Campus Integration Program, Comment Period Ends: 09/06/2016, Contact: Jeffrey Williams 301–688–2970.

Revision to FR Notice Published 07/22/2016; Correct Comment Period from 9/05/2016 to 09/06/2016.

Dated: August 16, 2016.

Dawn Roberts,

Management Analyst, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2016–19851 Filed 8–18–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Radio Broadcasting Services; AM or FM Proposals To Change the Community of License

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The following applicants filed AM or FM proposals to change the community of License: Campo Elias Munera, Station NEW, Facility ID 198790, BNPH–20151013AIU, From Roaring Springs, TX, To Girard, TX; LLC Marble City Media, LLC, Station WFXO, Facility ID 704, BPH–20160802ACA, From Ashland, AL, To Stewartville, AL; Noalmark Broadcasting Corporation, Station KMLK, Facility ID 85169, BPH–20160809AAJ, From El Dorado, AR, To Junction City, AR; United Broadcasting Company, Inc., Station KTKK, Facility ID14890, BP–20140623AAZ, From Sandy, UT, To Kearns, UT.

DATES: Comments may be filed through October 18, 2016.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Tung Bui, 202–418–2700.

SUPPLEMENTARY INFORMATION: The full text of these applications is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street SW., Washington, DC 20554 or electronically via the Media Bureau's Consolidated Data Base System, *http://svartifoss2.fcc.gov/prod/cdbs/pubacc/prod/cdbs_pa.htm.* A copy of this application may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, INC., 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *www.BCPIWEB.com.*

Federal Communications Commission.

James D. Bradshaw,

Deputy Chief, Audio Division, Media Bureau.

[FR Doc. 2016–19825 Filed 8–18–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

AGENCY: Federal Election Commission.

DATE AND TIME: Tuesday, August 16, 2016 at 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

Federal Register Notice of Previous Announcement—81 FR 53483

THE FOLLOWING ITEM WAS ALSO DISCUSSED: Motion to Set Priorities and Scheduling on Pending Enforcement Matters Awaiting Reason-to-Believe Consideration.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shawn Woodhead Werth,

Secretary and Clerk of the Commission.

[FR Doc. 2016–19970 Filed 8–17–16; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 15, 2016.

A. Federal Reserve Bank of New York (Ivan Hurwitz, Vice President) 33 Liberty Street, New York, New York 10045–0001. Comments can also be sent electronically to *Comments.applications@ny.frb.org:*

1. *People's United Financial, Inc., Bridgeport, Connecticut;* to acquire 100 percent of the voting shares of, and thereby merge with, Suffolk Bancorp, and thereby indirectly acquire voting shares of The Suffolk County National Bank, both in Riverhead, New York.

Board of Governors of the Federal Reserve System, August 16, 2016.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2016–19854 Filed 8–18–16; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Health Statistics, Classifications and Public Health Data Standards Staff: Meeting

Name: ICD–10 Coordination and Maintenance (C&M) Committee meeting.

Time and Date: 9 a.m.–5 p.m., EDT, September 13–14, 2016.

Place: Centers for Medicare and Medicaid Services (CMS) Auditorium, 7500 Security Boulevard, Baltimore, Maryland 21244.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 240 people. We will be broadcasting the meeting live via Webcast at *http://www.cms.gov/live/.*

Security Considerations: Due to increased security requirements CMS has instituted stringent procedures for entrance into the building by non-government employees. Attendees will

need to present valid government-issued picture identification, and sign-in at the security desk upon entering the building.

Attendees who wish to attend the September 13–14, 2016 ICD–10–CM C&M meeting must submit their name and organization by September 2, 2016 for inclusion on the visitor list. This visitor list will be maintained at the front desk of the CMS building and used by the guards to admit visitors to the meeting.

Participants who attended previous Coordination and Maintenance meetings will no longer be automatically added to the visitor list. You must request inclusion of your name prior to each meeting you wish to attend.

Please register to attend the meeting on-line at: *http://www.cms.hhs.gov/apps/events/*. Please contact Mady Hue (410–786–4510 or *Marilu.hue@cms.hhs.gov*), for questions about the registration process.

Purpose: The ICD–10 Coordination and Maintenance (C&M) Committee is a public forum for the presentation of proposed modifications to the International Classification of Diseases, Tenth Revision, Clinical Modification and ICD–10 Procedure Coding System.

Matters To Be Discussed: Agenda items include:

September 13–14, 2016.

ICD–10–PCS Topics

Administration of Influenza Vaccine
Administration of Peptide Enhanced Bone Graft
Balloon Atrial Septostomy
Extracorporeal Carbon Dioxide Removal
Extracorporeal Treatment of Vascular Grafts
Intramuscular Autologous Bone Marrow Cell Therapy
Resuscitative Endovascular Balloon Occlusion of the Aorta
Addenda and Key Updates

ICD–10–CM Diagnosis Topics

Abnormality in Fetal Heart Rate or Rhythm
Acute Appendicitis
Acute Cholecystitis
Acute Respiratory Distress
Amyloidosis
Antenatal Screening
Atrial Fibrillation (AF)
ATV and Motor-cross Vehicle Injuries
Body Integrity Dysphoria
Disease of Intestine
E-cigarette Use
Hepatic Diverticular Encephalopathy
Injury to Optic Tract and Visual Cortex
Intestinal Obstruction
Neonatal Encephalopathy
Obstetrical Issues
Parrots/Macaws Modifications
Personal History of Mesothelioma and Secondary Mesothelioma
Primary and Central Hypothyroidism
Post Endometrial Ablation Syndrome
Pulmonary Arterial Hypertension (representation)
Sickle Cell w/o Acute Chest Syndrome or Splenic Sequestration
Spinal Stenosis With Neurogenic Claudication
Surgical Site Infection
Types of MI
Umbilical Granuloma in the Perinatal Period
Zika Related Newborn Conditions

Agenda items are subject to change as priorities dictate.

Note: CMS and National Center for Health Statistics (NCHS) no longer provide paper copies of handouts for the meeting. Electronic copies of all meeting materials will be posted on the CMS and NCHS Web sites prior to the meeting at *http://www.cms.hhs.gov/ICD9ProviderDiagnosticCodes/03_meetings.asp#TopOfPage* and *http://www.cdc.gov/nchs/icd/icd9cm_maintenance.htm*.

Contact Persons for Additional Information: Donna Pickett, Medical Systems Administrator, Classifications and Public Health Data Standards Staff, NCHS, 3311 Toledo Road, Hyattsville, Maryland 20782, email *dfp4@cdc.gov*, telephone 301–458–4434 (diagnosis); Mady Hue, Health Insurance Specialist, Division of Acute Care, CMS, 7500 Security Boulevard, Baltimore, Maryland 21244, email *marilu.hue@cms.hhs.gov*, telephone 410–786–4510 (procedures).

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2016–19790 Filed 8–18–16; 8:45 am]

BILLING CODE 4160–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

Board of Scientific Counselors, National Center for Environmental Health/Agency for Toxic Substances and Disease Registry (BSC, NCEH/ATSDR), Lead Poisoning Prevention (LPP) Subcommittee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the CDC, National Center for Environmental Health/Agency for Toxic Substances and Disease Registry (NCEH/ATSDR) announces the following meeting of the aforementioned committee:

Time and Date: 8:30 a.m.—3:15 p.m. EDT, September 19, 2016.

Place: CDC, 4770 Buford Highway, Building 106, Conference Room 1/A, Atlanta, Georgia 30341. The meeting will also be held by teleconference. To participate in the teleconference, please dial 1–866–687–6445, passcode 5598486.

Status: The meeting is open to the public, the conference room accommodates approximately 60 people and will be limited only by the space available. The public is welcome to participate during the public comment period which is scheduled from 10:15 a.m. until 10:30 a.m. EST (15 minutes).

Individuals wishing to make a comment during the public comment period or to attend the meeting in person, please email your name, organization, and phone number by Thursday, September 15, 2016 to Amanda Malasky at *AMalasky@cdc.gov*.

Purpose: The subcommittee will discuss strategies and options on ways to prioritize NCEH/ATSDR's activities, improve health outcomes, and address health disparities as it relates to lead exposures. The subcommittee will deliberate on ways to evaluate lead exposure and how to best conduct health evaluations through exposure and epidemiologic studies. Subcommittee proposals on lead prevention practices and national lead poisoning prevention efforts will be provided to the Board of Scientific Counselors for deliberation and possible adoption as formal recommendations to NCEH/ATSDR.

Matters for Discussion: Agenda items will include the following: NCEH/ATSDR support for the public health emergency in Flint; rethinking the strategy for the NCEH Lead Surveillance Program; CDC's Blood Reference Value for Lead; other emerging lead topics;

advice, guidance, recommendations, and summary and next steps.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Amanda Malasky, Coordinator, Lead Poisoning Prevention Subcommittee, BSC, NCEH/ATSDR, 4770 Buford Highway, Mail Stop F–45, Chamblee, Georgia 30345; telephone 770/488–7699, Fax: 770/488–3377; Email: *AMalasky@cdc.gov.*

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director,

Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2016–19788 Filed 8–18–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Center for Health Statistics: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), National Center for Health Statistics (NCHS) announces the following meeting of the aforementioned committee.

Times and Dates: 11 a.m.–5:30 p.m., EDT, September 15, 2016. 8:30 a.m.–1 p.m., EDT, September 16, 2016.

Place: NCHS Headquarters, 3311 Toledo Road, Hyattsville, Maryland 20782.

Status: This meeting is open to the public; however, visitors must be processed in accordance with established federal policies and procedures. For foreign nationals or non-U.S. citizens, pre-approval is required (please contact Gwen Mustaf, 301–458–4500, *glm4@cdc.gov,* or Virginia Cain, *vcain@cdc.gov* at least 10 days in advance for requirements). All visitors are required to present a valid form of picture identification issued by a state, federal or international government. As required by the Federal Property Management Regulations, title 41, Code of Federal Regulation, subpart 101–20.301, all persons entering in or on Federal controlled property and their packages, briefcases, and other containers in their immediate possession are subject to being x-rayed and inspected. Federal law prohibits the knowing possession or the causing to be present of firearms, explosives and other dangerous weapons and illegal substances. The meeting room accommodates approximately 100 people.

Purpose: This committee is charged with providing advice and making recommendations to the Secretary, Department of Health and Human Services; the Director, CDC; and the Director, NCHS, regarding the scientific and technical program goals and objectives, strategies, and priorities of NCHS.

Matters for Discussion: The agenda will include:

1. Welcome remarks by the Director, NCHS
2. Presentation on Race and Ethnicity in Vital Statistics
3. Presentation on Improving the Quality of Cause of Death Reporting
4. Presentation on New Data on Births
5. Presentation on Research Data Centers Expansion

Requests to make oral presentations should be submitted in writing to the contact person listed below. All requests must contain the name, address, telephone number, and organizational affiliation of the presenter.

Written comments should not exceed five single-spaced typed pages in length and must be received by September 6, 2016.

The agenda items are subject to change as priorities dictate.

Contact Person for More Information: Virginia S. Cain, Ph.D., Director of Extramural Research, NCHS/CDC, 3311 Toledo Road, Room 7208, Hyattsville, Maryland 20782, telephone (301) 458–4500, fax (301) 458–4024.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2016–19789 Filed 8–18–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Board on Radiation and Worker Health Subcommittee for Dose Reconstruction Reviews, National Institute for Occupational Safety and Health Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following meeting for the aforementioned subcommittee:

Time and Date: 10:30 a.m.–5 p.m., EDT, September 13, 2016.

Place: Audio Conference Call via FTS Conferencing.

Status: Open to the public, but without a public comment period. The public is welcome to submit written comments in advance of the meeting, to the contact person below. Written comments received in advance of the meeting will be included in the official record of the meeting. The public is also welcome to listen to the meeting by joining the teleconference at the USA toll-free, dial-in number at 1–866–659–0537 and the pass code is 9933701.

Background: The Advisory Board on Radiation and Worker Health (ABRWH or the Advisory Board) was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Advisory Board include providing advice on the development of probability of causation guidelines that have been promulgated by the Department of Health and Human Services (HHS) as a final rule; advice on methods of dose reconstruction, which have also been promulgated by HHS as a final rule; advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program; and advice on petitions to add classes of workers to the Special Exposure Cohort.

In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to CDC. National Institute for Occupational Safety and Health (NIOSH) implements this responsibility for CDC. The charter was issued on August 3, 2001, renewed at appropriate intervals, rechartered on

March 22, 2016 pursuant to Executive Order 13708, and will expire on September 30, 2017.

Purpose: The Advisory Board is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class. The Subcommittee for Dose Reconstruction Reviews (SDRR) was established to aid the Advisory Board in carrying out its duty to advise the Secretary, HHS, on dose reconstruction.

Matters for Discussion: The agenda for the Subcommittee meeting includes the following dose reconstruction program quality management and assurance activities: dose reconstruction cases under review from Sets 14–18, including the Oak Ridge sites (Y–12, K–25, Oak Ridge National Laboratory), Hanford, Feed Materials Production Center ("Fernald"), Mound Plant, Rocky Flats Plant, Nevada Test Site, Idaho National Laboratory, and Savannah River Site; consideration of new dose reconstruction review methods and/or case selection criteria.

The agenda is subject to change as priorities dictate.

Contact Person for More Information: Theodore Katz, Designated Federal Officer, NIOSH, CDC, 1600 Clifton Road, Mailstop E–20, Atlanta, Georgia 30333, Telephone (513) 533–6800, Toll Free 1(800)CDC–INFO, Email *ocas@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2016–19787 Filed 8–18–16; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Fees for Sanitation Inspections of Cruise Ships

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: General notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS) announces fees for vessel sanitation inspections for Fiscal Year (FY) 2017. These inspections are conducted by HHS/CDC's Vessel Sanitation Program (VSP). VSP helps the cruise line industry fulfill its responsibility for developing and implementing comprehensive sanitation programs to minimize the risk for acute gastroenteritis. Every vessel that has a foreign itinerary and carries 13 or more passengers is subject to twice-yearly unannounced inspections and, when necessary, reinspection.

DATES: These fees are effective October 1, 2016, through September 30, 2017.

FOR FURTHER INFORMATION CONTACT: CAPT Jaret T. Ames, Chief, Vessel Sanitation Program, National Center for Environmental Health, Centers for Disease Control and Prevention, 4770 Buford Highway NE., MS F–59, Atlanta, Georgia 30341–3717; phone: 800–323–2132, 770–488–3141, or 954–356–6650; email: *vsp@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Purpose and Background

HHS/CDC established the Vessel Sanitation Program (VSP) in the 1970s as a cooperative activity with the cruise ship industry. VSP helps the cruise ship industry prevent and control the introduction, transmission, and spread of gastrointestinal illnesses on cruise ships. VSP operates under the authority of the Public Health Service Act (Section 361 of the Public Health Service Act; *42 U.S.C. 264,* "Control of Communicable Diseases"). Regulations found at *42 CFR 71.41* (Foreign Quarantine—Requirements Upon Arrival at U.S. Ports: Sanitary Inspection; General Provisions) state that carriers arriving at U.S. ports from foreign areas are subject to sanitary inspections to determine whether rodent, insect, or other vermin infestations exist, contaminated food or water, or other sanitary conditions requiring measures for the prevention of the introduction, transmission, or spread of communicable diseases are present.

The fee schedule for sanitation inspections of passenger cruise ships by VSP was first published in the **Federal Register** on November 24, 1987 (52 FR 45019). HHS/CDC began collecting fees on March 1, 1988. This notice announces fees that are effective for FY 2017, beginning on October 1, 2016, through September 30, 2017.

The following formula will be used to determine the fees:

$$\text{Average cost per inspection} = \frac{\text{Total cost of VSP}}{\text{Weighted number of annual inspections}}$$

Total cost of VSP = Total cost of operating the program, such as administration, travel, staffing, sanitation inspections, and outbreak response. Weighted number of annual inspections = Total number of ships and inspections per year accounting for vessel size, number of inspectors needed for vessel size, travel logistics to conduct inspections, and vessel location and arrivals in U.S. jurisdiction per year.

The fee schedule was originally established and published in the **Federal Register** on July 17, 1987 (52 FR 27060). It was most recently published in the **Federal Register** on August 26, 2015 (80 FR 51819). The fee schedule for FY 2017 is presented in Appendix A.

Fee

The fee schedule (Appendix A) will be effective October 1, 2016, through September 30, 2017.

Applicability

The fees will apply to all passenger cruise vessels for which inspections are conducted as part of HHS/CDC's VSP. Inspections and reinspections involve the same procedures, require the same amount of time, and are therefore charged at the same rates.

Dated: August 15, 2016.

Sandra Cashman,

Executive Secretary, Centers for Disease Control and Prevention.

Appendix A

FEE SCHEDULE FOR EACH VESSEL SIZE

Vessel size (GRT [1])	Inspection fee
Extra Small (<3,000 GRT)	US$1,495
Small (3,001–15,000 GRT)	2,990
Medium (15,001–30,000 GRT)	5,980
Large (30,001–60,000 GRT)	8,970
Extra Large (60,001–120,000 GRT)	11,960
Mega (>120,001 GRT)	17,940

[1] Gross register tonnage in cubic feet, as shown in Lloyd's Register of Shipping.

[FR Doc. 2016–19785 Filed 8–18–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1680–N]

Medicare Program; Announcement of the Advisory Panel on Clinical Diagnostic Laboratory Tests Meeting on September 12, 2016

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the next meeting date of the Advisory Panel on Clinical Diagnostic Laboratory Tests (the Panel) on Monday, September 12, 2016. The purpose of the Panel is to advise the Secretary of the Department of Health and Human Services (HHS) (the Secretary) and the Acting Administrator of the Centers for Medicare & Medicaid Services (CMS) (the Acting Administrator) on issues related to clinical diagnostic laboratory tests. The Panel will address Clinical Laboratory Fee Schedule issues relevant to the June 23, 2016 final rule entitled "Medicare Program; Medicare Clinical Diagnostic Laboratory Tests Payment System" (81 FR 41035 through 41101), which are designated in the Panel's charter and outlined in the agenda.

DATES: *Meeting Date:* The meeting of the Panel is scheduled to take place at CMS's headquarters in Baltimore, Maryland on Monday, September 12, 2016 beginning at 9:00 a.m. and ending at 4:30 p.m., Eastern Daylight Time (e.d.t.). The times listed in this notice are Eastern Daylight Time (EDT) and are approximate times except that the meeting will not begin before the posted time.

Meeting Registration: The public may attend the meeting in-person, view via webcast, or listen via teleconference. Beginning Friday, August 19, 2016 and ending Friday, September 2, 2016 at 5:00 p.m. e.d.t., registration to attend the meeting in-person may be completed on-line at *http://cms.gov/Regulations-and-Guidance/Guidance/FACA/AdvisoryPanelonClinicalDiagnosticLaboratoryTests.html.* On this Web page, under "Related Links," double-click the "Clinical Diagnostic Laboratory Tests FACA Panel Meeting Registration" link and enter the required information. All the following information must be submitted when registering:

- Name.
- Company name.
- Address.
- Email addresses.

Note: Participants who do not plan to attend the meeting in-person on September 12, 2016 should not register. No registration is required for participants who plan to view the meeting via webcast or listen via teleconference.

Presenter Registration and Submission of Presentations and Comments: We are interested in submitted comments or in-person presentations at the meeting concerning the issues described in the **SUPPLEMENTARY INFORMATION** section of this notice and clarified in the agenda to be published approximately 2 weeks before the meeting. The comments and presentations should not address issues not before the Panel. The deadline to register to be a presenter and to submit written presentations for the meeting is 5:00 p.m. e.d.t., Friday, September 2, 2016. Presenters may register by email by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Presentations should be sent via email to the same person's email address.

ADDRESSES: *Meeting Location and Webcast:* The meeting will be held in the Auditorium, CMS Central Office, 7500 Security Boulevard, Woodlawn, Maryland 21244–1850. Alternately, the public may either view the meeting via a webcast at *http://cms.gov/live.*

Web site and Teleconference: For teleconference dial-in information, the final meeting agenda, and additional information on the Panel, please refer to our Web site at *http://cms.gov/Regulations-and-Guidance/Guidance/FACA/AdvisoryPanelonClinicalDiagnosticLaboratoryTests.html.*

FOR FURTHER INFORMATION CONTACT: Glenn C. McGuirk, Designated Federal Official (DFO), Center for Medicare, Division of Ambulatory Services, CMS, 7500 Security Boulevard, Mail Stop C4–01–26, Baltimore, MD 21244, 410–786–5723, email *CDLTPanel@cms.hhs.gov* or *Glenn.McGuirk@cms.hhs.gov.* Press inquiries are handled through the CMS Press Office at (202) 690–6145.

SUPPLEMENTARY INFORMATION:

I. Background

The Advisory Panel on Clinical Diagnostic Laboratory Tests is authorized by section 1834A(f)(1) of the Social Security Act (the Act) (42 U.S.C. 1395m–1), as established by section 216 of the Protecting Access to Medicare Act of 2014 (PAMA) (Pub. L. 113–93, enacted April 1, 2014). The Panel is subject to the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory panels.

Section 1834A(f)(1) of the Act directs the Secretary of the Department of Health and Human Services (Secretary) to consult with an expert outside advisory panel, established by the Secretary, composed of an appropriate selection of individuals with expertise in issues related to clinical diagnostic laboratory tests. Such individuals may include molecular pathologists, clinical laboratory researchers, and individuals with expertise in laboratory science or health economics.

The Panel will provide input and recommendations to the Secretary and the Acting Administrator of the Centers for Medicare & Medicaid Services (CMS), on the following:

- The establishment of payment rates under section 1834A of the Act for new clinical diagnostic laboratory tests, including whether to use crosswalking or gapfilling processes to determine payment for a specific new test;
- The factors used in determining coverage and payment processes for new clinical diagnostic laboratory tests; and
- Other aspects of the new payment system, to be based on private payor rates, under section 1834A of the Act.

A notice announcing the establishment of the Panel and soliciting nominations for members was published in the October 27, 2014 **Federal Register** (79 FR 63919 through 63920). In the August 7, 2015 **Federal Register** (80 FR 47491), we announced membership appointments to the Panel along with the first public meeting date for the Panel, which was held on August 26, 2015. Subsequent public meetings for the Panel were held on October 19, 2015 (80 FR 59782) and July 18, 2016 (81 FR 35772). Recommendations from Panel meetings are posted on the CMS Web site listed in the **ADDRESSES** section of this notice.

The Panel charter provides that panel meetings will be held up to four times annually. The Panel consists of 15 individuals and a Chair. The Panel Chair facilitates the meeting and the Designated Federal Official (DFO) or DFO's designee must be present at all meetings.

II. Meeting Format and Agenda

This meeting is open to the public. The on-site check-in for visitors will be held from 8:30 a.m. to 9:00 a.m. on Monday, September 12, 2016. Following the opening remarks, the Panel will hear oral presentations from the public for no more than 1 hour during each of two sessions, one session in the morning and one session in the afternoon. During session one, registered persons from the public may present recommendations on payment options for routine chemistry tests that are currently paid as Automated Test Panels (ATPs) following implementation of the new payment system for clinical diagnostic laboratory tests on January 1, 2018. During session two, registered persons from the public may present recommendations on the application process for Advanced Diagnostic Laboratory Tests (ADLTs).

The agenda for the September 12, 2016, meeting will provide for discussion and comment on specified CLFS issues relevant to the final rule, CMS–1621–F entitled, "Medicare Program; Medicare Clinical Diagnostic Laboratory Tests Payment System," which are designated in the Panel's charter. Specifically, the Panel will discuss the following issues:

- Payment for routine chemistry tests that are currently paid as ATPs following implementation of the new payment system for clinical diagnostic laboratory tests on January 1, 2018.
- The application process for ADLTs.

A detailed agenda will be posted approximately 2 weeks before the meeting, on the CMS Web site listed in the **ADDRESSES** section of this notice.

III. Meeting Attendance

The Panel's meeting on September 12, 2016, is open to the public. Priority will be given to those who pre-register and attendance may be limited based on the number of registrants and the space available.

Persons wishing to attend this meeting, which is located on federal property, must register by following the instructions in the **DATES** section of this notice under "Meeting Registration." A confirmation email will be sent to the registrants shortly after completing the registration process.

IV. Security, Building, and Parking Guidelines

The following are the security, building, and parking guidelines:

- Persons attending the meeting, including presenters, must be pre-registered and on the attendance list by the prescribed date.
- Individuals who are not pre-registered in advance may not be permitted to enter the building and may be unable to attend the meeting.
- Attendees must present a government-issued photo identification to the Federal Protective Service or Guard Service personnel before entering the building. Without a current, valid photo ID, persons may not be permitted entry to the building.
- Security measures include inspection of vehicles, inside and out, at the entrance to the grounds.
- All persons entering the building must pass through a metal detector.
- All items brought into CMS including personal items, for example, laptops and cell phones are subject to physical inspection.
- The public may enter the building 30 to 45 minutes before the meeting convenes each day.
- All visitors must be escorted in areas other than the lower and first-floor levels in the Central Building.
- The main-entrance guards will issue parking permits and instructions upon arrival at the building.

V. Special Accommodations

Individuals requiring special accommodations must include the request for these services during registration.

VI. Panel Recommendations and Discussions

The Panel's recommendations will be posted after the meeting on our Web site as specified in the **ADDRESSES** section of this notice.

VIII. Copies of the Charter

The Secretary's Charter for the Advisory Panel on Clinical Diagnostic Laboratory Tests is available on the CMS Web site as specified in the **ADDRESSES** section of this notice or you may obtain a copy of the charter by submitting a request to the contact listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

IX. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Dated: August 4, 2016.

Andrew M. Slavitt,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2016–19848 Filed 8–18–16; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0370]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Export of Medical Devices; Foreign Letters of Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by September 19, 2016.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0264. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, Three White Flint North 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Export of Medical Devices; Foreign Letters of Approval—OMB Control Number 0910–0264—Extension

Section 801(e)(2) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act)

(21 U.S.C. 381(e)(2)) provides for the exportation of an unapproved device under certain circumstances if the exportation is not contrary to the public health and safety and it has the approval of the foreign country to which it is intended for export. Requesters communicate (either directly or through a business associate in the foreign country) with a representative of the foreign government to which they seek exportation, and written authorization must be obtained from the appropriate office within the foreign government approving the importation of the medical device. An alternative to obtaining written authorization from the foreign government is to accept a notarized certification from a responsible company official in the United States that the product is not in conflict with the foreign country's laws. This certification must include a statement acknowledging that the responsible company official making the certification is subject to the provisions of 18 U.S.C. 1001. This statutory provision makes it a criminal offense to knowingly and willingly make a false or fraudulent statement, or make or use a false document, in any manner within the jurisdiction of a department or Agency of the United States. The respondents to this collection of information are companies that seek to export medical devices. FDA's estimate of the reporting burden is based on the experience of FDA's medical device program personnel.

In the **Federal Register** of April 22, 2016 (81 FR 23720), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity/Section of FD&C Act	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours	Total operating and maintenance costs
Foreign letter of approval—section 801(e)(2)	38	1	38	3	114	$9,500

[1] There are no capital costs associated with this collection of information.

Dated: August 15, 2016.

Peter Lurie,

Associate Commissioner for Public Health Strategy and Analysis.

[FR Doc. 2016–19807 Filed 8–18–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0134]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Mammography Quality Standards Act Requirements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by September 19, 2016.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0309. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, Three White Flint North,10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, *PRAStaff@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Mammography Quality Standards Act Requirements—21 CFR Part 900, OMB Control Number 0910–0309—Extension

The Mammography Quality Standards Act (Pub. L. 102–539) requires the establishment of a Federal certification and inspection program for mammography facilities; regulations and standards for accreditation and certification bodies for mammography facilities; and standards for mammography equipment, personnel, and practices, including quality assurance. The intent of these regulations is to assure safe, reliable, and accurate mammography on a nationwide level. Under the regulations, as a first step in becoming certified, mammography facilities must become accredited by an FDA-approved accreditation body (AB). This requires undergoing a review of their clinical images and providing the AB with information showing that they meet the equipment, personnel, quality assurance, and quality control standards, and have a medical reporting and recordkeeping program, a medical outcomes audit program, and a consumer complaint mechanism. On the basis of this accreditation, facilities are then certified by FDA or an FDA-approved State certification agency and must prominently display their certificate. These actions are taken to ensure safe, accurate, and reliable mammography on a nationwide basis.

The following sections of Title 21 of the Code of Federal Regulations (CFR) are not included in the burden tables because they are considered usual and customary practice and were part of the standard of care prior to the implementation of the regulations. Therefore, they resulted in no additional burden: 21 CFR 900.12(c)(1) and (3) and 900.3(f)(1). Section 900.24(c) was also not included in the burden tables because if a certifying State had its approval withdrawn, FDA would take over certifying authority for the affected facilities. Because FDA already has all the certifying State's electronic records, there wouldn't be an additional reporting burden.

We have rounded numbers in the "Total Hours" column in all three burden tables. (Where the number was a portion of 1 hour, it has been rounded to 1 hour. All other "Total Hours" have been rounded to the nearest whole number.)

We do not expect any respondents for § 900.3(c) because all four ABs are approved until April 2020.

In the **Federal Register** of June 8, 2016 (81 FR 36924), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN

Activity/21 CFR Section/Form FDA No.	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours [1]	Total capital costs (in dollars)	Total operating and maintenance costs (in dollars)
Notification of intent to become an AB—900.3(b)(1)	0.33	1	0.33	1	1		
Application for approval as an AB; full [2]—900.3(b)(3)	0.33	1	0.33	320	106	10,000	
Application for approval as an AB; limited [3]—900.3(b)(3)	5	1	5	30	150		
AB renewal of approval—900.3(c)	0	1	0	15	1		
AB application deficiencies—900.3(d)(2)	0.1	1	0.1	30	3		
AB resubmission of denied applications—900.3(d)(5)	0.1	1	0.1	30	3		
Letter of intent to relinquish accreditation authority—900.3(e)	0.1	1	0.1	1	1		
Summary report describing all facility assessments—900.4(f)	330	1	330	7	2,310		77,600
AB reporting to FDA; facility [4]—900.4(h)	8,654	1	8,654	1	8,654		4,327
AB reporting to FDA; AB [5]—900.4(h)	5	1	5	10	50		
AB financial records—900.4(i)(2)	1	1	1	16	16		
Former AB new application—900.6(c)(1)	0.1	1	0.1	60	6		
Reconsideration of accreditation following appeal—900.15(d)(3)(ii)	1	1	1	2	2		
Application for alternative standard—900.18(c)	2	1	2	2	4		
Alternative standard amendment—900.18(e)	10	1	10	1	10		
Certification agency application—900.21(b)	0.33	1	0.33	320	106		208
Certification agency application deficiencies—900.21(c)(2)	0.1	1	0.1	30	3		
Certification electronic data transmission—900.22(h)	5	200	1000	0.083	83	30,000	
Changes to standards—900.22(i)	2	1	2	30	60		20
Certification agency minor deficiencies—900.24(b)	1	1	1	30	30		
Appeal of adverse action taken by FDA—900.25(a)	0.2	1	0.2	16	3		
Inspection fee exemption—Form FDA 3422	700	1	700	0.25	175		
Total					11,777	40,000	82,155

[1] Total hours have been rounded.
[2] One time burden.
[3] Refers to accreditation bodies applying to accredit specific full-field digital mammography units.
[4] Refers to the facility component of the burden for this requirement.
[5] Refers to the AB component of the burden for this requirement.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN

Activity/21 CFR Section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours [1]	Total capital costs (in dollars)	Total operating and maintenance costs (in dollars)
AB transfer of facility records—900.3(f)(1)	0.1	1	0.1	0	1		

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN—Continued

Activity/21 CFR Section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours [1]	Total capital costs (in dollars)	Total operating and maintenance costs (in dollars)
Consumer complaints system; AB—900.4(g)	5	1	5	1	5		
Documentation of interpreting physician initial requirements—900.12(a)(1)(i)(B)(*2*)	87	1	87	8	696		
Documentation of interpreting physician personnel requirements—900.12(a)(4)	8,654	4	34,616	1	34,616		
Permanent medical record—900.12(c)(4)	8,654	1	8,654	1	8,654	28,000	
Procedures for cleaning equipment—900.12(e)(13)	8,654	52	450,008	0.083	37,351		
Audit program—900.12(f)	8,654	1	8,654	16	138,464		
Consumer complaints system; facility—900.12(h)(2)	8,654	2	17,308	1	17,308		
Certification agency conflict of interest—900.22(a)	5	1	5	1	5		
Processes for suspension and revocation of certificates—900.22(d)	5	1	5	1	5		
Processes for appeals—900.22(e)	5	1	5	1	5		
Processes for additional mammography review—900.22(f)	5	1	5	1	5		
Processes for patient notifications—900.22(g)	3	1	3	1	3		30
Evaluation of certification agency—900.23	5	1	5	20	100		
Appeals—900.25(b)	5	1	5	1	5		
Total					237,223	28,000	30

[1] Total hours have been rounded.

TABLE 3—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]

Activity/21 CFR Section	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours [2]	Total operating and maintenance costs (in dollars)
Notification of facilities that AB relinquishes its accreditation—900.3(f)(2)	0.1	1	0.1	200	20	50
Clinical images; facility [3]—900.4(c), 900.11(b)(1) and (2)	2,885	1	2,885	1.44	4,154	
Clinical images; AB [4]—900.4(c)	5	1	5	416	2,080	230,773
Phantom images; facility [3]—900.4(d), 900.11(b)(1) and (2)	2,885	1	2,885	0.72	2,077	
Phantom images; AB [4]—900.4(d)	5	1	5	208	1,040	
Annual equipment evaluation and survey; facility [3]—900.4(e), 900.11(b)(1) and (2)	8,654	1	8,654	1	8,654	8,654
Annual equipment evaluation and survey; AB [4]—900.4(e)	5	1	5	1,730	8,650	
Provisional mammography facility certificate extension application—900.11(b)(3)	0	1	0	0.5	1	

TABLE 3—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]—Continued

Activity/21 CFR Section	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours [2]	Total operating and maintenance costs (in dollars)
Mammography facility certificate reinstatement application—900.11(c)	312	1	312	5	1,560	24,000,000
Lay summary of examination—900.12(c)(2)	8,654	5,085	44,055,590	0.083	3,652,464	
Lay summary of examination; patient refusal [5]—900.12(c)(2)	87	1	87	0.5	44	
Report of unresolved serious complaints—900.12(h)(4)	20	1	20	1	20	
Information regarding compromised quality; facility [3]—900.12(j)(1)	20	1	20	200	4,000	300
Information regarding compromised quality; AB [4]—900.12(j)(1)	20	1	20	320	6,400	600
Patient notification of serious risk—900.12(j)(2)	5	1	5	100	500	19,375
Reconsideration of accreditation—900.15(c)	5	1	5	2	10	
Notification of requirement to correct major deficiencies—900.24(a)	0.4	1	0.4	200	80	68
Notification of loss of approval; major deficiencies—900.24(a)(2)	0.15	1	0.15	100	15	25.50
Notification of probationary status—900.24(b)(1)	0.3	1	0.3	200	60	51
Notification of loss of approval; minor deficiencies—900.24(b)(3)	0.15	1	0.15	100	15	25.50
Total					3,691,842	24,259,921

[1] There are no capital costs associated with this collection of information.
[2] Total hours have been rounded.
[3] Refers to the facility component of the burden for this requirement.
[4] Refers to the AB component of the burden for this requirement.
[5] Refers to the situation where a patient specifically does not want to receive the lay summary of her exam.

Dated: August 15, 2016.

Peter Lurie,

Associate Commissioner for Public Health Strategy and Analysis.

[FR Doc. 2016–19808 Filed 8–18–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Service Administration

Advisory Committee on Interdisciplinary, Community-Based Linkages; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), notice is hereby given of the following meeting:

Name: Advisory Committee on Interdisciplinary, Community-Based Linkages (ACICBL)

Dates and Times: September 19, 2016

Place: Webinar/Conference Call

Status: The meeting will be open to the public.

Purpose: The ACICBL provides advice and recommendations to the Secretary of the Department of Health and Human Services (Secretary) concerning policy, program development, and other matters of significance related to interdisciplinary, community-based training grant programs authorized under sections 750—759, Title VII, Part D of the Public Health Service Act, as amended by the Affordable Care Act. The Advisory Committee focuses on the targeted program areas and/or disciplines for Area Health Education Centers, geriatrics, allied health, chiropractic, podiatric medicine, social work, graduate psychology, and rural health.

The purpose of the ACICBL meeting is to continue discussions on the ACICBL 16th report which is focused on enhancing community-based clinical training.

Agenda: The ACICBL agenda will be available 2 days prior to the meeting on the HRSA Web site at *http://www.hrsa.gov/advisorycommittees/bhpradvisory/acicbl/index.html.*

SUPPLEMENTARY INFORMATION: Requests to make oral comments or provide written comments to the ACICBL should be sent to Dr. Joan Weiss, Designated Federal Official, using the address and phone number below. Individuals who plan to participate on the conference call and webinar should notify Dr. Weiss at least 3 days prior to the meeting, using the address and phone number below. Members of the public will have the opportunity to provide comments. Interested parties should refer to the meeting subject as the HRSA Advisory Committee on Interdisciplinary, Community-Based Linkages.

- The conference call-in number is 1–800–619–2521. The passcode is: 9271697.
- The webinar link is *https://hrsa.connectsolutions.com/acicbl.*

Contact: Anyone requesting information regarding the ACICBL should contact Dr. Joan Weiss, in one of three ways: (1) Send a request to the following address: Dr. Joan Weiss, Designated Federal Official, Bureau of Health Workforce, Health Resources and Services Administration, Room 15N39, 5600 Fishers Lane, Rockville, Maryland 20857; (2) call (301) 443–0430; or (3) send an email to *jweiss@hrsa.gov.*

Jason E. Bennett,

Director, Division of the Executive Secretariat.

[FR Doc. 2016–19814 Filed 8–18–16; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Service Administration

Advisory Committee on Training in Primary Care Medicine and Dentistry; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), notice is hereby given of the following meeting:

Name: Advisory Committee on Training in Primary Care Medicine and Dentistry (ACTPCMD).

Dates and Times: September 9, 2016.

Place: Webinar/Conference Call Component.

Status: The meeting will be open to the public.

Purpose: The ACTPCMD provides advice and recommendations on a broad range of issues relating to grant programs authorized by Title VII, Part C, sections 747 and 748 of the Public Health Service Act (PHSA). During the September 9, 2016 meeting, the Committee will continue work on the ACTPCMD 14th report integrating behavioral health content into primary care medicine and oral health training program.

Agenda: The ACTPCMD agenda will be available 2 days prior to the meeting on the HRSA Web site at *http://www.hrsa.gov/advisorycommittees/bhpradvisory/actpcmd/index.html.*

SUPPLEMENTARY INFORMATION: Requests by members of the public to make oral comments or provide written comments to the ACTPCMD should be sent to Dr. Joan Weiss, Designated Federal Official, using the address and phone number below. Individuals who plan to participate on the conference call and webinar should notify Dr. Weiss at least 3 days prior to the meeting, using the address and phone number below. Interested parties should refer to the meeting subject as the HRSA Advisory Committee on Training in Primary Care Medicine and Dentistry or ACTPCMD.

- The conference call-in number is 1–800–619–2521. The passcode is 9271697.
- The webinar link is *https://hrsa.connectsolutions.com/actpcmd.*

Contact: Anyone requesting information regarding the ACTPCMD should contact Dr. Joan Weiss, Designated Federal Official within the Bureau of Health Workforce, Health Resources and Services Administration, in one of three ways: (1) Send a request to the following address: Dr. Joan Weiss, Designated Federal Official, Bureau of Health Workforce, Health Resources and Services Administration, 5600 Fishers Lane, Room 15N39, Rockville, Maryland 20857; (2) call (301) 443–0430; or (3) send an email to *jweiss@hrsa.gov.*

Jason E. Bennett,

Director, Division of the Executive Secretariat.

[FR Doc. 2016–19815 Filed 8–18–16; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the National Vaccine Advisory Committee

AGENCY: National Vaccine Program Office, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services is hereby giving notice that the National Vaccine Advisory Committee (NVAC) will hold a meeting September 20, 2016. The meeting is open to the public. However, pre-registration is required for both public attendance and public comment. Individuals who wish to attend the meeting and/or participate in the public comment session should register at *http://www.hhs.gov/nvpo/nvac/meetings/upcomingmeetings.* Participants may also register by emailing *nvpo@hhs.gov* or by calling (202) 690–5566 and providing their name, organization, and email address.

DATES: The meeting will be held on September 20, 2016. The meeting times and agenda will be posted on the NVAC Web site at *http://www.hhs.gov/nvpo/nvac/meetings/upcomingmeetings* as soon as they become available.

ADDRESSES: U.S. Department of Health and Human Services, Hubert H. Humphrey Building, the Great Hall, 200 Independence Avenue SW., Washington, DC 20201.

The meeting can also be accessed through a live webcast the day of the meeting. For more information, visit *http://www.hhs.gov/nvpo/nvac/meetings/upcomingmeetings.*

FOR FURTHER INFORMATION CONTACT: National Vaccine Program Office, U.S. Department of Health and Human Services, Room 715–H, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201. Phone: (202) 690–5566; email: *nvpo@hhs.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to Section 2101 of the Public Health Service Act (42 U.S.C. 300aa–1), the Secretary of Health and Human Services was mandated to establish the National Vaccine Program to achieve optimal prevention of human infectious diseases through immunization and to achieve optimal prevention against adverse reactions to vaccines. The NVAC was established to provide advice and make recommendations to the Director of the National Vaccine Program on matters related to the Program's responsibilities. The Assistant Secretary for Health serves as Director of the National Vaccine Program.

The September 2016 NVAC meeting will include a discussion of the 2010 National Vaccine Plan Mid-course Review. The NVAC's Mid-course Review Working Group and the Maternal Immunization Working Group will also present their findings and recommendations for deliberation and vote by the Committee. Members will also receive an update on the recently released CDC Strategic Framework for Global Immunizations. Please note that agenda items are subject to change as priorities dictate. Information on the final meeting agenda will be posted prior to the meeting on the NVAC Web site: *http://www.hhs.gov/nvpo/nvac.*

Public attendance at the meeting is limited to the available space. Individuals who plan to attend in person and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the National Vaccine Program Office at the address/phone listed above at least one week prior to the meeting. For those unable to attend in person, a live webcast will be available. More information on registration and accessing the webcast can be found at *http://www.hhs.gov/nvpo/nvac/meetings/upcomingmeetings.*

Members of the public will have the opportunity to provide comments at the NVAC meeting during the public comment periods designated on the agenda. Public comments made during the meeting will be limited to three minutes per person to ensure time is allotted for all those wishing to speak. Individuals are also welcome to submit their written comments. Written comments should not exceed three pages in length. Individuals submitting written comments should email their comments to the National Vaccine Program Office (*nvpo@hhs.gov*) at least five business days prior to the meeting.

Dated: August 4, 2016.

Bruce Gellin,

Executive Secretary, National Vaccine Advisory Committee, Deputy Assistant Secretary for Health, Director, National Vaccine Program Office.

[FR Doc. 2016–19847 Filed 8–18–16; 8:45 am]

BILLING CODE 4150–44–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors, National Human Genome Research Institute.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Human Genome Research Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Human Genome Research Institute.

Date: September 7–8, 2016.

Time: September 07, 2016, 2:00 p.m. to 9:00 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Regency Annex Room (Ballroom Level), 7400 Wisconsin Avenue, Bethesda, MD 20814.

Time: September 08, 2016, 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 10, Room B1C211 (FAES Room 1), 10 Center Drive, Bethesda, MD 20892.

Contact Person: Monica Berger, Executive Secretary, Office of the Scientific Director, National Human Genome Research Institute, 50 South Drive, Bldg. 50, Rm. 5222, Bethesda, MD 20892, 301–294–6873, *bergerm@mail.nih.gov.*

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: August 15, 2016.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–19771 Filed 8–18–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Scientific Advisory Committee on Alternative Toxicological Methods; Announcement of Meeting; Request for Comments

SUMMARY: This notice announces a meeting of the Scientific Advisory Committee on Alternative Toxicological Methods (SACATM). SACATM advises the Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM), the National Toxicology Program (NTP) Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM), and the Director of the National Institute of Environmental Health Sciences (NIEHS) and NTP regarding statutorily mandated duties of ICCVAM and activities of NICEATM. The meeting is open to the public, and registration is requested for both public attendance and oral comment and required to access the webcast. Information about the meeting and registration is available at *http://ntp.niehs.nih.gov/go/32822.*

DATES:

Meeting: September 27, 2016; it begins 8:30 a.m. Eastern Daylight Time (EDT) and continues until adjournment.

Written Public Comment Submissions: Deadline is September 13, 2016. Registration for Meeting and/or Oral Comments: Deadline is September 20, 2016.

Registration to View Webcast: Deadline is September 27, 2016. Registration to view the meeting via the webcast is required.

ADDRESSES:

Meeting Location: Rodbell Auditorium, Rall Building, NIEHS, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

Meeting Web page: The preliminary agenda, registration information, and background materials should be posted at *http://ntp.niehs.nih.gov/go/32822* by August 16, 2016.

Webcast: The meeting will be webcast; the URL will be provided to those who register for viewing.

FOR FURTHER INFORMATION CONTACT: Dr. Lori White, Designated Federal Officer for SACATM, Office of Liaison, Policy, and Review, Division of NTP, NIEHS, P.O. Box 12233, K2–03, Research Triangle Park, NC 27709. Phone: 919–541–9834, fax: 301–480–3272, email: *whiteld@niehs.nih.gov.* Hand Deliver/Courier address: 530 Davis Drive, Room K2124, Morrisville, NC 27560.

SUPPLEMENTARY INFORMATION:

Preliminary Agenda and Other Meeting Information: A preliminary agenda, roster of SACATM members, and background materials should be available by August 16, 2016, on the SACATM meeting Web site (*http://ntp.niehs.nih.gov/go/32822*) and available upon request from the Designated Federal Officer. Public comments and any additional information will be posted when available. Following the meeting, summary minutes will be prepared and available on the SACATM Web site or upon request from the Designated Federal Officer.

Meeting and Registration: This meeting is open to the public with time scheduled for oral public comments. The public may attend the meeting at NIEHS, where attendance is limited only by the space available, or view the webcast. Registration is required to view the webcast; the URL for the webcast will be provided in the email confirming registration. Individuals who plan to attend and/or provide oral comments are encouraged to register at *http://ntp.niehs.nih.gov/go/32822* by September 20, 2016, to facilitate planning for the meeting. Individuals are encouraged to access the Web site to stay abreast of the most current information regarding the meeting. Visitor and security information for those attending in person is available at *niehs.nih.gov/about/visiting/index.cfm.* Individuals with disabilities who need accommodation to participate in this event should contact Ms. Robbin Guy at phone: 919–541–4363 or email: *guyr2@niehs.nih.gov.* TTY users should contact the Federal TTY Relay Service at 800–877–8339. Requests should be made at least five business days in advance of the event.

Request for Comments: Both written and oral public input on the agenda topics is invited. Written comments submitted in response to this notice should be received by September 13, 2016. Comments will be posted on the SACATM meeting Web site and persons submitting them will be identified by

their name and affiliation and/or sponsoring organization, if applicable. Persons submitting written comments should include their name, affiliation (if applicable), and sponsoring organization (if any) with the document. Guidelines for public comments are at *http://ntp.niehs.nih.gov/ntp/about_ntp/guidelines_public_comments_508.pdf.*

Time is allotted during the meeting for the public to present oral comments on the agenda topics. Public comments can be presented in-person at the meeting or by teleconference line. There are 50 lines for this call; availability is on a first-come, first-served basis. The lines will be open from 8:30 a.m. until adjournment on September 27, although SACATM will receive public comments only during the formal public comment periods, as indicated on the preliminary agenda. Each organization is allowed one time slot per agenda topic. Each speaker is allotted at least 7 minutes, which if time permits, may be extended to 10 minutes at the discretion of the SACATM chair.

Persons wishing to present oral comments are encouraged to register using the SACATM meeting registration form (*http://ntp.niehs.nih.gov/go/32822*) by September 20, 2016. Registrants should indicate the topic(s) on which they plan to comment and whether they will present comments in-person or via the teleconference. The access number for the teleconference line for public comments will be provided to registrants by email prior to the meeting. Registrants are requested to, if possible, send a copy of their statement to *whiteld@niehs.nih.gov* by September 20, 2016, to enable review by SACATM, NICEATM, ICCVAM, and NIEHS/NTP staff prior to the meeting. Written statements can supplement and may expand the oral presentation. Registration for on-site oral comments will also be available on the meeting day, although time allowed for comments by these registrants may be limited and will be determined by the number of persons who register at the meeting. If registering on-site and reading from written text, please bring 30 copies of the statement for distribution and to supplement the record.

Background Information on ICCVAM, NICEATM, and SACATM: ICCVAM is an interagency committee composed of representatives from 16 federal regulatory and research agencies that require, use, generate, or disseminate toxicological and safety testing information. ICCVAM conducts technical evaluations of new, revised, and alternative safety testing methods with regulatory applicability and promotes the scientific validation and regulatory acceptance of toxicological and safety-testing methods that more accurately assess the safety and hazards of chemicals and products and that reduce, refine (decrease or eliminate pain and distress), or replace animal use. The ICCVAM Authorization Act of 2000 (42 U.S.C. 285*l*–3) established ICCVAM as a permanent interagency committee of the NIEHS under NICEATM.

NICEATM administers ICCVAM, provides scientific and operational support for ICCVAM-related activities, and conducts independent validation studies to assess the usefulness and limitations of new, revised, and alternative test methods and strategies. NICEATM and ICCVAM work collaboratively to evaluate new and improved test methods and strategies applicable to the needs of U.S. federal agencies. NICEATM and ICCVAM welcome the public nomination of new, revised, and alternative test methods and strategies for validation studies and technical evaluations. Additional information about ICCVAM and NICEATM can be found at *http://ntp.niehs.nih.gov/go/iccvam* and *http://ntp.niehs.nih.gov/go/niceatm.*

SACATM was established in response to the ICCVAM Authorization Act [Section 285*l*–3(d)] and is composed of scientists from the public and private sectors. SACATM advises ICCVAM, NICEATM, and the Director of the NIEHS and NTP regarding statutorily mandated duties of ICCVAM and activities of NICEATM. SACATM provides advice on priorities and activities related to the development, validation, scientific review, regulatory acceptance, implementation, and national and international harmonization of new, revised, and alternative toxicological test methods. Additional information about SACATM, including the charter, roster, and records of past meetings, can be found at *http://ntp.niehs.nih.gov/go/167.*

Dated: August 15, 2016.

John R. Bucher,

Associate Director, National Toxicology Program.

[FR Doc. 2016–19774 Filed 8–18–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2016–0724]

Commercial Fishing Safety Advisory Committee; Vacancies

AGENCY: Coast Guard, Department of Homeland Security.

ACTION: Request for applications.

SUMMARY: The Coast Guard seeks applications for membership on the Commercial Fishing Safety Advisory Committee. The Commercial Fishing Safety Advisory Committee provides advice and makes recommendations to the Coast Guard and the Department of Homeland Security on various matters relating to the safe operation of commercial fishing industry vessels. Applicants selected for service on the Commercial Fishing Safety Advisory Committee via this solicitation will not begin their respective terms until May 2017.

DATES: Completed applications should reach the Coast Guard on or before October 18, 2016.

ADDRESSES: Applicants should send a cover letter expressing interest in an appointment to the Commercial Fishing Safety Advisory Committee that identifies which membership category the applicant is applying under, along with a resume detailing the applicant's related experience for that category via one of the following methods:

- *By mail:* Commandant (CG–CVC), Attn: Fishing Vessel Safety, U.S. Coast Guard Stop 7501, 2703 Martin Luther King Jr. Ave. SE., Washington, DC 20593–7501.
- *By fax:* 202–372–8377, ATTN: Mr. Jack Kemerer.
- *By email: jack.a.kemerer@uscg.mil.*

FOR FURTHER INFORMATION CONTACT: Mr. Jack Kemerer, Alternate Designated Federal Officer, telephone at 202–372–1249, fax at 202–372–8377, or email at *jack.a.kemerer@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Commercial Fishing Safety Advisory Committee is a federal advisory committee established in accordance with the Federal Advisory Committee Act, (Title 5, U.S.C. Appendix). The Coast Guard chartered the Commercial Fishing Safety Advisory Committee to provide advice on issues related to the safety of commercial fishing industry vessels regulated under chapter 45 of title 46, United States Code, which includes uninspected fish catching vessels, fish processing vessels, and fish tender vessels. (*See 46 U.S.C. 4508.*)

The Commercial Fishing Safety Advisory Committee meets at least once a year. It may also meet for other extraordinary purposes. Its subcommittees or working groups may communicate throughout the year to prepare for meetings or develop proposals for the committee as a whole to address specific tasks.

Each member serves for a term of three years. An individual may be appointed to a term as a member more than once, but not more than two terms consecutively. All members serve at their own expense and receive no salary from the Federal Government, although travel reimbursement and per diem may be provided for called meetings.

The Coast Guard will consider applications for five (05) positions that expire or become vacant in May 2017 in the following categories:

(a) Individuals who represent the Commercial Fishing Industry (*two* positions);

(b) An individual who represents the General Public (*one* position), particularly an independent expert or consultant in maritime safety;

(c) An individual who represents education or training professionals related to fishing vessel, fish processing vessel, or fish tender vessel safety, or personnel qualifications (*one* position).

(d) An individual who represents underwriters that insure commercial fishing industry vessels (*one* position).

If you are selected as a member who represents the general public, you will be appointed and serve as a Special Government Employee as defined in section 202(a) of Title 18, U.S.C. As a candidate for appointment as a Special Government Employee, applicants are required to complete a Confidential Financial Disclosure Report (OGE Form 450). The Coast Guard may not release the reports or the information in them to the public except under an order issued by a Federal court or as otherwise provided under the Privacy Act (5 U.S.C. 552a). Only the Designated Coast Guard Ethics Official or his or her designee may release a Confidential Financial Disclosure Report. Applicants can obtain this form by going to the Web site of the Office of Government Ethics (*www.oge.gov*), or by contacting the individual listed in **FOR FURTHER INFORMATION CONTACT**. Applications for a member who represents the general public which are not accompanied by a completed OGE Form 450 will not be considered.

Registered lobbyists are not eligible to serve on federal advisory committees in an individual capacity. See "Revised Guidance on Appointment of Lobbyist to Federal Advisory Committees, Boards, and Commissions" (79 CFR 47482, August 13, 2014). The position we list for a member who represents the general public would be someone appointed in their individual capacity and would be designated as a Special Government Employee as defined in 202(a), Title 18, U.S.C. Registered lobbyists are lobbyists as defined in 2 U.S.C. 1602 who are required by 2 U.S.C 1603 to register with the Secretary of the Senate and Clerk of the House Representatives.

The Department of Homeland Security does not discriminate in selection of Committee members on the basis of race, color, religion, sex, national origin, political affiliation, sexual orientation, gender identity, marital status, disability and genetic information, age, membership in an employee organization, or any other non-merit factor. The Department of Homeland Security strives to achieve a widely diverse candidate pool for all of its recruitment actions.

If you are interested in applying to become a member of the Committee, send your cover letter and resume to Mr. Jack Kemerer, Commercial Fishing Safety Advisory Committee Alternate Designated Federal Officer, via one of the transmittal methods in the **ADDRESSES** section by the deadline in the **DATES** section. All email submittals will receive an email receipt confirmation.

Dated: August 15, 2016.

V.B. Gifford,

Captain, U.S. Coast Guard, Director of Inspections and Compliance.

[FR Doc. 2016–19805 Filed 8–18–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5916–N–13]

60-Day Notice of Proposed Information Collection: Training Evaluation Form

AGENCY: Office of the Assistance Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* October 18, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Training Evaluation Form.

OMB Approval Number: 2577–0271.

Type of Request: Revision of a currently approved collection.

Form Number: HUD 50945.

Description of the need for the information and proposed use: Executive Order 13571, "Streamlining Service Delivery and Improving Customer Service," issued on April 27, 2011, states "The public deserves competent, efficient, and responsive service from the Federal Government. Executive departments and agencies (agencies) must continuously evaluate their performance in meeting this standard and work to improve it." Executive Order 12862 "Setting Customer Service Standards," issued on September 11, 1993, requires agencies that provide significant services directly to the public to identify and survey their customers, establish service standards and track performance against those standards, and benchmark customer

service performance against the best in business.

To that end, the Office of Public and Indian Housing (PIH) will use a standardized training assessment instrument to evaluate learners' reactions to training or technical assistance programs. With the information collected, PIH will measure, evaluate, and compare the performance of its various training programs over time. The design of this form follows industry-accepted best practices, allowing additional comparisons to other training programs in business and government.

Examples of how the Training Evaluation Form is currently being used and will be used are: To inspect HUD insured and assisted properties, prospective contract inspectors are required to successfully complete HUD Uniform Physical Condition Standards (UPCS) inspection training. The training consists of a pre-requisite computer-based component followed by an instructor-led component, each of which is evaluated using the Training Evaluation Form. To become familiar with the UPCS inspection process and requirements, thereby facilitating and enhancing maintenance of properties and preparation for upcoming contract inspections, public housing agency (PHA) employees and multifamily property owners and agents (POAs) are able to take a computer-based UPCS training, which is also evaluated using the Training Evaluation Form.

PIH proposes to use the training form in the future to evaluate training offered to contract inspectors who will be conducting Uniform Physical Condition Standards-Voucher (UPCS–V) inspections of 2.2 million Section 8 Housing Choice Voucher units.

PIH also proposes to use the training form in the future for all other training offered to PIH program participants and stakeholders on major regulatory changes. These sessions may be held as technical assistance seminars, conferences, briefings, or online webinars.

Respondents (i.e., affected public): The training evaluation form will be completed by members of the public and individuals at state and local government entities who participate in a HUD training course.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Training Eval. Form	64,590	1	64,590	.033	2,123	$24.83	$52,937
Total	64,590	1	64,590	.033	2,123	24.83	52,937

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: August 11, 2016.

Merrie Nichols-Dixon,

Deputy Director for Policy, Program and Legislative Initiatives.

[FR Doc. 2016–19849 Filed 8–18–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5915–N–07]

60 Day Notice of Proposed Information Collection for Public Comment on the: ConnectHome Challenge Performance Reporting

AGENCY: Office of Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* October 18, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. *Email: OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Anna Guido at *Anna.Guido@hud.gov* or telephone 202–402–3400. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD has submitted to OMB a request for approval of the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: ConnectHome Challenge Performance Reporting.

OMB Approval Number: Pending.

Type of Request: New collection.

Description of the need for the information and proposed use: The purpose of this effort is to support communities who "take-up" the ConnectHome Challenge to close the digital divide among HUD-assisted households. The ConnectHome Challenge will call on Mayors, County Executives, Tribal Leaders, Housing Agencies and other Housing Providers, and other community leaders to agree to close the digital divide among HUD-assisted households.

In signing on to The ConnectHome Challenge, a community is committing, among other things, to: (1) Establish (possibly in collaboration with their

local knowledge institutions) baseline estimates of the percent of HUD-assisted households with in-home high-speed internet that is not reliant on a smartphone; (2) collaborate with local stakeholders to establish performance targets for increasing in-home high-speed internet adoption; (3) establish and share with HUD the local strategies for achieving in-home high-speed internet adoption targets; and (4) develop and execute an implementation plan and share progress with HUD.

Respondents (describe): HUD anticipates that 150 to 300 communities will participate in the ConnectHome Challenge. Because ''community'' will be defined differently by ConnectHome Challenge participants, HUD will attempt to promote collaboration across overlapping geographical entities (*e.g.*, participant cities falling within participant counties, participants with the same city distinguished by type of housing provider, and other possible scenarios).

Estimated Number of Respondents: 300.

Estimated Number of Responses: 2,700 [Connectivity Estimate (300 * 4) + Implementation Plan (300 * 1) + Progress Reporting and Plan Updates (300 * 4)].

Frequency of Response: Quarterly (Connectivity Estimate and Progress Reporting and Plan Updates) or Annually (Implementation Plan Development).

Average Hours per Response: 90 minutes for Connectivity Estimate, 90 minutes for Progress Reporting and Plan Updates, 6 hours for Implementation Plan Development.

Total Estimated Burdens: 5,400 hours.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Connectivity Estimate ..	300	4	1200	1.5	1800	$30.00	$54,000.00
Implementation Plan Development	300	1	300	6	1800	30.00	54,000.00
Progress Reporting and Plan Updates	300	4	1200	1.5	1800	30.00	54,000.00
Total	900	.....	.....	.....	5400	30.00	162,000.00

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: August 10, 2016.

Katherine M. O'Regan,

Assistant Secretary, Office of Policy Development and Research.

[FR Doc. 2016–19871 Filed 8–18–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5916–N–15]

60-Day Notice of Proposed Information Collection: Section 8 Management Assessment Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, PIH, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* October 18, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Arlette Mussington, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street SW., (L'Enfant Plaza, Room 2206), Washington, DC 20410; telephone 202–402–4109, (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Mussington.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Section 8 Management Assessment Program (SEMAP).

OMB Control Number: 2577–0215.

Type of Request: Revision of a currently approved collection.

Agency Form Numbers: HUD–52658.

Description of the need for the information and proposed use: On an annual basis (or every two years for small agencies) PHAs are required to submit a SEMAP certification (form HUD–52648) electronically into the Information Management System/Public and Indian Housing Information Center (IMS/PIC). There is a maximum of 15 indicators that are either verified

through PIC data or an on-site or off-site confirmatory review. HUD uses the PHA's SEMAP certification, together with other available data, to assess PHA management capabilities and deficiencies, and to assign an overall performance rating to each PHA administering a HCV program. HUD rates a PHA on each SEMAP indicator, completes a PHA SEMAP profile identifying any program management deficiencies and assigns an overall performance rating. A PHA's written report of correction of a SEMAP deficiency is used as documentation that the PHA has taken action to address identified program weaknesses. Where HUD assigns an overall performance rating of troubled, the PHA's corrective action plan is used to monitor the PHA's progress on program improvements.

Respondents (i.e. affected public): Public Housing Agencies.

Estimated Annual Reporting and Recordkeeping Burden:

Information collection	Number of respondents	Responses per respondent	Total annual responses	Hours per response	Total hours	Regulatory reference
SEMAP Certification	2,167	1	2,167	12	26,004	985.101
Corrective Action Plan	80	1	80	10	800	985.107(c)
Report on Correction of SEMAP Deficiency	542	1	542	2	1,084	985.106
Total Annual Burden					27,888	

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: August 12, 2016.

Merrie Nichols-Dixon,

Deputy Director, Office of Policy, Programs and Legislative Initiatives.

[FR Doc. 2016–19852 Filed 8–18–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5972–FA–01]

Announcement of Funding Awards; Capital Fund Emergency Safety and Security Grants; Fiscal Year 2016

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department. The public was notified of the availability of the Emergency Safety and Security funds with PIH Notice 2016–03 (Notice), which was issued March 9, 2016. Additionally, Public Housing Authorities (PHAs) were notified of funds availability via electronic mail and a posting to the HUD Web site. PHAs were funded in accordance with the terms of the Notice. This announcement contains the consolidated names and addresses of this year's award recipients under the Capital Fund Emergency Safety and Security grant program.

FOR FURTHER INFORMATION CONTACT: For questions concerning the Emergency Safety and Security awards, contact Ivan Pour, Director, Office of Capital Improvements, Office of Public Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 4130, Washington, DC 20410, telephone (202) 708–1640. Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: The Capital Fund Emergency Safety and Security program provides grants to PHAs for physical safety and security measures necessary to address crime and drug-related emergencies. More specifically, in accordance with Section 9 of the United States Housing Act of 1937 (42 U.S.C. 1437g) (1937 Act), and The Consolidated and Further Continuing Appropriations Act, 2016 (Pub. L. 114–113), (FY 2016 appropriations), Congress appropriated funding to provide assistance to "public housing agencies for emergency capital needs including safety and security measures necessary to address crime and drug-related activity as well as needs resulting from unforeseen or unpreventable emergencies and natural disasters excluding Presidentially declared disasters occurring in fiscal year [2016]."

The FY 2016 awards in this Announcement were evaluated for funding based on the criteria in the Notice. These awards are funded from the set-aside in the FY 2016 appropriations. In accordance with Section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat.1987, 42 U.S.C. 3545), the Department is publishing the names, addresses, and amounts of the 24 awards made under the set aside in Appendix A to this document.

Dated: August 14, 2016.

Lourdes Castro Ramírez,

Principal Deputy Assistant Secretary for Public and Indian Housing.

Appendix A

Capital Fund Emergency Safety and Security Program FY2016 Awards

Name/Address of applicant	Amount funded	Project description
HA City of Fort Payne, 203 13th Street NW., Fort Payne, AL 35967–3129.	$140,120	Security Cameras.
The Housing Authority of the City of Huntsville, 200 Washington Street NE., Huntsville, AL 35804.	247,367	Security Cameras, Lighting, Locks, and Security Storm Doors.
Cottonwood Housing Authority, P.O. Box 356, Cottonwood, AL 36320–0356.	65,000	Security Camera Systems, Locks, and Lighting.
HA Opp, 800 Barnes St., Opp, AL 36467–3258	250,000	Security Cameras, Lighting, Fencing and Doors.
HA Bessemer, 1515 Fairfax Ave., Bessemer, AL 35020–6648	247,250	Security Cameras and Lighting.
HA Tallassee, 904 Hickory Street, Tallassee, AL 36078–1719	250,000	Security Cameras, Fencing, and Lighting.
Housing Authority of the County of San Bernardino, 715 E. Brier Dr., San Bernardino, CA 92408–2841.	225,000	Security Cameras, Security Cameras, Fencing, and Lighting.
Housing Authority of City of East St. Louis, 700 N. 20th St., East St. Louis, IL 62205.	250,000	Security Camera System and Lighting.
The Housing Authority of the County of Hardin, P.O. Box 322, Elizabethtown, IL 62931–0322.	250,000	Security Cameras.
The Housing Authority of the City of Evansville, 402 Court St., Suite B, Evansville, IN 47708–1340.	250,000	Security Cameras, Doors, and Lighting.
The Housing Authority of the City of Elkhart, 1396 Benham Ave., Elkhart, IN 46516–3341.	250,000	Security Cameras.
The Housing Authority of Nicholasville, 601 Broadway, Nicholasville, KY 40356–1417.	192,000	Security Cameras, Fencing, Lighting, and Doors.
Housing Authority of the City of Alexandria, 2558 Loblolly Lane, Alexandria, LA 71306–1219.	178,625	Security Cameras and Lighting.
The Havre De Grace Housing Authority, 101 Stansbury Court, Havre De Grace, MD 21078–2641.	246,000	Security Cameras, Lighting, and Doors.
The Marquette Housing Commission, 316 Pine Street, Marquette, MI 49855–4250.	100,500	Security Cameras, Lighting, and Locks.
The HRA of Two Harbors, 505 1st Avenue, Two Harbors, MN 55616–1553.	55,000	Security Cameras, entry system, and lighting at the Bayview Terrace to improve security and monitoring.
The Housing Authority of the City of Forest, 518 North 4th Avenue, Forest, MS 39074–3627.	230,000	Security Cameras, Entry System, Fencing, and Lighting.
The Plainfield Housing Authority, 510 East Front Street, Plainfield, NJ 07060–1450.	250,000	Security Cameras, Doors, and Lighting.
The Town of Oyster Bay Housing Authority, 115 Central Park Road, Plainview, NY 11803–2027.	248,569	Security Cameras.
The Peekskill Housing Authority, 807 Main Street, Peekskill, NY 10566–2040.	250,000	Security Cameras, Security Alarm System, Doors, and Lighting.
The Harrisburg Housing Authority, 351 Chestnut Street, Harrisburg, PA 17101–2756.	250,000	Security Cameras and Lighting.
The Housing Authority of the County of Luzerne, 250 First Ave., Kingston, PA 18704–5808.	76,000	Security Cameras.
The Covington Housing Authority, 1701 Shoaf Street, Covington, TN 38019–3342.	250,000	Security Cameras.
Austin Housing Authority, 1124 S. IH35, Austin, TX 78704	250,000	Security Camera System, Lighting, and Fencing.

[FR Doc. 2016–19860 Filed 8–18–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5957–N–01]

User Fee Schedule for the Technical Suitability of Products Program—Revisions in the User Fees Assessed to Manufacturers of Materials and Products

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice revises the User Fee Schedule for the Technical Suitability of Products program published as a notice along with a final rule on August 9, 1984, and later revised in notices published on January 22, 1985, August 1, 1990, and May 1, 1997. This revised schedule increases fees and amends the fee schedule stated in the May 1, 1997 notice.

DATES: *Effective date:* September 19, 2016.

FOR FURTHER INFORMATION CONTACT: Pamela Beck Danner, Administrator, Office of Manufactured Housing Programs, Department of Housing and Urban Development, Room 9168, 451 7th Street SW., Washington, DC 20410; email *hsgmps@hud.gov* or telephone (202) 708–6423. (This is not a toll-free number.) Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Under the authority of Section 7(j) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(j)), which permits the Department to "establish fees and charges for inspection, project review and financing service, . . . and other beneficial rights, privileges, licenses, and services" it provides, the Department issued a final rule on August 9, 1984 (49 FR 31854), codified at 24 CFR 200.934, establishing a system of fees to be charged to manufacturers of products and materials used on structures approved for mortgages or loans insured under the National Housing Act (12 U.S.C. 1701 *et seq.*). Products and materials used in structures are approved via the Technical Suitability of Products (TSP) program under the authority of section 521 of the National Housing Act, 12 U.S.C. 1735e.

Under the rule, manufacturers that seek HUD acceptance of their materials and products under the TSP program will be charged fees for initial applications, renewals, and revisions with respect to review of documentation demonstrating technical suitability. Paragraph (c) of 24 CFR 200.934 provides, in relevant part, that the Department will "establish and amend" the fee schedule by publication of a notice in the **Federal Register**.

The Department has not amended the present fee schedule since May 1, 1997 (62 FR 23783). Income received as a

result of the present User Fee Schedule does not maintain the current minimum level of support for the ongoing TSP program and requires adjustment to maintain the integrity and effectiveness of the program. A fee increase is necessary for the following reasons: (1) To maintain partial recovery of program costs, since fees have not been adjusted for nearly 20 years; (2) to compensate the Department more adequately for the significant labor involved in processing "revisions," which require substantially more work than "renewals"; (3) to bring the Department's fees more in line with, although significantly lower than, other similarly-missioned nationally recognized technical evaluation programs (such as the International Code Council Evaluation Service); and (4) to recognize the fact that TSP renewals are for a 3-year period, which is a longer duration than provided by other nationally recognized evaluation programs.

Accordingly, notice is hereby given that the Department is revising the fee schedule published in the notice of May 1, 1997 (62 FR 23783), as set forth below. Note that the Department is discontinuing issuance of State Letters of Acceptance (SLA) and Mechanical Engineering Bulletins (MEB). This modification reflects a change in Departmental procedures which authorized the Department's State Offices to issue SLAs; MEBs, which covers separate utility cores or nonstandard mechanical systems, *i.e.* modular utility cores, kitchens and baths, are no longer issued by HUD under the TSP program. This notice also clarifies that the revision and basic renewal fees apply to Structural Engineering Bulletins (SEBs) and Materials Releases (MRs).

The complete fee schedule, as revised, is as follows:

(i) Initial Applications

Structural Engineering Bulletins (SEBs)—$6,000.

Materials Releases (MRs)—$6,000.

Use of Materials Bulletins—Administrator Review for Acceptance (ARAs)—$4,400.

(ii) Revisions

Structural Engineering Bulletins (SEBs)—$3,000.

Materials Releases (MRs)—$3,000.

(iii) Basic Renewal Fee Without Revision

The following fee schedule, as revised, will be assessed every three years for renewal without change:

Structural Engineering Bulletins (SEBs)—$1,200.

Materials Releases (MRs)—$1,200.

Authority: Sections 7 (d) and (j), Department of Housing and Urban Development Act, 42 U.S.C. 3535 (d) and (j), and 24 CFR 200.934(c).

Dated: August 11, 2016.

Janet M. Golrick,

Associate General Deputy Assistant Secretary for Housing.

[FR Doc. 2016–19868 Filed 8–18–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5907–N–34]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone (202) 402–3970; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), call the toll-free Title V information line at 800–927–7588 or send an email to *title5@hud.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: August 11, 2016.

Brian P. Fitzmaurice,

Director, Division of Community Assistance, Office of Special Needs Assistance Programs.

[FR Doc. 2016–19516 Filed 8–18–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5916–N–14]

60-Day Notice of Proposed Information Collection: Family Report, MTW Family Report

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, PIH, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* October 18, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Arlette Mussington, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street SW., (L'Enfant Plaza, Room 2206), Washington, DC 20410; telephone 202–402–4109, (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Mussington.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Family Report, MTW Family Report.

OMB Approval Number: 2577–0083.

Type of Request: Extension of currently approved collection.

Form Number: Form HUD 50058 Family Report, and HUD 50058 MTW Family Report.

Description of the need for the information and proposed use: The Office of Public and Indian Housing of the Department of Housing and Urban Development (HUD) provides funding to Public Housing Agencies (PHAs) to administer assisted housing programs. Form HUD–50058 MTW Family Reports solicit demographic, family profile, income and housing information on the entire nationwide population of tenants residing in assisted housing. The information collected through the Form HUD–50058 MTW will be used to monitor and evaluate the Office of Public and Indian Housing, Moving to Work (MTW) Demonstration program which includes Public Housing, Section 8 Housing Choice Voucher, Section 8 Project Based Certificates and Vouchers, Section 8 Moderate Rehabilitation and Moving to Work (MTW) Demonstration programs.

Tenant data is collected to understand demographic, family profile, income, and housing information for participants in the Public Housing, Section 8 Housing Choice Voucher, Section 8 Project Based Certificate, Section 8 Moderate Rehabilitation, and Moving to Work Demonstration programs. This data also allows HUD to monitor the performance of programs and the performance of public housing agencies that administer the programs.

Reason for PRA

- MTW Agencies are providing housing assistance through a wide variety of interesting and creative programs that fall outside of sections 8 and 9 need to be able to report households served through these programs into PIC.[1]
- The Moving to Work (MTW) PIC Module is currently unable to capture all of the households served through MTW activities because the HUD 50058 MTW Form in PIC does not have a code for reporting Local, Non-Traditional assisted families in the PIC system.
- Agencies have not been reporting these families into PIC and this makes it difficult to accurately account for the number of MTW families being served.

Background

- The MTW statute (1996 Appropriations Act, Section 204) states that an agency may combine its funding as provided under Sections 8 and 9 to provide housing assistance and services for low-income families. At the outset of the demonstration, a number of MTW agencies used this flexibility to design activities that went outside the bounds of the eligible activities of Sections 8 and 9 of the 1937 Act. Though the Standard MTW Agreement did not contain this flexibility, HUD committed to MTW agencies during negotiations that any provision permitted under an agency's original MTW agreement that was legal could be retained under the Standard Agreement.
- On October 1, 2009, the U.S. Department of Housing and Urban Development issued a letter to MTW agencies regarding the availability of the broader uses of funds authority, under the Moving to Work (MTW) program. The letter provided a brief description of the required steps that must be completed in order for agencies to access this additional MTW authorization.

Revision to HUD 50058 MTW—PIC System Change

- Create a Local, Non-Traditional Assistance "LN" program code categorization in Section 1.C Form 50058–MTW to track households that are provided assistance through local, non-traditional MTW programs in addition to public housing, tenant-based and project-based assistance.
- Add Local, Non-Traditional Assistance to the heading of Section 21 of Form 50058–MTW to allow detailed reporting on this type of assistance.

Respondents (i.e. affected public): Public Housing Agencies, State and local governments, individuals and households.

Estimated Number of Respondents: 4,149.

Information collection	Number of respondents (PHA) (with responses)	* Average number of responses per respondent (with responses)	Total annual responses	Minutes per response	Total hours	Regulatory reference (24 CFR) * See attached
Form HUD–50058 New Admission	4,114	87	355,984	40	237,323	
Form HUD–50058 Recertification	4,114	583	2,398,340	20	799,447	
Form HUD–50058 MTW New Admission.	35	529	13,515	40	3,010	
Form HUD–50058 Recertification MTW	35	4018	140,630	20	46,876	
Total	4,149		2,874,934		1,081,685	

** Average Number of Responses per Respondents = Total Annual Responses/Number of Respondents.*

Estimated annualized hourly cost to respondents (PHA); Form HUD–50058: To report using Form HUD–50058 Family Report, it will cost the average PHA $1,051 annually to enter and submit all data for New Admission and $3,483 annually for Recertification.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

[1] PIH Notice 2011–45 (HA), issued August 15, 2011, clarifies HUD policies, Federal statutes and regulations that apply to local, non-traditional activities implemented under the Moving to Work (MTW) demonstration program.

Dated: August 12, 2016.

Merrie Nichols-Dixon,

Deputy Director, Office of Policy, Programs and Legislative Initiatives.

[FR Doc. 2016–19850 Filed 8–18–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5921–N–12]

Implementation of the Privacy Act of 1974, as Amended; Amended System of Records Notice, Asset Disposition and Management System (ADAMS)

AGENCY: Office of Housing, HUD.

ACTION: Amended system of records notice.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974 (5 U.S.C. 552a (e)(4)), as amended, the Department's Office of Housing propose to amend and reissue a current system of records notice (SORN): Asset Disposition and Management System (ADAMS). The notice amendment includes administrative updates to refine details published under the categories of individuals covered, categories of records, authority for maintenance, storage, safeguards, retention and disposal, system manager and address, notification procedures, records access, contesting records procedures, and records source categories. These sections are amended to refine previously published information about the system of records. The existing scope, objectives, and business processes in place for the program remain unchanged. The amended SORN deletes and supersedes the ADAMS SORN published in the **Federal Register** on February 26, 2014 at 79 FR 10829–10830. The updated notice will be included in the Department's inventory of SORNs.

DATES: *Effective Date:* This notice action shall be effective immediately, which will become effective September 19, 2016.

[*Comments Due Date*]: September 19, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW., Room 10276, Washington, DC 20410. Communications should refer to the above docket number and title. Faxed comments are not accepted. A copy of each communication submitted will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Helen Goff Foster, Chief Privacy Officer/Senior Agency Official for Privacy, 451 Seventh Street SW., Room 10139, Washington, DC 20410, telephone number 202–402–6838 (this is not a toll-free number). Individuals who are hearing- and speech-impaired may access this number via TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION: This notice updates and refines previously published information pertaining to ADAMs in a clear and easy to read format. The amended notice conveys administrative updates to the notice's categories of individuals covered, categories of records, routine uses, storage, safeguards, retention and disposal, system manager and address, notification procedures, records access and contesting procedures, and records source captions. The Privacy Act places on Federal agencies principal responsibility for compliance with its provisions, by requiring Federal agencies to safeguard an individual's records against an invasion of personal privacy; protect the records contained in an agency system of records from unauthorized disclosure; ensure that the records collected are relevant, necessary, current, and collected only for their intended use; and adequately safeguard the records to prevent misuse of such information. This notice demonstrates the Department's focus on industry best practices and laws that protect interest such as personal privacy and law enforcement records from inappropriate release. This notice states the name and location of the record system, the authority for and manner of its operations, the categories of individuals that it covers, the type of records that it contains, the sources of the information for the records, the routine uses made of the records, and the types of exemptions in place for the records. The notice also includes the business address of the HUD officials who will inform interested persons of how they may gain access to and/or request amendments to records pertaining to themselves.

The amended notice does not meet threshold requirements set forth by Privacy Act, 5 U.S.C. 552a(r). Therefore, a report was not submitted to the Office of Management and Budget (OMB), the Senate Committee on Homeland Security and Governmental Affairs, and the House Committee on Oversight and Government Reform.

Authority: 5 U.S.C. 552a; 88 Stat. 1896; 42 U.S.C. 3535(d).

Dated: August 12, 2016.

Helen Goff Foster,

Chief Privacy Officer/Senior Agency Official for Privacy.

System of Records No.:

HSNG.SF/HUF.01.

SYSTEM NAME:

Asset Disposition and Management System (ADAMS)—P260.

SYSTEM LOCATION:

The physical system is hosted at the contractor's primary and disaster recovery sites: Yardi Systems, Inc., 430 South Fairview Avenue, Santa Barbara, CA 93117, Sunguard, 1001 E. Campbell Road, Richardson, TX 75081, and CenturyLink, 200 N. Nash Street, El Segundo, CA 90245. The above locations host the Department's design and development, testing and production, and disaster recovery instances for ADAMS. ADAMS is accessible at workstations located at the following locations: Department of Housing and Urban Development Headquarters, 451 Seventh Street SW., Washington, DC 20410, and at HUD field and regional office locations: [1] HUD Atlanta Homeownership Center, Five Points Plaza, 40 Marietta Street, Atlanta, GA 30303, HUD Philadelphia Homeownership Center, The Wanamaker Building, 100 Penn Square East, Philadelphia, PA 19107, HUD Denver Homeownership Center, Processing and Underwriting, 20th floor, 1670 Broadway, Denver, CO 80202, HUD Santa Ana Homeownership Center, Santa Ana Federal Building, 34 Civic Center Plaza, Room 7015, Santa Ana, CA 92701.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by ADAMS are: (1) Homebuyers (mortgagors) of REO properties, (2) successful bidders (purchasers) of HUD Real Estate Owned (REO) properties, (3) HUD Single Family Property Disposition Program Management and Marketing (M&M) contractors. Successful bidders are referred to as purchasers on the form HUD–2548, Sales Contract Property Disposition Program, and include the following groups: (1) FHA-approved real estate brokers, (2) Investors, (3) Registered, eligible non-profit organizations, (4) Public housing agencies, and (5) Other government agencies (State and local). The M&M

[1] *http://portal.hud.gov/hudportal/documents/huddoc?id=append2.pdf.*

contractor group include: (1) Mortgagee Compliance Managers (MCM), (2) Field Service Managers (FSM), and (3) Asset Managers (AM).

CATEGORIES OF RECORD IN THE SYSTEM:

Categories of records in the system include:

(1) Homebuyers Information: Name, address, Social Security number (SSN), and race/ethnicity characteristics. This information is also gathered by non-profit and government submissions.

(2) Successful Bidders Information: Business name and address, Employer Identification Number (EIN), Tax Identification Number (TIN), or SSN, broker's phone number, SAMS name and address identification number (NAID), FHA case number, property address, date purchaser(s) signed sales contract (Form HUD–9548), date sales contract accepted by HUD, purchase price; purchaser type, appraisal information, tax payments, sales offer information, HUD–1, contract information, vendor information, and financial transactions.

(3) Additional Nonprofit and Government (state and local) Information: Internal Revenue Service (IRS) letters for determination of nonprofit status, articles of Organization, mortgage notes, W–9, SAMS–1111, property report documentation (Median Income certification).

(4) Management and Marketing (M&M) Contractors Information: Business name and address; EIN, TIN, or SSN; phone number; SAMS NAID; FHA case number; property address; date purchaser(s) signed sales contract (Form HUD–9548); date sales contract accepted by HUD; purchase price; purchaser type; mortgage notes, W–9, SAMS–1111, property report documentation (Median Income certification) and limited information about the homebuyers: Name, address, SSN, and race/ethnicity characteristics.

In addition, ADAMS contains files on property appraisals, tax payments, purchase sales offer information, HUD–1, purchase contract information, vendor information, and property preservation and protection invoice information, FHA property listings, and property agent contact information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Housing Act as amended (12 U.S.C. 1702 *et seq.*), Title 24 Code of Federal Regulations Part 200.194, Placement of Nonprofit Organization on Nonprofit Organization Roster, The Housing and Community Development Act of 1987, 42 U.S.C. 3543, National Housing Act, Section 235(b), Public Law 479, 48 Stat. 12 U.S.C. 1701 *et seq.*, Section 165 (a) of the Housing and Community Development Act of 1987, Public Law 100–242, Section 904 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, Public Law 100–628.

PURPOSE:

ADAMS is a case management system for HUD owned and HUD managed single-family properties under HUD's Property Disposition and REO Discount Sales Programs. ADAMS was introduced into production in 2010. ADAMS supports HUD Headquarters and Homeownership Center (HOC) staff and HUD's Management and Marketing (M&M) contractors to track single-family properties from their acquisition by HUD through the steps necessary to resell the properties. In addition, M&M contractors manage the HUD Property Disposition Sales Program and the REO Discount Sales Programs (Good Neighbor Next Door (GNND), Asset Control Area (ACA) Sales, and $1 Homes). ADAMS is used to:

- Obtain, store, and display case-level information about properties acquired by or in custody of HUD.
- Track events and information describing the status of real property from the date of conveyance to the Department through several stages of management, marketing, and disposition, to final reconciliation of sale proceeds.
- Retain data relative to contracts, contractors, and vendors that support the property disposition program.
- Calculate property management, marketing, and incentive fees earned by M&M contractors, closing agents, and special property inspection (SPI) contractors, and generate disbursement transmittals.
- Calculate M&M contractor payment incentives and disincentives.
- Generate disbursement transmittals for payment of other property-related expenses such as pass-through expenses and property taxes.
- Verify eligibility to participate in the REO program.
- Validate that no conflicts of interest exist among non-profit/other government agencies' board members, employees, business partners, and homebuyers.
- Validate that discounted HUD–REO homes were sold to eligible buyers.
- Determine that participating agencies have not exceeded profit limits on the re-sale of HUD–REO homes purchased through the discount program.
- Support Good Neighbor Next Door Sales Programs (GNND) compliance control tasks for pre-sales/pre-registration, sales/pre-closing, and post-closing.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. Section 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside HUD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. To appropriate agencies, entities, and persons to the extent such disclosures are compatible with the purpose for which the records in this system were collected, as set forth by Appendix I [2]—HUD's Routine Uses Inventory published in the **Federal Register**.

2. To General Accounting Office (GAO) for audit purposes.

3. To Management and Marketing contractors for processing the sale of HUD Homes.

4. To Federal Bureau of Investigation (FBI) to investigate possible fraud revealed in the course of servicing efforts to allow HUD to protect the interest of the Secretary.

5. To Appropriate agencies, entities, and persons when:

a. HUD suspects or has confirmed that the security or confidentiality of information in a system of records has been compromised;

b. HUD has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of systems or programs (whether maintained by HUD or another agency or entity) that rely upon the compromised information;

c. HUD determines that the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with HUD's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm for purposes of facilitating responses and remediation efforts in the event of a data breach.

6. To the National Archives and Records Administration (NARA) or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2904 and 2906.

7. To a congressional office from the record of an individual in response to an inquiry from that congressional office

[2] *http://portal.hud.gov/hudportal/documents/huddoc?id=routine_use_inventory.pdf.*

made at the request of the individual to whom the record pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically in secure facilities. Electronic files are stored in case files on secure servers. Electronic files are replicated at a disaster recovery offsite location in case of loss of computing capability or other emergency at the primary facility. ADAMS does not have paper records.

RETRIEVABILITY:

Records are retrieved using computer search by the FHA case number, property address (including other geographical characteristics such as contract area, property state/city/county/zip code, Homeownership Center), or contractor ID or name, or non-profit/government agency name.

SAFEGUARDS:

Records are maintained in a secured computer network. Access is limited to authorized personnel. ADAMS access requires two levels of logins to access the system. The first login uses HUD Siteminder system to verify that the user has active HUD authorization. The second login uses ADAMS internal security system to set permissions for data access and system functionality.

RETENTION AND DISPOSAL:

In accordance with General Records Schedule 1.1, Financial Management and Reporting Records, Items 010 and 011, the records are maintained for six years or when business use ceases. Paper records are not in use. Backup and Recovery digital media will be destroyed or otherwise rendered irrecoverable per NIST SP 800–88 "Guidelines for Media Sanitization" (September 2006).

SYSTEM OWNER AND ADDRESS:

Ivery Himes, Director, Office of Single Family Asset Management, Room 9178, 451 Seventh Street SW., Washington, DC 20410.

NOTIFICATION AND RECORD ACCESS PROCEDURES:

For information, assistance, or inquiry about the existence of records, contact Helen Goff Foster, Chief Privacy Officer/Senior Agency Official for Privacy, 451 Seventh Street SW., Room 10139, Washington, DC 20410, telephone number (202) 402–6838. When seeking records about yourself from this system of records or any other HUD system of records, your request must conform with the Privacy Act regulations set forth in 24 CFR part 16. You must first verify your identity, meaning that you must provide your full name, current address, and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. In addition, your request should:

a. Explain why you believe HUD would have information on you.

b. Identify which Office of HUD you believe has the records about you.

c. Specify when you believe the records would have been created.

d. Provide any other information that will help the FOIA staff determine which HUD office may have responsive records.

If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying their agreement for you to access their records. Without the above information, the HUD FOIA Office may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting contents of records and appealing initial denials appear in 24 CFR part 16, Procedures for Inquiries. Additional assistance may be obtained by contacting Helen Goff Foster, Chief Privacy Officer/Senior Agency Official for Privacy, 451 Seventh Street SW., Room 10139, Washington, DC 20410, or the HUD Departmental Privacy Appeals Officers, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

RECORD SOURCE CATEGORIES:

Purchasers, Non-profit and State, local Government entities, M&M contractors, and HUD employees, HUD Form 9548.

EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 2016–19870 Filed 8–18–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX16GG009950000]

Announcement of National Earthquake Prediction Evaluation Council

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 106–503, the National Earthquake Prediction Evaluation Council (NEPEC) will hold its next meeting by phone. The Committee is comprised of members from academia and the Federal government. The Committee provides advice and recommendations to the Director of the USGS on earthquake predictions and related scientific research.

In this brief meeting by phone, the Council will receive updates on the status of pertinent activities of the Earthquake Hazards Program, and will deliver its recommendations on the testing of earthquake prediction hypotheses.

DATES: The meeting will be held from 12 Noon to 2:00 p.m. EDT on September 1, 2016.

FOR FURTHER INFORMATION CONTACT: Dr. Michael Blanpied, U.S. Geological Survey, MS 905, 12201 Sunrise Valley Drive, Reston, Virginia 20192, (703) 648–6696, *mblanpied@usgs.gov.*

SUPPLEMENTARY INFORMATION: Meetings of the National Earthquake Prediction Evaluation Council are open to the public. Those wishing to attend may contact Dr. Blanpied for further information. Those wishing to provide a brief statement to the Council may do so with prior arrangement.

William Leith,

Senior Science Advisor for Earthquake and Geologic Hazards.

[FR Doc. 2016–19804 Filed 8–18–16; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAZ910000.L17110000.XP0000 16X 6100.241A]

State of Arizona Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management

Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM), Arizona Resource Advisory Council (RAC) will meet in Phoenix, Arizona, as indicated below.

DATES: The Arizona RAC business meeting will take place on September 15, 2016 from 8:30 a.m. until 4:30 p.m. The RAC working group meeting will take place on September 14, 2016 from 8:30 a.m. until 4:15 p.m. Both meetings are open to the public.

ADDRESSES: The meeting will be held at the BLM Arizona State Office located at One North Central Avenue, Suite 800, Phoenix, Arizona 85004.

FOR FURTHER INFORMATION CONTACT: Adam Eggers, Arizona RAC Coordinator at the Bureau of Land Management, Arizona State Office, One North Central Avenue, Suite 800, Phoenix, Arizona 85004–4427, 602–417–9500. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in Arizona. Planned agenda items include a welcome and introduction of Council members; BLM State Director's update on BLM programs and issues; commercial recreation leases outreach update; fire and aviation update; BLM "Balance Point: Managing the health, diversity, and productivity of America's public lands for the use and enjoyment of present and future generations" presentation; RAC committee reports; RAC questions on BLM District Manager reports and other items of interest to the RAC. Members of the public are welcome to attend the RAC meetings. A public comment period is scheduled for September 15 from 2:30–3:00 p.m. for any interested members of the public who wish to address the Council on BLM programs and business. Depending on the number of persons wishing to speak and time available, the time for individual comments may be limited. Written comments may also be submitted during the meeting for the RAC's consideration. The final meeting agenda will be available two weeks prior to the meeting and posted on the BLM Web site at: *http://www.blm.gov/az/st/en/res/rac.html.* Additionally, directions to the meeting site and parking information may be found on the BLM Web site at: *http://www.blm.gov/az/st/en/res/pub_room/location.html.* Individuals who need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the RAC Coordinator listed above no later than two weeks before the start of the meeting.

Under the Federal Lands Recreation Enhancement Act, the RAC has been designated as the Recreation RAC and has the authority to review all BLM and Forest Service recreation fee proposals in Arizona. The Recreation RAC will review the Paria Canyon Business Plan at this meeting.

Raymond Suazo,

Arizona State Director.

[FR Doc. 2016–19818 Filed 8–18–16; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2016–0047; MMAA104000]

Outer Continental Shelf (OCS), Gulf of Mexico (GOM), Oil and Gas Lease Sales for 2018

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Notice of intent to prepare a Supplemental Environmental Impact Statement.

SUMMARY: Consistent with the regulations implementing the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*), BOEM is announcing its intent to prepare a Supplemental Environmental Impact Statement (EIS) for proposed GOM Lease Sales 250 and 251 (2018 GOM Lease Sales 250 and 251 Supplemental EIS) as scheduled in the 2017–2022 OCS Oil and Gas Leasing Proposed Program (2017–2022 Proposed Program). This Notice of Intent (NOI) serves to announce the EIS scoping process for the 2018 GOM Lease Sales 250 and 251 Supplemental EIS. The 2018 GOM Lease Sales 250 and 251 Supplemental EIS will tier from the 2017–2022 GOM Multisale EIS.

Section 18 of the OCS Lands Act (43 U.S.C. 1344) requires the development of an OCS oil and gas leasing program every five years. The Program sets forth a schedule of lease sales designed to best meet the Nation's energy needs. The lease sales proposed in the GOM in the 2017–2022 Proposed Program are areawide sales encompassing both the Western and Central Planning Areas, and a portion of the Eastern Planning Area not subject to Congressional moratorium. These planning areas are located off the States of Texas, Louisiana, Mississippi, Alabama, and Florida. By proposing lease sales that offer all available GOM acreage, BOEM seeks to provide more opportunity for industry to bid on rejected, relinquished, or expired OCS lease blocks and facilitate better planning to explore resources that straddle the U.S./Mexico boundary. During the pre-lease sale process, the size of any individual lease sale could be reduced, and a smaller area offered for leasing, should circumstances warrant. For example, an individual lease sale could be focused on a single GOM Planning Area as in the 2012–2017 OCS Oil and Gas Leasing Program.

SUPPLEMENTARY INFORMATION: Regulations implementing NEPA encourage agencies to analyze similar or related proposals in one EIS (40 CFR 1508.25). Since both lease sales would be held in 2018 and the ensuing OCS activities are similar, BOEM will prepare a single Supplemental EIS for two lease sales proposed to be held in the GOM in 2018 (Lease Sales 250 and 251). The 2018 GOM Lease Sales 250 and 251 Supplemental EIS will tier from the 2017–2022 GOM Multisale EIS and focus on new information released since the publication of the 2017–2022 GOM Multisale EIS. This EIS approach allows for subsequent NEPA analyses to focus on changes in the proposed lease sales and on new issues and information. Analyzing two proposed lease sales within one Supplemental EIS will eliminate the repetition of annual Supplemental EISs for each proposed lease sale. The resource estimates and scenario information for the Supplemental EIS will include a range that encompasses the resources and activities estimated for either or both of the proposed lease sales. At the completion of this Supplemental EIS process, a decision will be made for Lease Sale 250. Thereafter, a separate decision will be made for Lease Sale 251. No final decision will be made on any individual lease sale until the end of the Supplemental EIS process to allow for full consultation with Federal agencies, affected states, and the public.

The 2018 GOM Lease Sales 250 and 251 Supplemental EIS analysis will focus on the potential environmental effects from oil and natural gas leasing, exploration, development, and

production on all available acreage in the GOM, including the Western and Central Planning Areas, and the portion of the Eastern Planning Area not subject to Congressional moratorium. In addition to the no action alternative (*i.e.,* cancel the lease sale), other alternatives will be considered for each proposed lease sale, such as offering individual or multiple planning areas for lease or deferring certain areas from the proposed lease sales in addition to those alternatives considered in the 2017–2022 OCS Oil and Gas Leasing Proposed Program.

Scoping Process: This NOI serves to announce the scoping process for identifying issues and potential alternatives for consideration in the 2018 GOM Lease Sales 250 and 251 Supplemental EIS. Throughout the scoping process, Federal agencies, state, tribal, and local governments, and the general public have the opportunity to help BOEM determine significant resources and issues, impact-producing factors, reasonable alternatives, and potential mitigating measures to be analyzed in the Supplemental EIS and to provide additional information. BOEM will also use the NEPA commenting process to initiate the section 106 consultation process under the National Historic Preservation Act (54 U.S.C. 300101 *et seq.*), as provided in 36 CFR 800.2(d)(3).

Pursuant to the regulations implementing the provisions of NEPA (42 U.S.C. 4321 *et seq.*), BOEM will hold public scoping meetings for the 2018 GOM Lease Sales 250 and 251 Supplemental EIS. BOEM's scoping meetings will be held at the following places and times:

- Gulfport, Mississippi: Tuesday, September 6, 2016, Courtyard by Marriott, Gulfport Beachfront MS Hotel, 1600 East Beach Boulevard, Gulfport, Mississippi 39501; one meeting, beginning at 4:00 p.m. CDT and ending at 7:00 p.m. CDT;
- Mobile, Alabama: Wednesday, September 7, 2016, Renaissance Mobile Riverview Plaza Hotel, 64 South Water Street, Mobile, Alabama 36602; one meeting, beginning at 4:00 p.m. CDT and ending at 7:00 p.m. CDT;
- Houston, Texas: Tuesday, September 13, 2016, Houston Marriott North, 255 North Sam Houston Pkwy East, Houston, Texas 77060; one meeting, beginning at 4:00 p.m. CDT and ending at 7:00 p.m. CDT; and
- New Orleans, Louisiana: Thursday, September 15, 2016, Wyndham Garden New Orleans Airport, 6401 Veterans Memorial Blvd., Metairie, Louisiana 70003; one meeting, beginning at 4:00 p.m. CDT and ending at 7:00 p.m. CDT.

Cooperating Agencies: BOEM invites other Federal agencies, and state, tribal, and local governments to consider becoming cooperating agencies in the preparation of the 2018 GOM Lease Sales 250 and 251 Supplemental EIS. BOEM invites qualified government entities to inquire about cooperating agency status for this Supplemental EIS. Following the guidelines from the Council on Environmental Quality (CEQ), qualified agencies and governments are those with "jurisdiction by law or special expertise." Potential cooperating agencies should consider their authority and capacity to assume the responsibilities of a cooperating agency and should remember that an agency's role in the environmental analysis neither enlarges nor diminishes the final decisionmaking authority of any other agency involved in the NEPA process. Upon request, BOEM will provide potential cooperating agencies with a written summary of expectations for cooperating agencies, including time schedules and critical action dates, milestones, responsibilities, scope and detail of cooperating agencies' contributions, and availability of predecisional information. BOEM anticipates this summary will form the basis for a Memorandum of Agreement between BOEM and any cooperating agency. Agencies should also consider the "Factors for Determining Cooperating Agency Status" in Attachment 1 to CEQ's January 30, 2002, Memorandum for the Heads of Federal Agencies: *Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act.* This document is available on the Internet at: *http://energy.gov/sites/prod/files/nepapub/nepa_documents/RedDont/G-CEQ-CoopAgenciesImplem.pdf.*

BOEM, as the lead agency, will not provide financial assistance to cooperating agencies. Even if an organization is not a cooperating agency, opportunities will exist to provide information and comments to BOEM during the normal public input stages of the NEPA process.

Comments: Federal agencies, tribal, state, and local governments, and other interested parties are requested to comment on the scope of the 2018 GOM Lease Sales 250 and 251 Supplemental EIS, significant issues that should be addressed, and alternatives that should be considered. Comments can be submitted in any of the following ways:

1. In written form enclosed in an envelope labeled "Comments on the 2018 GOM Lease Sales 250 and 251 Supplemental EIS" and mailed (or hand carried) to Mr. Gary D. Goeke, Chief, Environmental Assessment Section, Office of Environment (GM 623E), BOEM, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394; or

2. Through the regulations.gov web portal: Navigate to *http://www.regulations.gov* and search for Docket No. BOEM–2016–0047. Click on the "Comment Now!" button to the right of the document link. Enter your information and comment, then click "Submit."

BOEM does not consider anonymous comments. Please include your name and address as part of your submittal. BOEM makes all comments, including the names and addresses of respondents, available for public review during regular business hours. Individual respondents may request that BOEM withhold their names and/or addresses from the public record; however, BOEM cannot guarantee that it will be able to do so. If you wish your name and/or address to be withheld, you must state your preference prominently at the beginning of your comment. All submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses will be made available for public inspection in their entirety.

DATES: Comments should be submitted no later than September 19, 2016.

FOR FURTHER INFORMATION CONTACT: For information on the 2018 GOM Lease Sales 250 and 251 Supplemental EIS, the submission of comments, or BOEM's policies associated with this notice, please contact Mr. Gary D. Goeke, Chief, Environmental Assessment Section, Office of Environment (GM 623E), BOEM, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, telephone 504–736–3233.

Authority: This NOI is published pursuant to the regulations (40 CFR 1501.7) implementing the provisions of NEPA.

Dated: August 12, 2016.

Abigail Ross Hopper,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2016–19861 Filed 8–18–16; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1330 (Preliminary)]

Dioctyl Terephthalate (DOTP) From Korea; Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission ("Commission") determines, pursuant to the Tariff Act of 1930 ("the Act"), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of dioctyl terephthalate ("DOTP") from Korea, provided for in subheading 2917.39.20 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value ("LTFV").[2]

Commencement of Final Phase Investigation

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigation. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce ("Commerce") of an affirmative preliminary determination in the investigation under section 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in that investigation under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigation need not enter a separate appearance for the final phase of the investigation. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Background

On June 30, 2016, Eastman Chemical Company, Kingsport, Tennessee filed a petition with the Commission and Commerce, alleging that an industry in the United States is materially injured by reason of LTFV imports of DOTP from Korea. Accordingly, effective June 30, 2016, the Commission, pursuant to section 733(a) of the Act (19 U.S.C. 1673b(a)), instituted antidumping duty investigation No. 731–TA–1330 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of July 7, 2016 (81 FR 44329). The conference was held in Washington, DC, on July 21, 2016, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission made this determination pursuant to section 733(a) of the Act (19 U.S.C. 1673b(a)). It completed and filed its determination in this investigation on August 15, 2016. The views of the Commission are contained in USITC Publication 4630 (August 2016), entitled *Dioctyl Terephthalate (DOTP) from Korea: Investigation No. 731–TA–1330 (Preliminary).*

By order of the Commission.

Issued: August 16, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–19817 Filed 8–18–16; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner F. Scott Kieff dissenting.

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–563 and 731–TA–1331–1333 (Preliminary)]

Finished Carbon Steel Flanges From India, Italy, and Spain; Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission ("Commission") determines, pursuant to the Tariff Act of 1930 ("the Act"), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of finished carbon steel flanges from India, Italy, and Spain provided for in subheading 7307.91.50 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value ("LTFV") and that are alleged to be subsidized by the government of India.

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce ("Commerce") of affirmative preliminary determinations in the investigations under sections 703(b) or 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under sections 705(a) or 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On June 30, 2016, Weldbend Corporation, Argo, Illinois and Boltex Mfg. Co., L.P., Houston, Texas filed petitions with the Commission and Commerce, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of finished carbon steel flanges from India, Italy, and Spain and subsidized imports of finished carbon steel flanges from India. Accordingly, effective June 30, 2016, the Commission, pursuant to sections 703(a) and 733(a) of the Act (19 U.S.C. 1671b(a) and 1673b(a)), instituted countervailing duty investigation No. 701–TA–563 and antidumping duty investigation Nos. 731–TA–1331–1333 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of July 7, 2016 (81 FR 44328). The conference was held in

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

Washington, DC, on July 21, 2016, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission made these determinations pursuant to sections 703(a) and 733(a) of the Act (19 U.S.C. 1671b(a) and 1673b(a)). It completed and filed its determinations in these investigations on August 15, 2016. The views of the Commission are contained in USITC Publication 4631 (August 2016), entitled *Finished Carbon Steel Flanges from India, Italy, and Spain: Investigation Nos. 701–TA–563 and 731–TA–1331–1333 (Preliminary).*

By order of the Commission.

Issued: August 16, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–19816 Filed 8–18–16; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Krill Oil Products and Krill Meal for Production of Krill Oil Products, DN 3167;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under § 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *http://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server at United States International Trade Commission (USITC) at *http://edis.usitc.gov.* The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Aker BioMarine Antarctic AS and Aker BioMarine Manufacturing, LLC on August 12, 2016. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain krill oil products and krill meal for production of krill oil products. The complaint names as respondents Olympic Holding AS of Norway; Rimfrost AS of Norway; Emerald Fisheries AS of Norway; Avoca Inc. of Merry Hill, NC; Rimfrost USA, LLC of Merry Hill, NC; Rimfrost New Zealand Limited of New Zealand; and Bioriginal Food & Science Corp. of Canada. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to § 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number ("Docket No. 3167") in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures [1]). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices,

[1] Handbook for Electronic Filing Procedures: *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf.*

and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: August 12, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–19683 Filed 8–18–16; 8:45 am]

BILLING CODE 7020–02–P

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *http://edis.usitc.gov.*

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; High-Voltage Continuous Mining Machines Standards for Underground Coal Mines

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Mine Safety and Health Administration (MSHA) sponsored information collection request (ICR) titled, "High-Voltage Continuous Mining Machines Standards for Underground Coal Mines," to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.* Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before September 19, 2016.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201603-1219-001* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–MSHA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the High-Voltage Continuous Mining Machines Standards for Underground Coal Mines information collection requirements codified in regulations 30 CFR 75.829, 75.813, and 75.832. This information collection supports safe use of high-voltage continuous mining machines (HVCMM) in underground coal mines by requiring records of testing, examination and maintenance on machines to reduce fire, electrical shock, ignition, and operational hazards. Coal mine supervisors and employees, State mine inspectors, and Federal mine inspectors use the records required by the regulations to document whether mine operators have conducted examinations and tests and have given insight into hazardous conditions encountered or that may be encountered. The records of inspections greatly assist those who use them in making decisions that will ultimately affect the safety of miners working with HVCMM. Federal Mine Safety and Health Act of 1977 sections 101(a) and 103(h) authorize this information collection. *See* 30 U.S.C. 811(a), 813(h).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1219–0140.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on September 30, 2016. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on April 29, 2016 (81 FR 25719).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1219–0140. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: DOL–MSHA.

Title of Collection: High-Voltage Continuous Mining Machines Standards for Underground Coal Mines.

OMB Control Number: 1219–0140.

Affected Public: Private Sector—businesses or other for-profits.

Total Estimated Number of Respondents: 2.

Total Estimated Number of Responses: 4,810.

Total Estimated Annual Time Burden: 148 hours.

Total Estimated Annual Other Costs Burden: $0.

Dated: August 15, 2016.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2016–19794 Filed 8–18–16; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Operations Under Water

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Mine Safety and Health Administration (MSHA) sponsored information collection request (ICR) titled, "Operations Under Water," to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.* Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before September 19, 2016.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201604-1219-001* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–MSHA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Operations Under Water information collection requirements. Regulations 30 CFR 7516.1 and 7516.3 require a coal mine operator to obtain a permit to mine under a body of water that is sufficiently large enough to constitute a hazard to miners and outline the procedural requirements for obtaining the permit. Federal Mine Safety and Health Act of 1977 section 101(a) and section 103(h) authorize this information collection. *See* 30 U.S.C. 811(a) and 813(h).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1219–0020.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on October 31, 2016. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on May 20, 2016 (81 FR 31966).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1219–0020. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–MSHA.

Title of Collection: Operations Under Water.

OMB Control Number: 1219–0020.

Affected Public: Private Sector—business or other for-profits.

Total Estimated Number of Respondents: 91.

Total Estimated Number of Responses: 91.

Total Estimated Annual Time Burden: 501 hours.

Total Estimated Annual Other Costs Burden: $1,360.

Dated: August 15, 2016.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2016–19833 Filed 8–18–16; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection, Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden,

conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the "National Longitudinal Survey of Youth 1997." A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the Addresses section below on or before October 18, 2016.

ADDRESSES: Send comments to Nora Kincaid, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue NE., Washington, DC 20212. Written comments also may be transmitted by fax to 202–691–5111 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Nora Kincaid, BLS Clearance Officer, 202–691–7628 (this is not a toll free number). (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The National Longitudinal Survey of Youth 1997 (NLSY97) is a nationally representative sample of persons who were born in the years 1980 to 1984. These respondents were ages 12–17 when the first round of annual interviews began in 1997; starting with round sixteen, the NLSY97 is conducted on a biennial basis. Round eighteen interviews will occur from September 2017 to May 2018. The Bureau of Labor Statistics (BLS) contracts with a vendor to conduct the NLSY97. The primary objective of the survey is to study the transition from schooling to the establishment of careers and families. The longitudinal focus of this survey requires information to be collected from the same individuals over many years in order to trace their education, training, work experience, fertility, income, and program participation.

One of the goals of the Department of Labor (DOL) is to produce and disseminate timely, accurate, and relevant information about the U.S. labor force. The BLS contributes to this goal by gathering information about the labor force and labor market and disseminating it to policymakers and the public so that participants in those markets can make more informed, and thus more efficient, choices. Research based on the NLSY97 contributes to the formation of national policy in the areas of education, training, work experience, fertility, income, and program participation. In addition to the reports that the BLS produces based on data from the NLSY97, members of the academic community publish articles and reports based on NLSY97 data for the DOL and other funding agencies. To date, approximately 497 articles examining NLSY97 data have been published in scholarly journals. The survey design provides data gathered from the same respondents over time to form the only dataset that contains this type of information for this important population group. Without the collection of these data, an accurate longitudinal dataset could not be provided to researchers and policymakers, thus adversely affecting the DOL's ability to perform its policy- and report-making activities.

II. Current Action

The BLS seeks approval to conduct round 18 of biennial interviews of the NLSY97. Respondents of the NLSY97 will undergo an interview of approximately 72 minutes during which they will answer questions about schooling and labor market experiences, family relationships, and community background.

During the fielding period for the main round 18 interviews, about 2 percent of respondents will be asked to participate in a brief validation interview a few weeks after the initial interview. The purpose of the validation interview is to verify that the initial interview took place as the interviewer reported and to assess the data quality of selected questionnaire items.

For round 18, we propose to convert the NLSY97 to a predominantly telephone survey. We anticipate that approximately 75 percent of interviews will be completed by telephone.

The round 18 questionnaire will resemble the round 17 questionnaire with few modifications. New questions for the round 18 questionnaire include questions on job tasks. In addition, extensive minor edits have been made to adapt the round 18 instrument for predominantly telephone administration, including the removal of references to show cards, introductory statements, reduction of self-administered content, and shortening of code frames.

As in prior rounds of the NLSY97, round 18 will include a pretest conducted several months before the main fielding to test survey procedures and questions and resolve problems before the main fielding begins. Because of the transition to phone interviewing, the pretest for round 18 precedes main fielding by a longer period of time (an additional 2 months) to correct any problems encountered in the pretest.

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Type of Review: Revision of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: National Longitudinal Survey of Youth 1997.

OMB Number: 1220–0157.

Affected Public: Individuals or households.

Form	Total respondents	Frequency	Total responses	Average time per response (minutes)	Estimated total burden (hours)
NLSY97 Pretest April/May 2017	150	One-time	150	72	180

Form	Total respondents	Frequency	Total responses	Average time per response (minutes)	Estimated total burden (hours)
Main NLSY97: September 2017–May 2018	6,980	One-time	6,980	72	8,376
Validation interview: October 2017–June 2018	139	One-time	139	4	9
Totals *	7,130		7,269		8,565

* The difference between the total number of respondents and the total number of responses reflects the fact that about 6,980 are expected to complete the main interview. In addition, about 139 respondents will be interviewed twice, once in the main survey and a second time in the 4-minute validation interview.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 15th day of August 2016.

Kimberley D. Hill,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 2016–19834 Filed 8–18–16; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and Title 30 of the Code of Federal Regulations Part 44 govern the application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification submitted to the Mine Safety and Health Administration (MSHA) by the parties listed below.

DATES: All comments on the petitions must be received by MSHA's Office of Standards, Regulations, and Variances on or before September 19, 2016.

ADDRESSES: You may submit your comments, identified by "docket number" on the subject line, by any of the following methods:

1. *Electronic Mail: zzMSHA-comments@dol.gov.* Include the docket number of the petition in the subject line of the message.
2. *Facsimile:* 202–693–9441.
3. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452; Attention: Sheila McConnell, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk in Suite 4E401. Individuals may inspect copies of the petitions and comments during normal business hours at the address listed above.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments.

FOR FURTHER INFORMATION CONTACT: Barbara Barron, Office of Standards, Regulations, and Variances at 202–693–9447 (Voice), *barron.barbara@dol.gov* (Email), or 202–693–9441 (Facsimile). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or
2. That the application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modification.

II. Petitions for Modification

Docket Number: M–2016–002–M.

Petitioner: United Salt Hockley, LLC, 14002 Warren Ranch Road, Hockley, Texas 77447.

Mine: Hockley Mine, MSHA I.D. No. 41–02478, located in Marshall Harris County, Texas.

Regulation Affected: 30 CFR 57.4131 (Surface fan installations and mine openings).

Modification Request: The petitioner requests that the previously granted petition for modification, Docket Number M–81–41–M be amended for the Hockley Mine, to meet the modern needs of the mine and to clarify the meaning and intent of the modifications. The petitioner states that:

(1) The purpose for amending the previously granted petition, docket number M–81–41–M, is to clarify any confusion relating to the location of fire sensors and the equipment used to alert miners to a fire. A strategic location for a fire sensor may change as the mine continues to expand, therefore the petitioner suggests that the consultant review the system and sensor locations every five years and make suggestions for any updates subject to MSHA's review and approval.

(a) Paragraph 1 of the previously granted petition reads as follows:

—Fire detection systems shall be installed with sensors at strategic locations throughout the mill building. An alarm indicating the fire location shall be provided in the main shaft hoist house and in the vicinity of the bottom of the first floor stairway to the upper floors. An alarm indicating a mill building fire shall be located in the mine office. The final locations shall be approved by MSHA as an integral part of the mine's emergency procedures.

(b) The petitioner proposes to amend Paragraph 1 to read as follows:

—A fire detection system will be installed with sensors at strategic locations throughout the mill building. An annunciator to indicate, at a minimum, the mill building fire location will be provided in the mine office, the main shaft hoist house, and in the vicinity of the bottom of the first floor stairway to the upper floors. Beginning in 2016, a fire protection consultant will be hired every five years to review the fire detection system. MSHA will review and approve any consultant suggestions, and modification or additions will be

made an integral part of the mine's emergency procedures.

(2) The purpose of this amendment to the previously granted petition is to clarify the duties of miners once a fire has been detected. This language ensures that certain duties will be performed by trained miners regardless of the working shift or time of day.

(a) Paragraph 2 of the previously granted petition reads as follows:

—The emergency procedures shall stipulate that all booster and auxiliary fans below ground shall be stopped coincidently with the initiation of a surface fire alarm and attendant stoppage of a main mine fan.

(b) The petitioner proposes to amend Paragraph 2 to read as follows:

—The Mine Emergency Plan will designate a responsible person for a mining position per shift, and the responsibilities specified will become part of the job duties of any miner assigned to each relevant mining position during their shift. The Mine Emergency Plan will define the responsible person for all shifts and each miner responsible for such a mining position will receive training in their duties as a responsible person in the event of a fire on the surface or in the shaft. In the event of a fire on the surface or in the shaft, a responsible person on the surface will immediately start the escape shaft fan and will stay in attendance at the fan to assure continued operation. Another responsible person will be responsible for stopping all surface fans and for cutting off the electric power to the underground mine. In the event of a mine fire underground, the main mine power and main mine fan controls will be guarded by a responsible person to ensure there are no status changes unless directed by management to make a status change. The power and mine fan may be off or on depending on work activities, thus the status change would affect conditions in the mine that could endanger the miners. This will ensure that no power or ventilation changes that may affect the miner's safety are made before mine management is able to evaluate the benefits and disadvantages of such changes. The electrical power and fan control locations will be included in the Mine Emergency Plan.

The petitioner further states that MSHA investigators conducted a meeting at the mine site, reviewed the petitioner's proposed amendments to ensure that the proposed alternative method is in compliance with the standard and will at all times guarantee no less than the same measure of protection afforded by the standard.

Docket Number: M–2016–003–M.

Petitioner: United Salt Hockley, LLC, 14002 Warren Ranch Road, Hockley, Texas 77447.

Mine: Hockley Mine, MSHA I.D. No. 41–02478, located in Harris County, Texas.

Regulation Affected: 30 CFR 57.4560 (Mine entrances).

Modification Request: The petitioner requests that the previously granted petition for modification, Docket Number M–81–42–M be amended for the Hockley Mine, to meet the modern needs of the mine and to clarify the meaning and intent of the modifications. The petitioner states that:

(1) The purpose for amending the previously granted petition, docket number M–81–42–M, is to clarify any confusion relating to the location of fire sensors and the equipment used to alert miners to a fire. A strategic location for a fire sensor may change as the mine continues to expand, therefore the petitioner suggests that the consultant review the system and sensor locations every five years and make suggestions for any updates subject to MSHA's review and approval.

(a) Paragraph 1 of the previously granted petition reads as follows:

—Fire detection systems shall be installed with sensors at strategic locations throughout the mill building. An alarm indicating the fire location shall be provided in the main shaft hoist house and in the vicinity of the bottom of the first floor stairway to the upper floors. An alarm indicating a mill building fire shall be located in the mine office. The final locations shall be approved by MSHA as an integral part of the mine's emergency procedures.

(b) The petitioner proposes to amend Paragraph 1 to read as follows:

—A fire detection system will be installed with sensors at strategic locations throughout the mill building. An annunciator to indicate, at a minimum, the mill building fire location will be provided in the mine office, the main shaft hoist house, and in the vicinity of the bottom of the first floor stairway to the upper floors. Beginning in 2016, a fire protection consultant will be hired every five years to review the fire detection system. MSHA will review and approve any consultant suggestions and modification or additions will be made an integral part of the mine's emergency procedures.

(2) The purpose of this amendment to the previously granted petition is to clarify the duties of miners once a fire has been detected. This language ensures that certain duties will be performed by trained miners regardless of the working shift or time of day.

(a) Paragraph 2 of the previously granted petition reads as follows:

—The emergency procedures shall stipulate that all booster and auxiliary fans below ground shall be stopped coincidently with the initiation of a surface fire alarm and attendant stoppage of a main mine fan.

(b) The petitioner proposes to amend Paragraph 2 to read as follows:

—The Mine Emergency Plan will designate a responsible person for a mining position per shift, and the responsibilities specified will become part of the job duties of any miner assigned to each relevant mining position during their shift. The Mine Emergency Plan will define the responsible person for all shifts and each miner responsible for such a mining position will receive training in their duties as a responsible person in the event of a fire on the surface or in the shaft. In the event of a fire on the surface or in the shaft, a responsible person on the surface will immediately start the escape shaft fan and will stay in attendance at the fan to assure continued operation. Another responsible person will be responsible for stopping all surface fans and for cutting off the electric power to the underground mine. In the event of a mine fire underground, the main mine power and main mine fan controls will be guarded by a responsible person to ensure there are no status changes unless directed by management to make a status change. The power and mine fan may be off or on depending on work activities, thus the status change would affect conditions in the mine that could endanger the miners. This will ensure that no power or ventilation changes that may affect the miner's safety are made before mine management is able to evaluate the benefits and disadvantage of such changes. The electrical power and fan control locations will be included in the Mine Emergency Plan.

The petitioner further states that MSHA investigators conducted a meeting at the mine site, reviewed the petitioner's proposed amendments to ensure that the proposed alternative method is in compliance with the standard and will at all times guarantee no less than the same measure of protection afforded by the standard.

Docket Number: M–2016–004–M.

Petitioner: United Salt Hockley, LLC, 14002 Warren Ranch Road, Hockley, Texas 77447.

Mine: Hockley Mine, MSHA I.D. No. 41–02478, located in Harris County, Texas.

Regulation Affected: 30 CFR 57.4533 (Mine opening vicinity).

Modification Request: The petitioner requests that the previously granted petition for modification, Docket Number M–81–43–M be amended for the Hockley Mine, to meet the modern needs of the mine and to clarify the meaning and intent of the modifications. The petitioner states that:

(1) The purpose for amending the previously granted petition, docket number M–81–43–M, is to clarify any confusion relating to the location of fire sensors and the equipment used to alert miners to a fire. A strategic location for a fire sensor may change as the mine continues to expand, therefore the petitioner suggests that the consultant review the system and sensor locations every five years and make suggestions for any updates subject to MSHA's review and approval.

(a) Paragraph 1 of the previously granted petition reads as follows:

—Fire detection systems shall be installed with sensors at strategic locations throughout the mill building. An alarm indicating the fire location shall be provided in the main shaft hoist house and in the vicinity of the bottom of the first floor stairway to the upper floors. An alarm indicating a mill building fire shall be located in the mine office. The final locations shall be approved by MSHA as an integral part of the mine's emergency procedures.

(b) The petitioner proposes to amend Paragraph 1 to read as follows:

—A fire detection system will be installed with sensors at strategic locations throughout the mill building. An annunciator indicating at a minimum the fire location, will be provided in the mill building, the mine office, the main shaft hoist house, and in the vicinity of the bottom of the first floor stairway to the upper floors. Beginning in 2016, a fire protection consultant will be hired every five years to review the fire detection system. MSHA will review and approve any consultant suggestions, and modification or additions will be made an integral part of the mine's emergency procedures.

(2) The purpose of this amendment to the previously granted petition is to clarify the duties of miners once a fire has been detected. This language ensures that certain duties will be performed by trained miners regardless of the working shift or time of day.

(a) Paragraph 2 of the previously granted petition reads as follows:

—The emergency procedures shall stipulate that all booster and auxiliary fans below ground shall be stopped coincidently with the initiation of a surface fire alarm and attendant stoppage of a main mine fan.

(b) The petitioner proposes to amend Paragraph 2 to read as follows:

—The Mine Emergency Plan will designate a responsible person for a mining position per shift, and the responsibilities specified will become part of the job duties of any miner assigned to each relevant mining position during their shift. The Mine Emergency Plan will define the responsible person for all shifts and each miner responsible for such a mining position will receive training in their duties as a responsible person in the event of a fire on the surface or in the shaft. In the event of a fire on the surface or in the shaft, a responsible person on the surface will immediately start the escape shaft fan and will stay in attendance at the fan to assure continued operation. Another responsible person will be responsible for stopping all surface fans and for cutting off the electric power to the underground mine. In event of a mine fire underground, the main mine power and main mine fan controls will be guarded by a responsible person to ensure there are not status changes unless directed by management to make a status change. The power and mine fan may be off or on depending on work activities, thus the status change would affect conditions in the mine that could endanger the miners. This will ensure that no power or ventilation changes that may affect the miner's safety are made before mine management is able to evaluate the benefits and disadvantage of such changes. The electrical power and fan control locations will be included in the Mine Emergency Plan.

The petitioner further states that MSHA investigators conducted a meeting at the mine site, reviewed the petitioner's proposed amendments to ensure that the proposed alternative method is in compliance with the standard and will at all times guarantee no less than the same measure of protection afforded by the standard.

Docket Number: M–2016–005–M.

Petitioner: United Salt Hockley, LLC, 14002 Warren Ranch Road, Hockley, Texas 77447.

Mine: Hockley Mine, MSHA I.D. No. 41–02478, located in Harris County, Texas.

Regulation Affected: 30 CFR 57.4760 (Shaft mines).

Modification Request: The petitioner requests that the previously granted petition for modification, Docket Number M–86–1–M be amended for the Hockley Mine, to meet the modern needs of the mine and to clarify the meaning and intent of the modifications. The petitioner states that:

(1) The purpose for amending the previously granted petition, docket number M–86–1–M, is to clarify what steps miners will follow in the event there is a loss of power underground. The amendment proposes an additional measure where a responsible person will be designated during each shift based on the mining position's job duties who will communicate via radio.

(a) Paragraph 4 of the previously granted petition reads as follows:

—An audible alarm switch shall be located within two (2) intersections from any active mining face or bench face. The alarm switches shall be identified by an electric light and activation of the switches shall energize the mine-wide audible alarms. The sounding of the alarm shall cause the Mine Emergency Plan to be followed immediately.

(b) The petitioner proposes to amend Paragraph 4 to read as follows:

—An audible alarm switch will be located within two (2) intersections from any active mining face or bench face. The alarm switches will be identified by an electric light and activation of the switches will energize the mine-wide audible alarms. In the event power is lost in the mine or shut-off in response to an emergency situation, miners will immediately begin following the Mine Emergency Plan to evacuate to the refuge chamber, and be alerted via radio communication of an emergency. The sounding of the alarm or any loss of power will cause the Mine Emergency Plan of evacuation to the refuge chamber to be implemented. A responsible person, preferably the lead man on each shift, will be designated in the Mine Emergency Plan to notify the miners via radio communication of an emergency and to instruct all miners to evacuate to the refuge chamber immediately.

(2) The purpose of this amendment to the previously granted petition is to allow the evacuation plan to meet the needs of the current mine as old and new corridors are continuously being

closed off and created respectively as salt is actively mined.

(a) Paragraph 5 of the previously granted petition reads as follows:

—The intersections immediately to the west of the refuge chamber (from 11S entry to 8W entry) will be maintained to provide access to the refuge area from the mining areas on the south side of the mine.

(b) The petitioner proposes to amend Paragraph 5 to read as follows:

— Safe travel ways and escape ways will be marked on the mine map and included in the mine escape and evacuation plan. The travel and escape ways will be updated as necessary to indicate changes as mining areas change. On hour Self-Contained Self-Rescuers (SCSR) will be stored in strategic locations which will be detailed in the Mine Emergency Plan and Mine Map. Miners will be trained on proper use of the SCSR's as required in Part 48.

(3) The purpose of this amendment to the previously granted petition is to clarify the miner responsible for certain emergency response activities by assigning these tasks to a mining position. This will ensure that a miner trained for these duties is on-site at all times when the mine is in operation.

(a) Paragraph 6 of the previously granted petition reads as follows:

—In the event of a fire alarm on the surface, in the shaft, or in the underground mine, a designated person on the surface shall immediately start the borehole fan and stay in attendance at that fan to assure its continued operation. Another designated person shall be responsible for stopping all surface fans and for cutting off the electric power to the underground mine. The electrical power and fan control locations and operational assignments shall be included in the escape and evacuation plan for the mine.

(b) The petitioner proposes to amend Paragraph 6 to read as follows:

—The Mine Emergency Plan will designate a responsible person for a mining position per shift, and the responsibilities specified will become part of the job duties of any miner assigned to each relevant mining position during their shift. The Mine Emergency Plan will define the responsible person for all shifts and each miner responsible for such a mining position will receive training in their duties as a responsible person in the event of a fire on the surface, in the shaft, or in the underground mine. In the event of a fire alarm on the surface or in the shaft, a responsible person on the surface will immediately start the escape shaft fan and will stay in attendance at the fan to assure continued operation. Another responsible person will stop the surface mine fan and cut off the electric power to the underground mine. In the event of a mine fire underground, the main mine power and main mine fan controls will be guarded by a designated miner to ensure there are no status changes unless directed by management to make a status change. The power and mine fan may be off or on depending on work activities, so the status change would affect conditions in the mine that could endanger the miners. This will ensure that no power or ventilation changes that may affect the miner's safety are made before mine management is able to evaluate the benefits and disadvantage of such changes. The electrical power and fan control locations and operational assignments will be included in the escape and evacuation plan for the mine.

(4) The purpose of the amendment to the previously granted petition is to establish communication protocol in the event of a loss of power.

(a) Paragraph 7 of the previously granted petition reads as follows:

—An emergency alarm siren network will be maintained as the primary warning system of an emergency or fire for personnel in the underground mine.

(b) The petitioner proposes to amend Paragraph 7 to read as follows:

—An emergency alarm siren network will be maintained as the primary warning system of an emergency or fire for personnel in the underground mine. Radio communication may be used in the event of power loss or intentional power shutdown. Any additional forms of communication and/or warning systems installed in the mine will be included in the Mine Emergency Plan and all miners will receive up-to-date training.

(5) The purpose for adding this amendment to the previously granted petition is to further reinforce the fire resistance of the mine fan duct.

(a) The petitioner proposes to add Paragraph 8 to the amended petition to read as follows:

—The mine fan duct from the mine fan to the shaft collar will be constructed of non-flammable or fire resistant material by December 31, 2016.

The petitioner further states that MSHA investigators conducted a meeting at the mine site, reviewed the petitioner's proposed amendments to ensure that the proposed alternative method is in compliance with the standard and will at all times guarantee no less than the same measure of protection afforded by the standard.

Docket Number: M–2016–024–C.

Petitioner: Signal Peak Energy, LLC, 100 Portal Drive, Roundup, Montana 59072.

Mine: Bull Mountain Mine #1, MSHA I.D. No. 24–01950, located in Musselshell County, Montana.

Regulation Affected: 30 CFR 75.312(c) (Main mine fan examinations and records).

Modification Request: The petitioner requests a modification of the existing standard to permit fan tests to be performed without shutting the fan down and without removing miners from the mine. The Petitioner states that:

(1) Stopping the fan for testing introduces contaminants into the mine atmosphere from the worked out area behind the longwall tailgate. In addition, any delay of a fan restart beyond 15 minutes after shutdown for testing could result in a lengthy restart of the mine operating systems. The petitioner's alternative method will result in the fan alarm signal being verified by a responsible person at a surface location where the responsible person is always on duty whenever anyone is underground. A report of all tests will be recorded.

(2) A valve would be installed in the system monitoring the water gauge of the fan pressure monitoring system. The water gauge installed at the mine is actually a Magnehelic gauge with electronic pickups, which are integrated into the atmospheric monitoring system (AMS). When the valve is closed, the AMS will detect zero fan pressure and activate the alarm.

(3) When the fan stoppage signal system is tested, an audible fan signal alarm sounds at the location where a responsible person is on duty, verifying the performance of the fan alarm signal system. The responsible person is provided with two-way communication to working sections and work stations.

(4) Every 5 to 7 months, each automatic fan signal device and signal alarm will be tested by stopping the fan to ensure that the automatic signal device causes the alarm to activate when the fan shuts down.

(5) The petitioner will notify the District Manager (DM) when the fan is equipped with the fan alarm signal system. This permits MSHA to make an inspection prior to testing the alarm in accordance with the Proposed Decision

and Order (PDO). If required by the DM, the test procedure will be demonstrated and the fan will be shut down during MSHA's inspection to verify that the automatic fan signal activates an alarm at the location of the responsible person.

(6) Until the fan is equipped in compliance with the PDO, the miners must be removed from the mine for the testing of any fan not yet equipped as required.

(7) By the end of the shift on which the test of the automatic fan signal devices is completed, the person(s) performing the test(s) will record the result of test(s) in a secure book. The record book will be retained at a surface location at the mine for at least one year and will be made available for inspection by an authorized representative of the Secretary and the representative of miners. The recordings will also indicate the general repair of the system.

(8) Within 60 days of this petition being granted, the petitioner will submit proposed revisions for its approved part 48 training plan to the DM. The revisions will include initial and refresher training regarding compliance with the PDO.

(9) Persons who are to perform the tests must be specifically trained on the proper method of testing upon initial assignment to these responsibilities and annually thereafter.

The petitioner asserts that the proposed alternative method will at all times guarantee no less the same measure of protection afforded by the standard.

Docket Number: M–2016–025–C.

Petitioner: Ohio County Coal Company, 1107 Golden Ridge Road, Dallas, West Virginia 26036.

Mine: Ohio County Mine, MSHA I.D. No. 46–01436, located in Marshall County, West Virginia.

Regulation Affected: 30 CFR 77.1914(a) (Electrical equipment).

Modification Request: The petitioner requests a modification of the existing standard to permit the use of 480-volt, three-phase, alternating current submersible pumps to dewater completed ventilation shafts prior to being put into service. The petitioner states that:

(1) The three-phase, 480-volt alternating current electric power circuit for the pump will be designed and installed to:

(a) Contain either a direct or derived neutral wire that will be grounded through a suitable resistor at the source transformer or power center and through a grounding circuit originating at the ground side of the grounding resistor, which will extend along with the power conductor and serve as the grounding conductor for the frame of the pump and all associated electric equipment that may be supplied power from this circuit.

(b) Contain a grounding resistor that limits the ground–fault current to not more than 25 amperes.

(c) The grounding resistor(s) will be rated for the maximum fault current available and will be insulated from ground for a voltage equal to the phase-to-phase voltage of the system.

(2) The 480-volt pump circuit will have a suitable circuit interrupting device of adequate interrupting capacity, with devices to protect against under-voltage, grounded phase, short-circuit, and overload.

(3) The under-voltage protection device will operate on a loss-of-voltage to prevent automatic restarting of the equipment.

(4) The grounded phase protection device will be provided as follows:

(a) The grounded phase protection device will be set not to exceed 40 percent of the current rating of the neutral grounding resistor.

(b) The 480-volt circuit will also have an undercurrent relay device to prevent closing the breaker when a phase to ground fault condition exists on the system, and a test circuit that will inject a test current through the grounded phase current transformer.

(5) The short-circuit protection device will be set not to exceed the required short-circuit protection for the power cable or 75 percent of the minimum available phase-to-phase short-circuit current, whichever is less.

(6) The circuit will include a disconnecting device located on the surface and installed in conjunction with the circuit breaker to provide a means for visual evidence that the power is disconnected from the pump circuits, and a means to lock and tag-out the system.

(7) The pump power system will include a fail-safe ground check circuit, or other no less effective device approved by MSHA that will cause the circuit breaker to open when either the ground or pilot wire is broken. A manually operated test switch will be provided to verify the operation ground check device. The device will be installed and maintained operable to monitor the ground continuity from the starter box to the pump.

(8) The pump(s) electric control circuit(s) will be designed and installed so that the pump(s) cannot start and/or run in the automatic mode if the water is below the low-water probe level. The low-water probe will be positioned to maintain at least 12 inches above the inlet of the pump and electrical connections of the pump motor. The low-water probe will be suitable for submersible pump control application. All probe circuits will be intrinsically safe. A motor controller will be provided and used for pump startup and shutdown.

(9) The pump installation will be equipped with a water level indicator at the pump circuit controls such that a miner can determine the water level is above the pump inlet and electrical connectors.

(10) The surface pump(s) control and power circuits will be examined as required by 30 CFR 77.502, as follows:

(a) A record of the examinations will be kept in accordance with 30 CFR 77.502 and 77.502–2.

(b) The examinations will include a functional test of the grounded phase protective device(s) to determine proper operation.

(c) A record of the functional tests will be recorded in an electrical equipment record book.

(d) Prior to placing the pump into service an electrical examination will be performed.

(e) Methane checks will be made at the collar of the borehole prior to energizing the pump. The pump will not be energized if 1.0 percent or greater of methane is detected.

(11) The power cable to the submersible pump motor will be suitable for this application and have a current carrying capacity not less than 125 percent of the full load current of the submersible pump motor and an outer jacket suitable for a "wet location".

(12) Splices and connections made in submersible pump cable will be made in a workmanlike manner and will meet the requirements of 30 CFR 75.604. The pump installations will comply with all other applicable 30 CFR requirements.

(13) The District Manager (DM) will be notified prior to dewatering any shaft using a nonpermissible submersible pump, and the required shaft plan will include this notification.

(14) Within 60 days after this petition for modification is granted, the petitioner will submit proposed revisions for their approved part 48 training plan to the DM. The proposed revisions will specify task training for all qualified electricians who perform electric work and monthly electric examinations as required by 30 CFR 77.502 and refresher training regarding the alternative method outlined in the petition and the terms and conditions stated in the Proposed Decision and

Order. The training will include the following elements:

(a) The hazards that could exist if the water level falls below the pump inlet or the electric connections of the pump motor.

(b) The safe restart procedures, which will include the miner determining that the water level is above the pump inlet and pump motor prior to attempting to establish power and start the pump motor.

(15) The procedures of 30 CFR 48.3 for approval of proposed revisions to already approved training plans will apply.

The petitioner further states that:

1. Upon completion of excavation/construction of a shaft, the shaft begins to accumulate water and personnel are never required to go below the collar of the shaft for dewatering purposes.

2. In case there is a blind drilled shaft, the shaft is fully lined with steel casing and is grouted in place. This steel casing and grout seal isolates the completed blind drilled shaft from any coal seams, mitigating any possibility for methane to enter the blind drilled shaft.

3. In the case of a conventionally constructed shaft, ventilation devices are installed to ensure that potential methane accumulations are mitigated. Dewatering significantly minimizes the chance of these devices becoming compromised. The electric motor of any submersible pump is located below the pump intake making it impossible for the motor to be above the surface of the water.

4. Currently there are no electric submersible motor/pump assemblies manufactured that will effectively pump water at the current and future depths of mine workings that are permissible as required by 30 CFR 77.1914(a).

5. The alternative method outlined in this petition is consistent with prudent engineering design pursuant to 30 CFR 77.1900 since it minimizes the hazards to those employed in the initial or subsequent development of the shaft.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded by the existing standard.

Sheila McConnell,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2016–19803 Filed 8–18–16; 8:45 am]

BILLING CODE 4520–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and Title 30 of the Code of Federal Regulations Part 44 govern the application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification submitted to the Mine Safety and Health Administration (MSHA) by the parties listed below.

DATES: All comments on the petitions must be received by MSHA's Office of Standards, Regulations, and Variances on or before September 19, 2016.

ADDRESSES: You may submit your comments, identified by "docket number" on the subject line, by any of the following methods:

1. *Electronic Mail: zzMSHA-comments@dol.gov.* Include the docket number of the petition in the subject line of the message.

2. *Facsimile:* 202–693–9441.

3. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452, Attention: Sheila McConnell, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk in Suite 4E401. Individuals may inspect copies of the petitions and comments during normal business hours at the address listed above.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments.

FOR FURTHER INFORMATION CONTACT: Barbara Barron, Office of Standards, Regulations, and Variances at 202–693–9447 (Voice), *barron.barbara@dol.gov* (Email), or 202–693–9441 (Facsimile). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

2. That the application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modification.

II. Petitions for Modification

Docket Number: M–2016–006–M.

Petitioner: Coeur Alaska, Inc., 1700 Lincoln Street, Suite 4700, Denver, Colorado 80203.

Mine: Kensington Mine, MSHA I.D. No. 50–01544, located in Juneau County, Alaska.

Regulation Affected: 30 CFR 57.11050 (Escapeways and refuges).

Modification Request: The petitioner requests relief from the existing standard insofar as it applies to the development and exploration areas of the Kensington Mine. The petitioner states that:

(1) Coeur Alaska owns and operates the Kensington Mine, which is an underground gold mine located in Juneau County, Alaska. Kensington utilizes both transverse and longitudinal long-hole stoping. In both methods, a single development drift is driven through waste rock adjacent to the ore body. When this drift reaches planned elevation, level accesses are developed to provide entry points to the ore body for exploration and later ore production. Once the level development and exploration are completed at a planned elevation, the ore is extracted either perpendicular (transverse stoping) or parallel to the strike of the ore (longitudinal stoping).

(2) Coeur Alaska seeks a modification stating that during the exploration or development of an ore body within the mine, in order to comply with 30 CFR 57.11050(a), Coeur will not be required to continuously reposition a portable emergency refuge chamber ("refuge") on the lowest decline within the mine or to continuously reposition the refuge to remain within 1,000 feet from the face of a development drift.

(3) Coeur Alaska seeks relief because Kensington already has secondary escapeways constructed to the lowest level of the mine, and is constructing and planning to develop additional secondary escapeways to future levels of the mine. Kensington's existing

permanent refuge chamber already complies with the 30-minute travel time to a refuge chamber required by § 57.11050(b). Training miners to rely on portable refuges that will change locations on frequent basis will result in a diminution of safety to the miners affected.

(4) Installing and relocating refuge chambers to remain within 1,000 feet of each development drift face would subject miners to greater hazards than they are subjected to under current conditions. Like any underground mine, Kensington's underground operations take place in a dynamic environment, and its exploration and development areas are dominated by self-propelled mobile equipment and blasting activities. At desired development rates, Kensington typically advances its faces in development drifts twice per day, with each advance being a 12-foot length. If the portable emergency refuge chambers ('refuge'') were positioned at the safest distance away from the face while still being in compliance with MSHA's newly proposed 1,000 distance requirement, the refuge would have to be relocated twice each day (following each of the two advances) just to remain within that lateral boundary each time the face is advanced, or the Mine will be out of compliance.

In order to reduce the number of relocations to less than one per day, the refuge will need to be positioned well within the 1,000 foot range. If Coeur places the refuge at 50 percent of the maximum allowable distance at the beginning of a development cycle (*e.g.* 500 feet from the face of a development drift), the refuge could remain in one place for a maximum of 21 days at typical development rates. However, during that 21-day cycle, the refuge will be repeatedly subjected to severe blast damage. The concussive forces from face blasts can be devastating at 500 feet. Over the course of 21 days blasting, the refuge would be exposed to 42 blasts. Accordingly, placing the refuge will inside of the 1,000 foot boundary increases the likelihood of mechanical damage to the refuge chamber. Moreover, Kensington only blasts during shift change, when the mine is completely evacuated, save one miner in the designated safe zone. No miners will be anywhere near the refuge chamber during blasting, or in a position to inspect the refuge chamber before the next shift arrives. Thus, any blast damage suffered by the refuge chamber will not be discovered until Coeur's miners arrive and inspect the chamber, exposing them to a greater risk of harm if use of the refuge chamber were necessary upon their arrival.

Not only is the structural integrity of the refuge chamber at risk if it is habitually located near the blasting activities, if the refuge chambers are require to "follow" the face in a development drift on the lowest level of the mine, the physical locations of these refuge chambers will be continually changing. This means that miners will not have reliable, fixed locations to which they can travel in an emergency. Instead, they will be searching for a moving target. The added difficulty for miners and mine rescue teams to know with certainty the exact location of each mine refuge chamber is more hazardous than a situation where each refuge chamber's location is fixed, will-known and depicted on historical and current versions the mines' map.

Because of Kensington's remote location, miners work long rotations and are away from site on Rest & Relaxation ("R&R") for long periods of time. If refuge chambers must be moved as MSHA appears to require, it is highly likely that a miner could go home on R&R and return to a different refuge chamber location every rotation. The shifting locations will require each miner to continuously remember the current locations for the refuge chambers in his vicinity, as opposed to constant emergency egress routes that are more likely to be remembered during an emergency. This will undoubtedly lead to less familiarity with the location of the facilities and in times of an emergency people need to be "programmed" as to mitigate the risk of responding incorrectly. Not only will uncertainty arise from the change in physical location for the refuge chamber, but the maps and signs inside Kensington might have to be updated as well. To the extent there are more signs and maps than refuge chambers, the risk will increase that one or more of the maps or signs will not be updated to reflect a future change of location. This error could have a catastrophic effect for miners going to a location they believe has a chamber based on an obsolete map only to find that it had moved.

In addition, in the event of a mine accident, mine rescue teams will need to validate that the location of each refuge chamber in which injured miners might be located, was in fact the current location of each refuge chamber in which injured miners might be located, was in fact the current location for that chamber. This uncertainty will complicate if not delay rescue efforts.

Not only does MSHA's requirement that a refuge chamber be tethered to the location of the development drift's face add uncertainty regarding the chambers precise location, the movement of that chamber deeper into the mine increases the risk for miners working in the area in between the lowest level and the development and exploration activities. For example, miners on the 405 and 330 Level Access areas have a shorter travel time to reach the portable refuge installed on the 255 Decline than secondary escapeways at the 480 Level.

As the 255 Decline face advances towards the planned 255 Level, if the portable emergency refuge chamber must follow along 1,000 feet behind the decline face, the travel time and distance to that portable refuge will be increasing for the miners on the 405 and 330 Level Access areas. Also, miners are trained first to try and evacuate the mine through the portal if possible, as opposed to going deeper into the mine if there is an emergency. If there is thick smoke in the mine, and the miners don their self-rescue breathing devices, they are trained to seek the nearest refuge. Not only does the movement of the portable emergency refuge chamber result in longer travel times for these miners, they are moving further underground and farther away from the escapeway, and trying to find a moving target in thick smoke.

If MSHA's purported rationale for having the portable refuge within 1,000 feet of the face in the development and exploration area is that this area is the most likely source of hazards for miners, the miners on the 405 and 330 Levels who are traveling to the refuge are moving towards the likely source of hazards, not away from it. Hence, the frequent relocating of the portable emergency refuge chamber adds a greater risk of physical damage to the refuge and a greater level of uncertainty and risk for the mines working underground who need to navigate to the refuge. Conversely, keeping refuge chambers in fixed locations, compliant with the standard's travel time requirement, simplifies the miners' egress plans, which increases the probability of proper execution of these egress plans, and does not detract from their safety.

(10) The proposed action by Coeur would provide no lesser degree of safety than application of the § 57.11050. Another basis for permitting modification of the standard's application is that Coeur's proposed alternative method provides at least the same measure of safety contemplated by the standard.

Repeated movement of the refuge puts miners at risk for several reasons. First, damage to the refuge will put miners at risk as the refuge may not function as intended. Second, the potential to damage the refuge chambers increases

significantly while they are being move. Third, the portable refuge chambers cannot simply be parked on the decline because of their size, they would block assess between the development drift face and the escapeways. To allow for the decline to remain clear, a cutout into the rib must be made to park the refuge chamber. Fourth, the refuge chambers are not available for use while being moved (and air and water are being reconnected), meaning that Kensington risks non-compliance with § 5711010 each time it is attempting to comply with MSHA's directive to reposition the refuge to remain within 1,000 feet of the face.

Taken to its logical conclusion, to ensure compliance, Kensington would be forced to have two refuges in place, and "leapfrog" them during exploration and development. However, the spacing and cost associated with that approach are untenable.

Each refuge chamber is roughly 15 feet long, and requires a cutout that is 30 feet deep. The development costs at Kensington are approximately $1500 per foot, meaning that each 30-foot cutout will cost $45,000 to create. Installing air, water and shotcrete will be in addition to the $45,000 figure. Moving the unit will take 2 miners approximately 12 hours, at a labor cost of $1136. In total, the average cost to relocate a portable refuge one time is almost $50,000. Assuming Kensington positioned the refuge at a distance that was 50 percent of the stated requirement, so that relocations were only required every ten days, the resulting 36 relocations per year will cost approximately $1.8 million for the 255 Decline alone.

For these reasons, not only does MSHA's current interpretation of 30 CFR 57.11050 add a new requirement to the standard without undergoing the rulemaking process, the interpretation will result in a diminution of safety to the miners at Kensington Mine. There is no peer-reviewed empirical data to support this additional requirement, and the plain language of 30 CFR 57.11050 does not support the requirement either.

The petitioner asserts that the proposed alternative method will provide the same or greater measure of safety as would be provided by application of the existing standard.

Sheila McConnell,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2016–19802 Filed 8–18–16; 8:45 am]

BILLING CODE 4520–43–P

LEGAL SERVICES CORPORATION

Notice of Instructions for Emergency Relief Grants

AGENCY: Legal Services Corporation

ACTION: Notice—Instructions for emergency relief grants.

SUMMARY: Generally, the Legal Services Corporation (LSC) has funds available to help meet the special needs of LSC grantees in areas experiencing emergencies recognized through government declarations. This Notice sets forth instructions for current LSC grantees with such needs affecting their offices or parts of their service area who wish to apply for emergency relief funding when such funds are available. This information is also posted to the LSC Web site at *www.lsc.gov.*

DATES: These instructions are effective September 19, 2016.

FOR FURTHER INFORMATION CONTACT: Disaster Grants Coordinator, Office of Program Performance, Legal Services Corporation, 3333 K St. NW., Washington, DC 20007, (202) 295–1500, *emergencygrants@lsc.gov* (preferred contact).

SUPPLEMENTARY INFORMATION:

Emergency Relief Grants

A. Eligibility

Generally, the Legal Services Corporation (LSC) has funds available to help meet the special needs of LSC grantees in areas experiencing emergencies recognized through government declarations. When funding is available, current LSC grantees are eligible to apply for such emergency funds only if they provide services or have an office located in an area subject to an emergency declaration or similar determination by a government entity or equivalent, at any level, including tribal governments regardless of federal recognition. Such determinations could address disasters, public health emergencies, droughts, or other circumstances warranting emergency-response actions and services. This policy supersedes LSC's prior policy that limited these grants to Federally declared disaster areas. Information regarding this grant program is available at *www.lsc.gov* in the "Our Grant Programs" section.

B. Applications

Interested grantees should contact the LSC Office of Program Performance to discuss the application process, standards, and selection criteria. Information about the application forms and method of submission are available on *www.lsc.gov* in the "Our Grant Programs" section. Applications should, at minimum, address the following topics.

1. Resources, Needs, and Objectives

a. A description of the damage sustained by applicant and/or the surge in demand for services as a result of the emergency.

b. An estimate, in dollars, of lost property, including records, and equipment.

c. The amount of emergency funds requested.

d. A brief narrative stating the purpose of the requested funds.

e. The grantee's current annual budget of revenue and expenses including both LSC funds and non-LSC funds.

2. Operational Procedures

a. The anticipated length of time needed to restore operations from emergency status to normal and/or the anticipated length of time of the expected surge in demand.

b. The anticipated term of the emergency grant (*i.e.,* proposed beginning and termination dates).

c. A description of the project, including criteria to be used for determining successful completion.

3. Budget—A Detailed Budget of Expenses for the Emergency Relief Grant

C. Approval Criteria

Given the nature of these emergency situations, LSC will process requests for assistance on a priority basis. The primary emphasis will be on restoring or expanding, as quickly as possible, the program's capacity to serve eligible clients.

D. Accounting and Reporting

1. Accounting for the Grant

The grant must be separately reported by natural line item in the grantee's annual audit(s). This reporting may be done either on the face of the financial statements, or in a schedule attached to the financial statements. The grant will provide additional instructions as needed.

2. Case Service Reporting

In times of crisis, the immediate needs of victims supersede the need to adhere to the grantee's established priorities. Thus, grantees confronted by natural disasters or emergencies generally dispense with the stated priorities to respond to the most pressing needs of their clients. Depending on the extent of the disaster and the impact it has on case activities, the grantee may process a substantial

number of cases outside of its normal priorities, which could significantly alter its case service reporting data. To avoid a distorted picture when disaster cases are reported in the regular CSRs, LSC may require separate case reporting for emergency-related cases that are outside of normal priorities and/or funded with an emergency relief grant.

Dated: August 15, 2016.

Mark Freedman,

Senior Associate General Counsel.

[FR Doc. 2016–19801 Filed 8–18–16; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Environmental Research and Education; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

NAME: Advisory Committee for Environmental Research and Education (9487).

DATE/TIME: September 28, 2016: 9:00 a.m.–5:30 p.m.; September 29, 2016: 9:00 a.m.–3:00 p.m.

PLACE: National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

TYPE OF MEETING: Open.

CONTACT PERSON: Dr. Stephen Meacham, Senior Staff Associate, Office of Integrative Activities/Office of the Director/National Science Foundation, 4201 Wilson Blvd., Room 935N, Arlington, V/A 22230 (Email: *smeacham@nsf.gov*/Telephone: (703) 292–8040).

MINUTES: May be obtained from *http://www.nsf.gov/geo/ere/ereweb/minutes.jsp.*

PURPOSE OF MEETING: To provide advice, recommendations, and oversight concerning support for environmental research and education.

AGENDA: (Tentative) Approval of minutes from past meetings. Updates on agency support for environmental research and activities. Discussion with NSF Director and Assistant Directors. Discussion of emerging research topics in environmental science, engineering and education. Updated agenda will be available at *http://www.nsf.gov/geo/ere/ereweb/minutes.jsp.*

Dated: August 16, 2016.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2016–19840 Filed 8–18–16; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Integrative Activities; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

NAME: Advisory Committee for Integrative Activities—Major Research Infrastructure (MRI) Review (#1373).

DATES & TIMES: September 22–23, 2016; 8:00 a.m.–5:00 p.m.

PLACE: National Science Foundation, 4201 Wilson Blvd., Room II–575, Arlington, VA 22230.

TYPE OF MEETING: Closed.

CONTACT PERSON: Randy Phelps, Staff Associate, Office of Integrative Activities, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 292–5049.

PURPOSE OF MEETING: To review the Major Research Infrastructure program's process, including examination of decisions on proposals, reviewer comments, and other relevant materials.

AGENDA:

September 22–23, 2016; 8:00 a.m.–5:00 p.m. (Closed).

Review and evaluate the Major Research Instrumentation Program and provide assessment of program level technical and managerial matters pertaining to proposal decisions and program operations.

REASON FOR CLOSING: The work being reviewed and evaluated includes information of a proprietary or confidential nature, including technical information; and information on personnel. These matters are exempt under 5 U.S.C. 552 b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 16, 2016.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2016–19839 Filed 8–18–16; 8:45 am]

BILLING CODE 7555–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2016–176 and CP2016–255; MC2016–177 and CP2016–256; MC2016–178 and CP2016–257; MC2016–179 and CP2016–258; MC2016–180 and CP2016–259; MC2016–181 and CP2016–260]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing recent Postal Service filings for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* August 22, 2016 (Comment due date applies to all Docket Nos. listed above)

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's Web site (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.40.

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39

U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2016–176 and CP2016–255; *Filing Title:* Request of the United States Postal Service to Add First-Class Package Service Contact 60 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date:* August 12, 2016; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Helen Fonda; *Comments Due:* August 22, 2016.

2. *Docket No(s).:* MC2016–177 and CP2016–256; *Filing Title:* Request of the United States Postal Service to Add Priority Mail & First-Class Package Service Contact 26 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date:* August 12, 2016; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Natalie R. Ward; *Comments Due:* August 22, 2016.

3. *Docket No(s).:* MC2016–178 and CP2016–257; *Filing Title:* Request of the United States Postal Service to Add Priority Mail Contract 232 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date:* August 12, 2016; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Katalin K. Clendenin; *Comments Due:* August 22, 2016.

4. *Docket No(s).:* MC2016–179 and CP2016–258; *Filing Title:* Request of the United States Postal Service to Add Priority Mail Contract 233 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date:* August 12, 2016; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Katalin K. Clendenin; *Comments Due:* August 22, 2016.

5. *Docket No(s).:* MC2016–180 and CP2016–259; *Filing Title:* Request of the United States Postal Service to Add Priority Mail Express Contract 41 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date:* August 12, 2016; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Helen Fonda; *Comments Due:* August 22, 2016.

6. *Docket No(s).:* MC2016–181 and CP2016–260; *Filing Title:* Request of the United States Postal Service to Add Priority Mail Contract 234 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data; *Filing Acceptance Date:* August 12, 2016; *Filing Authority:* 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.; Public Representative:* Katalin K. Clendenin; *Comments Due:* August 22, 2016.

This notice will be published in the **Federal Register**.

Stacy L. Ruble,

Secretary.

[FR Doc. 2016–19764 Filed 8–18–16; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Imperial Plantation Corporation; Order of Suspension of Trading

August 17, 2016.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Imperial Plantation Corporation because of questions regarding the accuracy of publicly available information about the company's business transactions and securities, including inconsistent disclosures about whether Imperial Plantation Corporation received $1 million in a private placement of one billion shares of its stock, and inaccurate disclosure that it cancelled the one billion shares when the shares remained outstanding as of June 22, 2016. Imperial Plantation Corporation (CIK No. 0001542934), is a Nevada corporation with its principal place of business listed as Tempe, Arizona with stock quoted on OTC Link (previously, "Pink Sheets") operated by OTC Markets Group, Inc. under the ticker symbol IMPC.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

THEREFORE, IT IS ORDERED, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EDT, August 17, 2016, through 11:59 p.m. EDT, on August 30, 2016.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2016–19945 Filed 8–17–16; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78576; File No. SR-Phlx-2016–83]

Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Pricing Schedule

August 15, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 5, 2016, NASDAQ PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's Pricing Schedule at Section I titled "Rebates and Fees for Adding and Removing Liquidity in SPY" at Part A, relating to Simple Orders for SPY[3] options to: (i) Increase the Customer[4] Fee for Removing Liquidity; and (ii) amend Tier 4 of the Specialist[5] and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Options overlying Standard and Poor's Depositary Receipts/SPDRs ("SPY") are based on the SPDR exchange-traded fund, which is designed to track the performance of the S&P 500 Index.

[4] The term "Customer" applies to any transaction that is identified by a member or member organization for clearing in the Customer range at The Options Clearing Corporation which is not for the account of a broker or dealer or for the account of a "Professional" (as that term is defined in Rule 1000(b)(14)).

[5] The term "Specialist" applies to transactions for the account of a Specialist (as defined in Exchange Rule 1020(a)). A Specialist is an Exchange member who is registered as an options specialist pursuant

Market Maker[6] Rebate for Adding Liquidity tiers and add two additional tiers.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqphlx.cchwallstreet.com/*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's Pricing Schedule at Section I titled "Rebates and Fees for Adding and Removing Liquidity in SPY" to increase the Simple Order Customer Fee for Removing Liquidity in SPY to fund additional Simple Order Specialist and Market Maker Rebates for Adding Liquidity for options overlying SPY.

First Fee Change

The purpose of the first fee change is to raise revenue for the Exchange by increasing the Simple Order Customer Fee for Removing Liquidity in SPY from $0.43 to $0.45 per contract. Despite the increase to this fee for Customers removing liquidity, the Exchange believes that the fee remains competitive as compared to fees assessed to other market participants.[7]

Second Fee Change

The purpose of the second fee change is to amend the Specialist and Market Maker Simple Order Rebates for Adding Liquidity to incentivize Specialists and Market Makers to add more volume to Phlx in order to receive rebates. Today Specialists and Market Makers have the opportunity to earn rebates that range from $0.15 to $0.30 per contract,[8] depending on the amount of Specialist and Market Maker Simple Order contracts that are electronically executed per day in a month in SPY on Phlx. The Exchange is proposing to amend current Tier 4 of the Specialist and Market Maker Simple Order Rebates for Adding Liquidity from volume that is greater than 20,000 to volume between 20,000 and 34,999 electronically executed Simple Order contracts per day in a month in SPY. The Tier 4 Specialist and Market Maker Simple Order Rebates for Adding Liquidity will remain at $0.30 per contract. The Exchange also proposes to add two more Specialist and Market Maker Simple Order Rebates for Adding Liquidity tiers. New Tier 5 Specialist and Market Maker Simple Order Rebates for Adding Liquidity would pay a $0.32 per contract rebate to Specialists and Market Makers that add between 35,000 to 49,999 electronically executed Simple Order contracts per day in a month in SPY. New tier 6 Specialist and Market Maker Simple Order Rebates for Adding Liquidity would pay a $0.35 per contract rebate to Specialists and Market Makers that add greater than 49,999 electronically executed Simple Order contracts per day in a month in SPY. The Exchange believes that adding these two new rebate tiers will encourage Specialists and Market Makers to add more electronically executed Simple Order liquidity in SPY on Phlx to obtain the higher rebates.

The Exchange proposes to amend Section I to reorganize the Pricing Schedule and delete unnecessary rule text. The Exchange proposes to amend the current sentence above the Specialist and Market Maker Simple Order Rebates for Adding Liquidity tiers which currently states, "*The Simple Order Rebate for Adding Liquidity for Specialists and Market Makers will be paid as noted below:". The Exchange intends to incorporate more language into the new sentence concerning the Specialist and Market Maker Simple Order Rebates for Adding Liquidity tiers to make clear which market participants are being paid the rebate and what volume counts toward the monthly volume. The Exchange proposes to amend the sentence as follows: "*The Simple Order Rebate for Adding Liquidity will be paid as noted below to Specialists and Market Makers adding the requisite amount of electronically executed Specialist and Market Maker Simple Order contracts per day in a month in SPY:". This language is not intended to amend the manner in which the Exchange pays the Specialist and Market Maker Simple Order Rebates for Adding Liquidity. The Exchange is proposing to include more clear and specific language above the tiers and then simply list the volume and rebate amount in the table, rather than repeating the language in the table several times. The Exchange believes that these non-substantive amendments will add clarity to the Specialist and Market Maker Simple Order Rebates for Adding Liquidity by avoiding unnecessary repetition in the Pricing Schedule and simplifying the rebate table.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[10] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while

to Rule 1020(a). An options Specialist includes a Remote Specialist which is defined as an options specialist in one or more classes that does not have a physical presence on an Exchange floor and is approved by the Exchange pursuant to Rule 501.

[6] The term "Market Maker" includes Registered Options Traders ("ROT"). *See* Exchange Rule 1014(b)(i) and (ii). A ROT includes a Streaming Quote Trader or "SQT," a Remote Streaming Quote Trader or "RSQT" and a Non-SQT, which by definition is neither a SQT nor a RSQT. A ROT is defined in Exchange Rule 1014(b) as a regular member of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. An SQT is defined in Exchange Rule 1014(b)(ii)(A) as an ROT who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned. An RSQT is defined in Exchange Rule in 1014(b)(ii)(B) as an ROT that is a member affiliated with an RSQTO with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. A Remote Streaming Quote Trader Organization or "RSQTO," which may also be referred to as a Remote Market Making Organization ("RMO"), is a member organization in good standing that satisfies the RSQTO readiness requirements in Rule 507(a). RSQTs may also be referred to as Remote Market Markers ("RMMs").

[7] Non-Customer market participants (Specialists, Market Makers, Firms, Broker-Dealers and Professionals) are assessed a Simple Order Fee for Removing Liquidity in SPY of $0.47 per contract.

[8] Today, the Specialist and Market Maker Simple Order Rebates for Adding Liquidity are paid on a four tier rebate schedule in SPY. All other market participants do not receive a Simple Order Rebate for Adding Liquidity in SPY.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4) and (5).

adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies." [11]

Likewise, in *NetCoalition* v. *Securities and Exchange Commission* [12] ("NetCoalition") the D.C. Circuit upheld the Commission's use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.[13] As the court emphasized, the Commission "intended in Regulation NMS that 'market forces, rather than regulatory requirements' play a role in determining the market data . . . to be made available to investors and at what cost." [14]

Further, "[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . ." [15] Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

First Fee Change

The Exchange's proposal to increase the Customer Simple Order Fee for Removing Liquidity in SPY is reasonable because despite the increase to the fee, Customers will continue to be assessed the lowest Simple Order Fee for Removing Liquidity in SPY as compared to other market participants (Specialists, Market Makers, Firms,[16] Broker-Dealers [17] and Professionals [18]) that continue to pay a $0.47 per contract Simple Order Fee for Removing Liquidity in SPY. SPY options are currently the most actively traded options class. Despite this fee increase, the Exchange believes the Simple Order Customer Fee for Removing Liquidity will continue to encourage a greater number of market participants to remove Customer liquidity in SPY on Phlx because they continue to be assessed lower fees as compared to other market participants.

The Exchange's proposal to increase the Customer Simple Order Fee for Removing Liquidity in SPY is equitable and not unfairly discriminatory because the Simple Order Customer Fee for Removing Liquidity will continue to be lower as compared to other market participants ($0.45 vs. $0.47 per contract) and this lower fee will continue to encourage market participants to remove Customer liquidity in SPY on Phlx. Customer liquidity benefits all market participants by providing more trading opportunities, which attracts market makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. Pricing by symbol is a common practice on many U.S. options exchanges as a means to incentivize order flow to be sent to an exchange for execution in the most actively traded options classes. Other options exchanges price by symbol.[19]

Second Fee Change

The Exchange believes that its proposal to amend the Tier 4 Specialist and Market Maker Simple Order Rebates for Adding Liquidity in SPY and add two new Specialist and Market Maker Simple Order Rebates for Adding Liquidity tiers is reasonable because it will attract more Specialist and Market Maker electronically executed Simple Order volume in SPY to Phlx. The Exchange is offering Specialists and Market Makers an opportunity to earn up to a $0.35 per contract Simple Order Rebate for Adding Liquidity in SPY. Today, the highest Specialist and Market Maker Simple Order Rebate for Adding Liquidity in SPY is $0.30 per contract. Specialists and Market Makers will be encouraged to add more electronically executed Simple Order liquidity in SPY on Phlx to obtain the proposed higher rebates.

The Exchange believes that its proposal to amend the Tier 4 Specialist and Market Maker Simple Order Rebates for Adding Liquidity in SPY and add two new Specialist and Market Maker Simple Order Rebates for Adding Liquidity tiers is equitable and not unfairly discriminatory because Specialists and Market Makers have obligations to the market and regulatory requirements, which normally do not apply to other market participants.[20] They have obligations to make continuous markets, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and not make bids or offers or enter into transactions that are inconsistent with a course of dealings. The differentiation as between Specialists and Market Makers and all other market participants recognizes the differing contributions made to the liquidity and trading environment on the Exchange by these market participants. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. For these reasons, the Exchange believes that it is equitable and not unfairly discriminatory to only offer Specialists and Market Makers Simple Order Rebates for Adding Liquidity in SPY.

The Exchange's proposal to reorganize the Pricing Schedule and delete unnecessary rule text is reasonable because the Exchange believes the deletion of the unnecessary text and reorganization of the rule text will bring greater clarity to the Pricing Schedule. The Exchange's proposal to reorganize the Pricing Schedule and delete unnecessary rule text is equitable and not unfairly discriminatory because the amendment is non-substantive and only intended to provide clarity to the Pricing Schedule. The rule text will apply uniformly to all market participants.

[11] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) ("Regulation NMS Adopting Release").

[12] *NetCoalition* v. *SEC*, 615 F.3d 525 (D.C. Cir. 2010).

[13] *See NetCoalition*, at 534–535.

[14] *Id.* at 537.

[15] *Id.* at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[16] The term "Firm" applies to any transaction that is identified by a member or member organization for clearing in the Firm range at The Options Clearing Corporation.

[17] The term "Broker-Dealer" applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

[18] The term "Professional" applies to transactions for the accounts of Professionals, as defined in Exchange Rule 1000(b)(14) means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

[19] Miami International Securities Exchange LLC ("MIAX") prices by symbol. *See* MIAX's Fee Schedule.

[20] *See* Rule 1014 titled "Obligations and Restrictions Applicable to Specialists and Registered Options Traders."

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

The fees and rebates proposed herein are intended to continue to incentivize market participants to send a greater amount of SPY order flow to Phlx and for this reason imposes no inter-market burden on competition. If the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

First Fee Change

The Exchange's proposal to increase the Customer Simple Order Fee for Removing Liquidity in SPY does not impose an undue burden on intra-market competition because the Simple Order Customer Fee for Removing Liquidity will continue to be lower as compared to other market participants ($0.45 vs. $0.47 per contract) and this lower fee will continue to encourage market participants to remove Customer liquidity in SPY on Phlx. Also, Customer liquidity benefits all market participants by providing more trading opportunities, which attracts market makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. Pricing by symbol is a common practice on many U.S. options exchanges as a means to incentivize order flow to be sent to an exchange for execution in the most actively traded options classes. Other options exchanges price by symbol.[21]

Second Fee Change

The Exchange believes that its proposal to amend the Tier 4 Specialist and Market Maker Simple Order Rebates for Adding Liquidity and add two new Specialist and Market Maker Simple Order Rebates for Adding Liquidity tiers does not impose an undue burden on intra-market competition because Specialists and Market Makers have obligations to the market and regulatory requirements, which normally do not apply to other market participants.[22] They have obligations to make continuous markets, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and not make bids or offers or enter into transactions that are inconsistent with a course of dealings. The differentiation as between Specialists and Market Makers and all other market participants recognizes the differing contributions made to the liquidity and trading environment on the Exchange by these market participants. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. For these reasons, the Exchange believes that it is equitable and not unfairly discriminatory to only offer Specialists and Market Makers Simple Order Rebates for Adding Liquidity in SPY.

The Exchange's proposal to reorganize the Pricing Schedule and delete unnecessary rule text does not impose an undue burden on intra-market competition because the Exchange believes the deletion of the unnecessary text and reorganization of the rule text will bring greater clarity to the Pricing Schedule and the revised language applies uniformly to all market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

[21] *See* note 19 above.

[22] *See* note 20 above.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[23]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2016–83 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2016–83. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE.,

[23] 15 U.S.C. 78s(b)(3)(A)(ii).

Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2016–83, and should be submitted on or before September 9, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–19798 Filed 8–18–16; 8:45 am]

BILLING CODE 8011–01–P

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78573; File No. SR–FINRA–2016–032]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change Relating to FINRA Rule 2232 (Customer Confirmations) To Require Members To Disclose Additional Pricing Information on Retail Customer Confirmations Relating to Transactions in Fixed Income Securities

August 15, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "SEA") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 12, 2016, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA 2232 (Customer Confirmations) to require members to disclose additional pricing information on retail customer confirmations relating to transactions in fixed income securities.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

FINRA is proposing to amend Rule 2232 to require members to provide additional pricing information on customer confirmations in connection with non-municipal fixed income transactions with retail customers. Specifically, if a member trades as principal with a non-institutional customer in a corporate debt or agency debt security, the member must disclose the member's mark-up or mark-down from the prevailing market price for the security on the customer confirmation, if the member also executes one or more offsetting principal transaction(s) on the same trading day on the same side as the customer trade, the aggregate size of which meets or exceeds the size of the customer trade.

While members are already required, pursuant to SEA Rule 10b–10, to provide customers with pricing information, including transaction cost information, in connection with transactions in equity securities where the member acted as principal, no comparable requirement currently exists for transactions in fixed income securities.[3] Based on statistics that are discussed in greater detail below, FINRA believes that some customers pay materially higher mark-ups or mark-downs in retail size trades than other customers for the same fixed income security. FINRA believes that the proposed requirement will provide meaningful and useful pricing information to retail customers in fixed income securities. FINRA believes that the proposal will better enable customers to evaluate the cost and quality of the execution service that members provide, will promote transparency into firms' pricing practices, and will encourage communications between firms and their customers about the pricing of their fixed income transactions.

As described in greater detail in Item II.C. below, FINRA initially solicited comment on a related proposal in *Regulatory Notice* 14–52 ("initial proposal"),[4] and subsequently on a revised proposal in *Regulatory Notice* 15–36 ("revised proposal").[5] FINRA also has been working with the MSRB to develop similar proposals, as appropriate, to ensure consistent disclosures to customers across debt securities and to reduce the operational burdens for firms that trade multiple fixed income securities. As such, the MSRB has been developing its own pricing information disclosure proposal, and FINRA and the MSRB published their initial and revised proposals concurrently.[6] FINRA understands that the MSRB intends to file a substantially similar rule change.

Provided below is a more detailed description of each aspect of the proposed rule change.

Scope of the Disclosure Requirement

The proposed rule applies where the member buys (or sells) a security on a principal basis from (or to) a non-institutional customer and engages in one or more offsetting principal trades on the same trading day in the same security, where the size of the member's offsetting principal trade(s), in the aggregate, equals or exceeds the size of the customer trade. A non-institutional customer is a customer account that is not an institutional account, as defined

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* 17 CFR 240.10b–10. Under Rule 10b–10, where a member is acting as principal for its own account and is not a market maker in an equity security, and receives a customer order in that equity security that it executes by means of a principal trade to offset the contemporaneous trade with the customer, the rule requires the member to disclose the difference between the price to the customer and the dealer's contemporaneous purchase (for customer purchases) or sale price (for customer sales). *See* Rule 10b–10(a)(2)(ii)(A). Where the firm acts as principal for any other transaction in an NMS stock, or an equity security that is listed on a national securities exchange and is subject to last sale reporting, the rule requires the member to report the reported trade price, the price to the customer in the transaction, and the difference, if any, between the reported trade price and the price to the customer. *See* Rule 10b–10(a)(2)(ii)(B).

[4] *See Regulatory Notice* 14–52 (November 2014).

[5] *See Regulatory Notice* 15–36 (October 2015).

[6] *See* MSRB Regulatory Notice 2015–16 (September 2015), MSRB Regulatory Notice 2014–20 (November 2014).

in Rule 4512(c).[7] In addition, the proposed rule applies only to transactions in corporate debt securities, as defined in the proposed rule,[8] and agency debt securities, as defined in Rule 6710(l).[9]

FINRA believes that the proposed rule provides meaningful pricing information to individual investors that would most benefit from such disclosure, while not imposing unduly burdensome disclosure requirements on members. FINRA believes that requiring disclosure for retail customers, *i.e.*, accounts that are not institutional accounts, is appropriate because retail customers typically have less ready access to market and pricing information than institutional customers. FINRA believes that using the definition of an institutional account as set forth in Rule 4512(c) to define the scope of the proposal is appropriate because firms use this definition in other rule contexts, therefore reducing the implementation costs associated with this proposal.[10]

Same Day Triggering Timeframe

FINRA believes that it is appropriate to require disclosure of the mark-up or mark-down where the firm's offsetting principal trade(s) equaled or exceeded the size of the customer trade on the same trading day. To the extent that a member will often use its contemporaneous cost or proceeds, *e.g.*, the price it paid or received for the bond, as the prevailing market price for purposes of calculating the mark-up or mark-down, FINRA believes that limiting the disclosure to those instances where there is an offsetting trade in the same trading day will reduce the variability of the mark-up and mark-down calculation.

As is discussed in greater detail in Item II.C., a number of commenters stated that the window for triggering disclosure should be limited to two hours. Among other things, commenters argued that a two-hour window would be easier to implement, and would more closely capture riskless principal trades, which would align the proposed disclosure to the riskless principal disclosure requirements for equity securities under Rule 10b–10.

As is also discussed below, FINRA has generated statistics, based on trade data reported to the Trade Reporting and Compliance Engine ("TRACE"), that indicate that the majority of firm principal/customer trades that occur within the same trading day occur within thirty minutes of one another. Nonetheless, FINRA believes that there are added benefits to requiring disclosure for trades that occur within the same trading day, rather than only trades that occur within two hours. First, the full-day window will ensure that more investors receive mark-up or mark-down disclosure, even where their trades occur more than two-hours from the firm principal trade (but still occur on the same trading day). Second, the full-day window may make members less likely to alter their trading patterns in response to the proposed rule, as members would be required to hold positions overnight to avoid the proposed disclosure.[11] Finally, as is discussed further below, TRACE data for 3Q15 shows a material difference between the median mark-up/mark-down and the mark-ups/mark-downs at the tail of the distribution, indicating that some customers (those at the tail of the distribution) paid considerably more than others (at the median of the distribution). This data indicates that there is variability in the difference in prices paid in both firm principal and customer trades that occurred close in time to one another, *e.g.*, within 30 minutes, and in firm principal and customer trades that did not occur close in time to one another. Based on this data, FINRA believes that the proposed disclosure would provide valuable information for customers whose trades occurred on the same trading day as the firm principal trade, regardless of whether those trades occurred close in time.

Some commenters recommended that FINRA limit the disclosure obligation to riskless principal transactions involving retail investors, as this would more accurately reflect dealer compensation and transaction costs, and would be more consistent with the stated objectives of the SEC in this area. These commenters would apply the proposed rule to riskless principal transactions as previously defined in the equity context by the Commission, where the broker-dealer has an "order in hand" at the time of execution. However, FINRA believes that it may be difficult to objectively define, implement and monitor a riskless principal trigger standard for fixed income securities and also believes that using the riskless principal standard ultimately is too narrow and that customers will benefit from the disclosure irrespective of whether the firm's capacity on the transaction was riskless principal.

Non-Arms-Length Affiliate Transactions

With respect to the offsetting principal trade(s), where a member buys from, or sells to, certain affiliates, the proposal would require the member to "look through" the member's transaction with the affiliate to the affiliate's transaction with a third party in determining when the security was acquired and whether the "same trading day" requirement has been triggered. Specifically, FINRA proposes to require members to apply the "look through" where a member's transaction with its affiliate was not at arms-length. For

[7] Rule 4512(c) defines an institutional account as an account of "(1) a bank, savings and loan association, insurance company or registered investment company; (2) an investment adviser registered either with the SEC under Section 203 of the Investment Advisers Act or with a state securities commission (or any agency or office performing like functions); or (3) any other person (whether a natural person, corporation, partnership, trust or otherwise) with total assets of at least $50 million."

[8] The proposed rule defines a corporate debt security as a "debt security that is United States ("U.S.") dollar-denominated and issued by a U.S. or foreign private issuer and, if a 'restricted security' as defined in Securities Act Rule 144(a)(3), sold pursuant to Securities Act Rule 144A, but does not include a Money Market Instrument as defined in Rule 6710(o) or an Asset-Backed Security as defined in Rule 6710(cc)."

[9] Rule 6710(l) defines an agency debt security as "a debt security (i) issued or guaranteed by an Agency as defined in paragraph (k); or (ii) issued or guaranteed by a Government-Sponsored Enterprise as defined in paragraph (n). The term excludes a U.S. Treasury Security as defined in paragraph (p) and a Securitized Product as defined in paragraph (m), where an Agency or a Government-Sponsored Enterprise is the Securitizer as defined in paragraph (s) (or similar person), or the guarantor of the Securitized Product." To make the proposed changes to Rule 2232 applicable to agency debt securities, as part of this proposal, FINRA will amend Rule 0150 to add Rule 2232 to the list of FINRA rules that apply to "exempted securities," except municipal securities.

[10] As discussed in greater detail below, FINRA initially proposed that the disclosure requirement would apply to customer trades of a "qualifying size," which was defined as customer transactions involving 100 bonds or less or bonds with a face amount of $100,000 or less, based on reported quantity. In response to comments that the proposed size-based standard could either exclude retail customer transactions above that amount from the proposed disclosure, or subject institutional transactions below that amount to the proposed disclosure, FINRA revised the proposal to incorporate the Rule 4512(c) definition of an institutional account.

[11] It is important to note that, under Rule 5310 (Best Execution and Interpositioning), members must use reasonable diligence to ascertain the best market for the security and buy or sell in such market so that the resultant price to the customer is as favorable as possible under prevailing market conditions. Supplementary Material .01 to Rule 5310 further emphasizes that a member must make every effort to execute a marketable customer order that it receives fully and promptly. Any intentional delay of a customer execution to avoid the proposed rule or otherwise would be contrary to these duties to customers. If the proposed rule change is approved, FINRA will monitor trading patterns to ensure firms are not purposely delaying a customer execution to avoid the disclosure. A firm found to purposefully delay the execution of a customer order to avoid the proposed disclosure may be in violation of the proposed rule, Rule 5310 and Rule 2010 (Standards of Commercial Honor and Principles of Trade).

purposes of the proposed rule change, an "arms-length transaction" would be considered a transaction that was conducted through a competitive process in which non-affiliate firms could also participate—*e.g.*, pricing sought from multiple firms, or the posting of multiple bids and offers—and where the affiliate relationship did not influence the price paid or proceeds received by the member. As a general matter, FINRA would expect that the competitive process used in an "arms-length" transaction, *e.g.*, the request for pricing or platform for posting bids and offers, is one in which non-affiliates have frequently participated. FINRA believes that sourcing liquidity through a non-arms-length transaction with an affiliate is functionally equivalent to selling out of its own inventory for purposes of the proposed disclosure trigger. FINRA therefore believes it is appropriate in those circumstances to require a member to "look through" its transaction with its affiliate to the affiliate's transaction with a third party to determine whether the proposed rule applies in these circumstances.[12]

Exceptions for Functionally Separate Trading Desks and Fixed-Price Offerings

The proposed rule also contains two exceptions from the proposed disclosure requirement. First, if the offsetting same day firm principal trade was executed by a trading desk that is functionally separate from the firm's trading desk that executed the transaction with the customer, the principal trade by that separate trading desk would not trigger the disclosure requirement. Firms must have in place policies and procedures reasonably designed to ensure that the functionally separate principal trading desk through which the member purchase or member sale was executed had no knowledge of the customer transaction.[13] FINRA believes that this exception is appropriate because it recognizes the operational cost and complexity that may result in requiring a firm principal trade executed by a separate, unrelated trading desk as the basis for determining whether a mark-up or mark-down disclosure is triggered on the customer confirmation. For example, the exception would allow an institutional desk within a firm to service an institutional customer without necessarily triggering the disclosure requirement for an unrelated trade performed by a separate retail desk within the firm. At the same time, in requiring that the member have policies and procedures in place that are reasonably designed to ensure that the functionally separate principal trading desk had no knowledge of the customer transaction, FINRA believes that the exception is sufficiently rigorous to minimize concerns about the potential misuse of the exception. In other words, in the example above, the firm could not use the functionally separate trading desk exception to avoid the proposed disclosure requirement if trades at the institutional desk were used to source transactions at the retail desk.

FINRA also believes that this exception is appropriate and consistent with the concept of functional and legal separation that exists in connection with other regulatory requirements, such as SEC Regulation SHO, and notes that some members already maintain functionally separate trading desks to comply with these requirements.

Second, the proposed rule would not apply if the member acquired the security in a fixed-price offering and sold the security to non-institutional customers at the same fixed-price offering price on the day the securities were acquired. In a fixed-price offering, the compensation paid to the firm, such as the underwriting fee, is paid for by the issuer and described in the prospectus. Given the availability of information in connection with a fixed-price offering, FINRA believes that the proposed disclosure is not warranted in those instances where the security is sold at the fixed-price offering price.

Proposed Information To Be Disclosed on the Customer Confirmation

If the transaction meets the criteria described above, the member would be required to disclose the member's mark-up or mark-down from the prevailing market price for the security. The mark-up or mark-down would be calculated in compliance with Rule 2121 and the supplementary material thereunder, and would be expressed both as a total dollar amount and as a percentage of the prevailing market price.[14] FINRA believes that it is appropriate to require firms to calculate the mark-up in compliance with Rule 2121, as Supplementary Material .02 to Rule 2121 provides extensive guidance on how to calculate the mark-up for the fixed income securities to which the proposal would apply, including a presumption to use contemporaneous cost or proceeds. While some commenters noted the operational cost and complexity of implementing a previous iteration of this proposal, FINRA notes that firms are currently subject to Rule 2121 and are required to evaluate the mark-ups that they charge in connection with trades to ensure that they are fair and not excessive.[15] FINRA notes that the proposal does not alter the requirements of Rule 2121, or otherwise intend to modify how firms calculate mark-ups. FINRA recognizes that the determination of the prevailing market price of a particular security may not be identical across firms and FINRA will expect that firms have reasonable policies and procedures in place to calculate the prevailing market price and that such policies and procedures are applied consistently across customers. Although the Supplementary Material to Rule 2121 provides extensive guidance, to the extent that firms have additional interpretive questions on the application of Rule 2121 to specific scenarios, FINRA will issue additional guidance as necessary.

[12] Similarly, in a non-arms-length transaction with an affiliate, the member also would be required to "look-through" to the affiliate's transaction with a third party and related cost or proceeds by the affiliate as the basis for determining the member's calculation of the mark-up or mark-down pursuant to Rule 2121 (Fair Prices and Commissions).

[13] This exception is distinguished from the "look through" provision noted above, whereby the customer transaction is being sourced through a non-arms-length transaction with the affiliate. Under the separate trading desk exception, functionally separate trading desks are required to have policies and procedures in place that are reasonably designed to ensure that trades on the functionally separate desks are executed with no knowledge of each other and reflect unrelated trading decisions. Additionally, FINRA notes that this exception would only apply to determine whether or not the proposed disclosure requirement has been triggered; it does not change a member's existing requirements relating to the calculation of its mark-up or mark-down under Rule 2121.

[14] FINRA and the MSRB conducted investor testing which indicated that investors found that disclosing the mark-up or mark-down both as a dollar amount and as a percentage of the prevailing market price would be more useful than only disclosing it in one of those forms. FINRA and the MSRB also solicited comment on whether to require members to disclose additional information on the trade confirmation for trades with retail customers, including whether firms should provide a link to TRACE, and whether firms should disclose the time of the customer trade. In response to comments received and support based on investor testing, FINRA intends to submit a rule filing in the near future that proposes these requirements.

[15] Because the proposed mark-up disclosure is not triggered unless an offsetting principal trade occurred on the same day, FINRA anticipates that the number of customer trades that will use a price other than the price of a contemporaneous trade as the prevailing market price are small. Using 3Q15 data, of the retail-size customer trades that have an offsetting firm principal trade on the same trading day, over 83 percent of those trades occurred within 30 minutes of each other. In 10.5 percent of these instances, an intervening trade, either by the same firm or a different market participant, occurred. Given the close time proximity between the majority of firm principal and customer trades, and the fact that most of these trades did not have an intervening trade, firms will typically use their contemporaneous cost as the prevailing market price.

FINRA believes that the proposal will provide retail customers with several important benefits. As discussed above, members are not required to provide customers who buy or sell fixed income securities with the same pricing information regarding mark-ups and mark-downs as customers who buy or sell equity securities. FINRA believes that requiring mark-up/mark-down disclosure will provide retail investors in non-municipal fixed income securities in transactions covered by the rule with comparable information to what retail investors in equity securities currently receive. FINRA believes that this disclosure will better assist fixed income investors in understanding and comparing the transaction costs associated with their purchases and sales.

If the Commission approves the proposed rule change, FINRA will announce the effective date of the proposed rule change no later than 90 days following Commission approval. The effective date will be no later than 365 days following Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[16] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and Section 15A(b)(9) of the Act,[17] which requires that FINRA rules not impose any burden on competition that is not necessary or appropriate.

FINRA believes that this proposed rule change is consistent with the Act because it will provide retail customers with meaningful and useful additional pricing information that retail customers cannot readily obtain through existing data sources such as TRACE. This belief is supported by investor testing, which indicates that investors find aspects of the proposed requirements useful, including disclosing the mark-up or mark-down both as a dollar amount and as a percentage of the prevailing market price. FINRA believes that some customers pay materially more for trades in fixed income securities than other customers in comparable trades. FINRA believes that the proposed rule will better enable customers to evaluate the cost of the services that members provide by helping customers understand mark-ups or mark-downs from the prevailing market prices in specific transactions. FINRA further believes that this type of information will promote transparency into members' pricing practices and encourage communications between members and their customers about the execution of their fixed income transactions. This proposal also will provide customers with additional information that may assist them in detecting practices that are possibly improper, which would supplement FINRA's own surveillance and enforcement program.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed changes will apply equally to all similarly situated members. Additionally, all members already have an obligation to calculate mark-ups to ensure compliance with Rule 2121.

Economic Impact Assessment

(a) Need for the Rule

FINRA is concerned that retail investors in fixed income securities currently are limited in their ability to understand and compare transaction costs associated with their purchases and sales. Investor testing conducted by FINRA and the MSRB reveals that investors lack a clear understanding of the concepts and definitions of mark-up and mark-down and their role in dealer compensation. The proposed disclosure is expected to provide retail investors with valuable pricing information, encourage investor participation in the fixed income markets, and foster price competition among dealers, which may lower transaction costs for retail transactions in fixed income securities.

The staff's analysis of TRACE data for 3Q15 finds a large difference between the estimated median mark-up/mark-down and the tail of the distribution, indicating that some customers paid considerably more than others in similar trades.[18] For example, for retail size (100 or fewer bonds) investment grade corporate debt transactions in 3Q15, the median estimated mark-up on customer buy orders was 0.53 percent, whereas the 95th percentile was more than four times higher (2.23 percent), suggesting that while the mark-up was half a percent or less on 50 percent of these orders, five percent of the orders (representing approximately 7,000 trades) had mark-ups of more than two percent.[19] Similarly, the median estimated mark-up for retail size corporate debt transactions in high-yield and unrated securities in 3Q15 was 0.83 percent and the 95th percentile was 2.96 percent.

Some market participants suggested that the proposed disclosure might not be meaningful because the observed dispersion in mark-ups might be explained by bond- or execution-specific characteristics. The staff's analysis of TRACE data for 3Q15 does not find relationships between mark-ups and bond- or execution-specific characteristics that would fundamentally undermine the value of the proposed requirement.

Specifically, some market participants asserted that high mark-ups might be adequate compensation for enhanced execution price. For example, it was argued that a dealer might reasonably charge a high mark-up on a customer purchase if the transaction price was lower than the prevailing market price. To examine the relationship between mark-up and price, the staff compared the price of each retail size customer purchase (sale) of a bond to all prices of retail size customer purchases (sales) of the same bond in 3Q15 to measure relative execution price.[20] The analysis

[16] 15 U.S.C. 78*o*–3(b)(6).

[17] 15 U.S.C. 78*o*–3(b)(9).

[18] The mark-up and mark-down calculations involved matching customer trades to offsetting same-day principal trades by the same dealer in the same CUSIP. This included matching same-sized trades as well as trades of different sizes where there was no same-sized match (*e.g.*, a dealer purchase of 100 corporate bonds matched to two sales to customers of 50 corporate bonds each). The mark-ups (mark-downs) on customer buys (sells) correspond to the percentage difference in price in customer trades and the offsetting principal trade. In cases when the offsetting principal trade was also a customer trade, the combined mark-up and mark-down ("spread") on these roundtrip transactions was calculated as the percentage difference in price between the customer buy and the customer sell.

[19] Most matched trades occurred close in time to each other. For example, among mark-up pairs of retail size customer purchases in investment grade corporate bonds in 3Q15, approximately 80 percent of the paired trades occurred within 30 seconds of each other. Nonetheless, the estimated mark-ups and mark-downs were calculated based on matching customer trades to offsetting same-day principal trades by the same dealer in the same CUSIP, and thus may be different from the ones calculated based on the prevailing market price.

[20] The sample only includes customer transactions that can be matched with offsetting same-day principal trades. In addition, the staff notes that the metric of relative execution price would be less reliable if fixed income security prices fluctuated widely within 3Q15. However, the monthly volatility of 10-year Treasury rates in 3Q15 was always below the average level of the prior 10 years, indicating that the interest rate volatility was moderate during the quarter. Treasury securities are considered to be free of default risk, and therefore are commonly used as a reliable interest rate benchmark for a wide range of private market transactions.

finds that higher estimated mark-ups were associated with higher, not lower, purchase prices as compared to all the purchase prices of the same bond in the same quarter. For instance, for retail size customer purchases of investment grade corporate bonds, the trades with the lowest estimated mark-ups (below the fifth percentile) had an average price percentile ranking of 35. In contrast, the trades with the highest estimated mark-ups (above the 95th percentile) had an average price percentile ranking of 63.

Some market participants asserted that high mark-ups and mark-downs might be caused by exceptionally low transaction quantities. For example, it was argued that a high mark-up on a customer purchase order of only three bonds might be justified by the high search cost. The analysis of TRACE data for 3Q15 finds no evidence that the highest estimated mark-ups were associated with unusually low quantities. For instance, for retail size customer purchases of investment grade corporate bonds, the median quantity of the trades with the highest estimated mark-ups (above the 95th percentile) was 20 bonds. Moreover, the median quantity did not change much for trades with different estimated mark-up levels.[21]

As discussed above, the mark-up and mark-down estimation involves matching same-sized trades as well as trades of different sizes where there was no same-sized match (*e.g.*, a dealer purchase of 100 corporate bonds matched to two sales to customers of 50 corporate bonds each). Some market participants asserted that the practice of breaking down a large transaction into smaller offsetting customer trades might lead to lower mark-ups due to the economies of scale, and thus might help explain the observed dispersion in mark-ups. The analysis of TRACE data for 3Q15 finds that splitting a larger principal trade into multiple smaller offsetting customer trades was associated with higher, not lower, mark-ups.

The analysis of TRACE data for 3Q15 also shows that the observed differences in estimated mark-ups were unlikely to be solely driven by bond characteristics. The results for retail size customer purchases of investment grade corporate bonds serve as an example. Among the bonds that had the highest estimated mark-ups (above the 95th percentile), approximately 77 percent also had trades with estimated mark-ups below the median. Moreover, these 77 percent of bonds traded more frequently with estimated below-median mark-ups. Further, the staff's analysis finds that bonds with higher trading frequencies in 3Q15, and presumably higher liquidity, had higher estimated mark-ups.[22]

In conclusion, the observed large dispersion in mark-ups and mark-downs do not appear to principally reflect bond or execution characteristics. The proposed disclosure is expected to provide customers with valuable and consistent information to understand, compare and evaluate transaction costs associated with their trades.

(b) Economic Baseline

The proposal would impact broker-dealers in the retail market of corporate and agency debt securities by imposing confirmation disclosure requirements on certain customer transactions. In 3Q15, the average daily number of retail size customer trades was 18,330 in corporate debt securities and 676 in agency debt securities. The transactions were mainly concentrated among large firms. For example, the top 20 broker-dealers with the highest volumes accounted for roughly 70 percent of the transactions for both corporate and agency debt securities.

It is estimated that approximately 59 percent of the retail size customer trades in corporate debt securities in 3Q15 would have been subject to the disclosure requirement if the proposed rule had been in place.[23] These disclosure-eligible trades were reported by about 800 dealers but were concentrated among large dealers. As discussed above, dealers already have an obligation to calculate their mark-ups for principal transactions in non-municipal fixed income securities to ensure compliance with Rule 2121.

(c) Economic Impacts

(i) Benefits

FINRA believes that the proposal will provide retail customers with meaningful and useful pricing information that these customers cannot readily obtain through TRACE data. As evidenced by investor testing, investors consider it important to know how much firms charge for transactions in fixed income securities, yet they are unfamiliar with mark-ups and mark-downs. FINRA believes that the pricing information will better enable customers to evaluate the cost and quality of the services that members provide by helping customers understand mark-ups or mark-downs from the prevailing market prices in specific transactions. FINRA further believes that this type of information will promote transparency into members' pricing practices and encourage communications between members and their customers about the pricing of their fixed income transactions. By providing additional pricing information to customers, this proposal may encourage customers to seek out other dealers that might offer more competitive prices for the services offered, which may incentivize members to offer more competitive prices to their retail customers. Any resulting reduction in the differential between the prevailing market price and the price paid by the customer would reduce transaction costs paid by investors and enhance investor confidence in the alignment between transaction costs and the value of the services received, which may encourage wider participation by investors in the retail segments of the corporate and agency debt market.[24]

(ii) Costs

FINRA recognizes that the proposal would impose burdens and costs on members. In both *Regulatory Notices* 14–52 and 15–36, FINRA specifically solicited comment on the potential costs of the proposal to members.[25] For example, in *Regulatory Notice* 15–36, FINRA asked about the anticipated costs to firms in developing and implementing systems to comply with the revised proposal and the anticipated on-going costs associated with the revised proposal. FINRA asked members to provide the estimates of these costs, and the assumptions underlying those estimates. While commenters stated that the initial and the revised proposals would impose significant implementation costs on firms, no commenters provided specific cost

[21] The median quantity was 28 bonds for trades with mark-ups below the fifth percentile, 15 bonds for trades with mark-ups between the 25th and 50th percentiles, and 20 bonds for trades with mark-ups between the fifth and 10th percentiles, the 10th and 25th percentiles, the 50th and 75th percentiles, the 75th and 90th percentiles, and the 90th and 95th percentiles.

[22] The analysis also finds a negative but limited impact of credit rating on the level of mark-ups.

[23] The percentage of eligible transactions may be overestimated as some matched trades may be transactions with affiliates or other trading desks.

[24] FINRA notes that this proposal may also provide regulatory benefits, as disclosing additional pricing information to customers may assist them in detecting practices that are possibly improper, which would supplement FINRA's own surveillance and enforcement program.

[25] *Regulatory Notices* 14–52 and 15–36 proposed to require members to disclose a "reference price," while this proposal requires mark-up disclosure, as determined from the prevailing market price. As discussed below, requiring mark-up disclosure rather than reference price disclosure may result in lower compliance costs.

estimates or a framework to assess anticipated costs.

Among other things, the proposal would require members to develop and deploy a methodology to satisfy the disclosure requirement, identify trades subject to the disclosure, convey the mark-up on the customer confirmation, and adopt policies and procedures to track and ensure compliance with the requirement. To apply the "look through" to non-arms-length transactions with affiliates, members would also need to obtain the price paid or proceeds received and the time of the affiliate's trade with the third party. FINRA is also aware, however, that some members already provide a form of mark-up disclosure for their customers, and may therefore incur fewer costs in complying with the proposed disclosure requirement.

The proposal would require firms to examine transactions occurring both before and after a customer trade execution to determine whether the trade is subject to the disclosure requirement. FINRA recognizes that the forward-looking approach (comparison to trades occurring after customer trades) may be difficult to implement in some current confirmation processing systems. Some firms with such systems stated that they would need to both maintain the current systems and build entirely new systems to comply with the proposed rule change. The operational impact of the proposal would be more material to these firms.

(iii) Effect on Competition

FINRA believes that the proposal would improve price transparency, enhance investor confidence, and promote price competition among dealers in the retail market of corporate and agency debt securities. Increased participation by retail investors and competitive pressure may lead to lower transaction costs.

In response to *Regulatory Notices* 14–52 and 15–36, some commenters stated that the costs associated with increased pricing disclosure may lead some dealers to exit the retail market. Some commenters noted that the requirement to disclose pricing information if the firm principal trade and the customer trade occurred on the same trading day would disproportionately impact smaller firms, as larger firms would be more able to hold positions overnight and not trigger the proposed requirement.

For each dealer's retail size customer trades in corporate bonds in 3Q15, the staff estimated the percentage of trades with offsetting same-day principal transactions. While large firms had a lower average percentage of matched trades than small firms, the difference appeared to be much greater between firms that were more active in the retail corporate bond market and firms that were less active.[26] For example, for the top 20 firms that are most active in the retail corporate bond market (as measured by the total number of retail size customer trades in principal capacity in the corporate bond market in 3Q15), on average 52 percent of the trades made by those firms qualified as matched trades.[27] In contrast, the average percentage of matched trades was 88 percent for all other firms. Therefore, it is possible that large firms and firms that are more active in the retail corporate bond market have greater capacity to hold inventory and source retail trades from that inventory, and therefore are less likely to trigger the proposed disclosure requirement.

Large firms and firms that are more active in the retail corporate bond market may respond to this proposal differently than other firms. Market participants indicated to FINRA that the costs to altering the trade processing and reporting systems for instances where the triggering principal trade occurred after the customer trade would be substantial. FINRA anticipates that large and more active firms are more likely to provide the disclosure to all retail customers even where a triggering principal trade has not occurred at the time of the customer trade because it would likely be less expensive than other methods of ensuring compliance with the proposed rule. FINRA understands that it is unlikely for less active firms to trade with a retail customer without an offsetting transaction. In the cases that they do, they may choose not to provide the disclosure to all retail customers, but then incur the costs of providing the trade processing information at the end of the day, cancelling and correcting the confirmation trade report at the end of the day for any retail trade that subsequently met the reporting requirements of the proposed rule. It is also possible that firms may choose to avoid entering into any trade that would subsequently trigger a reporting obligation, *e.g.*, by holding a position overnight.

More generally, FINRA understands that some firms are considering providing the mark-up/mark-down disclosure on all retail trades, regardless of whether the dealers' offsetting trade is made within the same day or not. Similarly, some firms have proposed to provide mark-up/mark-down disclosure on both retail and non-retail transactions to lower the costs associated with identifying disclosure-eligible trades. Providing any additional disclosure would be voluntary to firms, and would likely only occur where the benefits, including reduced implementation costs, outweighed the costs imposed. For example, a firm that voluntarily provides disclosure on all retail principal transactions (regardless of whether there was an offsetting transaction on the same trading day) would be able to avoid the forward-looking aspect of the proposal and its associated costs. As well, providing additional disclosures may limit the differential impact on smaller firms. And, as discussed above, FINRA notes that any intentional delay of a customer execution to avoid the proposed rule would be contrary to a firm's duties to customers under Rules 2010 and 5310. If the proposed rule is approved, FINRA will monitor trading patterns to ensure firms are not purposely delaying a customer execution to avoid the disclosure.

The staff also analyzed TRACE data for 3Q15 to understand the relationship between mark-ups and firm characteristics. The analysis finds that large firms and firms that are more active in the retail corporate bond market tend not to be represented within the tail of the largest estimated mark-ups and mark-downs in the distribution in the sample examined. For example, large firms accounted for 85 percent of all retail size customer purchases of investment grade corporate bonds in 3Q15, but only 61 percent of the trades with the highest estimated mark-ups (above the 95th percentile).[28] Similarly, the top 20 firms as measured by the total number of retail size customer trades in principal capacity in the corporate bond market in 3Q15 accounted for 68 percent of all retail size customer purchases of investment grade corporate bonds in 3Q15, but only 28 percent of the trades with the highest estimated mark-ups. These relationships remain significant after controlling for bond and execution characteristics. To

[26] FINRA considers firms with 150 or fewer registered representatives as small firms and 500 or more as large firms. The average percentage of matched retail size customer transactions of corporate bonds in 3Q15 was 89 percent for small firms and 82 percent for large firms. The difference was statistically significant. While the most active firms in the retail corporate bond market tend to be large, well-known firms, there are exceptions.

[27] As retail transactions are proxied by trades of 100 bonds or less, some retail size trades by the more active firms may be institutional transactions.

[28] The sample only includes customer transactions that can be matched with offsetting same-day principal trades.

the extent that the proposed disclosure may lead to changes in investor and firm behaviors, it can logically be anticipated to have a greater impact on firms currently charging relatively high mark-ups and mark-downs. Therefore, the analysis implies that the associated economic costs may be higher to some small firms and firms less active in retail customer trades.

However, it is important to note that small firms tend to be overrepresented within both the tail of the highest and the tail of the lowest mark-ups and mark-downs in the sample examined. In other words, while a disproportionate number of small firms charged relatively high mark-ups, there were also a disproportionate number of small firms that charged relatively low mark-ups. For example, small firms accounted for 8 percent of all retail size customer purchases of investment grade corporate bonds in 3Q15, but 18 percent of the trades with the lowest estimated mark-ups (below the 5th percentile). This implies that some small firms offering competitive prices may benefit from the proposed disclosure.

Moreover, small firms are more likely to have their customer confirmations generated by clearing firms. To the extent that clearing firms will not pass along the full implementation costs to each introducing firm, small firms may incur lower costs than large firms to comply with the proposed rule change.

Therefore, while it is possible that the costs associated with the proposal may lead small dealers to consolidate with large dealers or to exit the market, the effect may be limited. FINRA recognizes that increased concentration in the retail market for fixed income transactions could impact retail costs, by either increasing or decreasing those costs. FINRA also recognizes the potential for members to shift some of the compliance costs on to customers.

(iv) Other Considerations

As initially proposed, FINRA would have required members to disclose a "reference price," which used a baseline that is derived from the price that was actually paid by the firm for the bond that same day, and the differential between that reference price and the price to the customer. In response to both the initial proposal and the revised proposal, commenters raised concerns about the usefulness of reference price disclosure, and the potential burdens associated with implementing such disclosure. Based on concerns raised by commenters about the potential burdens associated with reference price disclosure, FINRA is now amending the proposal to require mark-up disclosure, as determined from the prevailing market price. FINRA believes that requiring mark-up disclosure rather than reference price disclosure may result in lower compliance costs, as members are already required under Rule 2121 to ensure that mark-ups and mark-downs are fair, and therefore should be calculating mark-ups to ensure compliance with Rule 2121. While FINRA notes that some members may generate customer confirmations on an intra-day basis, FINRA notes that the mark-up on the customer trade should generally be established at the time of that trade, which should reduce the impact of this proposal upon the confirmation generation process. While firms may still need to delay confirmation generation until the end of the day for at least some portion of disclosure-eligible trades due to the forward-looking aspect of the proposal, FINRA again notes that firms that voluntarily choose to provide disclosure on all retail trades could continue to provide confirmations intra-day, as the forward-looking aspect of the proposal would no longer be relevant.

FINRA recognizes that the determination of the prevailing market price may not be identical across firms and thus may result in a lack of comparability or consistency in disclosures, especially for thinly traded securities. FINRA expects that firms have reasonable policies and procedures in place to calculate the prevailing market price in a manner consistent with Rule 2121 and that such policies and procedures are applied consistently across customers.

FINRA believes that requiring disclosure for non-institutional accounts may lessen some of the costs and complexity associated with this proposal by allowing firms to use an existing distinction that already is integrated into their operations.

(d) Alternatives Considered

As discussed above and below, FINRA considered several alternative approaches and modified the proposal to reduce potential burdens and costs on member firms. For example, FINRA had proposed the disclosure of a "reference price," but then amended the proposal to require the disclosure of the mark-up or mark-down from the prevailing market price. Similarly, a "qualifying size" requirement was replaced with an exclusion for transactions that involve an institutional account. In response to comments and concerns, FINRA also proposes to exclude from the proposed disclosure those transactions which are part of fixed-price offerings on their first trading day and which are sold at the fixed-price offering price, and firm-side transactions that are conducted by a department or desk that is functionally separate from the retail-side desk. Where the member's principal trade was executed with an affiliate of the member in a transaction that was not at arms-length, FINRA proposes to require a member to "look through" its trade with the affiliate to the affiliate's trade with the third party to determine whether disclosure is required.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

This proposal was published for comment in *Regulatory Notice* 14–52 (November 2014) and *Regulatory Notice* 15–36 (October 2015). Thirty-two comments were received in response to *Regulatory Notice* 14–52,[29] and eighteen

[29] *See* Letter from Michael Nicholas, CEO, Bond Dealers of America, to Marcia E. Asquith, Corporate Secretary, FINRA, dated January 20, 2015 ("BDA Letter I"); letter from John T. Macklin, Director of Operations, Brean Capital, LLC, to Marcia E. Asquith, Corporate Secretary, FINRA, dated January 20, 2015 ("Brean Letter"); letter from Richard Bryant, President, Capital Investment Group, to Marcia E. Asquith, Corporate Secretary, FINRA, dated August 4, 2015 ("CIG Letter"); letter from Micah Hauptman, Financial Services Counsel, Consumer Federation of America, to Marcia E. Asquith, Corporate Secretary, FINRA, dated January 20, 2015 ("CFA Letter I"); letter from Chris Melton, Executive Vice President, Coastal Securities, to Marcia E. Asquith, Corporate Secretary, FINRA, dated January 16, 2015 ("Coastal Securities Letter I"); letter from Michael S. Nichols, Principal, Cutter Advisors Group, dated December 5, 2014 ("Cutter Letter"); letter from Larry E. Fondren, President and CEO, DelphX LLC, to Marcia E. Asquith, Corporate Secretary, FINRA, dated January 7, 2015 ("DelphX Letter"); Letter from Herbert Diamant, President, Diamant Investments Corp., to Marcia E. Asquith, Corporate Secretary, FINRA, dated January 9, 2015 ("Diamant Letter I"); letter from Robert A. Eder, to Cynthia Friedlander, FINRA, dated December 30, 2014 ("Eder Letter I"); letter from Robert A. Eder, dated April 1, 2015 ("Eder Letter II); letter from Norman L. Ashkenas, CCO, Fidelity Brokerage Services LLC and Richard J. O'Brien, CCO, National Financial Services, LLC, to Marcia E. Asquith, Corporate Secretary, FINRA, dated January 20, 2015 ("Fidelity Letter I"); letter from Darren Wasney, Program Manager, Financial Information Forum, to Marcia E. Asquith, Corporate Secretary, FINRA, dated January 20, 2015 ("FIF Letter I"); letter from David T. Bellaire, Executive Vice President and General Counsel, Financial Services Institute, to Marcia E. Asquith, Corporate Secretary, FINRA, dated January 20, 2015 ("FSI Institute Letter I"); letter from Rick Foster, Vice-President and Senior Counsel, Financial Services Roundtable, to Marcia E. Asquith, Corporate Secretary, FINRA, dated January 20, 2015 ("Financial Services Roundtable Letter"); letter from Fintegra, LLC ("Fintegra Letter"); letter from Alexander I. Rorke, Senior Managing Director, Hilliard Lyons, to Marcia E. Asquith, Corporate Secretary, FINRA, dated January 20, 2015 ("Hilliard Letter"); letter from Thomas E. Dannenberg, President and CEO, Hutchinson Shockey Erley and Co., to Ronald W. Smith, Corporate Secretary, MSRB, dated January 20, 2015; letter from Andrew Hausman, President, Interactive Data, to Marcia E. Asquith, Corporate Secretary, FINRA, dated January 20, 2015 ("Interactive Data

comments were received in response to *Regulatory Notice* 15–36.[30] A copy of *Regulatory Notice* 14–52 is attached as Exhibit 2a. A list of comment letters received in response to *Regulatory Notice* 14–52 is attached as Exhibit 2b, and copies of the comment letters received in response to *Regulatory Notice* 14–52 are attached as Exhibit 2c. A copy of *Regulatory Notice* 15–36 is attached as Exhibit 2d. A list of comment letters received in response to *Regulatory Notice* 15–36 is attached as Exhibit 2e, and copies of the comment letters received in response to *Regulatory Notice* 15–36 are attached as Exhibit 2f.

Summary of Initial Proposal and Comments Received

As proposed in *Regulatory Notice* 14–52, if a firm sold to a customer and bought the same security as principal from another party on the same trading day, the firm would have been required to disclose on the customer confirmation (i) the price to the customer; (ii) the price to the firm of the same-day trade (reference price); and (iii) the difference between those two prices.[31] The initial proposal would apply where the transaction with the customer was of a "qualifying size," of 100 bonds or less or bonds with a face value of $100,000 or less, which was designed to capture those trades that are retail in nature.

Of the 31 comments FINRA received on the proposal, 6 supported the proposal, while 25 commenters generally opposed the proposal or made recommendations on ways to narrow substantially the scope of the proposal. Generally, commenters that supported the proposal stated that the proposed confirmation disclosure would provide additional post-trade information to investors that would be otherwise difficult to ascertain.[32] Three commenters, including the CFA and the SEC Investor Advocate, stated that this additional information would put investors in a better position to assess whether they are paying fair prices and the quality of the services provided by their broker-dealer, and also could assist investors in detecting improper practices.[33] The CFA and DelphX indicated that the proposal would foster increased price competition in fixed income markets, which would ultimately lower investors' transaction costs.[34] Two commenters recommended that the proposal not be limited to retail trades under the proposed size threshold, but that disclosure should be made on all trades involving retail customers, regardless of size.[35]

Other commenters opposed the proposal on several grounds. Commenters questioned whether the proposed disclosure would provide investors with useful information,[36] or whether the disclosure would simply create confusion among investors.[37] Commenters asserted that the proposed methodology for calculating the reference price is overly complex[38] and would be costly for firms to implement.[39] Commenters also indicated the proposal could cause some dealers to exit the retail broker market, either because firms would be reluctant to adapt to the new disclosure requirement, or because of increased costs and the potentially lower profits.[40]

Several commenters suggested ways to narrow the scope of the proposal. Some commenters recommended that FINRA limit the disclosure obligation to riskless principal transactions involving retail investors, as this would more accurately reflect dealer compensation

Letter"); letter from Scott A. Hayes, President and CEO, Institutional Securities Corp., to Marcia E. Asquith, Corporate Secretary, FINRA, dated January 2, 2015 ("ISC Letter"); letter from Vincent Lumia, Managing Director, Morgan Stanley Smith Barney LLC, to Marcia E. Asquith, Corporate Secretary, FINRA, dated January 20, 2015 ("Morgan Stanley Letter I"); letter from Jed Bandes, President, Mutual Trust Co. of America Securities, dated December 23, 2014 ("Mutual Trust Letter"); letter from Hugh D. Berkson, Executive Vice-President, Public Investors Arbitration Bar Association, to Marcia E. Asquith, Corporate Secretary, FINRA, dated January 20, 2015 ("PIABA Letter I"); letter from Joseph R.V. Romano, President, Romano Brothers and Co., to Marcia E. Asquith, Corporate Secretary, FINRA, dated January 19, 2015 ("Romano Letter"); letter from Paige W. Pierce, President and CEO, RW Smith & Associates, LLC, dated January 21, 2015 ("RW Smith Letter I"); letter from Rick A. Fleming, Investor Advocate, SEC, to Marcia E. Asquith, Corporate Secretary, FINRA, dated January 20, 2015 ("SEC Investor Advocate Letter I"); letter from Sean Davy, Managing Director and David L. Cohen, Managing Director, SIFMA, to Marcia E. Asquith, Corporate Secretary, FINRA, dated January 20, 2015 ("SIFMA Letter I"); letter from Robert A. Muh, CEO, Sutter Securities Inc., to Marcia E. Asquith, Corporate Secretary, FINRA, dated January 20, 2015 ("Sutter Securities Letter"); letter from Karin Tex, dated January 12, 2015 ("Tex Letter"); letter from Kyle C. Wootten, Deputy Director—Compliance and Regulatory, Thomson Reuters, to Marcia E. Asquith, Corporate Secretary, FINRA, dated January 16, 2015 ("Thomson Reuters Letter I"); letter to Cynthia Friedlander from Scott D. Baines, Principal, Umpqua Investments, Inc., dated January 20, 2015 ("Umpqua Investments Letter"); letter from Bonnie K. Wachtel, CEO, and Wendie L. Wachtel, COO, Wachtel and & Co Inc., to Marcia E. Asquith, Corporate Secretary, FINRA, dated January 16, 2015 ("Wachtel Letter"); letter from Robert J. McCarthy, Director of Regulatory Policy, Wells Fargo Advisors, LLC, to Marcia E. Asquith, Corporate Secretary, FINRA, dated January 20, 2015 ("Wells Fargo Letter I").

[30] *See* Letter from Michael Nicholas, Bond Dealers of America, to Marcia E. Asquith, Corporate Secretary, FINRA, dated December 11, 2015 ("BDA Letter II"); letter from Micah Hauptman, Consumer Federation of America, to Marcia E. Asquith, Corporate Secretary, FINRA, dated December 11, 2015 ("CFA Letter II"); letter from Kurt N. Schacht and Linda L. Rittenhouse, CFA Institute, to Marcia E. Asquith, Corporate Secretary, FINRA, dated December 11, 2015 ("CFA Institute Letter"); letter from Chris Melton, Coastal Securities, to Marcia E. Asquith, Corporate Secretary, FINRA ("Coastal Securities Letter II"); letter from Herbert Diamant, Diamant Investment Corporation, to Marcia E. Asquith, Corporate Secretary, FINRA, dated November 30, 2015 ("Diamant Letter II"); letter from Norman L. Ashkenas and Richard J. O'Brien, Fidelity Investments, to Marcia E. Asquith, Corporate Secretary, FINRA, dated December 11, 2015 ("Fidelity Letter II"); letter from Darren Wasney, Financial Information Forum, to Marcia E. Asquith, Corporate Secretary, FINRA, dated December 11, 2015 ("FIF Letter II"); letter from David T. Bellaire, Financial Services Institute, to Marcia E. Asquith, Corporate Secretary, FINRA, dated December 11, 2015, ("FSI Institute Letter II"); letter from David P. Bergers, LPL Financial LLC, to Marcia E. Asquith, Corporate Secretary, FINRA, dated December 10, 2015 ("LPL Letter"); letter from Elizabeth Dennis, Morgan Stanley Smith Barney LLC, to Marcia E. Asquith, Corporate Secretary, FINRA, dated December 11, 2015 ("Morgan Stanley Letter II"); letter from Hugh D. Berkson, Public Investors Arbitration Bar Association, to Marcia E. Asquith, Corporate Secretary, FINRA, dated December 8, 2015 ("PIABA Letter II"); letter from Paige W. Pierce, RW Smith and Associates, LLC, to Marcia E. Asquith, Corporate Secretary, FINRA, dated December 11, 2015 ("RW Smith Letter II"); letter from Jason Clague, Charles Schwab and Co., to Marcia E. Asquith, Corporate Secretary, FINRA, dated December 11, 2015 ("Schwab Letter"); letter from Rick A. Fleming, Office of the Investor Advocate, SEC, to Marcia E. Asquith, Corporate Secretary, FINRA, dated December 11, 2015 ("SEC Investor Advocate Letter II"); letter from Sean Davy and Leslie M. Norwood, Securities Industry and Financial Markets Association, to Marcia E. Asquith, Corporate Secretary, FINRA, dated December 11, 2015 ("SIFMA Letter II"); letter from Manisha Kimmel, Thomson Reuters, to Marcia E. Asquith, Corporate Secretary, FINRA, dated December 11, 2015 ("Thomson Reuters Letter II"); letter from Thomas S. Vales, TMC Bonds LLC, to Marcia E. Asquith, Corporate Secretary, FINRA, dated December 11, 2015 ("TMC Bonds Letter"); letter from Robert J. McCarthy, Wells Fargo Advisors LLC, to Marcia E. Asquith, Corporate Secretary, FINRA, dated December 11, 2015 ("Wells Fargo Letter II").

[31] The initial proposal would also apply to instances where the firm buys bonds from a customer and sells the same bonds as principal to another party on the same trading day.

[32] *See, e.g.*, SEC Investor Advocate Letter I at 2.

[33] *See* CFA Letter I at 1; DelphX Letter at 2; SEC Investor Advocate Letter I at 2.

[34] *See* CFA Letter I at 1; DelphX Letter at 3.

[35] *See* Eder Letter I at 1; PIABA Letter I at 2.

[36] *See* Diamant Letter at 5; Romano Letter at 3–4; Sutter Securities Letter at 2.

[37] *See* BDA Letter I at 4–5; Diamant Letter I at 6; FSI Institute Letter I at 3; Morgan Stanley Letter I at 2; SIFMA Letter I at 17; Wells Fargo Letter I at 5; CIG Letter at 1.

[38] *See* Fidelity Letter I at 4; FIF Letter I at 2; SIFMA Letter I at 24–26; Thomson Reuters Letter I at 6; Wells Fargo Letter I at 8.

[39] *See* BDA Letter I at 2–3; Diamant Letter I at 7–8; Fidelity Letter I at 4–5; FIF Letter I at 2; FSI Institute Letter I at 5; Financial Services Roundtable Letter at 5; Morgan Stanley Letter I at 3; Wells Fargo Letter I at 7–8; Umpqua Investments Letter at 1.

[40] *See* Brean Letter at 1; Diamant Letter I at 7; FSI Institute Letter I at 8; Umpqua Investments Letter at 1.

and transaction costs,[41] and would be more consistent with the stated objectives of the SEC in this area and of the proposal itself.[42] Some commenters suggested that the proposed rule should apply to riskless principal transactions as previously defined by the Commission, wherein the broker-dealer has an "order in hand" at the time of execution.[43] One commenter, however, did not think that such a limitation would appreciably reduce the complexity or cost of the proposal.[44] Commenters also suggested that FINRA eliminate institutional trades from the scope of the proposal: For example, by not covering institutional accounts as defined in FINRA Rule 4512, or sophisticated municipal market professionals as defined in MSRB Rule D–15.[45] Both Fidelity and SIFMA stated that the proposal should permit trading desks that are separately operated within a firm to match only their own trades for purposes of pricing disclosure.[46] Morgan Stanley and SIFMA also stated that transactions between affiliates should not constitute a firm principal trade that, if accompanied by a same-day customer trade, would trigger the disclosure requirement.[47] Commenters also suggested that the proposal exempt the disclosure of mark-ups on new issues.[48] One commenter suggested that this exemption should exempt the disclosure of mark-up/mark-downs on transactions in new issues executed at the public offering price on the date of the issue's sale.[49]

Rather than proposing reference price disclosure, several commenters suggested that FINRA instead enhance TRACE, in part by providing greater investor education about TRACE,[50] and requiring firms to make those systems more accessible[51] by, for example, providing more near-real-time TRACE information to investors[52] or providing a link to TRACE on customer confirmations,[53] or by aggregating all TRACE data on a single Web site.[54]

In response to the comments received on *Regulatory Notice* 14–52, FINRA proposed several modifications to the proposal. First, FINRA proposed to replace the qualifying size requirement with an exclusion for transactions that involve an institutional account, as defined in FINRA Rule 4512(c). This would ensure that all eligible transactions involving retail customers, regardless of size or face amount, would be subject to the proposed disclosure and was responsive to firms' concerns about using disparate definitions of a retail customer. Second, FINRA proposed to exclude from the proposed disclosure those transactions which are part of fixed-price offerings on their first trading day and which are sold at the fixed-price offering price. Variable price offerings would remain subject to the proposed disclosure.[55]

Third, in response to concerns from commenters that having the disclosure requirements triggered by trades made by separate trading departments or desks would undermine the legal and operational separation of those desks, FINRA staff proposed to exclude firm-side transactions from the proposed disclosure that are conducted by a department or desk that is functionally separate from the retail-side desk, *e.g.*, where the firm can demonstrate through policies and procedures that the firm-side transaction was made by an institutional desk for an institutional customer that is separate from the retail desk and the retail customer, and that the institutional desk had no knowledge of the retail order. However, if, for example, the transactions and positions of the separate department or desk are regularly used to effect the transactions at the retail desk, this exception would not apply.

Fourth, in response to concerns from commenters about having the disclosure requirements triggered by trades between affiliates, FINRA proposed to exclude trades where the member's principal trade was executed with an affiliate of the member and the affiliate's position that satisfied this trade was not acquired on the same trading day. Some commenters stated that acquiring a security through an affiliate was functionally similar to an inventory trade, and that using this trade as the basis for a reference price calculation would be of limited value, especially if the affiliate acquired its position over multiple trading days.[56] To the extent that disclosure is not required where the firm principal trade occurs on a previous trading day, *e.g.*, the firm sells the security to a customer out of its inventory, this exception would apply a similar concept to trades involving affiliates. Fifth, to address concerns raised by commenters that customers may be confused by reference price information provided on volatile trading days where there are large price swings between the time of the trade with the customer and the firm's own trade, FINRA proposed that firms be required to provide a link to TRACE on the customer confirmation, and permitted firms to omit the reference price in the event of a material change in the price of the security between the time of the firm principal trade and the customer trade. Sixth, in response to concerns about the operational burdens associated with determining the reference price for certain "complex" trade scenarios, FINRA would permit members to use alternative methodologies for more complex trades.[57]

As discussed above, FINRA developed its initial proposal in consultation with the MSRB, and the initial FINRA and MSRB proposals were substantially similar. However, in response to comments, the MSRB proposed a different disclosure framework than FINRA. Specifically, the MSRB proposed requiring a firm to disclose the amount of the firm's mark-

[41] *See* Hilliard Letter at 2; Morgan Stanley Letter I at 2; SIFMA Letter I at 29; Wells Fargo Letter I at 11.

[42] *See* SIFMA Letter I at 31.

[43] *See* Hilliard Letter at 2; SIFMA Letter I at 30; Wells Fargo Letter I at 11.

[44] *See* Thomson Reuters Letter at 7.

[45] *See* BDA Letter I at 6; FIF Letter I at 3; Morgan Stanley Letter I at 3.

[46] *See* Fidelity Letter I at 8; SIFMA Letter I at 36.

[47] *See* Morgan Stanley Letter I at 3; SIFMA Letter I at 21.

[48] *See* BDA Letter I at 6; Coastal Securities Letter I at 1; SIFMA Letter I at 22.

[49] *See* Coastal Securities Letter I at 1.

[50] *See* Fidelity Letter I at 7; FSI Institute Letter I at 6–7; Financial Services Roundtable Letter at 6; Hilliard Letter at 3; Morgan Stanley Letter I at 2; SIFMA Letter I at 15–16.

[51] *See* Thomson Reuters Letter I at 7.

[52] *See* Wells Fargo Letter I at 7. Other commenters noted the difficulty of providing TRACE/EMMA data on the confirmation. *See* Romano letter at 4.

[53] *See* Fidelity Letter I at 7; FSI Institute Letter I at 6; Hilliard Letter at 3; Morgan Stanley Letter I at 2; SIFMA Letter I at 15–16.

[54] *See* FIF Letter I at 4; FSI Institute Letter I at 6; Romano Letter at 3–4; SIFMA Letter I at 15–16.

[55] In a fixed-price offering, bonds are generally sold at par and at the same price to all investors, and the compensation paid to the firm, such as the underwriting fee, is captured in the prospectus. In contrast, variable price offerings are reported as secondary trades, may involve investors paying different prices, and may be difficult for firms to distinguish from other kinds of secondary trades.

[56] *See* SIFMA Letter I at 21.

[57] FINRA proposed that, where there is a principal transaction and a customer transaction of the same size (or the principal transaction exceeds the size of the customer trade) without intervening trades within the same trading day, the price of the principal trade should be used as the reference price. However, where there is not a same-size principal and customer trade scenario or there are one or more intervening trades of a different size, the staff proposed that firms should be allowed to employ a reasonable alternative methodology in calculating the reference price, such as the average weighted price of the firm trades that equal or exceed the size of the customer trade, or the price of the last same-day trade executed as principal by the firm prior to the customer trade (or closest in time if executed after), irrespective of the size of that principal trade. FINRA also proposed that the firm must adequately document, and consistently apply, its chosen methodology.

up (or mark-down) from the prevailing market price for certain retail customer transactions, rather than the reference price paid by the firm and the differential between the reference price and the price paid by the customer. Under the MSRB's proposal, the firm would be required to disclose its mark-up or mark-down if the firm bought (sold) the security in one or more transactions in an aggregate trade size that met or exceeded the size of the sale (purchase) to (from) the customer within two hours of the customer transaction. The disclosed mark-up would be required to be expressed both as a total dollar amount and as a percentage. The MSRB also proposed exempting firms from disclosure when the firm and customer trades were conducted by functionally separate trading desks. For trades among affiliates, the MSRB proposed to "look through" the firm's trade with the affiliate to the affiliate's trade with the third party for purposes of determining whether disclosure is required. Additionally, the MSRB proposed to require the disclosure of two additional data points, even if mark-up disclosure would not be required under the MSRB's proposal. First, the MSRB proposed to require firms to add a CUSIP-specific link to EMMA on all customer confirmations. Second, the MSRB proposed to require on all customer confirmations the disclosure of the time of execution of a customer's trade.

Given the importance of achieving a coordinated approach with the MSRB, in *Regulatory Notice* 15–36 soliciting comment on the revised proposal, FINRA included a description of the MSRB's mark-up disclosure approach and invited comments on any relative merits and shortcomings of the MSRB's approach as compared to FINRA's revised approach.

Summary of Revised Proposal and Comments Received

In response to the revised proposal, some commenters reiterated that retail investors would benefit from some form of enhanced price disclosure. For example, the CFA stated that increased price disclosure would provide investors with the opportunity to make more informed investment decisions, and would foster increased price competition in the fixed income markets.[58] The SEC Investor Advocate stated that some kind of regulatory solution was necessary, as retail investors in fixed income securities "remain disadvantaged by the lack of information they receive in confirmation statements."[59] The PIABA stated that abuse of undisclosed mark-ups and mark-downs is not a hypothetical problem, and that making additional pricing information available could result in customers being charged more favorable prices.[60]

A number of commenters supported disclosing the mark-up, as based on the prevailing market price, instead of the reference price.[61] BDA recommended that the disclosure should be displayed either in dollar terms or as a percentage of the markup relative to the inter-dealer price.[62] Both BDA and Schwab stated that the reference price proposal would be costly, difficult for firms to implement and for retail customers to understand, and may not provide customers with meaningful information about the costs associated with particular transactions.[63] Schwab noted that, under the reference price proposal, a customer may receive disclosure for the execution of one lot of a particular order, but not for another lot of the same order.[64] Schwab stated that the reference price proposal would also reflect market fluctuations, so that a customer may infer that the dealer lost money on a transaction with a customer, even if a mark-up was charged.[65] Fidelity stated that the proposed disclosure requirement should focus on the difference between the price the customer was charged for a fixed income security and the prevailing market price of the fixed income security.[66] While Fidelity agreed that a dealer's actual contemporaneous costs or proceeds are a reasonable proxy for the prevailing market price in some situations, it stated that there are many situations in which a dealer's costs or proceeds are not a reasonable proxy for the prevailing market price.[67] Fidelity proposed that the prevailing market price be defined as the dealer's best available price for the subject security under the best available market at the time of trade execution.[68] Fidelity proposed different methodologies that dealers could apply when determining the prevailing market price, including (1) looking at a trader's mark-to-market at the end of the day; (2) contemporaneous cost; (3) top of book; and (4) vendor solutions that offer real time valuations for certain securities.[69]

Other commenters noted that the reference price proposal could negatively impact firms' efforts to generate timely confirmations.[70] In supporting the mark-up disclosure approach, the SEC Investor Advocate noted that mark-up disclosure, although it may lead to disclosure of a smaller cost to an investor under some circumstances, nonetheless provides relevant information about the actual compensation the investor is paying the dealer for the transaction, reflects market conditions and has the potential to provide a more accurate benchmark for calculating transaction costs.[71] LPL noted that mark-up disclosure would be relevant to retail transactions in all kinds of fixed income securities that might be the subject of future disclosure requirements.[72]

Some commenters opposed requiring that the firm principal and customer trades occur closer in time to each other, such as two hours, as had relatedly been proposed by the MSRB. The CFA and the SEC Investor Advocate noted that a shorter timeframe would increase the possibility that firms would attempt to evade the disclosure requirement by holding onto positions.[73] Other commenters, including Morgan Stanley and SIFMA, indicated that the timeframe for disclosure should be shortened to the two-hour window.[74] These commenters stated that the two-hour window would capture the majority of the trades at issue, and also be easier to implement.[75] Commenters stated that the concern that a shorter timeframe would facilitate gaming of the disclosure requirement was misplaced, as it was unlikely that firms would change trading patterns and increase risk exposure merely to avoid disclosure.[76] They also said that FINRA has sufficient access to data to determine if firms were attempting to game the two-hour disclosure window.[77]

Commenters generally supported the change of the scope of the proposal from the "qualifying size" standard (transactions involving 100 bonds or

[58] *See* CFA Letter II at 6.

[59] *See* SEC Investor Advocate Letter II at 2.

[60] *See* PIABA Letter II at 3.

[61] *See* BDA Letter II at 6; Fidelity Letter II at 5; FSI Institute Letter II at 5; LPL Letter at 1; Schwab Letter at 3–4; SEC Investor Advocate Letter II at 5.

[62] *See* BDA Letter II at 2.

[63] *See* BDA Letter II at 4–5; Schwab Letter at 2.

[64] *See* Schwab Letter at 2.

[65] *See* Schwab Letter at 2.

[66] *See* Fidelity Letter II at 7–8.

[67] *Id.*

[68] *Id.* at 7.

[69] *Id.* at 8.

[70] *See* Fidelity Letter II at 11; FIF Letter II at 3; Schwab Letter at 4.

[71] *See* SEC Investor Advocate Letter II at 5.

[72] *See* LPL Letter at 4.

[73] *See* CFA Letter II at 2; SEC Investor Advocate Letter II at 5.

[74] *See* Diamant Letter II at 7; Morgan Stanley Letter II at 3; SIFMA Letter II at 7.

[75] *See* Diamant Letter II at 7; Morgan Stanley Letter II at 3; SIFMA Letter II at 7.

[76] *See* Morgan Stanley Letter II at 3; RW Smith Letter II at 2; SIFMA Letter II at 10.

[77] *See* RW Smith Letter II at 2.

less or $100,000 face amount or less) to transactions with non-institutional accounts.[78] The CFA noted that the revised standard would help ensure that all retail transactions would receive disclosure, regardless of size.[79]

Three commenters opposed the proposal to require firms to disclose the time of the execution of the customer transaction.[80] FIF stated that this proposal would create additional expense for firms, and could not be adjusted in connection with any trade modifications, cancellations or corrections.[81] FIF also indicated that the execution time was not necessary for securities that trade infrequently, as investors should not have difficulty ascertaining the prevailing market price at the time of their trade.[82] Schwab indicated that this would not be a necessary data point for investors.[83]

Other commenters, however, supported including the time of execution of the customer trade. Thomson Reuters stated that including the time of execution would allow retail investors to more easily identify relevant trade data on TRACE[84] and FSI stated that this would allow investors to understand the market for their security at the time of their trade.[85]

Commenters also supported adding a general link to TRACE.[86] FSI and SIFMA supported the proposal to add a link to the TRACE Web site on customer confirmations instead of a CUSIP-specific link, as a CUSIP-specific link could be inaccurate or misleading, and could be difficult for firms to implement.[87] BDA stated that a general link to the main TRACE page would be operationally easier to achieve.[88]

Commenters supported the proposed exclusion for transactions involving separate trading desks,[89] although Schwab indicated that this exception should be subject to information barriers and rigorous oversight.[90] The CFA suggested FINRA specifically require, in the rule text, that firms have policies and procedures in place to ensure functional separation,[91] and the SEC Investor Advocate suggested that FINRA provide greater guidance as to what constitutes a functional separation.[92]

Some commenters supported the proposal, in cases of transactions between affiliates, to "look through" to the affiliate's principal transaction for purposes of determining whether disclosure is required.[93] FIF and Thomson Reuters stated, however, that not all firms are able to "look through" principal trades, given information barriers and the fact that firms often conduct inter-dealer business on a completely separate platform than the retail business.[94]

With respect to the proposed exemption for fixed-price new issues, the two commenters that addressed this issue, CFA Institute and SIFMA, supported the proposed exemption.[95]

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–FINRA–2016–032 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2016–032. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2016–032, and should be submitted on or before September 9, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[96]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–19773 Filed 8–18–16; 8:45 am]

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[78] *See* CFA Letter II at 4; CFA Institute Letter at 3; Coastal Securities Letter II; PIABA Letter II at 2; Schwab Letter at 5; SIFMA Letter II at 15.

[79] *See* CFA Letter II at 4.

[80] *See* FIF Letter at 5; Schwab Letter at 6; SIFMA Letter at 16.

[81] *See* FIF Letter at 5.

[82] *See* FIF Letter at 6.

[83] *See* Schwab Letter at 6.

[84] *See* Thomson Reuters Letter at 2.

[85] *See* FSI Letter at 7.

[86] *See* BDA Letter II at 3; Coastal Securities Letter II; FSI Institute Letter II at 6.

[87] *See* FSI Institute Letter II at 6; SIFMA Letter II at 19.

[88] *See* BDA Letter II at 3.

[89] *See* CFA Institute Letter at 5; Schwab Letter at 6; SIFMA Letter II at 15.

[90] *See* Schwab Letter at 6.

[91] *See* CFA Letter II at 5.

[92] *See* SEC Investor Advocate Letter II at 6.

[93] *See* CFA Institute Letter at 5; Fidelity Letter II at 11–12; PIABA Letter II at 2; Schwab Letter at 6; SIFMA Letter II at 18.

[94] *See* FIF Letter II at 5; Thomson Reuters Letter II at 3.

[95] *See* CFA Institute Letter at 4; SIFMA Letter II at 15.

[96] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32218; File No. 812–14599]

Wells Fargo Bank, National Association, et al., Notice of Application

August 16, 2016.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from certain requirements of rule 3a–7(a)(4)(i) under the Act.

SUMMARY OF APPLICATION: Applicant requests an order that would permit an issuer of asset-backed securities ("ABS") that is not registered as an investment company under the Act in reliance on rule 3a–7 under the Act (an "Issuer") to appoint any of the applicants to act as a trustee in connection with the Issuer's ABS when any such applicant is affiliated with an underwriter for the Issuer's ABS.

APPLICANTS: Wells Fargo Bank, National Association; Wells Fargo Bank Northwest, National Association; and Wells Fargo Delaware Trust Company, National Association.

FILING DATES: The application was filed on January 11, 2016 and amended on May 2, 2016, and August 2, 2016.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 6, 2016 and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Brent J. Fields, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants: c/o Bradford E. Chatigny, Esq., Managing Counsel, Wells Fargo Law Department, 301 South College Street, 32nd Floor, Charlotte, NC 28202.

FOR FURTHER INFORMATION CONTACT: Laura J. Riegel, Senior Counsel, at (202) 551–3038, or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. Each applicant is a wholly-owned indirect subsidiary of Wells Fargo & Company.[1] Each applicant is frequently selected to act as trustee in connection with ABS issued by Issuers.

2. An ABS transaction typically involves the transfer of assets by a seller, usually by a "sponsor," to a bankruptcy remote special purpose corporate or trust entity that is established for the sole purpose of holding the assets and issuing ABS to investors (an "ABS Transaction"). Payments of interest and principal on the ABS depend primarily on the cash flow generated by the pool of assets owned by the Issuer.

3. The parties to an ABS Transaction enter into several transaction agreements that provide for the holding of the assets by the Issuer and define the rights and responsibilities of the parties to the transaction ("Transaction Documents"). The operative Transaction Document governing the trustee is referred to herein as the "Agreement."

4. The sponsor of an ABS Transaction assembles the pool of assets by purchasing or funding them, describes them in the offering materials, and retains the underwriter to sell interests in the assets to investors. The sponsor determines the structure of the ABS Transaction and drafts the Transaction Documents. The sponsor selects the other parties to the ABS Transaction, including the underwriter, the servicer, and the trustee.

5. The servicer, either directly or through subservicers, manages the assets that the Issuer holds. The servicer typically collects all the income from the assets and remits the income to the trustee. The trustee uses the income, as instructed by the servicer and/or as provided by the Agreement, to pay interest and principal on the ABS, to fund reserve accounts and purchases of additional assets, and to make other payments including fees owed to the trustee and other parties to the ABS Transaction.

6. The sponsor of an ABS Transaction selects the trustee and other participants in the transaction. In selecting a trustee, the sponsor generally seeks to obtain customary trust administrative and related services for the Issuer at minimal cost. In some instances, other parties to an ABS Transaction may provide recommendations to a sponsor about potential trustees. An underwriter for an ABS Transaction also may provide advice to the sponsor about trustee selection based on, among other things, the underwriter's knowledge of the pricing and expertise offered by a particular trustee in light of the contemplated transaction.

7. If an underwriter affiliated with an applicant recommends a trustee to a sponsor, both the underwriter's recommendation and any selection of an applicant by the sponsor will be based upon customary market considerations of pricing and expertise, among other things, and the selection will result from an arms-length negotiation between the sponsor and an applicant. An applicant will not price its services as a trustee in a manner designed to facilitate its affiliate being named underwriter.

8. The trustee's role in an ABS Transaction is specifically defined by the Agreement, and under the Agreement the trustee is not expected or required to perform discretionary functions. The responsibilities of the trustee as set forth in the Agreement are narrowly circumscribed and limited to those expressly accepted by the trustee. The trustee negotiates the provisions applicable to it directly with the sponsor and is then appointed by, and enters into the Agreement with, the Issuer.

9. The trustee usually becomes involved in an ABS Transaction after the substantive economic terms have been negotiated between the sponsor and the underwriters. The trustee does not monitor any service performed by, or obligation of, an underwriter, whether or not the underwriter is affiliated with the trustee. In the unlikely event that an applicant, in acting as trustee to an Issuer for which an affiliate acts as underwriter, becomes obligated to enforce any of the affiliated underwriter's obligations to the Issuer, an applicant will resign as trustee for the Issuer consistent with the requirements of rule 3a–7(a)(4)(i). In such an event, an applicant will incur the costs associated with the Issuer's procurement of a successor trustee.

10. The sponsor selects one or more underwriters to purchase the Issuer's ABS and resell them or to place them privately with buyers obtained by the underwriter. The sponsor enters into an underwriting agreement with the underwriter that sets forth the responsibilities of the underwriter with

[1] Applicants also request that the order apply to an Issuer's future appointment of any other entity controlling, controlled by, or under common control (as defined in section 2(a)(9) of the Act) with any of the applicants as a trustee in connection with an Issuer's ABS. Applicants represent that any other entity that relies on the order in the future will comply with the terms and conditions of the application. Any existing entity currently intending to rely on the requested order has been named as an applicant.

respect to the distribution of the ABS and includes representations and warranties regarding, among other things, the underwriter and the quality of the Issuer's assets. The obligations of the underwriter under the underwriting agreement are enforceable against the underwriter only by the sponsor.

11. The underwriter may assist the sponsor in the organization of an Issuer by providing advice, based on its expertise in ABS Transactions, on the structuring and marketing of the ABS. This advice may relate to the risk tolerance of investors, the type of collateral, the predictability of the payment stream, the process by which payments are allocated and down-streamed to investors, the way that credit losses may affect the trust and the return to investors, whether the collateral represents a fixed set of specific assets or accounts, and the use of forms of credit enhancements to transform the risk-return profile of the underlying collateral. Any involvement of an underwriter in the organization of an Issuer that occurs is limited to helping determine the assets to be pooled, helping establish the terms of the ABS to be underwritten, and providing the sponsor with a warehouse line of credit for the assets to be transferred to the Issuer in connection with, and prior to, the related securitization.

12. An underwriter may provide advice to a sponsor regarding the sponsor's selection of a trustee for the Issuer. However, an underwriter's role in structuring a transaction would not extend to determining the obligations of a trustee, and the underwriter is not a party to the Agreement or to any of the Transaction Documents. Except for arrangements involving credit or credit enhancement for an Issuer or remarketing agent activities, the underwriter typically has no role in the operation of the Issuer after its issuance of securities. Applicants represent that although an underwriter typically may provide credit or credit enhancement for an Issuer or engage in remarketing agent activities, an underwriter affiliated with an applicant will not provide or engage in such activities.

Applicant's Legal Analysis

1. Rule 3a–7 excludes from the definition of investment company under section 3(a) of the Act an Issuer that meets the conditions of the rule. One of rule 3a–7's conditions, set forth in paragraph (a)(4)(i), requires that the Issuer appoint a trustee that is not affiliated with the Issuer or with any person involved in the organization or operation of the Issuer (the "Independent Trustee Requirement"). Rule 3a–7(a)(4)(i) therefore prohibits an Issuer from appointing a trustee that is affiliated with an underwriter.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction or any class or classes of persons, securities or transactions from any provision of the Act, or from any rule thereunder, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Applicants request exemptive relief under section 6(c) of the Act from rule 3a–7(a)(4)(i) under the Act to the extent necessary to permit an Issuer to appoint an applicant as a trustee to the Issuer when such applicant is affiliated with an underwriter involved in the organization of the Issuer. Applicants submit that the requested exemptive relief from the Independent Trustee Requirement is necessary and appropriate in the public interest and is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act due to changes in the banking industry, due to the timing and nature of the roles of the trustee and the underwriter in ABS Transactions, and because the requested relief is consistent with the policies and purposes underlying the Independent Trustee Requirement and rule 3a–7 in general.

4. Applicants note that when rule 3a–7 was proposed in 1992, virtually all trustees were unaffiliated with the other parties involved in an ABS Transaction. Applicants state that consolidation within the banking industry, as well as economic and other business factors, has resulted in a significant decrease in the number of bank trustees providing services to Issuers. Applicants also state that bank consolidation has been accompanied by the expansion of banks into investment banking, including the underwriting of ABS Transactions. Applicants further state that due to these banking industry changes, most trustees that provide services to Issuers, including an applicant, have affiliations with underwriters to Issuers. Applicants state that, as a result, when an affiliate of an applicant is selected to underwrite ABS in an ABS Transaction, rule 3a–7(a)(4)(i)'s Independent Trustee Requirement generally prevents applicant from serving as trustee for the Issuer. Applicants state that the Independent Trustee Requirement imposes an unnecessary regulatory limitation on trustee selection and causes market distortions by leading to the selection of trustees for reasons other than customary market considerations of pricing and expertise. This result is disadvantageous to the ABS market and to ABS investors.

5. Applicants submit that due to the nature and timing of the roles of the trustee and the underwriter, an applicant's affiliation with an underwriter would not result in a conflict of interest or possibility of overreaching that could harm investors. Applicants state that the trustee's role begins with the Issuer's issuance of its securities, and the trustee performs its role over the life of the Issuer. Applicants state that, in contrast, the underwriter is chosen early in the ABS Transaction process, may help to structure the ABS Transaction, distributes the Issuer's securities to investors, and generally have no role subsequent to the distribution of the Issuer's securities. Applicants further state that an ABS trustee does not monitor the distribution of securities or any other activity performed by underwriters and there is no opportunity for a trustee and an affiliated underwriter to act in concert to benefit themselves at the expense of holders of the ABS either prior to or after the closing of the ABS Transaction.

6. Applicants state that the trustee's role is narrowly defined, and that the trustee is neither expected nor required to exercise discretion or judgment except after a default in the ABS transaction, which rarely occurs. Applicants state that the duties of a trustee after a default are limited to enforcing the terms of the Agreement for the benefit of debt holders as a "prudent person" would enforce such interests for his own benefit. Applicants further state that the trustee of the Issuer has virtually no discretion to pursue anyone in any regard other than preserving and realizing on the assets. In any event, applicants state that any role taken by the trustee in the event of a default would occur after the underwriter has terminated its role in the transaction.

7. Applicants submit that the concerns underlying the Independent Trustee Requirement are not implicated if the trustee for an Issuer is independent of the sponsor, servicer, and credit enhancer for the Issuer, but is affiliated with an underwriter for the Issuer, because in that situation no single entity would act in all capacities in the issuance of the ABS and the operation of an Issuer. Applicants state that each applicant would continue to act as an independent party safeguarding the assets of any Issuer regardless of an affiliation with an

underwriter of the ABS. Applicants submit that the concern that affiliation could lead to a trustee monitoring the activities of an affiliate also is not implicated by a trustee's affiliation with an underwriter, because, in practice, a trustee for an Issuer does not monitor the distribution of securities or any other activity performed by underwriters. Applicants further state that the requested relief would be consistent with the broader purpose of rule 3a–7 of not hampering the growth and development of the ABS market, to the extent consistent with investor protection.

8. Applicants state that the conditions set forth below provide additional protections against conflicts and overreaching. For example, the conditions ensure that an applicant will continue to act as an independent party safeguarding the assets of an Issuer regardless of an affiliation with an underwriter of the ABS and would not allow the underwriter any greater access to the assets, or cash flows derived from the assets, of the Issuer than if there were no affiliation.

Applicants' Conditions

Each applicant agrees that any order granting the requested relief will be subject to the following conditions:

1. The applicant will not be affiliated with any person involved in the organization or operation of the Issuer in an ABS Transaction other than the underwriter.

2. The applicant's relationship to an affiliated underwriter will be disclosed in writing to all parties involved in an ABS Transaction, including the rating agencies and the ABS holders.

3. An underwriter affiliated with the applicant will not be involved in the operation of an Issuer, and its involvement in the organization of an Issuer will extend only to determining the assets to be pooled, assisting in establishing the terms of the ABS to be underwritten, and providing the sponsor with a warehouse line of credit for the assets to be transferred to the Issuer in connection with, and prior to, the related securitization.

4. An affiliated person of the applicant, including an affiliated underwriter, will not provide credit or credit enhancement to an Issuer if the applicant serves as trustee to the Issuer.

5. An underwriter affiliated with the applicant will not engage in any remarketing agent activities, including involvement in any auction process in which ABS interest rates, yields, or dividends are reset at designated intervals in any ABS Transaction for which the applicant serves as trustee to the Issuer.

6. All of an affiliated underwriter's contractual obligations pursuant to the underwriting agreement will be enforceable by the sponsor.

7. Consistent with the requirements of rule 3a–7(a)(4)(i), the applicant will resign as trustee for the Issuer if the applicant becomes obligated to enforce any of an affiliated underwriter's obligations to the Issuer.

8. The applicant will not price its services as trustee in a manner designed to facilitate its affiliate being named underwriter.

For the Commission, by the Division of Investment Management, under delegated authority.

Brent J. Fields,

Secretary.

[FR Doc. 2016–19855 Filed 8–18–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78578; File No. SR–NASDAQ–2016–109]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Nasdaq Rule 7047

August 15, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 3, 2016, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is proposing to amend Rule 7047 (Nasdaq Basic)[3] with language indicating the removal of certain credits that a Distributor[4] is eligible to receive in respect to Nasdaq Basic.[5]

While changes pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on September 1, 2016.

The text of the proposed rule change is available at *nasdaq.cchwallstreet.com*, at Nasdaq's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposal is to amend Rule 7047(c) with language indicating that the Distributor fee for Nasdaq Basic will be uniformly applied to all Distributors, regardless of any user fees, immediately after approval to receive Nasdaq Basic, at the current fee of $1,500 per month.[6]

Nasdaq Basic is a proprietary data product that provides a low cost alternative to the other Level 1 offerings. Nasdaq Basic provides the best bid and offer and last sale information for all U.S. exchange-listed securities based on liquidity within the Nasdaq market center, as well as trades reported to the FINRA/Nasdaq Trade Reporting Facility™ (TRF™) ("FINRA/Nasdaq TRF").[7] Thus, Nasdaq Basic provides

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] References to rules are to Nasdaq rules, unless otherwise noted.

[4] The term "Distributor" refers to any entity that receives Nasdaq Basic data directly from Nasdaq or indirectly through another entity and then distributes it to one or more Subscribers. Rule 7047 (d)(1).

[5] Nasdaq Basic, which is discussed below, is a proprietary data product that provides a low cost alternative to other Level 1 offerings. Rule 7047. Level 1 provides primary market data such as bid/ask price and size and last price and size.

[6] Now, as discussed below, each Distributor is eligible to receive a credit against its monthly Distributor Fee for Nasdaq Basic equal to the amount of its monthly user fees for Nasdaq Basic up to a maximum of $1,500. Rule 7047(c).

[7] "FINRA" is the Financial Industry Regulatory Authority.

Nasdaq Last Sale ("NLS") together with best bid and offer information from Nasdaq.

NLS was approved by the Commission in June of 2008. NLS is a non-core market data product designed for distribution through internet portals and broadcast television, as well as distribution to individuals that access the data via a username/password-identified account and/or quote-counting mechanisms.[8] NLS includes two data elements: (1) Last sale transaction reports from the Nasdaq Market Center, and (2) last sale transaction reports from the FINRA/Nasdaq TRF.[9] As such, NLS is a "non-core" product that provides a subset of the "core" quotation and last sale data provided by securities information processors ("SIPs") under the CQ/CT Plan and the Nasdaq Unlisted Trading Privileges ("UTP") Plan.

Nasdaq Basic, another non-core market data product, was approved by the Commission about a year later in March of 2009.[10] As originally proposed, the Nasdaq Basic product was to provide two data feeds: (1) A feed carrying the best bid and offer on the Nasdaq Market Center, and (2) a feed containing NLS which carries last sale transaction reports from Nasdaq and from the FINRA/Nasdaq TRF.

Nasdaq Basic, which is described in current Rule 7047, was expanded to three separate components, which may be purchased individually or in combination.[11] The Nasdaq Basic components are: (i) Nasdaq Basic for Nasdaq, which contains the best bid and offer on the Nasdaq Market Center and last sale transaction reports for Nasdaq and the FINRA/Nasdaq TRF for Nasdaq-listed stocks, (ii) Nasdaq Basic for NYSE, which contains the best bid and offer on the Nasdaq Market Center and last sale transaction reports for Nasdaq and the FINRA/Nasdaq TRF for NYSE-listed stocks, and (iii) Nasdaq Basic for NYSE MKT, which contains the best bid and offer on the Nasdaq Market Center and last sale transaction reports for Nasdaq and the FINRA/Nasdaq TRF for stocks listed on NYSE MKT and other listing venues whose quotes and trade reports are disseminated on Tape B.[12]

The fee structure for Nasdaq Basic features a fee for Professional Subscribers and a reduced fee for Non-Professional Subscribers.[13] The current monthly fees for Non-Professional Subscribers are $0.50 per Subscriber for Nasdaq Basic for Nasdaq, $0.25 per Subscriber for Nasdaq Basic for NYSE, and $0.25 per Subscriber for Nasdaq Basic for NYSE MKT. The current monthly fees for Professional Subscribers are $13 per Subscriber for Nasdaq Basic for Nasdaq, $6.50 per Subscriber for Nasdaq Basic for NYSE, and $6.50 per Subscriber for Nasdaq Basic for NYSE MKT. There is also a per query option for use cases that do not require a monthly subscription for unlimited usage, a distributor fee for internal and external distribution, and certain credits for Nasdaq Basic users.[14]

There is also a separate Distributor fee for Nasdaq Basic.[15] Currently, each Distributor of any Nasdaq Basic product shall pay a fee of $1,500 per month for either internal or external distribution or both.[16] Currently, each Distributor is eligible to receive a credit against its monthly Distributor Fee for Nasdaq Basic equal to the amount of its monthly user fees for Nasdaq Basic up to a maximum of $1,500 (the "credit"). The Exchange now proposes to eliminate the credit from subsection (c)(2) of Rule 7047.[17] Going forward, the Exchange proposes to apply the Distributor Fee (currently $1,500 per month) for all Distributors of Nasdaq Basic immediately after the Exchange approves a Distributor for the product.

The Exchange believes that the proposed rule change is reasonable and proper. This is because Distributors will not be disadvantaged by the rule change because this would be applied to all Distributors after approval to receive Nasdaq Basic data. The credit was implemented in order to incentivize new firms to subscribe to Nasdaq Basic and grow the product. Due to strong product growth and continued overall industry cost savings with Nasdaq Basic compared to Level 1 data, as well as the administrative burden of maintaining the credit, the Exchange believes the change to remove the Distributor fee credit as described will not deter new subscribers or be unfairly discriminatory. Charging a monthly fixed fee without a credit available to all eligible Distributors makes this product similar to nearly all other Nasdaq data products and makes its administration less burdensome on the Exchange.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[18] in general, and with Sections 6(b)(4) and (5) of the Act,[19] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other

[8] *See* Securities Exchange Act Release No. 57965 (June 16, 2008), 73 FR 35178 (June 20, 2008) (SR–NASDAQ–2006–060) (approval order establishing NLS pilot). *See also* Securities Exchange Act Release No. 71351 (January 17, 2014), 79 FR 4200 (January 24, 2014) (SR–NASDAQ–2014–006) (notice of filing and immediate effectiveness regarding permanent approval of NLS pilot).

[9] *See* Rule 7039(a)–(c).

[10] *See* Securities Exchange Act Release No. 59582 (March 16, 2009), 74 FR 12423 (March 24, 2009) (SR–NASDAQ–2008–102) (order approving Nasdaq Basic pilot and finding it to be consistent with Sections 6(b)(4), (5) and (8) of the Act and Rule 603(a) under Regulation NMS). *See also* Securities Exchange Act Release No. 65527 (October 11, 2011), 76 FR 64147 (October 17, 2011) (SR–NASDAQ–2011–129) (notice of filing and immediate effectiveness re permanent approval of Nasdaq Basic pilot).

[11] *See* Rule 7047.

[12] Tape A and Tape B securities are disseminated pursuant to the Security Industry Automation Corporation's ("SIAC") Consolidated Tape Association Plan/Consolidated Quotation System, or CTA/CQS ("CTA"). Tape C securities are disseminated pursuant to the UTP Plan.

[13] Per Rule 7047(d)(3): (A) A "Non-Professional Subscriber" is a natural person who is not (i) registered or qualified in any capacity with the Commission, the Commodity Futures Trading Commission, any state securities agency, any securities exchange or association, or (ii) any commodities or futures contract market or association; engaged as an "investment adviser" as that term is defined in Section 201(11) of the Investment Advisers Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt. (B) A "Professional Subscriber" is any Subscriber other than a Non-Professional Subscriber.

[14] *See* Rule 7047. *See also* Securities Exchange Act Release No. 72620 (July 16, 2014), 79 FR 42572 (July 22, 2014) (SR–NASDAQ–2014–070) (notice of filing and immediate effectiveness regarding Nasdaq Basic fees).

[15] In addition, there is also an enterprise license available for certain Nasdaq Basic recipients. Rule 7047(b)(4) states in part, for example: (4) As an alternative to (b)(1), a broker-dealer may purchase an enterprise license for internal Professional Subscribers to receive Nasdaq Basic for Nasdaq, Nasdaq Basic for NYSE, and Nasdaq Basic for NYSE MKT. The fee will be $365,000 per month; provided, however, that if the broker-dealer obtains the license with respect to usage of Nasdaq Basic provided by an External Distributor that controls display of the product, the fee will be $365,000 per month for up to 16,000 internal Professional Subscribers, plus $2 for each additional internal Professional Subscriber over 16,000; and provided further that the broker-dealer must obtain a separate enterprise license for each External Distributor that controls display of the product if it wishes such External Distributor to be covered by an enterprise license rather than per-Subscriber fees.

[16] Internal distribution is where a Distributor receives Nasdaq Basic data and then distributes that data to one or more Subscribers within the Distributor's own entity. External distribution is where a Distributor receives Nasdaq Basic data and then distributes that data to one or more Subscribers outside the Distributor's own entity. Rule 7047(d)(1).

[17] Subsection (c)(3) of Rule 7047 will be re-numbered to subsection (c)(2), and will continue to state: A Distributor may pay $1,500 per month to distribute data derived from Nasdaq Basic to an unlimited number of non-professional subscribers. This fee is in addition to the Distributor Fee listed in (c)(1).

[18] 15 U.S.C. 78f.

[19] 15 U.S.C. 78f(b)(4) and (5).

persons using its facilities, and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Nasdaq Basic product provides a subset of the data that is also provided by the Level 1 data feed available under the Nasdaq UTP Plan. Moreover, the current fees for Nasdaq Basic, similarly to the fees for NLS and NLS Plus, having been previously established, and the Commission has either specifically determined them to be consistent with the Act or has permitted them to become effective on an immediately effective basis.[20] Thus, this proposed rule change does not change a fee of the Exchange, but rather eliminates the Distributor fee credit, such that going forward the Exchange will uniformly apply the Distributor fee for all subscribers of Nasdaq Basic. However, to the extent that the proposed rule change is effectively a proposed fee that has already been approved, Nasdaq believes that this also provides further justification that the proposed credit elimination provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which Nasdaq operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers,[21] in that the change reflects the full value of the product without increase in its cost.

The proposed credit elimination continues to reflect an equitable allocation and continues to be not unfairly discriminatory. Nasdaq Basic, like NLS and NLS Plus, are voluntary products for which market participants can readily substitute core data feeds that provide quotation and last sale information. Accordingly, Nasdaq is constrained from pricing such products in a manner that would be inequitable or unfairly discriminatory. The distinction between fees for professional and non-professional users, and between Distributors and other users, is consistent with the distinction made under Commission-approved fees for core data, and the applicable fees are lower than applicable fees for core data to reflect the lesser quantum of data made available. The Exchange believes that the proposed rule change is reasonable, equitable and not unfairly discriminatory. This is because current Distributors will not be disadvantaged by the rule change, because even if the credit deletion could be seen in the nature of a fee increase, current Distributors have been able to take advantage of the credit under current Rule 7047. And, on a going forward basis the monthly Distributor fee would be applied uniformly to all Distributors after approval to receive Nasdaq Basic data, which would help with the administration of costs by the Exchange.

In adopting Regulation NMS, the Commission granted SROs and broker-dealers ("BDs") increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. Nasdaq believes that its Nasdaq Basic, as also NLS and NLS Plus, market data products are precisely the sort of market data product that the Commission envisioned when it adopted Regulation NMS. The Commission concluded that Regulation NMS—by deregulating the market in proprietary data—would itself further the Act's goals of facilitating efficiency and competition:

> [E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.[22]

By removing unnecessary regulatory restrictions on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history. If the free market should determine whether proprietary data is sold to BDs at all, it follows that the price at which such data is sold should be set by the market as well.

Moreover, fee liable data products such as Nasdaq Basic, and also NLS and NLS Plus, are a means by which exchanges compete to attract order flow, and this proposal simply codifies the relevant fee structure into an Exchange rule. To the extent that exchanges are successful in such competition, they earn trading revenues and also enhance the value of their data products by increasing the amount of data they are able to provide. Conversely, to the extent that exchanges are unsuccessful, the inputs needed to add value to data products are diminished. Accordingly, the need to compete for order flow places substantial pressure upon exchanges to keep their fees for both executions and data reasonable.

The Exchange believes that data products are a means by which exchanges compete to attract order flow. To the extent that exchanges are successful in such competition, they earn trading revenues and also enhance the value of their data products by increasing the amount of data they are able to provide. Conversely, to the extent that exchanges are unsuccessful, the inputs needed to add value to data products are diminished. Accordingly, the need to compete for order flow places substantial pressure upon exchanges to keep their fees for both executions and data reasonable.

The fee structure for Nasdaq Basic, similarly to NLS and NLS Plus, also continues to reflect an equitable allocation and continues not be unfairly discriminatory, because these are voluntary products which market participants can readily substitute (or put together themselves).[23] Accordingly, Nasdaq is constrained from providing such products in a manner that would be inequitable or unfairly discriminatory. Moreover, the fee schedules for Nasdaq Basic, as also for NLS and NLS Plus, are designed to ensure that the fees charged are tailored to the specific usage patterns of a range of potential customers. Thus, for example, Professional Subscriber fees provide a means for brokerage customers to use the information internally; and the distinction between fees for Professional and Non-Professional users, as also Distributors,

[20] *See, e.g.,* Securities Exchange Act Release Nos. 59582 (March 16, 2009), 74 FR 12423 (March 24, 2009) (SR–NASDAQ–2008–102) (finding current per user and per subscriber fees to be consistent with the Act); 59933 (May 15, 2009), 74 FR 24889 (May 26, 2009) (SR–NASDAQ–2009–208[sic]) (finding current distributor fees for Nasdaq Basic to be consistent with the Act); 64994 (July 29, 2011), 76 FR 47621 (August 5, 2011) (SR–NASDAQ–2011–091) (immediate effectiveness of optional derived data fee); and 65526 (October 11, 2011), 76 FR 64137 (October 17, 2011) (SR–NASDAQ–2011–130) (immediate effectiveness of enterprise license fee). Similarly, Non-Professional, as opposed to Professional, fees have been established and approved. *See* Securities Exchange Act Release Nos. 21856 (March 15, 1985), 50 FR 11472 (March 21, 1985) (SR–NASD–85–1); and 57965 (June 16, 2008), 73 FR 35178 (June 20, 2008) (SR–NASDAQ–2006–060). *See also* Securities Exchange Act Release No. 72620 (July 16, 2014), 79 FR 42572 (July 22, 2014) (SR–NASDAQ–2014–070) (notice of filing and immediate effectiveness regarding Nasdaq Basic fees). *See also* Securities Exchange Act Release No. 75600 (August 4, 2015), 80 FR 47968 (August 10, 2015) (SR–NASDAQ–2015–88) (notice of filing and immediate effectiveness regarding NLS fees).

[21] 15 U.S.C. 78f(b)(4), (5).

[22] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) ("Regulation NMS Adopting Release").

[23] *See, e.g.,* Securities Exchange Act Release No. 75257 (June 22, 2015), 80 FR 36862 (June 26, 2015) (SR–NASDAQ–2015–055) (order approving NLS Plus), wherein the Exchange notes that NLS Plus is a data product that a competing market data vendor could create and sell on his own without being in a disadvantaged position relative to the Exchange.

is consistent with the distinction made under Commission-approved fees for core data, and the applicable fees are lower than applicable fees for core data to reflect the lesser quantum of data made available. The range of fee options further ensures that customers are not charged a fee that is inequitably disproportionate to the use that they make of the product.

In summary, deletion of the Distributor credit so that the Distributor fee for Nasdaq Basic will be uniformly applied to all Distributors, regardless of any user fees, will help to protect a free and open market by continuing to provide additional non-core data (offered on an optional basis for a fee) to the marketplace and by providing investors with greater choices.[24] Additionally, the proposal would not permit unfair discrimination because Basic will be available to all Distributors as discussed.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed fee structure is designed to ensure a fair and reasonable use of Exchange resources by allowing the Exchange to recoup costs while continuing to offer its data products at competitive rates to firms.

The market for data products is extremely competitive and firms may freely choose alternative venues and data vendors based on the aggregate fees assessed, the data offered, and the value provided. This rule proposal does not burden competition, which continues to offer alternative data products and, like the Exchange, set fees, but rather reflects the competition between data feed vendors and will further enhance such competition. Nasdaq Basic, like NLS and NLS Plus, compete directly with existing similar products and potential products of market data vendors. Nasdaq Basic, like NLS and NLS Plus, are part of the existing market for proprietary last sale data products that is currently competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with each other for listings, trades, and market data itself, providing virtually limitless opportunities for entrepreneurs who wish to produce and distribute their own market data. This proprietary data is produced by each individual exchange, as well as other entities, in a vigorously competitive market. Similarly, with respect to the FINRA/Nasdaq TRF data that is a component of Nasdaq Basic, NLS, and NLS Plus, allowing exchanges to operate TRFs has permitted them to earn revenues by providing technology and data in support of the non-exchange segment of the market. This revenue opportunity has also resulted in fierce competition between the two current TRF operators, with both TRFs charging extremely low trade reporting fees and rebating the majority of the revenues they receive from core market data to the parties reporting trades.

Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, market data and trade execution are a paradigmatic example of joint products with joint costs. The decision whether and on which platform to post an order will depend on the attributes of the platform where the order can be posted, including the execution fees, data quality and price, and distribution of its data products. Without trade executions, exchange data products cannot exist. Moreover, data products are valuable to many end users only insofar as they provide information that end users expect will assist them or their customers in making trading decisions.

The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange's transaction execution platform and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs. Moreover, the operation of the exchange is characterized by high fixed costs and low marginal costs. This cost structure is common in content and content distribution industries such as software, where developing new software typically requires a large initial investment (and continuing large investments to upgrade the software), but once the software is developed, the incremental cost of providing that software to an additional user is typically small, or even zero (*e.g.*, if the software can be downloaded over the internet after being purchased).[25] In Nasdaq's case, it is costly to build and maintain a trading platform, but the incremental cost of trading each additional share on an existing platform, or distributing an additional instance of data, is very low. Market information and executions are each produced jointly (in the sense that the activities of trading and placing orders are the source of the information that is distributed) and are each subject to significant scale economies. In such cases, marginal cost pricing is not feasible because if all sales were priced at the margin, Nasdaq would be unable to defray its platform costs of providing the joint products. Similarly, data products cannot make use of TRF trade reports without the raw material of the trade reports themselves, and therefore necessitate the costs of operating, regulating,[26] and maintaining a trade reporting system, costs that must be covered through the fees charged for use of the facility and sales of associated data.

Competition among trading platforms can be expected to constrain the aggregate return each platform earns from the sale of its joint products, but different platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. Nasdaq pays rebates and credits to attract orders, charges relatively low prices for market information and charges relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower liquidity rebates to attract orders, setting relatively low prices for accessing posted liquidity, and setting relatively high prices for market information. Still others may provide most data free of charge and rely exclusively on transaction fees to recover their costs. Finally, some platforms may incentivize use by providing opportunities for equity ownership, which may allow them to charge lower direct fees for executions and data.

In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face

[24] *See* Sec. Indus. Fin. Mkts. Ass'n (SIFMA), Initial Decision Release No. 1015, 2016 SEC LEXIS 2278 (ALJ June 1, 2016) (finding the existence of vigorous competition with respect to non-core market data). *See also* the decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition* v. *SEC*, 615 F.3d 525 (D.C. Cir. 2010) ("*NetCoalition I*") (upholding the Commission's reliance upon competitive markets to set reasonable and equitably allocated fees for market data).

[25] *See* William J. Baumol and Daniel G. Swanson, "The New Economy and Ubiquitous Competitive Price Discrimination: Identifying Defensible Criteria of Market Power," *Antitrust Law Journal*, Vol. 70, No. 3 (2003).

[26] It should be noted that the costs of operating the FINRA/Nasdaq TRF borne by Nasdaq include regulatory charges paid by Nasdaq to FINRA.

competitive constraints with regard to the joint offering. Such regulation is unnecessary because an "excessive" price for one of the joint products will ultimately have to be reflected in lower prices for other products sold by the firm, or otherwise the firm will experience a loss in the volume of its sales that will be adverse to its overall profitability. In other words, an increase in the price of data will ultimately have to be accompanied by a decrease in the cost of executions, or the volume of both data and executions will fall.[27]

The proposed fee structure is designed to ensure a fair and reasonable use of Exchange resources by allowing the Exchange to recoup costs and ease administrative burden while continuing to offer its data products at competitive rates to firms.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[28]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[27] Moreover, the level of competition and contestability in the market is evident in the numerous alternative venues that compete for order flow, including eleven SRO markets, as well as internalizing BDs and various forms of alternative trading systems ("ATSs"), including dark pools and electronic communication networks ("ECNs"). Each SRO market competes to produce transaction reports via trade executions, and two FINRA-regulated TRFs compete to attract internalized transaction reports. It is common for BDs to further and exploit this competition by sending their order flow and transaction reports to multiple markets, rather than providing them all to a single market. Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products. The large number of SROs, TRFs, BDs, and ATSs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, TRF, ATS, and BD is currently permitted to produce proprietary data products, and many currently do or have announced plans to do so, including Nasdaq, NYSE, NYSE MKT, NYSE Arca, and BATS/Direct Edge.

[28] 15 U.S.C. 78s(b)(3)(A)(ii).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2016–109 on the subject line.

Paper comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2016–109. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2016–109, and should be submitted on or before September 9, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–19799 Filed 8–18–16; 8:45 am]

BILLING CODE 8011–01–P

[29] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2016–92]

Petition for Exemption; Summary of Petition Received; Delta Engineering

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of title 14 of the Code of Federal Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before September 8, 2016.

ADDRESSES: Send comments identified by docket number FAA–2016–8687 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov*, as

described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Deana Stedman, ANM–113, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98057–3356, email *deana.stedman@faa.gov,* phone (425) 227–2148.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on August 2, 2016.

Dale Bouffiou,

Acting Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2016–8687.

Petitioner: Delta Engineering.

Section(s) of 14 CFR Affected: § 25.571(e)(1).

Description of Relief Sought: Delta Engineering has requested relief from certain discrete source damage-tolerance requirements for the installation of two cameras on an Aerospatiale ATR42–500 airplane.

[FR Doc. 2016–19780 Filed 8–18–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Prepare an Environmental Impact Statement (EIS) for the Proposed Airfield Safety Enhancement Project at Tucson International Airport, Tucson, Pima County, Arizona

AGENCY: Federal Aviation Administration, (FAA), DOT.

ACTION: Notice of intent to prepare an Environmental Impact Statement and request for scoping comments.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice under the provisions of the National Environmental Policy Act (NEPA) of 1969, as amended to advise the public that an Environmental Impact Statement (EIS) will be prepared to assess the potential impacts of the proposed Airfield Safety Enhancement Project (ASEP) including real property transactions between the United States Air Force (USAF) and the Tucson Airport Authority (TAA); demolition of 12 Earth Covered Magazines (ECM); replacement of the ECMs elsewhere on USAF Plant 44; construction of a new parallel taxiway; relocation of Runway 11R–29L and other associated development at Tucson International Airport. The proposed project also includes transfer of land ultimately to the USAF, on behalf of the National Guard Bureau (NGB), for construction of a Munitions Storage Area and access road to support the 162nd Fighter Wing at Tucson Air National Guard Base. To ensure that all significant issues related to the proposed action are identified, one (1) public scoping meeting and one (1) governmental agency scoping meeting will be held.

FAA is the lead agency on the preparation of the EIS and has invited the Department of the Air Force (USAF) and the National Guard Bureau (NGB) to participate as cooperating agencies because the Tucson Airport Authority's proposed action requires federal actions by both U.S. Department of Defense agencies.

FOR FURTHER INFORMATION CONTACT: Mr. David B. Kessler, M.A., AICP, Federal Aviation Administration, Western-Pacific Region—Airports Division, AWP–610.1., P.O. Box 92007, Los Angeles, California 90009–2007. Telephone: 310–725–3615.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to inform federal, state, and local government agencies, and the public of the intent to prepare an EIS and to conduct a public and agency scoping process. Information, data, opinions, and comments obtained throughout the scoping process will be considered in preparing the draft EIS.

The scoping process for this EIS will include a comment period for interested agencies and interested persons to submit oral and/or written comments representing the concerns and issues they believe should be addressed. Please submit any written comments to the FAA not later than 5:00 p.m. Pacific Daylight Time, Monday, October 3, 2016.

The EIS will be prepared in accordance with the procedures described in FAA Order 5050.4B, *National Environmental Policy Act (NEPA) Implementing Instructions for Airport Actions,* and FAA Order 1050.1F, *Environmental Impacts: Policies and Procedures.* The Tucson Airport Authority, the owner of Tucson International Airport, proposes the following development as identified in the Airfield Safety Enhancement Plan: Construction of a new center parallel and connecting taxiway system; a replacement Runway 11R–29L (proposed to be 11,000 feet long by 150 feet wide); acquisition of land for the runway object free area, taxiway object free area, runway safety area, and runway protection zone; from USAF Plant 44. The proposed ASEP also includes relocation of navigational aids and development and/or modification of associated arrival and departure procedures for the relocated runway. The proposed ASEP also includes demolition of 12 ECMs and replacement of the ECMs elsewhere on USAF Plant 44. The EIS will also evaluate the proposed release of airport land from federal obligations between the former East Hughes Access Road and the new Aerospace Parkway, south of USAF Plant 44. A portion of this land has been proposed for construction of a Munitions Storage Area, to include ECMs, and access road, for the 162nd Fighter Wing at the Tucson Air National Guard Base located adjacent to Tucson International Airport. The FAA is the lead Federal Agency for preparation of the EIS. The FAA has invited the U.S. Department of the Air Force and the U.S. National Guard Bureau to participate as cooperating agencies under Title 40, Code of Federal Regulations (CFR) § 1508.5.

Within the EIS, FAA proposes to consider a range of alternatives that could potentially meet the purpose and need to enhance airfield safety at Tucson International Airport including, but not limited to, the following:

Alternative One—Sponsor's Proposed Action: Acquire 58 acres of land along the shared property boundary between the Tucson International Airport and USAF Plant 44, construction of a new centerline parallel and connecting taxiway between Runway 11L–29R and Runway 11R–29L; construction of a relocated Runway 11R–29L about 100 feet to the southwest, creating a centerline separation of 800 feet between the existing Runway 11L/29R and the relocated Runway 11R/29L. The relocated Runway 11R/29L will be 11,000 feet long by 150 feet wide. The relocation of Runway 11R/29L will include removal and reinstallation of associated navigational aids. This alternative includes demolition of 12 ECMs and construction of replacement ECMs, elsewhere on USAF Plant 44; release of airport land from federal obligations between the former East Hughes Access Road and Aerospace Parkway. A portion of this land would be ultimately transferred to the USAF, on behalf of the NGB, for construction

of a Munitions Storage Area and an access road for the 162 Fighter Wing based at Tucson Air National Guard Base.

Alternative Two—Alternative Airfield Development at Tucson: Extending and upgrading the current general aviation Runway 11R/29L to an air carrier runway, maintaining a 700-foot centerline separation between the current air carrier Runway 11L/29R and the extended and upgraded Runway 11R/29L.

Alternative Three—Use of Other Existing Airports: The possible use of other existing area airports including, but not limited to, Ryan Airfield and Marana Regional Airport will be evaluated.

Alternative Four—Use of Other Modes of Transportation: Use of intercity bus line, rail, and automobile transportation will be evaluated.

Alternative Five—No Action Alternative: Under this alternative, the existing airport would remain unchanged. No land acquisition and transfer between the Tucson International Airport and USAF Plant 44 and no demolition and replacement of ECMs would occur; no new center taxiway would be constructed, and Runway 11R–29L would remain in its current configuration. FAA would not release land between the former East Hughes Access Road and Aerospace Parkway, no new Munitions Storage Area and access road for the 162nd Fighter Wing of the Arizona Air National would be constructed on land between the former East Hughes Access Road and Aerospace Parkway.

Public Scoping and Agency Meetings: To ensure that the full range of issues related to the proposed action is addressed and that all significant issues are identified, comments and suggestions are invited from all interested parties. Public and agency scoping meetings will be conducted to identify any significant issues associated with the proposed action.

A governmental agency scoping meeting for all federal, state, and local regulatory agencies which have jurisdiction by law or have special expertise with respect to any potential environmental impacts associated with the proposed action will be held on Thursday, September 22, 2016. This meeting will take place at 1:00 p.m. Mountain Standard Time, on the first floor of the Tucson Executive Terminal, at the base of the old Airport Traffic Control Tower building with "TUCSON" on the side, 7081 South Plumer Avenue, Tucson, Arizona. A notification letter will be sent in advance of the meeting.

One public scoping meeting for the general public will be held. The public scoping meeting will be held from 6:00 p.m. to 8:00 p.m. Mountain Standard Time on Thursday, September 22, 2016. The public scoping meeting will be conducted on the first floor of the Tucson Executive Terminal at the base of the old Airport Traffic Control Tower building with "TUCSON" on the side, 7081 South Plumer Avenue, Tucson, Arizona. To notify the general public of the scoping process, a legal notice will be placed in newspapers having general circulation in the study area. The newspaper notice will notify the public that scoping meetings will be held to gain their input concerning the proposed action, alternatives to be considered, and impacts to be evaluated.

The FAA is aware that there are Native American tribes with a historical interest in the area. The FAA will interact on a government-to-government basis, in accordance with all executive orders, laws, regulations, and other memoranda. The tribes will also be invited to participate in accordance with NEPA and Section 106 of the National Historic Preservation Act.

Issued in Hawthorne, California August 11, 2016.

Mark A. McClardy,

Director, Office of Airports, Western-Pacific Region, AWP–600.

[FR Doc. 2016–19776 Filed 8–18–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2016–89]

Petition for Exemption; Summary of Petition Received; The Boeing Company

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of title 14 of the Code of Federal Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before September 8, 2016.

ADDRESSES: Send comments identified by docket number FAA–2016–7855 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Deana Stedman, ANM–113, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98057–3356, email *deana.stedman@faa.gov,* phone (425) 227–2148.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on August 2, 2016.

Dale Bouffiou,

Acting Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2016–7855.

Petitioner: The Boeing Company.

Section(s) of 14 CFR Affected: §§ 25.901(c) and 25.1309(b).

Description of Relief Sought: The Boeing Company seeks temporary relief from the requirements of 14 CFR 25.901(c) and 25.1309(b) to allow time necessary to fully develop, certify, and

incorporate a design change to correctly accommodate single failures of the thrust control module which can cause un-commanded high thrust. Boeing intends to correct the design by December 31, 2018, for production 787 Model airplanes, and provide retrofit instructions to the fleet.

[FR Doc. 2016–19779 Filed 8–18–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2016–91]

Petition for Exemption; Summary of Petition Received; The Boeing Company

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Title 14 of the Code of Federal Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before September 8, 2016.

ADDRESSES: Send comments identified by docket number FAA–2016–8059 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Deana Stedman, ANM–113, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98057–3356, email *deana.stedman@faa.gov,* phone (425) 227–2148.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on August 2, 2016.

Dale Bouffiou,

Acting Director, Office of Rulemaking.

Petition For Exemption

Docket No.: FAA–2016–8059

Petitioner: The Boeing Company

Section(s) of 14 CFR Affected: § 25.901(c)

Description of Relief Sought: The Boeing Company seeks relief from the *no single failure* requirement of 14 CFR 25.901(c) as it relates to un-commanded high thrust failure in combination with a high level of crosswind for Model 787 airplanes.

[FR Doc. 2016–19782 Filed 8–18–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2016–90]

Petition for Exemption; Summary of Petition Received; Airbus

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Title 14 of the Code of Federal Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before September 8, 2016.

ADDRESSES: Send comments identified by docket number FAA–2016–8326 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Deana Stedman, ANM–113, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98057–3356, email *deana.stedman@faa.gov,* phone (425) 227–2148.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on August 2, 2016.

Dale Bouffiou,

Acting Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2016–8326.

Petitioner: Airbus

Section(s) of 14 CFR Affected: §§ 25.841(a)(2)(i), 25.841(a)(2)(ii), and 25.841(a)(3)

Description of Relief Sought: Airbus has requested relief from certain cabin

pressure altitude requirements related to cabin decompressions which can occur following an uncontained engine rotor failure on Airbus Model A350–1000 airplanes.

[FR Doc. 2016–19778 Filed 8–18–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2016–0068]

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System

In accordance with part 235 of Title 49 Code of Federal Regulations (CFR) and 49 U.S.C. 20502(a), this document provides the public notice that by a document dated June 29, 2016, the Union Pacific Railroad (UP) petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of a signal system. FRA assigned the petition Docket Number FRA–2016–0068.

Applicant: Union Pacific Railroad, Mr. Kevin D. Hicks, AVP Engineering–Design, 1400 Douglas Street, MS 0910, Omaha, NE 68179.

UP seeks approval of the modification of Control Point (CP) B002 on the Omaha Subdivision, at Milepost (MP) 2.00, in the State of Iowa, by dividing it into two CPs: CP B902 and CP B002.

The reason given for the proposed modification is to accommodate a U.S. Department of Transportation (DOT) project to widen Interstate 29 as well as to facilitate yard operations and expedite train movements in the area. All existing signals at the present CP B002 will be removed and replaced with the proposed layout at the new CPs B002 and B902. Existing switches will be relocated to accommodate DOT's Interstate 29 widening project. An interface house will be installed at CP B003 to replace the line circuits currently in service across the Missouri River Bridge with coded track, and the signal aspect progression will be upgraded to four aspects from the current three. This modification will follow the completion of Phase 1 of the project, which was assigned Docket Number FRA–2015–0051, and was approved on October 5, 2015.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by October 3, 2016 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.* See also *https://www.regulations.gov/privacyNotice* for the privacy notice of regulations.gov.

Issued in Washington, DC, on August 15, 2016.

Karl Alexy,

Director, Office of Safety Analysis.

[FR Doc. 2016–19800 Filed 8–18–16; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Submission for OMB Review; OCC Supplier Registration Form

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the renewal of an information collection as required by the Paperwork Reduction Act of 1995 (PRA).

In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The OCC is soliciting comment concerning the renewal of its information collection titled, "OCC Supplier Registration Form." The OCC also is giving notice that it has sent the collection to OMB for review.

DATES: Comments must be submitted on or before September 19, 2016.

ADDRESSES: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email, if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557–0316, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465–4326 or by electronic mail to *prainfo.@occ.treas.gov.* You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your

comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Additionally, please send a copy of your comments by mail to: OCC Desk Officer, 1557–0316, U.S. Office of Management and Budget, 725 17th Street NW., #10235, Washington, DC 20503 or by email to: *oira submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, OCC Clearance Officer, (202) 649–5490 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is requesting that OMB extend its approval of the following information collection:

Title: OCC Supplier Registration Form.

OMB Control No.: 1557–0316.

Frequency of Response: On occasion.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 200.

Estimated Burden Hours Per Response: 10 minutes.

Estimated Total Annual Burden Hours: 33 hours.

Abstract: Section 342 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) required the OCC to develop and implement standards and procedures to ensure, to the maximum extent possible, the fair inclusion and utilization of minorities, women, and minority-owned and women-owned businesses in all business and activities of the agency at all levels, including procurement, insurance, and all types of contracts [1] and to develop standards for coordinating technical assistance to such businesses.[2]

In order to comply with the Congressional mandate to develop standards for the fair inclusion and utilization of minority-and women-owned businesses and to provide effective technical assistance to these businesses, the OCC developed an on-going system to collect up-to-date contact information and capabilities statements from potential suppliers. This information allows the OCC to update and enhance its internal database of interested minority- and women-owned businesses. This information also allows the OCC to measure the effectiveness of its technical assistance and outreach efforts and to target areas where additional outreach efforts are necessary.

On May 31, 2016, the OCC issued a 60-day notice soliciting comment on the information collection, 81 FR 34435. No comments were received. Comments continue to be invited on:

(1) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(2) The accuracy of the OCC's estimate of the burden of the collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected;

(4) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and

(5) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: August 15, 2016.

Stuart Feldstein,

Director, Legislative and Regulatory Activities Division.

[FR Doc. 2016–19791 Filed 8–18–16; 8:45 am]

BILLING CODE 4810–33–P

[1] 12 U.S.C. 5452(c)(1).

[2] 12 U.S.C. 5452(b)(2)(B).

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of Specially Designated National and Blocked Person Pursuant to Executive Order 13288, as Amended by Executive Order 13469, and Executive Order 13391

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (OFAC) is removing the name of one individual whose property and interests in property have been blocked pursuant to Executive Order 13288 of March 6, 2003, "Blocking Property of Persons Undermining Democratic Institutions in Zimbabwe," as amended by Executive Order 13391, "Blocking Property of Additional Persons Undermining Democratic Processes or Institutions in Zimbabwe," and Executive Order 13469 of July 25, 2008, "Blocking Property of Additional Persons Undermining Democratic Processes or Institutions in Zimbabwe."

DATES: OFAC's action described in this notice are effective as of August 15, 2016.

FOR FURTHER INFORMATION CONTACT: Associate Director for Global Targeting, tel.: 202/622–2420, Assistant Director for Sanctions Compliance & Evaluation, tel.: 202/622–2490, Assistant Director for Licensing, tel.: 202/622–2480, Office of Foreign Assets Control, or Chief Counsel (Foreign Assets Control), tel.: 202/622–2410 (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

The SDN List and additional information concerning OFAC sanctions programs are available from OFAC's Web site (*www.treasury.gov/ofac*). Certain general information pertaining to OFAC's sanctions programs is also available via facsimile through a 24-hour fax-on-demand service, tel.: 202–622–0077.

Notice of OFAC Actions

On August 15, 2016, OFAC, in consultation with the State Department, determined that circumstances no longer warrant the inclusion of the following individual on OFAC's SDN list, and that this individual is no longer subject to the blocking provisions of Section 1(a) of E.O. 13288, as amended by E.O. 13469, and section 1(a) of E.O. 13991.

1. AL-Shanfari, Thamer Bin Said Ahmed (A.K.A. Al Shanfari, Sheikh Thamer; A.K.A. Al Shanfari, Thamer; A.K.A. Al Shanfari, Thamer Said Ahmed; A.K.A. Al-Shanfari, Thamer Bin Saeed; A.K.A. Al-Shanfari, Thamer Said Ahmed; A.K.A. Shanfari, Thamer), P.O. Box 18, Ruwi 112, Oman; DOB 03 Jan 1968; Alt. Nationality Oman; Alt. Citizen Oman; Passport 00000999 (Oman); Alt. Passport 3253 (Oman) (Individual) [Zimbabwe].

Dated: August 15, 2016.

John E. Smith,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2016–19784 Filed 8–18–16; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF TREASURY

Internal Revenue Service

Electronic Tax Administration Advisory Committee (ETAAC); Nominations

AGENCY: Internal Revenue Service, Department of Treasury.

ACTION: Request for nominations.

SUMMARY: The Internal Revenue Service (IRS) is requesting applications from consumer advocates, as well as individuals with experience in cybersecurity and information security, tax software development, tax preparation, payroll and tax financial product processing, systems management and improvement, implementation of customer service initiatives, and public administration, to be considered for selection as members of the Electronic Tax Administration Advisory Committee (ETAAC). This is the second solicitation for ETAAC nominations. The IRS wants to ensure the committee's membership is properly balanced as required by the Federal Advisory Committee Act (FACA).

Nominations should describe and document the proposed member's qualification for ETAAC membership, including the applicant's knowledge of regulations and the applicant's past or current affiliations and dealings with the particular tax segment or segments of the community that the applicant wishes to represent on the council. Applications will be accepted for current vacancies from qualified individuals and from professional and public interest groups that wish to have representation on ETAAC. Submissions must include an application and resume.

ETAAC provides continuing input into the development and implementation of the IRS organizational strategy for electronic tax administration. The ETAAC will provide an organized public forum for discussion of electronic tax administration issues such as prevention of refund fraud identity theft in support of the overriding goal that paperless filing should be the preferred and most convenient method of filing tax and information returns. The ETAAC members will convey the public's perceptions of IRS electronic tax administration activities, offer constructive observations about current or proposed policies, programs and procedures, and suggest improvements.

This is a volunteer position and members will serve a one-, two-, or three-year term on the ETAAC to allow for a rotation in membership which ensures that different perspectives are represented. Travel expenses within government guidelines will be reimbursed. In accordance with Department of Treasury Directive 21–03, a clearance process including fingerprints, annual tax checks, a Federal Bureau of Investigation criminal check and a practitioner check with the Office of Professional Responsibility will be conducted.

DATES: Written nominations must be received on or before September 19, 2016.

ADDRESSES: Nominations should be sent to: Michael Deneroff, IRS National Public Liaison Office, CL:NPL:SRM, Room 7559, 1111 Constitution Avenue NW., Washington, DC 20224, Attn: ETAAC Nominations. Applications may also be submitted via fax to 855–811–8020 or via email at *PublicLiaison@irs.gov.* Application packages are available on the IRS Web site at *http://www.irs.gov/for-tax-pros.* Application packages may also be requested by telephone from National Public Liaison, 202–317–6851 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Michael Deneroff at (202) 317–6851, or send an email to *publicliaison@irs.gov.*

SUPPLEMENTARY INFORMATION: The establishment and operation of the Electronic Tax Administration Advisory Committee (ETAAC) is required by the Internal Revenue Service (IRS) Restructuring and Reform Act of 1998 (RRA 98), Title II, Section 2001(b)(2). ETAAC follows a charter in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2. The ETAAC provides continued input into the development and implementation of the IRS's strategy for electronic tax administration. The ETAAC will research, analyze, consider, and make recommendations on a wide range of electronic tax administration issues and will provide input into the development of the strategic plan for electronic tax administration. Members will provide an annual report to Congress by June 30th.

Applicants must complete the application form, which includes describing and documenting the applicant's qualifications for ETAAC membership. Applicants must submit a short one- or two-page statement including recent examples of specific skills and qualifications as they relate to: Cybersecurity and information security, tax software development, tax preparation, payroll and tax financial product processing, systems management and improvement, implementation of customer service initiatives, consumer advocacy and public administration. Examples of skill in critical thinking, strategic planning and oral and written communication are desirable.

An acknowledgement of receipt will be sent to all applicants.

Equal opportunity practices will be followed in all appointments to the ETAAC in accordance with Department of Treasury and IRS policies. The IRS has a special interest in assuring that women and men, members of all races and national origins, and individuals with disabilities have an opportunity to serve on advisory committees. Therefore, IRS extends particular encouragement to nominations from such appropriately qualified individuals.

Dated: August 15, 2016.

Candice Cromling,

Director, National Public Liaison.

[FR Doc. 2016–19838 Filed 8–18–16; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL REGISTER

Vol. 81 Friday,

No. 161 August 19, 2016

Part II

Department of Education

34 CFR Parts 461, 462, 463 et al.

Programs and Activities Authorized by the Adult Education and Family Literacy Act (Title II of the Workforce Innovation and Opportunity Act); Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 461, 462, 463, 472, 477, 489, and 490

RIN 1830–AA22

[Docket No. 2015–ED–OCTAE–0003]

Programs and Activities Authorized by the Adult Education and Family Literacy Act (Title II of the Workforce Innovation and Opportunity Act)

AGENCY: Office of Career, Technical, and Adult Education, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary establishes regulations to implement changes to the Adult Education and Family Literacy Act (AEFLA) resulting from the enactment of the Workforce Innovation and Opportunity Act of 2014 (WIOA or the Act). These final regulations clarify new provisions in AEFLA. The Secretary also updates the regulations that establish procedures for determining the suitability of tests used for measuring State performance on accountability measures that assess the effectiveness of AEFLA programs and activities. The Secretary also removes specific parts of title 34 of the Code of Federal Regulations (CFR) that are no longer in effect.

DATES: These final regulations are effective September 19, 2016.

FOR FURTHER INFORMATION CONTACT: Lekesha Campbell, U.S. Department of Education, 400 Maryland Avenue SW., Room 11008, Potomac Center Plaza (PCP), Washington, DC 20202–2800.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Information Relay Service (FIRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

On July 22, 2014, President Obama signed into law WIOA (Pub. L. 113–128), which replaces the Workforce Investment Act of 1998 (WIA). As under WIA, AEFLA is title II of WIOA (title II). WIOA supports innovative strategies to keep pace with changing economic conditions and seeks to improve coordination across the primary Federal programs that support employment services, workforce development, adult education, and vocational rehabilitation activities. These final regulations further the Department of Education's (Department or ED) implementation of new provisions in AEFLA. Through these regulations, we explain the programs and activities authorized under AEFLA and assist State and local grantees in their implementation efforts.

We have limited the regulations to only those that we believe are absolutely necessary to clarify and reiterate key statutory provisions of WIOA, as well as to respond to public comments. In the regulations, we incorporate the relevant requirements from AEFLA to provide context and for reader convenience.

Summary of the Major Provisions of This Regulatory Action:

Through these final regulations the Secretary:

1. Removes specific parts of title 34 that are no longer in effect.

2. Updates and revises existing AEFLA regulations regarding the suitability of tests for use in the National Reporting System for Adult Education (NRS) to reflect new provisions of WIOA. The regulations also include procedures that States and local eligible providers must follow when using suitable tests for NRS reporting. The changes conform to statutory language in WIOA and clarify existing requirements.

3. Restates the purpose of AEFLA and the programs authorized by the Act, as well as clarifies the related Education Department General Administration Regulations (EDGAR) and definitions that apply to the program.

4. Describes the process and requirements for States to award grants or contracts to eligible providers and the activities that may be charged to local administrative costs. These regulations implement new requirements established by WIOA, including the requirement that local workforce development boards (Local WDBs) review applications for funds prepared by applicants for AEFLA funding, the requirement that entities have "demonstrated effectiveness" to be eligible providers, and the requirement that local administrative funds be used to promote the alignment of an eligible provider's activities with the local workforce development plan established under title I of WIOA.

5. Reiterates what constitutes an adult education and literacy activity or program and clarifies how funds may be used for activities that are newly authorized by WIOA.

6. Describes how AEFLA funds may be used to support programs for corrections education and the education of other institutionalized individuals, including new activities authorized by WIOA.

7. Clarifies the use of funds for new and expanded activities under the Integrated English Literacy and Civics Education program.

Public Comment

On April 16, 2015, the Secretary published a notice of proposed rulemaking (NPRM or proposed regulations) for these programs in the **Federal Register** (80 FR 20968), available at *https://federalregister.gov/a/2015-05540*. In response to our invitation in the NPRM, nearly 300 parties submitted comments on the proposed regulations. In these final regulations we discuss amendments and new regulations in the order in which their parts appear in the CFR. We then set out our analysis by subpart and section. For each part, we provide a summary of the changes we proposed, a summary of the differences between the proposed regulations and these final regulations, and a detailed discussion of the public comments we received on the proposed regulations. We then discuss the regulations that we are removing. Generally, we do not address technical and other minor changes.

We received a number of comments expressing general support for the proposed regulations. We thank the commenters for their support. We do not discuss comments that were beyond the scope of the changes we proposed in the NPRM.

34 CFR Part 462—Measuring Educational Gain in the National Reporting System for Adult Education

Summary of Changes

In the preamble of the NPRM, we discussed on pages 20969 through 20971 the major changes proposed to part 462. These regulations are authorized under section 212 of WIOA, which makes adult education and literacy programs and activities subject to the performance accountability requirements of section 116 of WIOA. Through the proposed regulations, we sought to further formalize the process for determining the suitability of tests for use in the NRS. By creating a uniform review and approval process, the regulations would facilitate the submission process for test publishers and strengthen the integrity of the NRS as a critical tool for measuring State performance on accountability measures related to adult education and literacy activities under AEFLA, as required under section 116 of WIOA. The proposed process would also provide a means by which the Secretary would assess the continued validity of tests that have previously been determined suitable for use in the NRS.

There are three differences between the NPRM and these final regulations. In the final regulations:

• We use the term "English as a Second Language (ESL)" when referring to educational functioning levels of English language learners to maintain consistency with NRS information collection and guidelines.

• We update § 462.13(c) regarding the criteria that the Secretary uses to determine the suitability of tests for use in the NRS.

• We remove § 462.43 regarding how States may report educational functioning level gains for students. Educational functioning level gain is included in the WIOA joint final rule at 20 CFR 677.155(a)(1)(v) (and will be included in part 463, Subpart I) as one of five measures of documented progress that specify how to show a measurable skill gain for performance accountability under section 116 of WIOA, and it applies across all of the WIOA core programs. As such, the Department of Education and the Department of Labor agree that any further explanation regarding educational functioning level gains is best provided in the joint information collection request (ICR) for the WIOA Common Performance Reporting (WIOA Joint Performance ICR) and joint guidance. The Departments reiterate that States will be required to report on the measurable skill gains performance indicator, which may include educational functioning level gain, as set forth in § 677.155(a)(1)(v), consistent with the WIOA Joint Performance ICR and as explained in guidance.

Public Comment:

Subpart A—General

§ 462.3 What definitions apply?

In the NPRM we proposed to revise § 462.3 to align several terms with the language in WIOA. For example, to conform to section 203 of AEFLA, we proposed replacing the term "English as a second language (ESL)" with the term "English language acquisition (ELA)." We also proposed to remove the reference to a physical copy of the NRS Guidelines to provide an easier and immediate public access online.

Comments: Numerous commenters supported changing the term from ESL to ELA, with some stating that it more accurately describes the intent of the programming and pathways. One commenter recommended substituting English Language Acquisition Program (ELAP) for the term ELA. Numerous commenters expressed concern about States using the term English Language Acquisition (ELA) to refer to English Language Learners or students in ESL because "ELA" is commonly understood to refer to English Language Arts in a number of educational contexts, including in college and career readiness standards. They indicated that it would cause unnecessary confusion. Numerous commenters recommended using the already-branded terms ESL or English for Speakers of Other Languages (ESOL).

Discussion: We appreciate the support from some commenters for the change in terminology that we originally proposed. We also acknowledge the concerns raised by other commenters regarding confusion that might arise from the proposed change in terminology. We note that in revising the NRS information collection request, *Implementation Guidelines: Measures and Methods for the National Reporting System for Adult Education* (OMB Control Number: 1830–0027), we retained the term English as a Second Language (ESL) when specifically referring to the six educational functioning levels for English language learners. Since the changes we originally proposed in this rule related specifically to these six educational functioning levels used for NRS reporting and not to the actual services available to English language learners under the Act, we believe using the term English as a Second Language (ESL) results in greater clarity and consistency between this rule and the corresponding NRS information collection request.

Change: We have replaced the term English language acquisition (ELA) with the term English as a Second Language (ESL) when referring to the educational functioning levels for English language learners, and we have made the appropriate conforming changes throughout part 462.

Subpart B—What process does the Secretary use to review the suitability of tests for use in the NRS?

§ 462.10 How does the Secretary review tests?

In proposed § 462.10, the Department established two additional submission dates for the submission of tests in program years 2016 and 2017. Currently, tests must be submitted by October 1 of each year. The two additional dates of April 1, 2017 and April 1, 2018 would provide more opportunities for the Secretary to review and approve assessments and will increase the availability of new assessments to eligible providers in the first two years of implementing the performance accountability requirements under section 116 of WIOA.

Comments: Several commenters expressed support for the addition of two submission dates for test review, stating that this will allow test publishers time to develop quality assessments, and to submit new or revised assessments that align with the *College and Career Readiness Standards for Adult Education* and the final released versions of the educational functioning level descriptors. One commenter suggested two submission dates each year, beginning with April 1, 2017, and continuing until there are multiple tests approved. One commenter recommended that the Department offer more than two submission dates. They suggested that in 2016 and 2017, the Department consider allowing the publishers to submit applications when they are ready, rather than only on October 1 or April 1.

Discussion: We appreciate commenters' support for our proposed two submission dates each year, as well as their suggestion to offer continuous or rolling submissions throughout the year based upon publishers' readiness to submit. Our past experience indicates that rolling assessment review opportunities do not yield an increase in the quantity or quality of tests suitable for use in the NRS. Based on our experiences to date, we believe that the two additional dates of April 1, 2017 and April 1, 2018, in addition to October 1, 2016 and October 1, 2017, offer increased flexibility as well as additional opportunities to submit new tests for review in the first two years of implementing the performance accountability requirements under section 116 of WIOA. Beginning in program year 2018, we will return to one annual submission date on October 1.

Change: None.

§ 462.13 What criteria and requirements does the Secretary use for determining the suitability of tests?

We noted in the preamble of the NPRM that we proposed to update the reference to the *Standards for Educational and Psychological Testing* to reflect the most current edition of these standards.

Comments: One commenter requested that the regulations be updated to refer to the *Standards for Educational and Psychological Testing* as being developed by American Educational Research Association (AERA), American Psychological Association (APA), and the National Council of Measurement in Education (NCME), as reflected in the 2014 edition.

Discussion: We appreciate the commenter's suggestion that the regulations be updated to refer to the

2014 edition of the *Standards for Educational and Psychological Testing,* which was inadvertently omitted in the proposed rule text.

Change: We have revised final § 462.13 to reflect the new edition of the *Standards for Educational and Psychological Testing.*

Subpart D—What requirements must States and eligible providers follow when measuring educational gain?

§ 462.40 Must a State have an assessment policy?

In § 462.40, we proposed adding one additional element to the information a State must include in its State assessment policy by requiring that the State specify a target for the percentage of all pre-tested students who both meet that threshold of instruction and take a matched post-test. The post-test score is used to determine whether the student has made educational functioning level gain. Under WIA, States were directed to specify this target by the information collection request, *Implementation Guidelines: Measures and Methods for the National Reporting System for Adult Education* (OMB Control Number: 1830–0027), but in the NPRM, we proposed to make this a regulatory requirement.

Comments: Two commenters expressed concern that the requirement to set a post-testing target will negatively influence the integrity of the testing process, leading States to skirt the most effective administration of the tests or to manipulate reporting. One of these commenters recommended that uniform review and approval processes be used to ensure integrity of test and reporting results. The other commenter stated that post-testing targets place too much emphasis on the role post-testing plays in determining educational functioning level gains, to the exclusion of screening, support services, and instruction, and can lead to improper test administration to meet reporting demands.

Discussion: We agree with the commenters that the integrity of the testing process and the quality of instructional services must not be negatively impacted by the regulatory requirement. We note that the proposed requirement for a State to specify in its assessment policy a target for the percentage of all pre-tested students who meet that threshold of instruction and take a matched post-test is a standard States are currently directed to specify by the information collection, *Implementation Guidelines: Measures and Methods for the National Reporting System for Adult Education* (OMB Control Number: 1830–0027). We are making this practice a regulatory requirement for consistency purposes. As stated in our proposed regulations, the purpose of requiring States to establish this standard is to promote the implementation of policies and practices by eligible providers that maximize the percentage of students who have a matched post-test completed in order to document educational functioning level gain and to encourage continuous improvement over time.

Change: None.

Comments: One commenter recommended States be given a trial period to evaluate and determine reasonable performance and therefore acclimate to the process of setting post-test targets so they can negotiate more effectively with the Department on reasonable target levels.

Discussion: We appreciate the commenter's interest in determining how to most meaningfully implement the proposed requirement. We note that a post-test standard is a current element in the information collection, *Implementation Guidelines: Measures and Methods for the National Reporting System for Adult Education* (OMB Control Number: 1830–0027). We are including this element in this section as a regulatory requirement, thus aligning it with the other elements required in the State assessment policy and establishing consistency between these final regulations and the information collection request. We further note that the post-testing standard required in this regulation is determined solely by the State and articulated in the State's assessment policy. It is not negotiated with the Department. The State, at its sole discretion, may evaluate the standard it has set and make any necessary revisions.

Change: None.

§ 462.42 How are tests used to place students at an NRS educational functioning level?

Proposed § 462.42 revised the authority citation to conform to WIOA.

Comments: One commenter expressed concerns that the testing methods to determine educational functioning level will disadvantage participants because they may not be experienced with traditional testing, and because standardized testing has been recognized to skew toward particular ethnicities and higher socioeconomic groups.

Discussion: We appreciate the commenter's concern that the testing methods to determine educational functioning levels may disadvantage participants who may not be experienced with standardized testing. We agree that poorly constructed tests can skew results for particular groups. We note that in § 462.13, we have specified the criteria and requirements that the Secretary uses for determining the suitability of tests. These criteria require a regular evaluation of test items for fairness and bias, which includes the design, development, and delivery of tests for variability among intended test takers. We conclude that these criteria are sufficient to address the commenter's concerns.

Change: None.

§ 462.43 How is educational gain measured for the purpose of the performance indicator in section 116(b)(2)(A)(i)(V) of the Act concerning the achievement of measurable skill gains?

Proposed § 462.43(a) confirmed that educational functioning level gain is measured by testing students in reading and mathematics. We also proposed adding § 462.43(c) to allow States that offer adult high school programs, authorized by State law or regulations, to measure and report educational functioning level gain through the awarding of credits or Carnegie units. Additionally, as noted in § 462.41, we revised the title of this section to clarify that the measurement of educational gain as described in these regulations is for the purpose of applying the measurable skill gains performance indicator in section 116 of WIOA to programs and activities under AEFLA.

Comments: Many commenters endorsed continued use of educational functioning levels (EFLs) through pre-/post-testing and also encouraged eventual refinement of EFLs or the development of other potential measures that can document participants' progress toward educational goals. Some commenters suggested that the final regulations support measures that demonstrate progression along a career pathway. Various commenters suggested that the final regulations provide specificity on how a number of alternative measures, such as transition to postsecondary education and training, attainment of a secondary credential, advancement in competency-based educational programs, and passing portions of high school equivalency exams or citizenship exams might count as educational functioning level gains for students. Commenters also inquired about how pre-/post-testing could be used to support students' progression along a career pathway. Some commenters supported our proposed inclusion of

Carnegie units or credits in States with adult high school programs while others questioned how the regulation might safeguard against States reporting educational functioning level gains for students based upon seat time rather than actual skills attainment.

Discussion: We appreciate the commenters' concern for implementing the measurable skill gains performance indicator in a manner that supports students' progression along a career pathway and that does not only rely on testing. We agree that States need additional flexibility to support students' progression along career pathways responsive to industry needs and standards within local or regional economies and believe that flexibility is provided in § 677.155(a)(1)(v) of the WIOA joint final rule. We note that educational functioning level gain for students is included in § 677.155(a)(1)(v) as one of five measures of documented progress that specify how to show a measurable skill gain under section 116 of WIOA and that apply across all WIOA core programs. We also note that attainment of a secondary school diploma is another measure of documented progress in § 677.155(a)(1)(v) that States may use to demonstrate and report a measurable skill gain under section 116 of WIOA. Because these measures apply across core programs, the Departments have agreed that any further explanation regarding these measures, including educational functioning level gain, is best provided in the WIOA Joint Performance ICR and joint guidance. However, in response to commenters' suggestions, the Departments intend to include transition to postsecondary education and training in the WIOA Joint Performance ICR as an additional way for States to report an educational functioning level gain. The Departments reiterate that States will be required to report on the measurable skill gains indicator, which may include educational functioning level gain, as set forth in § 677.155(a)(1)(v), consistent with the WIOA Joint Performance ICR and as explained in guidance.

Change: We remove and reserve § 462.43.

34 CFR Part 463—Adult Education and Family Literacy Act

Summary of Changes

In the preamble of the NPRM, we discussed on pages 20971 through 20975 proposed new regulations to support State and local implementation of WIOA-related changes to the AEFLA program. We proposed regulations to reiterate the purpose of AEFLA and the programs authorized by the Act, as well as clarify the relationship of those programs and definitions to EDGAR. We also sought to describe the process and requirements for States to award grants or contracts to eligible providers and the activities that may be charged to local administrative costs. The proposed regulations included new requirements established by WIOA, such as: The requirement that Local WDBs review applications for funds prepared by applicants for AEFLA funding, the requirement that entities have "demonstrated effectiveness" to be eligible providers, and the requirement that local administrative funds be used to promote the alignment of an eligible provider's activities with the local workforce development plan established under title I of WIOA. The proposed regulations also sought to define what constitutes an adult education and literacy activity or program and clarify how funds may be used for activities that are newly authorized by WIOA. We also proposed to describe how AEFLA funds may be used to support programs for corrections education and the education of other institutionalized individuals, including new activities authorized by WIOA. Finally, we proposed regulations to clarify the use of funds for new and expanded activities under the Integrated English Literacy and Civics Education program.

There are several important differences between the NPRM and these final regulations:

We clarified in these final regulations that attainment of a secondary school equivalency credential is inherently a part of the purpose of AEFLA.

We removed the limitation of the definition of "concurrent enrollment" to subpart F so that the definition now applies to all subparts in this Part 463. In the definition of "reentry initiatives and post release services" in § 463.3, we changed the phrase "release from prison" to "release from a correctional institution."

We have revised § 463.21 to give States more flexibility for organizing and overseeing a process for Local WDBs to review eligible providers' applications for alignment with the local workforce development plan and to make recommendations to the eligible agency to promote alignment with the local plan.

We have revised § 463.24 to clarify that an eligible provider that has not been previously funded under title II of WIOA may demonstrate effectiveness by providing performance data related to its record of improving the skills of eligible individuals, particularly eligible individuals who have low levels of literacy, in the content domains of reading, writing, mathematics, English language acquisition, and other subject areas relevant to the services contained in the State's application to award contracts or grants to eligible providers.

We have revised § 463.25 to clarify that the eligible agency may increase the amount that can be spent on local administration in cases where the cost limits are too restrictive to allow for specified activities.

We have revised § 463.32(a) to clarify that a State or eligible provider may use curriculum, lesson plans, or instructional materials to demonstrate that an English language acquisition program is implementing the State's content standards for adult education.

We have revised § 463.32(b) to more clearly state our intent for how eligible providers can demonstrate that an English language acquisition program is meeting the requirement of § 463.31(b) by offering educational and career counseling services that enable English language learners to transition to further education or employment.

We have revised § 463.37(a)(1) to more clearly state how, within the overall scope of the program, each of the three required components of an integrated education and training program must be of sufficient intensity and quality, and based on the most rigorous research available.

We have revised § 463.73 to more clearly reflect the statutory requirement to use funds provided under section 243 in combination with integrated education and training activities as defined in subpart D as well as to better clarify options for meeting the requirement.

Public Comment:

Comments: One commenter expressed general support for the Act's potential for helping youth and adults prepare for meaningful employment in State, regional, and local economies. This commenter encouraged adult educators to consult with employers in the design of services.

Discussion: We agree with the commenter's suggestion. We have historically provided a range of technical assistance resources to encourage and support adult educators' engagement with employers to ensure that education services are relevant and responsive to local economic circumstances. We believe that the Act's support for career pathways development and new adult education and literacy activities such as workforce preparation activities and integrated education and training offer adult educators new opportunities to enhance and expand engagement efforts with

employers so that adult education services meet the needs of job seekers and employers.

Change: None.

Subpart A—Adult Education General Provisions

463.1 What is the purpose of the Adult Education and Family Literacy Act?

WIOA retains and expands the purposes of AEFLA. Under WIA, AEFLA aimed to help adults improve their educational and employment outcomes, become self-sufficient, and support the educational development of their children. Under WIOA, AEFLA's purposes have been expanded to include assisting adults to transition to postsecondary education and training, including through career pathway programs. Further, WIOA formalizes the role of adult education in assisting English language learners to acquire the skills needed to succeed in the 21st-century economy.

Comments: Numerous commenters expressed support for the expanded purposes of AEFLA. Two commenters stated that in addition to the focus on workforce development, priority service should continue for individuals who are not in the workforce and need adult education and literacy services. Another commenter expressed concern over the statutory reference in the purpose section of AEFLA to "transition to postsecondary education and training, including through career pathways," stating that the focus of adult education should remain on secondary credential attainment.

Discussion: We appreciate the commenters' support for the expanded purposes of AEFLA. We agree with those commenters who stated that in addition to a focus on workforce development, services should continue to be made available for individuals who are not in the workforce and need adult education and literacy services. We believe that the Act, as well as these final regulations, provide States the flexibility to continue to provide adult education services to eligible individuals both in and out of the labor force. We do not agree, however, that the focus of adult education should remain solely on secondary school equivalency or secondary credential attainment. We believe that within the overall purposes set forth in the Act to strengthen the United States workforce development system through innovation in, and alignment and improvement of, employment, training, and education programs to promote individual and national economic growth, WIOA appropriately emphasizes transition to postsecondary education and training and career pathways. Moreover, the multiple and expanded purposes of adult education set forth in WIOA do not give us authority to limit the focus to secondary credential attainment.

Change: None.

Comments: Several commenters expressed concerns that while both the name and the purpose of the authorizing statute reference family literacy, the proposed regulations did not adequately convey the importance of eligible providers continuing to provide family literacy services. One commenter suggested that the Department add language to the proposed regulations to clarify the importance of family literacy services as an express purpose under AEFLA. Another commenter expressed concern that simply restating the statutory language in the proposed regulations might result in individuals not in the workforce being denied services and suggested that the Department revise the language of the proposed regulations.

Several of these commenters suggested that the Department consider including family literacy-relevant performance measures in the performance accountability system. One commenter suggested that the Department allow State plans to include additional performance indicators relevant to improving family literacy. Another commenter suggested that the Department convene an expert group to assist with the development of such measures.

Discussion: Proposed § 463.1 restated section 202 from the Act. Section 202 states that the purpose of AEFLA is to create a partnership between the Federal government, States, and localities to assist eligible individuals in achieving four enumerated goals, the second of which is to assist adults who are parents or family members to obtain education skills that—

(A) Are necessary to becoming full partners in the educational development of their children; and

(B) Lead to sustainable improvements in the economic opportunities for their family.

We believe this statutory language clearly and sufficiently establishes the continued importance of family literacy within the Act. Moreover, we do not believe we have the authority to emphasize any one of the four statutory purposes over others. We are aware of the concern over the continued ability to serve individuals not in the labor force. Again, as we noted above, we believe that the Act, as well as these final regulations, provide States the flexibility to continue to provide adult education services to eligible individuals both in and out of the labor force.

In terms of commenters' requests that we add family literacy measures to the performance accountability system for WIOA, the Act specifies six primary indicators of performance and does not give the Department the authority to create additional indicators of performance. However, section 116(b)(2)(B) provides States with the flexibility to identify in the State plan additional performance accountability indicators. Additionally, based upon these comments we have decided to retain the optional family literacy reporting table within the NRS, thereby supporting States' flexibility to report these measures should they opt to use them. We note that this optional reporting table was created with input from adult education administrators and practitioners and is maintained through a process that includes consultation with a technical work group comprised of State directors of adult education.

Change: None.

Comments: One commenter suggested that, in addition to the statutory reference to secondary diploma attainment, we should revise proposed § 463.1(c) to expressly include attainment of high school equivalency.

Discussion: We appreciate the commenter's suggestion and agree that acknowledging attainment of secondary school equivalency, in addition to secondary school diploma attainment, clarifies proposed § 463.1(c).

Change: We have revised § 463.1(c) to include the attainment of the recognized equivalent of a secondary school diploma.

Comments: One commenter suggested that proposed § 463.1(d) might be strengthened by adding language from proposed § 463.31 concerning the definition of an English language acquisition program.

Discussion: We appreciate the commenter's suggestions and agree that, in instances where immigrants need English language acquisition services, this suggestion might strengthen the regulations. However, we note that not all immigrants need English language acquisition services and that making this change could limit immigrants' access to other adult education and literacy activities. Additionally, we note that in proposing § 463.1, we stated that our intent was to clarify the expanded purposes of AEFLA under WIOA. Our intent was not to expand on those purposes. We believe that § 463.1(d) as proposed achieves the clarity that we sought and also maintains maximum State flexibility to address diverse

immigrants' needs for adult education and literacy activities.

Change: None.

463.3 What definitions apply to the Adult Education and Family Literacy Act programs?

Proposed § 463.3 identified 31 terms used in WIOA that pertain to AEFLA. In some instances, the terms, as defined in titles I and II, apply across all six of the programs authorized or amended under WIOA, including the Adult, Dislocated Worker, and Youth programs (title I of WIOA); AEFLA (title II of WIOA); the Employment Service program under the Wagner-Peyser Act of 1933 (title III of WIOA); and the Vocational Rehabilitation program authorized under title I of the Rehabilitation Act of 1973 (title IV of WIOA) (together, "core programs"). In other instances, the terms are specific to AEFLA, title II of WIOA. Proposed § 463.3 is intended to assist AEFLA grantees by centralizing relevant definitions into one section. Proposed § 463.3 also identifies terms found in EDGAR that apply to State grant programs and that are relevant to AEFLA. Seven additional terms used in WIOA are not explicitly defined elsewhere. We have listed and defined these terms under "other definitions" to clarify their meaning for purposes of the AEFLA program.

Concurrent Enrollment

Comments: One commenter concurred with our proposed definition but noted that other sections of the proposed regulations referred to six, rather than four, core programs. This commenter asked that the proposed definition be revised to be consistent with other related regulations. Two commenters stated that co-enrollment should not be limited to the core programs and should include postsecondary education and training. Additionally, in a comment under § 463.22 (see below) a commenter suggested that we remove the limitation of the definition to this subpart F only.

Discussion: We appreciate the suggestion supporting consistency throughout the proposed regulations and agree that in the proposed definition of concurrent enrollment we should have referred to six, rather than four, core programs. We also note that when we originally proposed this definition we stated that it was for purposes of administration of the AEFLA program and that we acknowledged that in practice the term often had a wider meaning. We also originally proposed the definition specifically for purposes of this subpart F in which proposed § 463.60(b) listed allowable educational programs for criminal offenders in correctional institutions and other institutionalized individuals.

Through the definition of concurrent enrollment, we clarify that postsecondary education is not an allowable use of AEFLA funds under § 463.60(b)(6). Finally, we agree with the commenter who suggested that we not limit the definition of concurrent enrollment only to this subpart F.

Change: We have revised the definition of "concurrent enrollment" in § 463.3 to correct the reference to core programs to six rather than four. We have also removed the limitation on this definition applying to only subpart F.

Reentry Initiatives and Post Release Services

Comments: Regarding the definition of "reentry initiatives and post release services," one commenter objected to the proposed definition's reference to release from prison. This commenter suggested that replacing prison with the term correctional institution as defined in WIOA would not unnecessarily limit reentry services.

Discussion: We appreciate the commenter's desire to maintain maximum flexibility in providing reentry services and agree that the final rule should not unnecessarily limit these services.

Change: We have revised the definition of "re-entry and post-release services" in § 463.3 to apply to release from a correctional institution.

Comments: One commenter suggested that the statutory definition of "basic skills deficient" be expanded in final regulations to provide additional time for both adults who have not taken standardized tests and adults with undiagnosed learning disabilities.

Discussion: We appreciate the commenter's concern for being able to provide optimal supports for adults who may be unfamiliar with standardized testing and adults with learning disabilities. We have reviewed the definitions of both "individual with a barrier to employment" in section 3(24) of the Act and "individual with a disability" in section 3(25) of the Act and conclude that they are adequate to include adults with learning disabilities and adults who may be unfamiliar with standardized testing. We also note that section 504 of the Rehabilitation Act of 1973 requires that eligible providers provide appropriate test accommodations as needed.

Change: None.

Subpart C—How does a state make an award to eligible providers?

§ 463.20 What is the process that the eligible agency must follow in awarding grants or contracts to eligible providers?

Proposed § 463.20 describes the process that an eligible agency must follow when awarding grants or contracts to eligible providers. WIOA retains the WIA requirement that an eligible agency award multiyear grants or contracts on a competitive basis to eligible providers for the purpose of developing, implementing, and improving adult education within the State or outlying area. WIOA also retains the WIA requirement that an eligible agency ensure that all eligible providers have direct and equitable access to apply and compete for grants and contracts under AEFLA. Title II of WIOA further requires an eligible agency to use the same grant or contract announcement and application processes for all eligible providers in the State or outlying area. Under WIA, when awarding grants under AEFLA, State eligible agencies were required to consider 12 factors. WIOA revises these 12 factors and adds one additional factor relating to the alignment between proposed activities and services and the strategy and goals of the local plan, and the activities and services of the one-stop partners. Eligible agencies must also consider under WIOA the coordination of the local education program with available education, training, and other support services in the community.

Comments: One commenter expressed support for proposed § 463.20, but noted that that the description of individuals in the community who are identified as most in need of adult education no longer contains a stipulation for determining an individual's need based on income. The commenter recommended that, since WIOA requires the alignment between proposed activities and services and the strategy and goals of the local plan, States be allowed flexibility to implement additional factors such as income when determining most in need.

Discussion: We appreciate the commenter's concerns for meeting the education and employment needs of low-income individuals. While WIA explicitly required that, in awarding grants or contracts under title II, the eligible agency must consider the commitment of the eligible provider to serve individuals in the community who are most in need of literacy services, including individuals who are low income or have minimal literacy skills, WIOA does not explicitly contain

such a requirement for consideration. However, § 463.20(d) does require that the eligible agency consider the degree to which the eligible provider would be responsive to serving individuals in the community who were identified in the local plan as most in need of adult education. The local plan must include an analysis of the education and skill levels of the workforce, including individuals with barriers to employment. Section 3 of the Act includes low-income individuals as one population in the definition of individuals with barriers to employment. We believe the requirement for an eligible agency to consider the extent to which an eligible provider is responsive to serving those individuals identified in the local plan as needing adult education, combined with local plan requirements to serve those with barriers to employment, will result in better access to education and training for all individuals with barriers to employment, including low-income individuals. Therefore, consistent with the needs identified in the approved Unified or Combined State Plan, we believe States have the flexibility to implement additional factors such as income when determining most in need. We remind States that choose to implement such additional factors of the requirement in section 223(c) of WIOA to identify to eligible providers that the rule or policy is being imposed by the State.

Change: None.

Comments: Another commenter expressed support for proposed § 463.20, which included a restatement of the 13 considerations that State eligible agencies must take into account in making awards to eligible providers. The commenter asked the Department to consider adding two additional considerations intended to support partnership development among core programs—one addressing co-enrollment and another addressing braided funding. Other commenters suggested that we add an additional consideration: Whether the eligible entity has a comprehensive plan to publicize the availability of adult education programming and the capacity to ensure ongoing communication, where appropriate, through partnerships or coordination with other entities, including public television stations. These same commenters suggested that we amend proposed § 463.20(d)(10) to include public television stations.

Discussion: We note that proposed § 463.20 restated the statutory requirements regarding the process that the eligible agency must follow in awarding grants or contracts to eligible providers. While we appreciate the commenters' support for developing robust local partnerships to support successful WIOA implementation, we do not believe that we have the authority to add additional required considerations beyond the 13 specified in WIOA. We agree that the strategies suggested by commenters can support robust partnership development. We further note that § 463.20 does not preclude eligible providers from engaging in these strategies. Co-enrollment and braided funding may be ways in which an eligible provider demonstrates that it meets the requirements of § 463.20(d)(4) or § 463.20(d)(10). Similarly, engagement with public television stations may be one of the ways in which an eligible provider demonstrates to the eligible agency that it meets the requirements of § 463.20(d)(10).

Change: None.

§ 463.21 What processes must be in place to determine the extent to which a local application for grants or contracts to provide adult education and literacy services is aligned with a local plan under section 108 of WIOA?

WIOA promotes coordination between the Local WDBs and adult education providers by requiring in section 107(d)(11)(B)(i) that the local WDB review applications for AEFLA funds submitted to the eligible agency by eligible providers to determine whether the application is consistent with the local workforce plan, and to make recommendations to the eligible agency to promote alignment with the local workforce plan. Proposed § 463.21 required an eligible agency to establish procedures for the Local Board review in its grant or contract application process and also established the type of documentation that must accompany the application. The proposed regulations also required the eligible agency to consider the results of the local WDB review in determining the extent to which the application addresses the requirements of the local plan developed in accordance with section 108 of WIOA. The purpose of the proposed regulation is to establish uniform procedures within the State and outlying area for a local WDB to review an application and to ensure that the eligible agency considers the review in its award of grants and contracts for adult education and literacy activities.

Comments: Multiple commenters stated that proposed § 463.21 supported improved alignment between local workforce development plans and adult education providers and expressed their support for this goal. Many of these commenters added that it was essential for the State to set consistent guidelines and uniform procedures. One of these commenters further suggested that the Department require States to (1) implement a standardized process for use statewide, (2) develop a standardized rubric for Local WDBs to use in implementing the process, and (3) develop the process in consultation with Local WDBs. Some of these commenters raised concerns about adequate time for the local WDB to conduct its review as outlined in proposed § 463.21, and one commenter suggested that we expand the language in proposed § 463.21 to include a requirement for the Local WDBs to complete their reviews by a date specified by the eligible State agency.

Discussion: We appreciate commenters' support for the goal of improved alignment between local workforce development plans and adult education service delivery. We agree that it is important that States set consistent guidelines and uniform procedures. We also acknowledge that there is diversity among States and local workforce development areas. As a result of this diversity, we believe there is a need to provide States with flexibility in meeting the statutory requirements for Local WDBs to review eligible providers' applications for consistency with the local workforce development plan and make recommendations to the eligible agency to promote alignment with the plan. We believe that adding the level of specificity suggested by commenters will limit States' flexibility in meeting the statutory requirements.

Change: None.

Comments: One commenter stated that neither section 107 nor section 232 of WIOA prescribed the time frame or the method for local WDB review or dictated the manner in which Local WDBs should make recommendations. The commenter maintained that, as proposed, § 463.21 would require an eligible provider to first submit its application to the local WDB. The commenter felt that this requirement was too restrictive and that States should be afforded the ability to develop operational processes to ensure alignment, consistent with sections 107 and 232 of WIOA.

Discussion: We agree with the commenter that, as proposed, § 463.21 presumed a more rigid sequence of steps for the submission of eligible providers' applications to Local WDBs that might not be optimal for all States.

Change: We have revised § 463.21(a) and (b) to allow States more flexibility

for organizing and overseeing a process for Local WDBs to review eligible providers' applications for alignment with the local workforce development plan and to make recommendations to the eligible agency to promote alignment with the local plan.

Comments: Other commenters, while supportive of the goal of improved alignment, also expressed concern regarding whether the requirement for Local WDBs to review eligible providers' applications for alignment with the local workforce development plans might be realistically implemented in large urban areas with multiple eligible providers submitting applications to provide adult education and literacy activities. Some of these commenters proposed alternative means to achieve the desired alignment. For example, one commenter suggested alternative approaches such as, engaging all eligible providers within a local workforce development area in the creation of the local or regional workforce development plan, recruiting local WDB members to serve on adult education advisory councils, and specifying roles and responsibilities of required partners in local memoranda of understanding (MOUs). Another commenter suggested substituting the requirement for local WDB review of eligible providers' applications for documentation of the eligible provider's involvement in the development of the local workforce development plan.

Discussion: We understand commenters' concern regarding implementing the new requirement for Local WDBs to review applications for title II funds submitted to eligible agencies by eligible providers. Final § 463.20 provides an eligible agency with flexibility to implement this new requirement, consistent with section 107(d)(11)(B)(i) of WIOA. The final regulations ensure all applications within a State are treated the same in the local WDB review process. The Act explicitly requires Local WDBs to review applications, and the Department is unable to include in the regulations any alternative review process that eliminates this requirement, such as those suggested by commenters.

Change: None.

Comments: A few commenters requested that we provide guidance on how to implement the requirements of proposed § 463.21 in single State areas. Some commenters suggested that the Department would need to consider flexible options that respond to States where regional consortia or workforce advisory groups perform some of the duties of Local WDBs. Other commenters suggested that State workforce development boards should be required to review preliminary decisions by the eligible State agency before funds are awarded and that this could be accomplished by State workforce development board representation on grant review committees.

We also received comments expressing concerns over the Local WDB's ability to avoid conflicts of interest and remain impartial in the conduct of the review of eligible providers' applications for alignment with local workforce development plans. To avoid such conflicts of interest at the local level, one commenter suggested that the final rule require that the State workforce board has a right to review eligible providers' applications prior to the State eligible agency issuing awards.

Discussion: Final § 463.21 recognizes the diversity among States, including single State areas, and provides flexibility in how a State establishes a process to determine the extent to which a local application for grants or contracts to provide adult education and literacy services is aligned with the local plan under section 108 of WIOA. WIOA does not, however, allow the Department to consider options that would have the effect of replacing local WDB review and recommendations with those from an alternate body or group. Additionally, AEFLA authorizes the eligible agency to award grants and contracts for adult education and literacy activities. In doing so, the eligible agency must consider a set of factors in the award of those grants or contracts, which include the degree to which the eligible provider would be responsive to the regional needs identified in the local plan. Section 463.21 describes how the eligible agency establishes a process for local WDB review in the grant or contract competition and considers the results of the review in its funding decisions. An additional requirement for the local WDB or State Workforce Development Board to review preliminary funding decisions by the eligible agency would diminish the authority of the eligible agency provided in statute. An eligible agency, however, has the flexibility to determine its application review process consistent with title II requirements, including determining how grant or contract applications are reviewed and providing safeguard measures to facilitate objective review and avoid conflicts of interest.

Change: None.

Comments: Two commenters expressed a concern that proposed § 463.21 would enable Local WDBs to determine which eligible providers would have the opportunity to submit applications to the State eligible agency or which applications the State eligible agency could fund.

Some commenters expressed concerns regarding expertise of the local WDB in adult education, and questioned its ability to adequately review eligible providers' applications. One of these commenters suggested that independent adult education experts be invited to assist Local WDBs in conducting their reviews of eligible providers' applications. The commenter suggested that we expand the proposed rule text to explicitly encourage this practice.

Discussion: We agree with commenters' concerns that local WDB reviews do not diminish the authority provided in AEFLA of the eligible agency to make funding determinations based on a variety of requirements contained in § 463.20. The purpose of the local WDB review of an eligible provider application is to determine whether such plans are consistent with the local plan under section 108 of WIOA and to make recommendations to the eligible agency to promote alignment with such a plan. The eligible agency must consider the results of the review along with other statutory considerations in making funding decisions. The Department believes that only appointed local WDB members who do not have a conflict of interest as defined in section 107(h) of WIOA are allowed to participate in the review of an eligible provider application. The rule does not preclude the local WDB from offering training to board members by adult education experts prior to participating in the review process and, therefore, a change to the regulations is not necessary.

Change: None.

§ 463.22 What must be included in the eligible provider's application for a grant or contract?

Proposed § 463.22 identifies what an eligible provider must include in its application for a grant or contract under AEFLA. An eligible provider must provide the information and assurances required by the eligible agency. The eligible provider must also describe how it will: Spend funds consistent with the requirements of AEFLA; provide services in alignment with the local plan required under section 108 of WIOA, including promotion of concurrent enrollment with title I services; fulfill one-stop partner responsibilities; meet adjusted levels of performance based on the newly-established primary indicators of

performance in section 116(b)(2)(A)(i) of WIOA and collect data to report on performance indicators; and provide services to meet the needs of eligible individuals. Eligible providers must also describe any cooperative arrangements that they have with other entities for the delivery of adult education and literacy activities and provide other information that addresses the 13 considerations outlined in § 463.20.

Comments: Regarding proposed § 463.22(a)(3), one commenter suggested that the description of providing services in alignment with local workforce plans, including promotion of concurrent enrollment with title I services should include specific reference to concurrent or co-enrollment, as we defined these terms in proposed § 463.3, that is concurrent or co-enrollment as enrollment in two or more WIOA core programs.

Discussion: We agree with the commenter that the definition of concurrent enrollment contained in § 463.3 should also be applied to sections other than subpart F.

Change: We have revised the proposed definition to remove the limitation that it applies only to this subpart F.

Comments: Regarding proposed § 463.22(a)(4), several commenters expressed concern about eligible providers' ability to meet this requirement before data on the new WIOA performance indicators becomes available. One commenter suggested that the Department amend proposed § 463.22(a)(4) to enable eligible providers to describe how they will meet additional performance indicators related to self-sufficiency and family literacy.

Discussion: We understand the commenters' concerns about the availability of data for the primary indicators of performance. We recognize that data on all indicators will not be available until after eligible agencies are required to conduct competitions under subpart C. However, the requirement in § 463.22(a)(4) is to provide a description of how the eligible provider will meet the State's adjusted levels of performance rather than to demonstrate that it has met the State's adjusted levels of performance. Additionally, the Department issued Program Memorandum OCTAE 16–02, Establishing Expected Levels of Performance and Negotiating Adjusted Levels of Performance for Program Year (PY) 2016–17 and 2017–18. In this guidance we note that the Department is using transition authority under section 503(a) of WIOA to establish a phased-in approach of negotiating and setting levels of performance for the first two program years of the initial four-year Unified or Combined State Plan. For PYs 2016–17 and 2017–18, the Department will negotiate adjusted levels of performance with States for one indicator for the AEFLA program—the measurable skill gain indicator. The Department will collect baseline data for the other five primary performance indicators during this period.

We are unable to add language to § 463.22(a)(4) that would establish additional indicators of performance because the primary indicators of performance are specified in section 116 of WIOA. A State may identify additional indicators of performance in the State plan, but these additional indicators are not subject to negotiation with the Department. In cases where a State has identified additional indicators of performance in its State plan, section 232 of the Act provides the State with the flexibility to include in its application for funds a requirement for eligible providers to describe how they will meet such additional performance indicators.

Change: None.

Comments: Regarding proposed § 463.22(a)(5)(i), one commenter questioned what we meant by providing access through the one-stop delivery system to adult education and literacy activities. This commenter stated that in areas where adult education providers and one-stop operators had minimal interactions under WIA, such providers will need time to establish the kind of working relationships now explicitly required under WIOA. The commenter expressed the hope that the Department would acknowledge that such a transformation would require a period of transition.

Discussion: We appreciate the commenter's concerns about the time needed to transform relationships among partner programs in the one-stop delivery system and recognize the need for technical assistance and guidance as the workforce system implements expanded partnership requirements. The Department is committed to providing on-going assistance to States in achieving a vision of increased access to high-quality services through the one-stop delivery system.

Change: None.

Comments: Regarding proposed § 463.22(a)(5)(ii), one commenter suggested that the regulations provide best practice strategies for title II eligible providers to use a portion of funds under WIOA to maintain the one-stop delivery system. This commenter suggested that examples of these best practices might include co-location, co-enrollment, and delivery of digital literacy and distance learning programming for one-stop customers.

Discussion: We agree with the commenter's suggestion that best practice strategies would be helpful to States as they implement one-stop provisions. However, we disagree that these regulations are the appropriate place for providing such best practices. The Department will assist in making best practices and examples available through technical assistance.

Change: None.

Comments: Three commenters suggested that we redesignate § 463.22(a)(10) to § 463.22(a)(11) and insert the following for § 463.22(a)(10): how the eligible agency, either directly or in partnership or coordination with other agencies, institutions, or organizations, will provide for the delivery of adult education and literacy services across multiple platforms, such as television, internet based, and place based.

Discussion: We appreciate the commenter's suggestions to emphasize partnerships that provide adult education and literacy services across multiple platforms. We agree that such partnerships have the potential of enhancing access to these services and remain committed to improving access to services. However, based on the requirements of section 232 of WIOA, § 463.22 contains items that are statutorily required to be in an eligible provider's application for a grant or contract, including information that the eligible agency may require. The Department cannot require additional items.

Change: None.

§ 463.23 Who is eligible to apply for a grant or contract for adult education and literacy activities?

Proposed § 463.23 lists the organizations that are eligible to apply for a grant or contract to provide adult education and literacy activities, as well as the 10 organization types that may be eligible providers, two of which are a consortium or coalition of organization types and a partnership between an employer and eligible entities. Proposed § 463.24 further permits other organization types, even if not specifically listed, to apply as eligible providers if they meet the demonstrated effectiveness requirement.

Comments: A few commenters suggested that we expand the list of potential eligible providers in proposed § 463.23. Some of these commenters stated that public television stations have demonstrated a commitment and ability to provide necessary and relevant

adult education services and suggested that we expand the list in proposed § 463.23 to include public television stations as potential eligible providers of adult education and literacy services. One commenter suggested that we might better assist States' efforts to develop employer-driven workforce development systems by expanding the list in proposed § 463.23 to include employers. Another commenter suggested that we add non-profit labor unions to the list as well.

Discussion: We appreciate the suggestions to add to the list of potential eligible providers. We believe the statutory language is flexible enough to cover other non-profit organizations and entities, such as those identified by commenters, and that it is therefore unnecessary to identify additional, specific organizations or entities.

Change: None.

§ 463.24 How must an eligible provider establish that it has demonstrated effectiveness?

To ensure that programs are of high quality, proposed § 463.24 would further clarify how an organization previously funded under title II of WIOA, as well as an organization not previously funded under title II of WIOA, could demonstrate effectiveness by providing performance data in its application. This clarification would help States conduct fair and equitable grant competitions for all eligible providers.

Comments: Multiple commenters expressed support for the requirement to use past performance data to establish demonstrated effectiveness. Several of these commenters also suggested that we add a requirement to specify past performance data with particular subpopulations, for example learning disabled adults or English language learners. One of these commenters suggested that the final regulations allow for special consideration of eligible providers that have worked with adults having the lowest levels of educational attainment. A few commenters suggested that the Department issue non-regulatory guidance to assist States and potential eligible providers in better understanding what specific types of data may be used to meet the requirements in proposed § 463.24.

Discussion: We appreciate the commenters' support for using past performance data to establish demonstrated effectiveness. We note that in the NPRM, we specified data on past performance in improving the skills of eligible individuals, as defined in section 203(4) of WIOA, which includes individuals who are basic skills deficient, individuals who do not have a secondary school diploma or its recognized equivalent, and English language learners. We also included the requirement to pay particular attention to past effectiveness in serving eligible individuals who have low levels of literacy. We also note that the final rule does not preclude a State from also considering other subpopulations that may have been identified in the State's unified or combined plan. We believe that any further delimitation of the types of individuals served in the past might limit States' flexibility to respond to emerging needs within a State, regional or local economy. Additionally, creating special consideration for certain eligible providers would violate the requirement in the Act that eligible providers have direct and equitable access to apply for funds. As in the past, the Department expects to provide training and technical assistance to eligible agencies.

Change: None.

Comments: Many commenters supportive of proposed § 463.24 were also concerned about the lack of past performance data on WIOA performance accountability indicators during the initial years of WIOA implementation. These commenters suggested that we revise § 463.24 to enable eligible providers to establish that they have demonstrated effectiveness using applicable performance measures from the most recent reporting period.

Discussion: We recognize concerns about the availability of performance data under WIOA in the initial years of WIOA implementation and acknowledge that full performance data on WIOA primary indicators of performance may not be available when eligible providers are making initial applications for funding. However, we believe that § 463.24 provides an alternative for applicants that may not have WIOA primary indicators of performance data available. The regulations allow any eligible provider that has never been funded under title II of WIOA, which would include all eligible providers during the initial years of WIOA, to provide performance data to demonstrate its effectiveness in serving basic skills deficient eligible individuals, including data demonstrating a record of success on outcomes related to improving the skills of eligible individuals, particularly eligible individuals who have low levels of literacy, in the content domains of reading, writing, mathematics, English language acquisition, and other subject areas relevant to the services contained in the State's application for funds.

Change: We have revised § 463.24 to clarify that an eligible provider that has not been previously funded under title II of WIOA may demonstrate effectiveness by providing performance data related to its record of improving the skills of eligible individuals, particularly eligible individuals who have low levels of literacy, in the content domains of reading, writing, mathematics, English language acquisition, and other subject areas relevant to the services contained in the State's application for funds.

Comments: One commenter suggested that we revise proposed § 463.24 to require three years of past performance data and that we include past data on student persistence as well. The commenter suggested that we consider using an eligible provider's post-test rate as an indicator of student persistence. Another commenter supportive of eligible providers using past performance data to establish that they have demonstrated effectiveness suggested that we also include a requirement to provide data on co-enrollment in other core programs as well as postsecondary career and technical education.

Discussion: We appreciate the commenters' recommendations to include additional requirements in § 463.24 to be used in determining demonstrated effectiveness. However, we believe the proposed regulation provides reliable data on participant outcomes that are reflective of program effectiveness. The requirement to provide three years of data and inclusion of additional factors would limit flexibility for States and eligible providers.

Change: None.

Comments: One commenter suggested that we expand proposed § 463.24 to include § 463.24(d), which would state that the title II eligible State agency is responsible for defining how both current and new applicants are evaluated in the grant competitions when determining demonstrated effectiveness.

Discussion: We agree with comments that recognize that the eligible agency for title II is responsible for determining if an applicant is of demonstrated effectiveness. Section 463.20 makes clear that the eligible agency is responsible for awarding grants and contracts to eligible providers within the State or outlying area to provide adult education and literacy activities and the processes it must follow in doing so. We believe the rule is clear and that no further clarification is necessary.

Change: None.

Comments: Two commenters expressed concerns regarding the requirement in proposed § 463.24 for eligible providers to establish that they have demonstrated effectiveness based upon past performance data. These commenters felt that this requirement limited potential eligible providers to organizations with past experience providing adult education and literacy services. These commenters felt that proposed § 463.24 did not provide eligible providers the opportunity to demonstrate capacity for effectiveness.

One of these commenters stated that proposed § 463.24 limited a State's ability to cultivate or develop new eligible providers of adult education and literacy services. According to this commenter, the requirement in proposed § 463.24 that an eligible provider establish that it has demonstrated effectiveness based upon its past performance data did not allow for States to consider new providers with qualified staff but no past performance data. The commenter suggested that there may be circumstances in which States may want the flexibility to consider the past performance data of individual members of an eligible provider's proposed staff rather than the organization as a whole.

Another commenter stated employers, in particular, as potential eligible providers might have a difficult time meeting the past performance data requirements set forth in proposed § 463.24 and suggested we consider the postsecondary education practice of establishing demonstrated capacity to provide effective education and occupational training services.

One commenter suggested that we revise proposed § 463.24 to allow flexibility for equivalent past performance data with similar subpopulations and institute a provisional year for funding eligible providers able to present adequate equivalent past performance data until more relevant past performance data on actual adult education and literacy services with particular subpopulations becomes available.

Discussion: We agree with commenters who expressed concern that the requirement to demonstrate past effectiveness should not limit qualified eligible providers from competing for grants and contracts to provide adult education and literacy services. The regulation establishes uniformity for how past effectiveness is determined so that all eligible providers are treated fairly in the grant competition. Section 463.24 provides an opportunity for an eligible provider who does not have performance data as defined in the Act to demonstrate past effectiveness by providing data that demonstrates it has been previously effective in serving basic skills deficient eligible individuals. This data may demonstrate past effectiveness in improving reading, writing, mathematics, English language acquisition and other subject areas relevant to services contained in the State's application for funds. We believe this provides flexibility for how an applicant may meet the statutory requirement for having demonstrated effectiveness. In regard to recommendations made to require demonstrated effectiveness related to specific subpopulations, we believe the provision in § 463.24 for an application to demonstrate effectiveness in subject areas relevant to the State's application allows the State the flexibility to garner such information, as appropriate. We are not able to substitute "establishing demonstrated capacity to provide effective educational and occupational training services" or to substitute past effectiveness of staff since such a change would not meet the Act's requirement for demonstrated effectiveness. Additionally, we do not believe that instituting a provisional year for eligible providers to gather data meets the Act's requirement for demonstrated effectiveness based upon past performance.

Change: None.

Comments: One commenter questioned the clarity of proposed § 463.24 and suggested that we make clear that proposed § 463.24(b) and (c) are intended to specify means by which eligible providers might meet the requirements in § 463.24(a), and are not additional data submission requirements.

Discussion: We agree that § 463.24(b) and (c) are not intended to result in additional data submission requirements, but rather that the eligible agency must make a means available in the application process for eligible providers to present such data in the application for a grant or contract.

Change: We have revised § 463.24 to more clearly indicate that proposed § 463.24(b) and (c) are two ways in which eligible providers might meet the requirements in § 463.24(a).

§ 463.25 What are the requirements related to local administrative cost limits?

Comments: None.

Discussion: As part of the formal clearance process, we identified a need to clarify § 463.25 to better align with the final joint regulations.

Change: We revised § 463.25 to clarify that the eligible agency may increase the amount that can be spent on local administration in cases where the cost limits are too restrictive to allow for specified activities.

§ 463.26 What activities are considered local administrative costs?

Comments: One commenter expressed support for proposed § 463.26. The remainder of the comments that we received regarding proposed § 463.26 focused specifically on § 463.26(e). While commenters supported the use of administrative rather than program funds, these commenters also expressed concern regarding the adequacy of the available local administrative funds to cover AEFLA program administration costs and the provisions of proposed § 463.26(e)—*i.e.*, carrying out the one-stop partner responsibilities described in the proposed joint regulations about one-stop partner responsibilities including contributing to the infrastructure costs of the one-stop delivery system. Some commenters suggested limiting the amount of local administrative funds that could be used for carrying out the partner responsibilities described in § 678.420 including contributing to the infrastructure costs of the one-stop delivery system to not more than 1.5 percent of an eligible provider's total AEFLA funding. One commenter suggested that the cap on administrative funds be raised in order to meet the requirements of proposed § 463.26(e). Another commenter suggested that additional guidance on contributions to the infrastructure costs of the one-stop delivery system was needed.

Discussion: We acknowledge the concern expressed by some commenters regarding the adequacy of funds available to cover local administrative costs, particularly as it relates to carrying out one-stop partner responsibilities. The proposed joint regulation describing the local funding mechanism for one-stop infrastructure costs reiterates that the amount of local administrative funds that may be used for one-stop infrastructure costs must be based on proportionate use of the one-stop delivery system and relative benefit received. Additionally, as stated in § 463.25, in cases where the eligible provider believes the 5 percent limitation on administrative costs is too restrictive to allow for administrative activities, including the partner responsibilities to support the one-stop delivery system, the eligible provider may negotiate with the eligible agency to determine an adequate level of funds

to support non-instructional activities. We conclude, therefore, that § 463.25 gives eligible providers adequate flexibility to address the commenters' concerns.

We appreciate the commenter's request for guidance on contributions to the infrastructure costs of the one-stop delivery system. We are working with our partners at the U.S. Department of Labor to develop joint guidance and technical assistance to states on the implementation of the infrastructure cost provisions.

Change: None.

Subpart D—What are adult education and literacy activities?

§ 463.31 What is an English language acquisition program?

Proposed § 463.31 restates the statutory requirement in section 203(6) of WIOA that an English language acquisition program under the Act be designed to help English language learners achieve competence in reading, writing, speaking, and comprehension of the English language. It also clarifies a new requirement under WIOA that the program must lead to the attainment of a secondary school diploma or its recognized equivalent, and transition to postsecondary education or training, or lead to employment.

Comments: Multiple commenters expressed support for the statutory requirement (restated in proposed § 463.31(b)) that an English language acquisition program must lead to attainment of a secondary school diploma or its recognized equivalent and transition to postsecondary education and training, or employment. These commenters stated that this requirement would support successful implementation of career pathways programs. Other commenters stated that this new requirement seemed to contradict the retention of family literacy activities as an express purpose under the Act. These commenters stated that eligible providers funded under the Act provide English language acquisition services to English language learners whose primary reason for participating is to support the educational development of their children, and who may not have immediate goals related to employment or postsecondary education. Commenters suggested that we revise proposed § 463.31(b) such that the program of instruction must lead to documented improvement in literacy levels for the purposes of family literacy, or the attainment of a secondary school diploma or its recognized equivalent and transition to postsecondary education or training, or lead to employment.

Discussion: We appreciate the support of commenters who stated that the new statutory requirement for an English language acquisition program to lead to attainment of a secondary school diploma or its recognized equivalent and transition to postsecondary education and training, or employment, supports the successful implementation of career pathways programs. We do not agree that this new requirement contradicts the retention of family literacy as an adult education and literacy activity under the Act. We acknowledge that students participate in adult education and literacy activities—including family literacy and English language acquisition—for a variety of reasons, not all of which are related to credential attainment, a transition to postsecondary education, or employment. However, we do not believe that the statutory requirement that the English language acquisition *program* must lead to attainment of a secondary school diploma or its recognized equivalent, transition to postsecondary education and training, or employment, precludes serving eligible individuals whose primary motivation for participating in the program is to support the educational development of their children. Moreover, § 463.1(b) clarifies the appropriateness of serving such eligible individuals. We believe that it is clear that English language acquisition programs should not discourage or exclude eligible individuals from participation, regardless of whether they are seeking a secondary school diploma or its recognized equivalent, or transition to postsecondary education or training or employment. We do not believe that we have the authority to expand the statutory requirement by adding a family literacy-specific requirement for English language acquisition programs to the final regulations. We also note that through the measurable skill gains performance indicator, documented improvements in literacy levels are already inherently a part of all adult education and literacy activities reported in the NRS.

Change: None.

Comments: A few commenters interpreted proposed § 463.31(b) to mean that adult English language learners are expected to attain a secondary school diploma or its recognized equivalent and transition to postsecondary education or training, or obtain employment within a program year. These commenters expressed concerns regarding the feasibility of such an expectation and noted that it was inconsistent with the Act's intent to serve eligible individuals who are basic skills deficient. One of these commenters expressed a concern that the perception that participants were meant to achieve the outcomes in proposed § 463.31(b) within a program year might result in lower-skilled individuals not being served. This commenter suggested that the Department provide guidance on how eligible providers can provide English language acquisition services to lower-skilled learners in accordance with the requirements of proposed § 463.31.

Discussion: We appreciate the commenters' concerns for continuing to serve all levels of English language learners, including lower-skilled individuals and individuals who are basic skills deficient. We agree that continuing to serve these English language learners is consistent with the intent of the Act. We believe that this is reinforced in § 463.20(d)(1) and (d)(2) through the considerations that eligible agencies must take into account in awarding grants and contracts to eligible providers. We also believe the flexibility that we provide English language acquisition programs in § 463.32 to meet the requirement in § 463.31(b) further supports eligible providers' ability to serve English language learners at all levels, including lower-skilled individuals and individuals who are basic skills deficient.

Change: None.

Comments: Numerous commenters expressed concerns that some English language learners already have secondary (and, sometimes postsecondary) credentials from their native countries, while others are already employed upon enrollment in English language acquisition activities. Thus, such individuals may not be seeking English language acquisition services for reasons related to the attainment of a secondary school diploma (or its recognized equivalent), transition to postsecondary education and training, or employment, and, therefore, would not be eligible to participate in English language acquisition activities. These commenters suggested that we delete the phrase "that leads to" in § 463.31(b) and substitute in its place the phrase "that provides opportunities that include but are not limited to." Several of these commenters also requested that we provide additional guidance on how English language learners with secondary or postsecondary credentials from their own country might be served in an English language acquisition program under WIOA.

Discussion: We appreciate the commenters' concerns for continuing to serve all levels of English language learners including professionals with degrees and credentials from their native countries. As stated earlier, we do not believe that the statutory requirement that the English language acquisition program must lead to attainment of a secondary school diploma or its recognized equivalent and transition to postsecondary education and training or employment precludes serving eligible individuals whose primary motivation for participating in the program is other than credential attainment or employment-related. Section 463.31(a) states clearly that an English language acquisition program is a program of instruction designed to help English language learners achieve competence in reading, writing, speaking, and comprehension of the English language. We do not believe that the program design requirements set forth in § 463.31(b) are intended to limit services to particular types of students with particular goals or reasons for participating. We believe that any eligible individual who is an English language learner, as defined in section 203(7) of WIOA, can be served by an English language acquisition program and should not be dissuaded from participation in such programs. Additionally, eligible agencies and eligible providers may want to consider which adult education and literacy activities—*e.g.*, English language acquisition or integrated English literacy and civics education—best meet the needs of particular English language learners and, to the extent possible, match services available to students' needs.

Change: None.

Comments: One commenter expressed support for what the commenter described as the renaming of ESL (English as a Second Language) to ELA (English Language Acquisition). Multiple commenters expressed a concern over potential confusion that might arise in adopting the acronym ELA to represent English language acquisition. According to these commenters, the acronym ELA is already widely used in education to represent English language arts. Other commenters requested that we allow States to choose to continue using extant nomenclature for English language acquisition activities. According to this commenter, States should continue to be able to refer to these services as English as a Second Language (ESL) or English for Speakers of Other Languages (ESOL) consistent with past practice within a particular State.

Discussion: We appreciate the commenters' concern for clarity and for proactively avoiding any possible confusion. We note that in proposed § 463.31 we restated terminology that is in the Act. We did not propose using any particular acronym to describe services for English language learners. We agree that States should continue to be able to refer to services in a manner that is most appropriate to the particular circumstances within a State as long as the program or services meet the Act's definition of English language acquisition. We also note that we will continue to use language that is consistent with that used in the Act.

Change: None.

§ 463.32 How does a program that is intended to be an English language acquisition program meet the requirement that the program lead to attainment of a secondary school diploma or its recognized equivalent and transition to postsecondary education and training, or employment?

Proposed § 463.32 seeks to establish how an English language acquisition program must meet the new requirement that it lead to secondary school completion (attainment of a diploma or its recognized equivalent) and transition to postsecondary education and training or employment. Section 463.32 proposes that a program may satisfy the requirement by using rigorous and challenging adult education standards that meet the requirements in the Unified or Combined State Plan, providing supportive services that assist an individual to transition to postsecondary education or training, or designing the program to be a part of a career pathway. These programs or services have been identified as having a positive impact on the successful transition of adults to postsecondary education and training and employment. We invited public input on these proposals and requested suggestions regarding other methods that may be used to meet the requirement.

Comments: One commenter expressed support for proposed § 463.32, stating that it allows title II providers the necessary flexibility to enable English language acquisition programs to be part of career pathways.

Discussion: We appreciate the commenter's support and agree that § 463.32 allows eligible providers flexibility to enable English language acquisition programs to be part of career pathways.

Change: None.

Comments: Several commenters stated that proposed § 463.32(a) requires States to have an English Language Acquisition curriculum aligned with State adult education content standards. These commenters expressed concerns that States do not have such a curriculum, and that it might take considerable time and additional resources to develop such a curriculum. One of these commenters noted that some States are precluded by State law from creating such a curriculum. These commenters therefore recommended that this requirement be removed or modified. If we modified the requirement, many of these commenters suggested that we replace the word "curriculum" with the phrase "instruction and instructional materials." One commenter requested that we provide a timeline and expected degree of alignment (as a percentage) required between a curriculum and State adult education standards.

Discussion: We appreciate the commenters' concerns regarding the creation of State curricula for English language acquisition programs. In proposing § 463.32(a) we did not intend to require States to have an English language acquisition curriculum aligned to the State's content standards for adult education. It was our intention to propose that implementation of the State's content standards for adult education would be one option for meeting the requirement in § 463.31(b) and that one way to demonstrate implementation of the State's content standards for adult education was through use of an aligned curriculum. The proposed regulation does not require that such a curriculum be a State curriculum. Rather, it requires that a curriculum be aligned with the State adult education content standards. This would allow flexibility for a curriculum to be a local curriculum as long as it is aligned with the State content standards.

Change: We have revised § 463.32(a) to clarify that a State or local curriculum, lesson plans, or instructional materials, if aligned with State adult education content standards, may demonstrate that an English language acquisition program is implementing the State's content standards for adult education.

Comments: Regarding proposed § 463.32(b), numerous commenters expressed concerns regarding our use of the term "supportive services." Commenters noted that supportive services are defined in section 3(59) of the Act. Commenters stated that few adult education programs had sufficient

funds to provide such services using title II funds. Commenters suggested that we revise proposed § 463.32(b) to read as follows: Offer case management or educational and career counseling services that enable an eligible individual to access support in order to attain a secondary school diploma or its equivalent and transition to postsecondary education or employment. One commenter supported our use of the term supportive services as defined in WIOA stating that such services are often necessary to support students' attainment of a secondary credential and transition to postsecondary education and training.

Discussion: We appreciate commenters' concerns regarding the use of limited title II funds to provide supportive services. In proposing § 463.32(b), we did not intend that eligible providers use title II funds to provide supportive services as defined in section 3(59) of the Act for the purpose of demonstrating that an English language acquisition program leads to attainment of a secondary school diploma or its recognized equivalent and transition to postsecondary education and training or leads to employment. It was our intention that an English language acquisition program could meet the requirement of § 463.31(b) by offering educational and career counseling services that enabled English language learners to transition to further education or employment. While we agree with the commenter who stated that supportive services are often necessary to support students' attainment of a secondary credential and transition to postsecondary education and training, we do not believe that supportive services, as that term is defined in section 3(59) of the Act, is an appropriate method to meet the intent of § 463.32 or an appropriate use of AEFLA funds. We encourage eligible providers to collaborate with other required partners in the local workforce development area to provide participants access to appropriate supportive services.

Change: We have revised § 463.32(b) to more clearly state our intent for how eligible providers might demonstrate that an English language acquisition program is meeting the requirement of § 463.31(b) by offering educational and career counseling services that enable English language learners to transition to further education or employment.

Comments: Regarding proposed § 463.32(c), several commenters suggested that we provide non-regulatory guidance on how English language acquisition services for lower level students can be part of a career pathway. Multiple commenters suggested that we elaborate on the language in proposed § 463.32(c) to read as follows: Be part of a career pathway that includes at lower levels career-infused provisions including infusing contextualizing instructions around high demand job clusters in the area, integrating work readiness skills and integrating career awareness and planning. One commenter suggested that we add a definition of career pathways that includes an emphasis on pathways to jobs with family-sustaining wages to the regulations. Other commenters requested that we clarify whether the term career pathways as applied under proposed § 463.32(c) requires coordination with career pathways being implemented by Local WDBs pursuant to section 107(d)(5) of WIOA.

Discussion: We appreciate the commenters' desire to understand how English language acquisition programs serving lower-skilled English language learners can be part of a career pathway. We have historically provided substantive and on-going technical assistance on how adult education programs serving lower-skilled learners can be designed to provide on-ramps and bridges to career pathways. We urge commenters to consult these resources available through the Literacy Information and Communication System (LINCS) at *http://lincs.ed.gov/*. While we agree that rephrasing § 463.32(c), as proposed by some commenters, is one way to describe how an English language acquisition program might be part of a career pathway, we do not agree that it is, or should be, the only way. We believe that the statutory definition of career pathways is adequate for English language acquisition programs that opt for § 463.32(c) as a means to meet the requirement that the program lead to secondary school completion (attainment of a secondary school diploma or recognized equivalent) and transition to postsecondary education and training or lead to employment. We encourage English language acquisition programs using this option to coordinate, as appropriate, with career pathways being implemented by Local WDBs pursuant to Section 107(d)(5) of WIOA.

Change: None.

Comments: One commenter stated that proposed § 463.32(a), (b), and (c) are all necessary to support low-skilled adults' advancement along career pathways and suggested that we revise the regulation to make them all required. Several other commenters suggested that the regulation should be revised such that all programs are required to demonstrate that they meet proposed § 463.32(a) as well as either proposed § 463.32(b) or (c). Other commenters encouraged the Department to maintain maximum flexibility in how English language acquisition programs might meet the statutory requirement that the program leads to attainment of a secondary school diploma or equivalent and transition to postsecondary education and training or leads to employment.

Discussion: We agree with commenters that proposed § 463.32(a), (b), and (c) are all important to support low-skilled adults' advancement along career pathways. We also note that States' English language acquisition programs are diverse and have varying levels of programmatic capacity. While larger, better-resourced programs might be able to meet all three requirements proposed in § 463.32, other programs that also contribute to adults' advancement along a career pathway might not be able to meet all three requirements. We therefore agree with those commenters that urged us to maintain maximum flexibility in how English language acquisition programs might meet AEFLA's requirement that the program leads to attainment of a secondary school diploma or its recognized equivalent and transition to postsecondary education and training or leads to employment.

Change: None.

Comments: One commenter suggested that we add an additional provision to allow programs to meet the requirement by offering health, financial, and general literacy to promote self-sufficiency.

Discussion: We appreciate the commenter's response to our request for alternatives to the three options we proposed. We also agree with the commenter that the topics of health, financial, and general literacy to promote self-sufficiency are important for adult English language learners to master. However, we do not believe that mastery of these topics alone necessarily leads to attainment of a secondary school diploma or its recognized equivalent and transition to postsecondary education and training or leads to employment, as AEFLA requires.

Change: None.

Comments: Another commenter expressed support for proposed § 463.32 and suggested that we add the additional provision for how an English language acquisition program might meet the requirement that the program lead to the attainment of a secondary school diploma or its recognized

equivalent and transition to postsecondary education and training or lead to employment. This commenter suggested that all English language acquisition programs offered by postsecondary institutions that articulate to other postsecondary programs offered at the respective institutions be considered as meeting the requirement.

Discussion: We appreciate the commenter's response to our request for alternatives to the three options we proposed. We also note that intra-institutional articulation of courses is an important step in the development of career pathways. However, we further note that intra-institutional articulation among courses does not necessarily always result in career pathways as defined in section 3(7) of the Act. Providing this option, then, could result in a particular subset of adult English language acquisition eligible providers being able to meet the requirement of § 463.31(b) by using a lower standard than other types of eligible providers. We believe that English language acquisition programs offered by postsecondary institutions may meet the requirement in § 463.31(b) using one or more of the three options we originally proposed.

Change: None.

§ 463.33 What are integrated English literacy and civics education services?

WIOA includes among the authorized adult education and literacy activities a set of services that were previously authorized through annual appropriations acts, rather than through title II of WIA. These services are integrated English literacy and civics education services, which WIOA defines in section 203(12) as educational services that include both literacy and English language instruction integrated with civics education. Under WIOA, these services may be provided to adults who are English language learners, including those who are professionals with degrees or credentials in their native countries, and may include workforce training. Proposed § 463.33 restates AEFLA's statutory language pertaining to integrated English literacy and civics education services.

Comments: Several commenters expressed support for the definition of English literacy and civics education services. Many of these same commenters expressed confusion over the distinction between integrated English literacy and civics education as an adult education and literacy activity in § 463.30 and the Integrated English Literacy and Civics Education program in subpart G of these regulations.

Discussion: We thank commenters for sharing their concerns and appreciate the opportunity to clarify two distinct uses of the term integrated English literacy and civics education within our regulations. Integrated English literacy and civics education is used in two distinct ways in the Act.

First, integrated English literacy and civics education may be provided by an eligible provider as a "required local activity" under section 231(b), in accordance with its grant or contract with the State to provide adult education and literacy activities. An eligible provider that provides integrated English literacy and civics education as a local activity under section 231(b) is not required to provide the services in combination with integrated education and training.

Second, integrated English literacy and civics education must also be implemented as a program under section 243 of the Act with funds allocated as described in section 243. The integrated English literacy and civics education program under section 243 (see subpart G) carries additional requirements beyond those that an eligible provider must meet in implementing integrated English literacy and civics education as a local activity under section 231(b).

Services provided through section 243 (see subpart G) must include education services that enable adult English language learners to achieve competency in the English language and to acquire the basic and more advanced skills needed to function effectively as parents, workers, and citizens in the United States. It must include instruction in literacy and English language acquisition and instruction on the rights and responsibilities of citizenship and civic participation, and may include workforce training. Additionally, the section 243 integrated English literacy and civics education program must be provided in combination with integrated education and training activities.

As part of the integrated English literacy and civics education program requirements, each program that receives funding under section 243 must be designed to (1) prepare adults who are English language learners for, and place such adults in, unsubsidized employment in in-demand industries and occupations that lead to economic self-sufficiency; and (2) integrate with the local workforce development system and its functions to carry out the activities of the program.

Change: None.

§ 463.34 What are workforce preparation activities?

Proposed § 463.34 restated statutory language in WIOA that establishes workforce preparation activities as activities, programs, or services that are designed to help an individual acquire a combination of basic academic skills, critical thinking, digital literacy, and self-management skills. While adult education and literacy instruction has traditionally supported the development of basic academic and critical thinking skills, the addition of workforce preparation activities under WIOA will now also enable eligible providers to support the development of self-management skills and digital literacy. WIOA further states that workforce preparation includes developing competencies in using resources and information, working with others, understanding systems, and obtaining skills necessary to successfully transition to and complete postsecondary education, training, and employment. These competencies are commonly incorporated into definitions of employability skills. Proposed § 463.34 added employability skills to the list of competencies described in WIOA to further clarify the definition of workforce preparation.

Comments: One commenter questioned the need to use the term workforce preparation activities, stating that such activities were already a de facto part of existing adult basic and adult secondary education. Multiple commenters expressed support for inclusion of workforce preparation activities in the Act and stated that such instructional activities can help promote self-sufficiency and reduce generational poverty.

One commenter expressed support for inclusion of workforce preparation activities among adult education and literacy activities but expressed concern regarding the adequacy of the accountability framework to assess workforce preparation activities. Another commenter suggested that Local WDBs and adult educators work together to achieve a common ground for measuring the workforce preparation skills of individuals exiting core programs.

Discussion: We appreciate commenters' overall support for the Act's specific attention to workforce preparation activities as an explicit part of adult education and literacy activities. We acknowledge that the six primary indicators of performance set forth in section 116 of the Act may not appear to explicitly assess workforce preparation activities. However, the

Secretaries of Labor and Education have defined the measurable skill gains indicator to include attainment of an educational functioning level gain. Within the NRS for adult education, educational functioning level descriptors were recently revised to align with rigorous college and career readiness standards, which include much of the knowledge and skills listed under workforce preparation activities. We maintain, therefore, that workforce preparation activities are assessed broadly through the assessment of educational functioning levels. We further note that, given the highly contextualized nature of these activities relative to particular industry sectors and jobs as well as the diversity in State, regional, and local economic conditions, we appreciate one commenter's suggestion that Local WDBs and adult educators work together to achieve a common ground for measuring the workforce preparation skills of individuals exiting core programs. Finally, we note that States have the flexibility to identify additional performance indicators to address this concern.

Change: None.

Comments: Numerous commenters expressed support for the inclusion of digital literacy skills as part of workforce preparation activities defined in proposed § 463.34 and requested that the regulation require the use of digital literacy standards in providing these services. These commenters suggested the Northstar Digital Literacy Standards as an example.

Discussion: We appreciate the commenters' support for inclusion of digital literacy skills as part of workforce preparation activities. We also appreciate commenters' desire to base instruction of these skills on standards. However, we have authority under section 102(b)(2)(D)(ii) of WIOA only to require eligible agencies to align content standards for adult education with State-adopted challenging academic content standards, as adopted under the Elementary and Secondary Education Act, as amended. Beyond this, we do not have authority to require the adoption of, or instruction based on, any specific kind of standards.

Change: None.

§ 463.35 What is integrated education and training?

Proposed § 463.35 restated the statutory definition of integrated education and training from section 203(11) of WIOA.

Comments: Some commenters asked for clarification as to whether all eligible providers of adult education and literacy activities are required to provide integrated education and training. One commenter stated that such a requirement might not be efficient depending upon a particular adult education program's size, type, and location. The commenter speculated that it might not be sufficient that adult education programs provide adult education and literacy activities along with workforce preparation activities and refer students, as appropriate, to occupational training programs within the community. Another commenter questioned the appropriateness of integrated education and training for learners at the lowest levels. The commenter stated that integrated education and training should focus on students with an educational functioning level at or above sixth grade equivalency. The commenter further recommended that integrated education and training be focused on students with employment-related goals rather than all students.

Discussion: We appreciate commenters sharing their questions and concerns regarding whether or not all eligible providers of adult education and literacy activities are required to provide integrated education and training. We note that proposed § 463.35 merely restated AEFLA's definition of integrated education and training, which does not require all eligible providers to provide integrated education and training. Section 203(2) of the Act lists the programs, activities, and services that are allowable adult education and literacy activities. Integrated education and training is only one activity of several listed. We point out, however, that eligible agencies receiving funds provided under section 243 of the Act through the integrated English literacy and civics education program are required to provide integrated English literacy and civics education in combination with integrated education and training activities (see § 463.70(c)). Consistent with the purpose as stated in section 202 of the Act, these regulations provide eligible agencies and eligible providers the flexibility to respond to diverse adult education needs particular to State, regional, and local circumstances.

Change: None.

Comments: One commenter inquired if young adults with disabilities who are no longer eligible for special education might qualify for integrated education and training services as described in proposed § 463.35.

Discussion: We appreciate the commenter's question. Section 203(4) of the Act defines eligible individuals. Individuals who meet the stipulations set forth in section 203(4) of the Act, regardless of disability status, qualify for adult education and literacy services, including integrated education and training services as described in § 463.35.

Change: None.

§ 463.36 What are the required components of an integrated education and training program funded under title II?

Proposed § 463.36 described the three components that would be required in an integrated education and training program. These components are adult education and literacy activities, workforce preparation activities, and workforce training. Two of the components, adult education and literacy activities and workforce preparation activities, are explained in § 463.30 and § 463.34, respectively. Proposed § 463.36 further clarified the third remaining component, the workforce training component, by referencing section 134(c)(3)(D) of the Act, which identifies the activities that constitute training within the employment and training services authorized by title I–B of WIOA.

Comments: One commenter agreed that the three required components in proposed § 463.36 were essential and recommended that we add two additional requirements—supportive services and integration with job placement services and other functions of the local workforce development system. According to this commenter, supportive services and integration with job placement services and other functions of the local workforce development system are also essential to supporting students' successful completion of integrated education and training and subsequent employment.

Discussion: We appreciate the commenter's support for the proposed three required components of integrated education and training. We also acknowledge the importance of supportive services (see our discussion regarding § 463.32(b) above) and job placement services in supporting eligible individuals' educational and career advancement. However, we do not believe that WIOA provides us with the authority to add additional requirements for integrated education and training programs. We note that in § 463.38 (see below) we establish that an integrated education and training program meets the requirement that it is for educational and career advancement in part by being part of a career pathway. We believe the requirement that integrated education and training programs funded under title II be part of

a career pathway will help ensure that integrated training and education program participants can access appropriate supportive and job placement services.

Change: None.

Comments: One commenter suggested that for lower level learners we revise the three required components in proposed § 463.36 by substituting § 463.36(c), workforce training for a specific occupation or occupational cluster which can be any one of the training services defined in section 134(c)(3)(D) of the Act, for career awareness. Another commenter suggested that for lower level students we require only § 463.36(a), adult education and literacy activities, and § 463.36(b), workforce preparation activities.

Discussion: We appreciate the commenters' concerns for adequately addressing the education and employment needs of lower-skilled adults. We also agree that it is important to provide learners at all levels with career awareness services. We note that section 203(12) of the Act requires that integrated education and training include "workforce training for a specific occupation or occupational cluster." We do not believe that general career awareness activities alone constitute workforce training as described in section 203(12).

Additionally, as we noted in our discussion in § 463.35, above, we do not anticipate that all eligible individuals served by an eligible provider will immediately be ready for or need integrated education and training. Some eligible individuals—depending upon local economic conditions or individual characteristics—may be best served first through other adult education and literacy activities prior to, and in preparation for, subsequent enrollment in an integrated education and training program. Again, we believe that eligible agencies and eligible providers need maximum flexibility to determine how to best address the needs and goals for job seekers and employers identified in the State and local workforce development plans.

Change: None.

Comments: One commenter expressed support for the flexibility to use title II funds for workforce training for a specific occupation or occupational cluster for the purpose of educational and career advancement. Another commenter suggested that title II providers should partner with title I providers whenever possible to ensure efficiency and avoid duplication of services. Numerous other commenters suggested that the occupational training component of integrated education and training be funded with title I funds and that those funds should be exhausted before title II funds were used for that purpose. These commenters suggested that a provision be added to the regulations similar to the limitations of use of AEFLA funds for family literacy services found in section 231(d) of the Act. Additional commenters offered alternative suggestions, including ability to benefit and employer funds that could be used for occupational training costs before title II funds were used. Commenters sharing this view further suggested that if title II funds were to be used to pay for occupational training, the regulations should provide a limit on how much of the funds could be expended on occupational training. One commenter stated that title II funds should not be used for costs associated with occupational training.

Discussion: We appreciate commenters' concerns for optimal efficiency in devoting resources to the development and provision of integrated education and training programs. We agree that whenever possible, appropriate WIOA core programs or other appropriate resources should be leveraged to maximize overall efficiency and impact of the publicly funded workforce development system. We acknowledge that reserving title II funds for the provision of adult education and literacy activities, including workforce preparation activities, and utilizing other sources of funding, as appropriate, to provide the workforce training component can extend the availability of much-needed adult education and literacy services. We also agree with commenters who suggested strong partnerships with title I programs and strongly encourage effective co-enrollment strategies between title II and title I training services in order to maximize resources when delivering integrated education and training. We note, however, that the Act does not provide us with the authority to restrict the source of funding for the workforce training component of integrated education and training, nor does it provide us with the authority to limit the amount of funds that can be used for occupational training.

Change: None.

§ 463.37 How does a program providing integrated education and training under title II meet the requirement that the three required components be "integrated"?

Proposed § 463.37 sought to establish how the three components of integrated education and training must be integrated. The proposed regulation required that an integrated education and training program balance the proportion of instruction across the three components, deliver the components simultaneously, and use occupationally relevant instructional materials. Proposed § 463.37 would also require a program to have a single set of learning objectives that identifies specific adult education content, workforce preparation activities, and workforce training competencies. These proposed requirements were intended to facilitate the design of high-quality integrated education and training programs that focus on improving the academic skills of low-skilled adults while advancing their occupational competencies. We sought public input on the proposed requirements and other suggested requirements that may support the provision of integrated education and training services to eligible adults at all skill levels.

Comments: Numerous commenters expressed support for proposed § 463.37. One commenter expressed support for proposed § 463.37 and noted additionally that adult educators would likely require new and ongoing professional development in order to be able to effectively meet the requirement that the three required components be integrated. Other commenters expressed specific concern over local programs' ability to meet the proposed requirement in rural areas with few occupational training providers. Other commenters expressed support for proposed § 463.37 and encouraged the Department to consider whether it may be appropriate to provide additional guidance to States and eligible providers on appropriate tools for measuring workforce preparation activities and workforce training competencies. These commenters stated that workforce preparation activities and workforce training competencies may be newer curriculum elements for some adult education providers, and it might be valuable to offer resources on how they can best be measured. Another commenter stated that additional guidance and flexibility would be required in order for title II providers to be able to meet the requirements of proposed § 463.37.

Discussion: We appreciate commenters' overall support for proposed § 463.37 and agree that for many eligible providers the development, delivery, and assessment of integrated education and training will present both new opportunities and challenges. We appreciate the commenters' suggestions regarding specific types of guidance and

professional development that may be needed to support expansion of high quality integrated education and training. We continue to support an online collection of technical assistance resources, a virtual community of practice, and a number of online courses and Webcasts available through the Literacy Information and Communication System (LINCS) at: *http://lincs.ed.gov/* as well as the Department's online resource for teaching and assessing employability skills available at: *http://cte.ed.gov/employabilityskills/*. As we plan for future guidance and technical assistance efforts, we will consider the commenters' suggestions.

Change: None.

Comments: Regarding proposed § 463.37(a)(1) that within the overall scope of an integrated education and training program the three required components be instructionally balanced proportionately across the three components, particularly with respect to improving reading, writing, mathematics, and English proficiency of eligible individuals, one commenter questioned the clarity of the phrase "instructionally balanced proportionately" and stated that requiring the three components to be instructionally balanced proportionately would limit States' flexibility to design integrated education and training programs that are responsive to the needs of students, employers, and local economies.

Discussion: We appreciate the commenter's concern for maintaining adequate flexibility to design integrated education and training programs that are responsive to the needs of students, employers and, local economies. We note that in proposing § 463.37(a) we stated that § 463.37(a)(1), § 463.37(a)(2), and § 463.37(a)(3) were meant to be considered within the overall scope of an integrated education and training program. We do not, therefore, agree that this limits States' flexibility to design integrated education and training programs that are responsive to the needs of students, employers, and local economies. However, we also recognize that the proposed phrasing of § 463.37(a)(1) may not have adequately stated our intent that all three required components be of sufficient quality and intensity. We note that one of the considerations that an eligible agency must take into account when reviewing eligible providers' applications for grants or contracts to provide adult education and literacy services is sufficient quality and intensity of the services proposed (see § 463.20(d)(5)(i)). In proposing § 463.37(a)(1), it was our intention to ensure that each of the required components of an integrated education and training program be of sufficient quality and intensity.

Change: We have revised § 463.37(a)(1) to more clearly state our intent that within the overall scope of an integrated education and training program, all three required components must be of sufficient quality and intensity and must be based on the most rigorous research available.

Comments: Regarding proposed § 463.37(a)(2) that the three required components occur simultaneously, two commenters asked whether providing adult education and literacy activities, workforce preparation activities, and occupational training as distinct, yet linked, activities sufficiently met the requirement for the components to be integrated. Another commenter expressed overall support for proposed § 463.37 and suggested that we emphasize in the final rule that integrated education and training is a career pathways strategy that supports acceleration in accordance with the definition of career pathways in section 3(7)(E) of the Act. The commenter suggested, therefore, that we emphasize that the adult education and literacy activities, workforce preparation activities, and occupational training should occur simultaneously and not sequentially. One commenter stated that the requirement that the three activities occur simultaneously would limit States' flexibility in designing integrated education and training programs that are responsive to the needs of students and employers.

Discussion: We appreciate the commenters' desire for flexibility in the design of integrated education and training programs that are responsive to the needs of both job seekers and employers. We note that section 203(11) of the Act requires that the three components be delivered "concurrently and contextually." We further note that in proposing § 463.37(a) we stated that § 463.37(a)(1), (a)(2), and (a)(3) were meant to be considered *within the overall scope* of an integrated education and training program. We do not, therefore, agree that this limits States' flexibility to design integrated education and training programs that are responsive to the needs of students, employers, and local economies. We agree with the commenter who noted that integrated education and training is part of a career pathways strategy that supports acceleration in accordance with the definition of career pathways in section 3(7)(E) of the Act and, accordingly, that the adult education and literacy activities, workforce preparation activities, and occupational training should occur simultaneously and not sequentially. We anticipate that as WIOA implementation unfolds, we will be collaborating with eligible agencies and providers to provide additional guidance on particular questions regarding diverse models of integrated education and training.

Change: None.

Comments: Numerous commenters expressed concerns for programs serving lower level students and students in multi-level classes and the ability of these programs to meet the requirement in proposed § 463.37(a)(3) that the instruction in the three required components use occupationally relevant materials. These commenters suggested that we revise proposed § 463.37(a)(3) to change the words "use occupationally relevant instructional materials" to "use employability relevant instructional materials." The commenters stated that this change would better encompass all students served by adult education programs.

Discussion: We appreciate the commenters' concerns for adequately addressing the education and employment needs of lower-skilled adults. We also agree that it is important to provide learners at all levels with opportunities to master employability skills and encourage eligible providers to incorporate workforce preparation activities into all adult education and literacy activities, as appropriate. As we noted in our discussion in § 463.35 above, we do not anticipate that all eligible individuals served by an eligible provider will immediately be ready for or need integrated education and training. It may be that some eligible individuals—depending upon local economic conditions or individual characteristics—are best served by first providing other adult education and literacy activities prior to, and in preparation for, subsequent enrollment in an integrated education and training program. For those eligible individuals who need, and are ready for, integrated education and training services, we believe it necessary to use occupationally relevant instructional materials, as appropriate, across the three required components of the integrated education and training program. We note that section 203(12) of the Act requires that integrated education and training include "workforce training for a specific occupation or occupational cluster." We do not believe that substituting general employability instructional materials for occupationally relevant instructional materials would be consistent with the statutory requirement.

Change: None.

Comments: One commenter suggested that we add an additional requirement that adult education programs providing integrated education and training must have components that are integrated by coordinating with one or more industry partnerships that will be established by the local WDB. The commenter stated that working with industry partnerships would support the development of relevant curricula, contextualization of programming, and the creation of work-based learning opportunities that support the integration of the three required components. The commenter asserted that such partnerships are critical to the building of a strong career pathway for program participants.

Discussion: We agree with the commenter that the quality and relevance of integrated education and training programs can be enhanced by coordinating with one or more industry partnerships to be established by Local WDBs. We agree that working with industry partnerships can support the development of relevant curricula, contextualization of programming, and the creation of work-based learning opportunities. We also believe that such coordination can be a strategy for ensuring high quality occupationally relevant instructional materials. And we agree that such partnerships are critical to the building of a strong career pathway for program participants and we encourage all eligible providers to coordinate, as appropriate, with industry partnerships. However, we do not agree that such partnerships necessarily result in the integration of the three required components of an integrated education and training program.

Change: None.

§ 463.38 How does a program providing integrated education and training under title II meet the requirement that an integrated education and training program be "for the purpose of educational and career advancement"?

Under proposed § 463.38, we required the educational component of a program to be aligned with the State's content standards for adult education as described in the State's Unified or Combined State Plan and that the program be part of a career pathway as defined in section 3(7) of WIOA, in order to meet the WIOA requirement that the integrated education and training program be for the purpose of educational and career advancement. The use of rigorous and challenging academic standards and career pathways that contextualize learning are recognized strategies to promote readiness for postsecondary education and work.

Comments: Numerous commenters expressed support for proposed § 463.38, particularly the requirement in proposed § 463.38(a) that the adult education component of the program be aligned with the State's content standards for adult education as described in the State's Unified or Combined State Plan.

A few commenters expressed some reservation regarding the requirement in proposed § 463.38(b) that the integrated education and training program be part of a career pathway. According to these commenters, some jobs in some regional economies (*e.g.,* van driver, casino dealer, night janitor) were not part of a career pathway. They suggested that we modify proposed § 463.38(b) to require that, if possible, the integrated education and training program be part of a career pathway. Another commenter recommended that career awareness activities be interpreted to satisfy the requirement that the program is part of a career pathway, especially for beginning level, lower-skilled learners.

One commenter stated that integrated education and training should address the long-term needs of the workforce as well as the immediate needs of employers. According to the commenter, integrated education and training should be defined as both education for transferrable skills, and knowledge and job related training for immediate job placement. The commenter suggested that the Department strengthen proposed § 463.38 to reinforce these two goals.

Discussion: We appreciate the commenters' support for the requirement in § 463.38(a) that the adult education component of the program be aligned with the State's content standards for adult education as described in the State's Unified or Combined State Plan. We agree with the commenter who stated that integrated education and training should address the long-term needs of the workforce as well as the immediate needs of employers. In large part, our intent in establishing the requirement that the adult education component of the program be aligned with the State's content standards for adult education is to support the inclusion of transferrable skills and knowledge in the design of integrated education and training programs. We appreciate commenters who shared concerns about integrated education and training programs designed for particular jobs in local economies meeting the requirement that the program be part of a career pathway. However, based on the examples provided by these commenters, we disagree that such jobs cannot be part of a career pathway. In fact, in our own research on occupational or career clusters at O*Net OnLine (see *http://www.onetonline.org/*), which is sponsored by the Department of Labor, we found that each of the examples offered could easily be associated with one or more career pathways. Thus, requiring an integrated education and training program to be aligned with the State's content standards for adult education and to be part of a career pathway, allows such a program to address both the short- and long-term needs of the workforce as well as the immediate needs of employers. We do not believe that providing only career awareness meets the definition of career pathways in section 3(7) of the Act.

Change: None.

Subpart F—Programs for Corrections Education and the Education of Other Institutionalized Individuals

§ 463.60 What are programs for corrections education and the education of other institutionalized individuals?

Proposed § 463.60 described programs for corrections education and the education of other institutionalized individuals.

Comments: One commenter expressed support for proposed § 463.60. Several commenters stated that not all corrections facilities provide all of the educational programs listed in proposed § 463.60(b). The commenters concluded that the list of academic programs should be suggestive rather than mandatory and asked that we revise the language in proposed § 463.60(b) accordingly.

Discussion: We appreciate the commenters' concerns for clarity regarding proposed § 463.60. We note that proposed § 463.60 restated the list in section 225(b) of WIOA of the permissible educational programs for criminal offenders in correctional institutions and other institutionalized individuals. We believe both WIOA and § 463.60 are sufficiently clear that the list is permissive and that implementing every program on the list is not required.

Change: None.

Comments: One commenter suggested that completion of high school equivalency begun while incarcerated should be a condition of parole. The commenter further suggested that postsecondary education should be available to individuals under the age of 21.

Discussion: We appreciate the commenter's concern for maximizing incarcerated and formerly incarcerated individuals' access to educational opportunities. We note, however, that both suggestions are beyond our statutory authority.

Change: None.

Comments: We received several comments requesting additional guidance on corrections education. Numerous commenters requested that we provide guidance on whether incarcerated individuals were considered in the workforce and whether prison jobs counted as employment for purposes of the performance accountability system in section 116 of WIOA. One of these commenters suggested that consideration of the difficulties in serving incarcerated individuals be factored into the negotiation of State adjusted levels of performance for purposes of the performance accountability system. This commenter also requested that we clarify what career pathways services should be provided to eligible individuals served in corrections education programs. Another commenter requested that we clarify if AEFLA funds for corrections education and education of other institutionalized individuals could be used to provide special education services to young adults incarcerated in the juvenile justice system or students eligible for a 504 plan.

Discussion: We appreciate the commenters' requests for guidance and clarification regarding programs for corrections education and other institutionalized individuals. Questions regarding whether incarcerated individuals are considered in the workforce and whether prison jobs count toward the employment indicators have been addressed in the joint final regulations on the performance accountability system. The Department of Labor and the Department of Education (the Departments) have added language in 20 CFR 677.155(a)(2)(i) (for purposes of AEFLA, found in Part 463 subpart I) to establish that for the purpose of determining program performance levels, section 225 participants will not be included in performance calculations for the following indicators: Employment under 20 CFR 677.155(a)(1)(i) and (ii); earnings under 20 CFR 677.155(a)(1)(iii); credential attainment under 20 CFR 677.155(a)(1)(iv); and the effectiveness in serving employers under 20 CFR 677.155(a)(1)(vi). The Departments made this decision based on the fact that section 225 participants do not have the opportunity to be employed or to participate in education or training programs in the same manner as other participants who are in the general population. The process of negotiating and reaching agreement on adjusted levels of performance has been addressed in the final WIOA Unified and Combined State Plan Requirements Information Collection Request (State Plan ICR), as well as through Program Memorandum OCTAE 16–02, Establishing Expected Levels of Performance and Negotiating Adjusted Levels of Performance for Program Year (PY) 2016–17 and 2017–18. As noted in the State Plan ICR and guidance, for the first State plan submission, the Departments will work with States during the negotiation process to establish the adjusted levels of performance for each of the primary indicators for the core programs. If necessary, some may be adjusted after the release of the final regulation and joint performance ICR. Additionally, the Departments will disseminate joint and program-specific guidance to provide further clarification.

In terms of clarifying what career pathway services should be provided to eligible individuals served in corrections programs, we believe that eligible providers should provide career pathway services that support achievement of the vision and goals articulated in State and local workforce development plans. We seek to maintain State and local flexibility to achieve their respective visions and goals and therefore decline to limit the services that may be provided through regulation. Finally, we note that AEFLA funds for corrections education and education of other institutionalized individuals may be used to provide special education services to eligible individuals regardless of disability status.

Change: None.

Comments: One commenter described challenges in providing concurrent enrollment services to inmates in rural areas where occupational training providers and resources were scarce and training program offerings limited and sporadic. The commenter requested that the Department provide non-regulatory guidance to address these issues.

Discussion: We acknowledge that the challenges in providing adult education and literacy activities, including programs for corrections education and the education of other institutionalized individuals, may differ in rural and urban areas. In the past we have provided technical assistance to support high-quality corrections education across the nation (see, for example, the corrections education resource collection and community of practice through the available through the Literacy Information and Communication System (LINCS) at: *http://lincs.ed.gov/*). As we move forward with WIOA implementation, we will continue to look for opportunities to address emerging challenges.

Change: None.

§ 463.61 How does the eligible agency award funds to eligible providers under programs for corrections education and the education of other institutionalized individuals?

WIOA emphasizes the importance of educational and career advancement for incarcerated individuals by increasing the cap on funds that States may use for programs for corrections education and the education of other institutionalized individuals from 10 percent (under WIA) to 20 percent. Proposed § 463.61 restated this new statutory provision and clarified that any awards made by the eligible agency for programs for corrections education and education programs for other institutionalized individuals must be made in accordance with the applicable regulation in subpart C.

Comments: One commenter expressed support for proposed § 463.61. Other commenters requested clarification on how State departments of corrections might participate in the process specified in subpart C.

Discussion: We appreciate the opportunity to provide clarification that State departments of corrections, like all other eligible providers, would submit an application for a grant or contract to provide adult education and literacy activities following the process specified in subpart C.

Change: None.

§ 463.63 How may funds under programs for corrections education and the education of other institutionalized individuals be used to support transition to re-entry initiatives and other post-release services with the goal of reducing recidivism?

Proposed § 463.63 sought to establish how funds may support transition to re-entry initiatives and other post-release services. This regulation was intended to clarify that re-entry and other post-release services must support the educational needs of the individual.

Comments: One commenter expressed support for proposed § 463.63, noting that the provision of such post-release services was consistent with the design of career pathways. Another commenter questioned how recidivism might be

defined in order to meet any associated reporting requirements under the Act.

Discussion: We appreciate the support for the proposed regulation and agree that such post-release services are consistent with the design of career pathways. In our definition of re-entry and post-release services we noted that examples of such services might include education and employment services that can help formerly incarcerated individuals in progressing along a career pathway. We appreciate the question regarding a definition of recidivism and have addressed that issue in amendments to our information collection package, *Implementation Guidelines: Measures and Methods for the National Reporting System for Adult Education* (OMB Control Number: 1830–0027).

Change: None.

Subpart G—What is the Integrated English Literacy and Civics Education program?

In addition to the new integrated English literacy and civics education services described in § 463.33—one of several authorized "adult education and literacy activities" in AEFLA—WIOA authorized a new, specific Integrated English Literacy and Civics Education program that replaces the English literacy and civics education (EL/Civics) program previously authorized through annual appropriations. The authorization of the program in WIOA eliminates the need for it to be authorized and separately funded annually through the appropriations process. The new program retains the focus on English language proficiency and civics education instruction, but there are new requirements to support stronger ties to employment and the workforce system.

§ 463.70 What is the Integrated English Literacy and Civics Education program?

Proposed § 463.70 described the program's statutory requirements related to participants for whom this program is intended and the types of services that are required in the program. It also sought to clarify that the educational services provided under the program must meet the requirements established in § 463.33 pertaining to integrated English literacy and civics education services.

Comments: Two commenters expressed support for proposed § 463.70. A third commenter expressed similar support but also suggested implementing a flexible approach to incorporating workforce preparation into education. According to this commenter, curricula not necessarily contextualized for workforce development or employment is still relevant to workforce development and employment. Other commenters expressed support for proposed § 463.70 and also encouraged flexibility in implementation. According to these commenters, co-enrollment in workforce development programs should be optional and reflect a student-centered approach that takes students' needs and abilities into account. The commenters encouraged the Department to provide examples in guidance of how the program might support the economic, linguistic, and civic integration goals of diverse immigrant subpopulations.

Other commenters expressed concern that the definition of the Integrated English Literacy and Civics Education program in proposed § 463.70 was more restrictive than the definition of "integrated English literacy and civics education" in section 203(12) of the Act and restated in proposed § 463.33. These commenters suggested that we replace the word "must" in proposed § 463.70(c) with "may" so that § 463.70(c) would read as follows: "Such educational service may be delivered in combination with integrated education and training services as described in § 463.36."

Two commenters sharing this concern expressed the additional concern that the definition of the Integrated English Literacy and Civics Education program in proposed § 463.70 would limit States' ability to provide services that can address all the needs of English language learners seeking English language proficiency and civics education services. These commenters further stated that not all English language learners seeking English language proficiency and civics education services seek or require workforce training. Some, for example, are already gainfully self-employed and interested primarily in improving their language skills and obtaining citizenship. For those learners for whom workforce training might be appropriate, the commenter encouraged workforce development providers to partner with adult education providers to leverage their respective expertise and resources in support of efficiently helping such learners to be placed in unsubsidized employment.

Discussion: We appreciate commenters sharing their support for the proposed regulation and suggesting that we adopt a flexible approach for incorporating workforce preparation into educational services. We agree that curricula not necessarily contextualized for workforce development or employment can still be relevant to workforce development and employment. We also agree that eligible individuals' co-enrollment in workforce development programs should be optional and based upon individuals' needs and abilities. Proposed § 463.70(c) restates statutory language. Substituting "must" for "may," as some commenters suggested, would change language explicitly restated from the Act. We do not believe we have the authority to change language restated from the Act. We agree that not all English language learners seeking English language proficiency and civics education services also seek, or require, workforce training. As we have stated above in our discussion of § 463.35, we do not anticipate that all eligible individuals seeking English language proficiency and civics education services would require integrated education and training. English language learners seeking English language proficiency and civics education, but not seeking workforce training, should not be excluded or discouraged from participation in the Integrated English Literacy and Civics Education program. However, we do note that the Act requires that eligible providers receiving funds under section 243 are required to provide these services in combination with integrated education and training (see § 463.73). We believe that a program design that provides the option for interested eligible individuals to access integrated education and training services meets the statutory requirement that the program funds be used in combination with such services. For those eligible providers serving eligible individuals under section 243 who do require integrated education and training, we proposed two options for meeting the requirement in § 463.74. Additionally, as we noted in our discussion of § 463.33, States have the flexibility to provide integrated English literacy and civics education as a required activity under section 231(b) without the additional workforce and employment-related requirements of section 243. Therefore, we do not agree that the regulation, as proposed, would limit States' flexibility to provide integrated English literacy and civics education services that are responsive to students' diverse needs.

Change: None.

Comments: Other commenters expressed concern regarding the absence of specific measures for civics education in the proposed regulations and suggested that the Department consider adding such measures to the performance accountability system for WIOA. These commenters stated that an

absence of such measures could result in creating unintended disincentives for providing much needed civics instruction.

Discussion: We appreciate the commenters' concerns over creating unintended disincentives for providing civics instruction. We note that the definition of integrated English literacy and civics education provided in § 463.33 requires that it include instruction in literacy and English language acquisition and instruction on the rights and responsibilities of citizenship and civic participation. While we lack authority to add additional primary indicators of performance, we continue to include optional civics education outcomes for States to use in our information collection request for title II (see *Implementation Guidelines: Measures and Methods for the National Reporting System for Adult Education* (OMB Control Number: 1830–0027)).

Change: None.

§ 463.72 How does the eligible agency award funds to eligible providers for the Integrated English Literacy and Civics Education program?

Proposed § 463.72 described the statutory requirements to be used by eligible agencies in awarding funds, including a requirement that States must follow the provisions governing the award of funds established in subpart C.

Comments: One commenter expressed support for proposed § 463.72. Other commenters expressed concerns over the requirement that EL/Civics education providers funded under WIA may not be able to meet the requirements of demonstrated effectiveness in proposed § 463.24 and suggested that the Department revise the proposed regulations in order to provide special consideration for providers of EL/Civics under WIA as they compete for Integrated English Literacy and Civics Education funds.

Discussion: Section 231(c) of the Act requires that eligible agencies ensure that all eligible providers have direct and equitable access to apply and compete for grants or contracts. We do not have authority to give States the flexibility to provide special consideration for EL/Civics providers under WIA. We have, however, revised § 463.24 to clarify options for how eligible providers can establish demonstrated effectiveness.

Change: We revised § 463.24(b)(2) to provide an option for eligible providers who do not have performance data based upon the primary indicators of performance listed in section 116 of the Act.

§ 463.73 What are the requirements for eligible providers that receive funding through the Integrated English Literacy and Civics Education program?

Proposed § 463.73 reiterated statutory language regarding Integrated English Literacy and Civics Education program services and design, including requirements for the program to facilitate job placement, economic self-sufficiency, and integration with the workforce development system.

Comments: Two commenters expressed support for proposed § 463.73. Multiple commenters expressed disagreement with proposed § 463.73(b) and (c) by suggesting that these should not be requirements. These commenters suggested that the Department rephrase proposed § 463.73 to make § 463.73(b) and (c) optional.

Discussion: We appreciate commenters' support for proposed § 463.73. Section 463.73 restates the Act's statutory language. It is inconsistent with the Act to make these statutory requirements optional.

Change: None.

Comments: A few commenters suggested that we revise proposed § 463.73(a) and add language to encourage providers of integrated English literacy and civics education to partner with public television stations. These commenters stated that such a revision could support the use of high-quality instructional materials.

Discussion: We appreciate the commenters' concern for the use of high-quality instructional materials and agree that public television stations may serve as one potential source of such materials. We note that we set out requirements in these final regulations and use technical assistance to share promising practices. We also note that the Department does not have the authority to endorse particular curricula or sets of materials.

Change: None.

Comments: One commenter stated that meeting the requirement of proposed § 463.73(b) might pose particular challenges for rural areas where sufficient integrated education and training providers may not exist.

Discussion: We acknowledge that the challenges in providing adult education and literacy activities, including integrated education and training, may differ in rural and urban areas. In the past we have provided technical assistance to support high-quality career pathways development, including the development of models of integrated education and training, across the nation (see, for example, the career pathways resource collection and community of practice available through the Literacy Information and Communication System (LINCS) at: *http://lincs.ed.gov/*. We have also encouraged and supported States in exploring non-traditional service delivery options, including distance and hybrid models of education. As we move forward with WIOA implementation, we will continue to look for opportunities to address challenges through innovation and technology.

Change: None.

Comments: Other commenters suggested that we specify a particular type of integrated education and training that will meet the requirement proposed in § 463.73(b). One commenter suggested that we revise § 463.73(b) to state that the integrated education and training activities provided to participants served under section 243 include entrepreneurship education and small business planning and development so that those participants are able to start their own business as a career pathway that leads to sustainable improvements in the economic opportunities for their families.

Discussion: We appreciate the commenters' concern for ensuring that the integrated education and training provided in combination with integrated English literacy and civics education is relevant to the needs of English language learners. We agree that for some eligible individuals, entrepreneurship education can contribute to advancement along a career pathway that leads to sustainable improvements in the economic opportunities for families. We also note that in § 463.36, we clarify the workforce training component of integrated education and training by referencing the training services listed in section 134(c)(3)(D) of the Act, including "entrepreneurial training."

Change: None.

Comments: One commenter expressed concern for adult education providers' ability to meet the requirements in proposed § 463.73(c)(1) and (c)(2). This commenter suggested that these requirements might be more easily achieved through collaboration with other core programs.

Discussion: We agree with the commenter. We believe that § 463.74(a) provides this option to eligible providers through the option of co-enrolling participants in integrated education and training, as described in subpart D, that is provided within the local or regional workforce development

area from sources other than section 243. For example, an eligible provider might collaborate with the local title I Youth, Adult, or Dislocated Worker provider to fund the training component of the integrated education and training activities.

Change: None.

§ 463.74 How does an eligible provider that receives funds through the Integrated English Literacy and Civics Education program meet the requirement to provide services in combination with integrated education and training?

Proposed § 463.74 was intended to clarify an important distinction between integrated English literacy and civics education services that may be provided under section 231 of the Act, and integrated English literacy and civics education programs funded under section 243 of the Act. The Act requires that funds made available for integrated English literacy and civics education be used in combination with integrated education and training activities. The proposed regulation provided two options that an eligible provider funded under section 243 of the Act may use to provide integrated English literacy and civics education in combination with integrated education and training activities.

Comments: Several commenters stated that the Department needs to provide further clarification regarding proposed § 463.74. These commenters suggested that not all students would need to be co-enrolled in occupational training. Additionally, these commenters suggested that for some students (for example, lower skilled students) on-ramp or bridge programs that can improve students' basic skill levels, as well as provide career awareness and workforce preparation activities, rather than co-enrollment in occupational training, may be a better approach. These commenters asked the Department to allow flexibility so lower skilled students could participate in integrated English literacy and civics education services, make a career pathway plan while they are participating, and then transition to appropriate workforce training when they reach a level of English that would ensure that they could benefit from occupational training. Commenters asked the Department to supplement the final regulations with further guidance on such flexibility.

Discussion: We agree with commenters' observations that not all students seeking services under section 243 of the Act will require employment related services and, therefore, may have no need to be co-enrolled in occupational training. Similarly, we further agree that some students who have employment-related educational needs may not be adequately prepared for integrated education and training and may benefit most from more basic educational services in preparation for integrated education and training. We believe the Act does not require all participants enrolled in integrated English literacy and civics education programs under section 243 to be receiving integrated education and training services. We do believe the Act requires that eligible providers receiving funds under section 243 use those funds for integrated English literacy and civics education in combination with integrated education and training activities. Thus, participants for whom integrated education and training services are appropriate will have access to those services. For these reasons, we proposed in the NPRM two options for how programs could meet the statutory requirement that funds for integrated English literacy and civics education programs provided under section 243 be used in combination with integrated education and training activities. First, eligible providers serving eligible individuals for whom integrated English literacy and civics education and integrated education and training are appropriate have the flexibility to co-enroll such eligible individuals in other integrated education and training programs within the local or regional workforce development area funded through sources other than section 243. Second, such eligible providers may use section 243 funds to support integrated education and training activities as defined in subpart D.

Change: We have revised § 463.74 to more clearly reflect the statutory requirement to use funds provided under section 243 in combination with integrated education and training activities as defined in subpart D as well as to better clarify the options for meeting the requirement.

Comments: One commenter expressed concern that the requirement to provide integrated English literacy and civics education services in combination with integrated education and training would disadvantage many providers of EL/Civics education under WIA in competing for funds under section 243 of the Act. According to this commenter, many of the EL/Civics providers funded under WIA did not provide workforce preparation or workforce training, and therefore do not have the capacity to offer such programming. The commenter asked the Department to modify the proposed rule to give special consideration to organizations that offer EL/Civics programming but not integrated education and training services. The commenter suggested that the rule be modified to expressly state that integrated education and training services could be offered by an entity other than the organization providing EL/Civics programming but working in coordination with that entity. In support of this point the commenter further stated that proposed § 463.23(i) specifically provided for applications from consortia and coalitions of different organizations that provide services. The commenter also suggested that the rule could also be modified to give consideration to an applicant organization's prior receipt of EL/Civics funding and provision of EL/Civics programming when applying for grants under AEFLA.

Discussion: We appreciate concerns expressed related to current providers of English literacy and civics education under WIA not having the capacity to provide services under the new requirements of section 243 of WIOA. Section 463.72 of these final regulations requires the eligible agency to award funds to eligible providers under subpart C. We believe the requirement to award section 243 funds using the same requirements as other awards under title II is consistent with WIOA. We cannot create special considerations for one type of eligible provider over another in the rule. We do, however, agree that the types of cooperation described by the commenter may result in a competitive application for section 243 funds and we encourage eligible providers to seek out partnerships that leverage workforce services for participants in integrated English literacy and civics education.

Change: None.

§ 463.75 Who is eligible to receive education services through the Integrated English Literacy and Civics Education program?

Proposed § 463.75 described those eligible under the Act to receive services under the integrated English literacy and civics education program.

Comments: One commenter expressed support for proposed § 463.75. Another commenter expressed appreciation for the inclusion of professionals with degrees and credentials in their native countries. One commenter inquired whether civics education was applicable only to English language learners or to all students enrolled in integrated education and training.

Discussion: We appreciate commenters' overall support for

proposed § 463.75 and share in their appreciation for the inclusion of professionals with degrees and credentials in their native countries. While we support the integration of civics education, as appropriate, into all adult education and literacy activities for all students, we also note that integrated English literacy and civics education is specifically for English language learners.

Change: None.

Regulations To Be Removed

In the preamble of the NPRM, we discussed on page 20969 those regulations that we proposed to remove. The Department proposed to remove 34 CFR parts 460 and 461 because these regulations are no longer applicable to the Federal AEFLA program. These regulations were promulgated under the National Literacy Act (P.L. 102–73) in 1992, which has since been superseded. We also proposed to remove regulations for six discretionary grant programs that are no longer authorized by statute: the State Literacy Resource Centers Program (part 464), the National Workplace Literacy Program (part 472), the State Program Analysis Assistance and Policy Studies Program (part 477), the Functional Literacy for State and Local Prisoners Program (part 489), the Life Skills for State and Local Prisoners Program (part 490), and the Adult Education for the Homeless Program (part 491).

Public Comment: In response to our invitation in the NPRM, no parties submitted comments on the removal of any of these regulations.

Changes: None.

Regulatory Impact Analysis

Executive Order 12866

Under Executive Order 12866, the Secretary must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an "economically significant" rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This regulatory action is a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

We have also determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

We are issuing these final regulations only on a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that these final regulations are consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs associated with this regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

Potential Costs and Benefits

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action and have determined that these regulations do not impose additional costs to State eligible agencies under title II, local eligible providers of adult education, or the Federal government. We make this determination based upon analysis of the particular requirements in parts 462 and 463.

The regulations in part 462 primarily represent conforming changes and updates to current regulations so as to make an orderly transition from WIA to WIOA. For example, we revised the title of § 462.41 to conform to the joint WIOA rule to implement the measurable skill gains performance indicator by requiring the documentation of achievement of academic, technical, occupational, or other forms of progress.

A second example of changes in part 462 is one in which States are provided more flexibility in reporting outcomes for adult learners. Section 462.43(c) recognizes the fact that several States offer adult high school programs, sanctioned by State law or regulation, which lead to a secondary school diploma or its equivalent. The rule now allows these States to measure and report educational gain through the awarding of credits or Carnegie Units, but does not require States to implement changes at an additional cost. Thus, from a cost perspective, the regulations in part 462 do not impose substantively new requirements on State eligible agencies or local eligible providers of adult education. Additionally, the benefits of clarifying the conforming changes from WIA to WIOA and

providing States additional flexibility justify the promulgation of the regulations in part 462.

The regulations in part 462 also update and revise existing AEFLA regulations established under WIA that determine the suitability of tests for use in the NRS to reflect new WIOA provisions. We expect that these final regulations will result in a more uniform test review and approval process. For example, § 462.10 establishes new dates by which tests must be submitted for review each year. The revised submission dates provide more opportunities for publishers to submit assessments to the Secretary for review and may increase the availability of new assessments to providers. Section 462.11(a)(4) increases the number of application copies that a publisher must submit to the Secretary from three to four. The additional cost to test publishers of providing another copy of an application is negligible. Accordingly, we conclude that the regulations in part 462 provide test publishers with greater flexibility in the overall submission process, and as such, anticipate that the benefits of this additional flexibility outweigh any potential minimal costs for test publishers. Moreover, we believe that the benefits of this change outweigh the potential costs as it strengthens the integrity of the NRS as a critical tool for measuring State performance on accountability measures while reducing costs to the Federal government.

The regulations in part 463 largely clarify administrative and programmatic changes made by WIOA to the provisions regarding general adult education (*e.g.*, applicable definitions, relevant programs, applicable regulations), how States make awards to local eligible providers, new adult education and literacy activities, new requirements for programs for corrections education and the education of other institutionalized individuals, and a new English literacy and civics education program. While WIOA enacts substantive programmatic changes in these areas, WIOA also provides States and outlying areas funding and flexibility to address these challenges.

The regulations in subpart C of part 463 describe the process and requirements for States and outlying areas to award grants or contracts to eligible providers as well as the activities allowed for local administrative costs. New application requirements include those aimed at alignment with local workforce plans and promotion of concurrent enrollment with title I services, fulfillment of one-stop partner responsibilities, performance against the newly established primary indicators of performance, improving services to meet the needs of eligible individuals, and other information that addresses the 13 considerations outlined in § 463.20. The changes and new requirements in subpart C pose no costs to eligible State agencies, eligible providers, or the Federal government that are additional to the costs imposed by statutory requirements.

Section 463.21 requires an eligible agency to establish procedures for local WDB review in its grant or contract application process. The regulation further establishes that the local WDB must have an opportunity to make recommendations to the eligible agency to promote alignment with the local plan and that the eligible agency must consider the results of the review by the local WDB in determining the extent to which the application addresses the required considerations in § 463.20. While this is a new requirement under WIOA, we conclude that it does not impose significant additional costs to eligible State agencies, eligible providers, or the Federal government as it minimally extends requirements already in place to compete for AEFLA funds.

The regulations in subparts D, F, and G generally restate statutory definitions of adult education and literacy activities and clarify new allowable uses of funds. As such, we conclude that these new regulations add no additional costs and provide the added benefit of clarifying the flexibility that eligible State agencies and eligible providers have in using funds provided under the Act for adult education and literacy activities as set forth in WIOA. Thus, we have determined that the regulations in part 463 do not impose additional costs to State eligible agencies under title II of WIOA, eligible providers of adult education, or the Federal government.

Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 does not require you to respond to a collection of information unless it displays a valid OMB control number. We display the valid OMB control numbers assigned to the collections of information in these final regulations at the end of the affected sections of the regulations.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Assessment of Educational Impact

In the NPRM, we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available. We received no comments, and we do not believe that these regulations would require transmission of this sort of information.

Federalism

Executive Order 13132 requires us to ensure meaningful and timely input by State and local elected officials in the development of regulatory policies that have federalism implications. "Federalism implications" means substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. In the NPRM we stated that the regulations covered in that document may have federalism implications and encouraged State and local elected officials to review and provide comments on the proposed regulations. In the *Public Comment* section of this preamble, we discuss any comments we received on this subject.

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(Catalog of Federal Domestic Assistance Number: 84.002.
Adult Education—Basic Grants to States)

List of Subjects

34 CFR Part 460

Adult education, Grant programs—education.

34 CFR Part 461

Administrative practice and procedure, Adult education, Grant programs—education.

34 CFR Part 462

Administrative practice and procedure, Adult education, Grant programs—education, Reporting and recordkeeping requirements.

34 CFR Part 463

Adult education, Grant programs—education.

34 CFR Part 464

Administrative practice and procedure, Adult education, Grant programs—education.

34 CFR Part 472

Administrative practice and procedure, Adult education, Grant programs—education, Reporting and recordkeeping requirements.

34 CFR Part 477

Administrative practice and procedure, Adult education, Grant programs—education.

34 CFR Part 489

Administrative practice and procedure, Adult education, Grant programs—education, Reporting and recordkeeping requirements.

34 CFR Part 491

Administrative practice and procedure, Adult education, Grant programs—education.

Dated: June 30, 2016.

John B. King, Jr,

Secretary of Education.

For the reasons discussed in the preamble, under the authority of 29 U.S.C. 3271 *et seq.* and 3343(f), the Secretary amends title 34 of the Code of Federal Regulations as follows:

PART 462—MEASURING EDUCATIONAL GAIN IN THE NATIONAL REPORTING SYSTEM FOR ADULT EDUCATION

■ 1. The authority citation for part 462 is revised to read as follows:

Authority: 29 U.S.C. 3292, *et seq.*, unless otherwise noted.

■ 2. The authority citation at the end of § 462.1 is revised to read as follows:

§ 462.1 What is the scope of this part?

* * * * *

(Authority: 29 U.S.C. 3292)

■ 3. Section 462.2 is revised to read as follows:

§ 462.2 What regulations apply?

The following regulations apply to this part:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 76 (State-Administered Programs).

(2) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(3) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(4) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(5) 34 CFR part 82 (New Restrictions on Lobbying).

(6) 34 CFR part 84 (Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)).

(7) 34 CFR part 86 (Drug and Alcohol Abuse Prevention).

(8) 34 CFR part 97 (Protection of Human Subjects).

(9) 34 CFR part 98 (Student Rights in Research, Experimental Programs, and Testing).

(10) 34 CFR part 99 (Family Educational Rights and Privacy).

(b) The regulations in this part 462.

(c)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

(Authority: 29 U.S.C. 3292)

■ 4. Section 462.3 is amended by:

■ a. Revising paragraph (a) introductory text.

■ b. Revising the definition of "Adult basic education (ABE)" in paragraph (b).

■ c. Revising paragraphs (1), (3)(i), and (3)(iii) of the definition of "Adult education population" in paragraph (b).

■ d. Revising the definitions of "Adult secondary education (ASE)", "Content domains, content specifications, or NRS skill areas", "Educational functioning levels", "English as a second language (ESL)", and "Guidelines" in paragraph (b).

■ e. Revising the authority citation.

The revisions read as follows:

§ 462.3 What definitions apply?

(a) *Definitions in the Adult Education and Family Literacy Act (Act).* The following terms used in these regulations are defined in section 203 of the Adult Education and Family Literacy Act, 20 U.S.C. 3292 (Act):

* * * * *

(b) * * *

Adult basic education (ABE) means instruction designed for an adult whose educational functioning level is equivalent to a particular ABE literacy level listed in the NRS educational functioning level table in the Guidelines.

Adult education population * * *

(1) Who have attained 16 years of age;

* * * * *

(3) * * *

(i) Are basic skills deficient;

* * * * *

(iii) Are English language learners.

Adult secondary education (ASE) means instruction designed for an adult whose educational functioning level is equivalent to a particular ASE literacy level listed in the NRS educational functioning level table in the Guidelines.

Content domains, content specifications, or NRS skill areas mean, for the purpose of the NRS, reading, writing, and speaking the English language, mathematics, problem solving, English language acquisition, and other literacy skills as defined by the Secretary.

Educational functioning levels mean the ABE, ASE, and ESL literacy levels, as provided in the Guidelines, that describe a set of skills and competencies that students demonstrate in the NRS skill areas.

English as a Second Language (ESL) means instruction designed for an adult whose educational functioning level is equivalent to a particular ESL English language proficiency level listed in the NRS educational functioning level table in the Guidelines.

Guidelines means the *Implementation Guidelines: Measures and Methods for the National Reporting System for Adult Education* (OMB Control Number: 1830–0027) (also known as NRS Implementation Guidelines) posted on the Internet at: *www.nrsweb.org.*

* * * * *

(Authority: 29 U.S.C. 3292, *et seq.*, unless otherwise noted)

■ 5. Section 462.4 is revised to read as follows:

§ 462.4 What are the transition rules for using tests to measure educational gain for the National Reporting System for Adult Education (NRS)?

A State or an eligible provider may continue to measure educational gain for the NRS using tests that the Secretary has identified in the most recent notice published in the **Federal Register** until the Secretary announces through a notice published in the **Federal Register** a date by which such tests may no longer be used.

(Authority: 29 U.S.C. 3292)

■ 6. In § 462.10, paragraph (b) and the authority citation for the section are revised to read as follows:

§ 462.10 How does the Secretary review tests?

* * * * *

(b) A test publisher that wishes to have the suitability of its test determined by the Secretary under this part must submit an application to the Secretary, in the manner the Secretary may prescribe, by October 1, 2016, April 1, 2017, October 1, 2017, April 1, 2018, October 1, 2018, and by October 1 of each year thereafter.

(Authority: 29 U.S.C. 3292)

■ 7. Section 462.11 is amended by revising paragraphs (a)(4), (b), (e) introductory text, (f) introductory text, and (j)(4) and the authority citation to read as follows:

§ 462.11 What must an application contain?

(a) * * *

(4) Submit to the Secretary four copies of its application.

(b) *General information.* (1) A statement, in the technical manual for the test, of the intended purpose of the test and how the test will allow examinees to demonstrate the skills that are associated with the NRS educational functioning levels in the Guidelines.

* * * * *

(e) *Match of content to the NRS educational functioning levels (content validity).* Documentation of the extent to which the items or tasks on the test cover the skills in the NRS educational functioning levels in the Guidelines, including—

* * * * *

(f) *Match of scores to NRS educational functioning levels.* Documentation of the adequacy of the procedure used to translate the performance of an examinee on a particular test to an estimate of the examinee's standing with respect to the NRS educational functioning levels in the Guidelines, including—

* * * * *

(j) * * *

(4) If a test has been substantially revised—for example by changing its mode of administration, administration procedures, structure, number of items, content specifications, item types, forms, sub-tests, or number of hours between pre- and post-testing from the most recent edition reviewed by the Secretary under this part—the test publisher must provide an analysis of the revisions, including the reasons for the revisions, the implications of the revisions for the comparability of scores on the current test to scores on the previous test, and results from validity, reliability, and equating or standard-setting studies undertaken subsequent to the revisions.

(Authority: 29 U.S.C. 3292)

■ 8. Section 462.12 is amended by revising paragraphs (a)(2)(iv), (c)(2), (d)(2), (e)(1)(ii), and (e)(5), and the authority citation to read as follows:

§ 462.12 What procedures does the Secretary use to review the suitability of tests?

(a) * * *

(2) * * *

(i) * * *

(iv) Includes a test that samples one or more of the major content domains of the NRS educational functioning levels of ABE, ASE or ESL with sufficient numbers of questions to represent adequately the domain or domains; and

* * * * *

(c) * * *

(2) Annually publishes in the **Federal Register** and posts on the Internet at *www.nrsweb.org* a list of the names of tests and test forms and the educational functioning levels the tests are suitable to measure in the NRS. A copy of the list is also available from the U.S. Department of Education, Office of Career, Technical, and Adult Education, Division of Adult Education and Literacy, 400 Maryland Avenue SW., Room 11152, Potomac Center Plaza, Washington, DC 20202–7240.

(d) * * *

(2) The test publisher may resubmit an application to have the suitability of its test determined by the Secretary under this part on October 1 in the year immediately following the year in which the Secretary notifies the publisher.

(e) * * *

(1) * * *

(ii) A test has been substantially revised—for example, by changing its mode of administration, administration procedures, structure, number of items, content specifications, item types, forms or sub-tests, or number of hours between pre- and post-testing.

* * * * *

(5) If the Secretary revokes the determination regarding the suitability of a test, the Secretary publishes in the **Federal Register** and posts on the Internet at *www.nrsweb.org* a notice of that revocation along with the date by which States and eligible providers must stop using the revoked test. A copy of the notice of revocation is also available from the U.S. Department of Education, Office of Career, Technical, and Adult Education, Division of Adult Education and Literacy, 400 Maryland Avenue SW., Room 11152, Potomac Center Plaza, Washington, DC 20202–7240.

(Authority: 29 U.S.C. 3292)

■ 9. Section 462.13 is amended by revising paragraph (b) and the authority citation to read as follows:

§ 462.13 What criteria and requirements does the Secretary use for determining the suitability of tests?

* * * * *

(b) The test must sample one or more of the major content domains of the NRS educational functioning levels of ABE, ASE or ESL with sufficient numbers of questions to adequately represent the domain or domains.

* * * * *

(Authority: 29 U.S.C. 3292)

■ 10. Section 462.14 is amended by revising paragraph (b) and the authority citation to read as follows:

§ 462.14 How often and under what circumstances must a test be reviewed by the Secretary?

* * * * *

(b) If a test that the Secretary has determined is suitable for use in the NRS is substantially revised—for example, by changing its mode of administration, administration procedures, structure, number of items, content specifications, item types, forms, sub-tests, or number of hours between pre- and post-testing—and the test publisher wants the test to continue to be used in the NRS, the test publisher must submit, as provided in § 462.11(j)(4), the substantially revised test or version of the test to the Secretary for review so that the Secretary can determine whether the test continues to be suitable for use in the NRS.

* * * * *

(Authority: 29 U.S.C. 3292)

■ 11. Section 462.40 is amended by revising paragraphs (c)(2) and (3) and the authority citation to read as follows:

§ 462.40 Must a State have an assessment policy?

* * * * *

(c) * * *

(2) Identify the pre- and post-tests that the State requires eligible providers to use to measure the educational functioning level gain of ABE, ASE, and ESL students;

(3)(i) Indicate when, in calendar days or instructional hours, eligible providers must administer pre- and post-tests to students;

(ii) Ensure that the time for administering the post-test is long enough after the pre-test to allow the test to measure educational functioning level gains according to the test publisher's guidelines; and

(iii) Specify a standard for the percentage of students to be pre- and post-tested.

* * * * *

(Authority: 29 U.S.C. 3292)

■ 12. Section 462.41 is amended by revising paragraphs (b)(2) and (3), (c)(2), and the authority citation to read as follows:

§ 462.41 How must tests be administered in order to accurately measure educational gain?

* * * * *

(b) * * *

(2) Administer the pre-test to students at a uniform time, according to the State's assessment policy; and

(3) Administer pre-tests to students in the skill areas identified in the State's assessment policy.

(c) * * *

(2) Administer the post-test to students at a uniform time, according to the State's assessment policy;

* * * * *

(Authority: 29 U.S.C. 3292)

■ 13. The authority citation at the end of § 462.42 is revised to read as follows:

§ 462.42 How are tests used to place students at an NRS educational functioning level?

* * * * *

(Authority: 29 U.S.C. 3292)

§ 462.43 [Removed and Reserved]

■ 14. Remove and reserve § 462.43.

§ 462.44 [Removed and Reserved]

■ 15. Remove and reserve § 462.44.

■ 16. Part 463 is added to read as follows:

PART 463—ADULT EDUCATION AND FAMILY LITERACY ACT

Sec.

Subpart A—Adult Education General Provisions

463.1 What is the purpose of the Adult Education and Family Literacy Act?
463.2 What regulations apply to the Adult Education and Family Literacy Act programs?
463.3 What definitions apply to the Adult Education and Family Literacy Act programs?

Subpart B—[Reserved]

Subpart C—How Does a State Make an Award to Eligible Providers?

463.20 What is the process that the eligible agency must follow in awarding grants or contracts to eligible providers?
463.21 What processes must be in place to determine the extent to which a local application for grants or contracts to provide adult education and literacy services is aligned with a local plan under section 108 of WIOA?
463.22 What must be included in the eligible provider's application for a grant or contract?
463.23 Who is eligible to apply for a grant or contract for adult education and literacy activities?
463.24 How can an eligible provider establish that it has demonstrated effectiveness?
463.25 What are the requirements related to local administrative cost limits?
463.26 What activities are considered local administrative costs?

Subpart D—What Are Adult Education and Literacy Activities?

463.30 What are adult education and literacy programs, activities, and services?
463.31 What is an English language acquisition program?
463.32 How does a program that is intended to be an English language acquisition program meet the requirement that the program lead to attainment of a secondary school diploma or its recognized equivalent and transition to postsecondary education and training or leads to employment?
463.33 What are integrated English literacy and civics education services?
463.34 What are workforce preparation activities?
463.35 What is integrated education and training?
463.36 What are the required components of an integrated education and training program funded under title II?
463.37 How does a program providing integrated education and training under title II meet the requirement that the three required components be "integrated"?
463.38 How does a program providing integrated education and training under title II meet the requirement that an integrated education and training program be "for the purpose of educational and career advancement"?

Subpart E—[Reserved]

Subpart F—Programs for Corrections Education and the Education of Other Institutionalized Individuals?

463.60 What are programs for Corrections Education and the Education of other Institutionalized Individuals?
463.61 How does the eligible agency award funds to eligible providers under the program for Corrections Education and Education of other Institutionalized Individuals?
463.62 What is the priority for programs that receive funding through programs for Corrections Education and Education of other Institutionalized Individuals?
463.63 How may funds under programs for Corrections Education and Education of other Institutionalized Individuals be used to support transition to re-entry initiatives and other post-release services with the goal of reducing recidivism?

Subpart G—What Is the Integrated English Literacy and Civics Education Program?

463.70 What is the Integrated English Literacy and Civics Education program?
463.71 How does the Secretary make an award under the Integrated English Literacy and Civics Education program?
463.72 How does the eligible agency award funds to eligible providers for the Integrated English Literacy and Civics Education program?
463.73 What are the requirements for eligible providers that receive funding through the Integrated English Literacy and Civics Education program?
463.74 How does an eligible provider that receives funds through the Integrated English Literacy and Civics Education program meet the requirement to use funds for Integrated English Literacy and Civics Education in combination with integrated education and training activities?
463.75 Who is eligible to receive education services through the Integrated English Literacy and Civics Education program?

Subpart H–K—[Reserved]

Authority: 29 U.S.C. 102 and 103, unless otherwise noted.

Subpart A—Adult Education General Provisions

§ 463.1 What is the purpose of the Adult Education and Family Literacy Act?

The purpose of the Adult Education and Family Literacy Act (AEFLA) is to create a partnership among the Federal Government, States, and localities to provide, on a voluntary basis, adult education and literacy activities, in order to—

(a) Assist adults to become literate and obtain the knowledge and skills necessary for employment and economic self-sufficiency;

(b) Assist adults who are parents or family members to obtain the education and skills that—

(1) Are necessary to becoming full partners in the educational development of their children; and

(2) Lead to sustainable improvements in the economic opportunities for their family;

(c) Assist adults in attaining a secondary school diploma or its recognized equivalent and in the transition to postsecondary education and training, through career pathways; and

(d) Assist immigrants and other individuals who are English language learners in—

(1) Improving their—

(i) Reading, writing, speaking, and comprehension skills in English; and

(ii) Mathematics skills; and

(2) Acquiring an understanding of the American system of Government, individual freedom, and the responsibilities of citizenship.

(Authority: 29 U.S.C. 3271)

§ 463.2 What regulations apply to the Adult Education and Family Literacy Act programs?

The following regulations apply to the Adult Education and Family Literacy Act programs:

(a) The following Education Department General Administrative Regulations (EDGAR):

(1) 34 CFR part 75 (Direct Grant Programs), except that 34 CFR 75.720(b), regarding the frequency of certain reports, does not apply.

(2) 34 CFR part 76 (State-Administered Programs), except that 34 CFR 76.101 (The general State application) does not apply.

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(6) 34 CFR part 82 (New Restrictions on Lobbying).

(7) 34 CFR part 86 (Drug and Alcohol Prevention).

(8) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

(b) The regulations in 34 CFR part 462.

(c) The regulations in 34 CFR part 463.

§ 463.3 What definitions apply to the Adult Education and Family Literacy Act programs?

Definitions in the Workforce Innovation and Opportunity Act. The following terms are defined in Sections 3, 134, 203, and 225 of the Workforce Innovation and Opportunity Act (29 U.S.C. 3102, 3174, 3272, and 3305):

Adult Education
Adult Education and Literacy Activities
Basic Skills Deficient
Career Pathway
Core Program
Core Program Provision
Correctional Institution
Criminal Offender
Customized Training
Eligible Agency
Eligible Individual
Eligible Provider
English Language Acquisition Program
English Language Learner
Essential Components of Reading
Family Literacy Activities
Governor
Individual with a Barrier to Employment
Individual with a Disability
Institution of Higher Education
Integrated Education and Training
Integrated English Literacy and Civics Education
Literacy
Local Educational Agency
On-the-Job Training
Outlying Area
Postsecondary Educational Institution
State
Training Services
Workplace Adult Education and Literacy Activities
Workforce Preparation Activities

Definitions in EDGAR. The following terms are defined in 34 CFR 77.1:

Applicant
Application
Award
Budget
Budget Period
Contract
Department
ED
EDGAR
Fiscal Year
Grant
Grantee
Nonprofit
Private
Project
Project Period
Public
Secretary
Subgrant
Subgrantee

Other Definitions. The following definitions also apply:

Act means the Workforce Innovation and Opportunity Act, Public Law 113–128.

Concurrent enrollment or *co-enrollment* refers to enrollment by an eligible individual in two or more of the six core programs administered under the Act.

Digital literacy means the skills associated with using technology to enable users to find, evaluate, organize, create, and communicate information.

Peer tutoring means an instructional model that utilizes one institutionalized individual to assist in providing or enhancing learning opportunities for other institutionalized individuals. A peer tutoring program must be structured and overseen by educators who assist with training and supervising tutors, setting educational goals, establishing an individualized plan of instruction, and monitoring progress.

Re-entry and *post-release services* means services provided to a formerly incarcerated individual upon or shortly after release from a correctional institution that are designed to promote successful adjustment to the community and prevent recidivism. Examples include education, employment services, substance abuse treatment, housing support, mental and physical health care, and family reunification services.

Title means title II of the Workforce Innovation and Opportunity Act, the Adult Education and Family Literacy Act, Public Law 113–128.

Subpart B—[Reserved]

Subpart C—How Does a State Make an Award to Eligible Providers?

§ 463.20 What is the process that the eligible agency must follow in awarding grants or contracts to eligible providers?

(a) From grant funds made available under section 222(a)(1) of the Act, each eligible agency must award competitive multiyear grants or contracts to eligible providers within the State or outlying area to enable the eligible providers to develop, implement, and improve adult education and literacy activities within the State or outlying area.

(b) The eligible agency must require that each eligible provider receiving a grant or contract use the funding to establish or operate programs that provide adult education and literacy activities, including programs that provide such activities concurrently.

(c) In conducting the competitive grant process, the eligible agency must ensure that—

(1) All eligible providers have direct and equitable access to apply and compete for grants or contracts;

(2) The same grant or contract announcement and application processes are used for all eligible providers in the State or outlying area; and

(3) In awarding grants or contracts to eligible providers for adult education

and literacy activities, funds shall not be used for the purpose of supporting or providing programs, services, or activities for individuals who are not eligible individuals as defined in the Act, except that such agency may use such funds for such purpose if such programs, services, or activities are related to family literacy activities. Prior to providing family literacy activities for individuals who are not eligible individuals, an eligible provider shall attempt to coordinate with programs and services that do not receive funding under this title.

(d) In awarding grants or contracts for adult education and literacy activities to eligible providers, the eligible agency must consider the following:

(1) The degree to which the eligible provider would be responsive to—

(i) Regional needs as identified in the local workforce development plan; and

(ii) Serving individuals in the community who were identified in such plan as most in need of adult education and literacy activities, including individuals who—

(A) Have low levels of literacy skills; or

(B) Are English language learners;

(2) The ability of the eligible provider to serve eligible individuals with disabilities, including eligible individuals with learning disabilities;

(3) The past effectiveness of the eligible provider in improving the literacy of eligible individuals, especially those individuals who have low levels of literacy, and the degree to which those improvements contribute to the eligible agency meeting its State-adjusted levels of performance for the primary indicators of performance described in § 677.155;

(4) The extent to which the eligible provider demonstrates alignment between proposed activities and services and the strategy and goals of the local plan under section 108 of the Act, as well as the activities and services of the one-stop partners;

(5) Whether the eligible provider's program—

(i) Is of sufficient intensity and quality, and based on the most rigorous research available so that participants achieve substantial learning gains; and

(ii) Uses instructional practices that include the essential components of reading instruction;

(6) Whether the eligible provider's activities, including whether reading, writing, speaking, mathematics, and English language acquisition instruction delivered by the eligible provider, are based on the best practices derived from the most rigorous research available, including scientifically valid research and effective educational practice;

(7) Whether the eligible provider's activities effectively use technology, services and delivery systems, including distance education, in a manner sufficient to increase the amount and quality of learning, and how such technology, services, and systems lead to improved performance;

(8) Whether the eligible provider's activities provide learning in context, including through integrated education and training, so that an individual acquires the skills needed to transition to and complete postsecondary education and training programs, obtain and advance in employment leading to economic self-sufficiency, and to exercise the rights and responsibilities of citizenship;

(9) Whether the eligible provider's activities are delivered by instructors, counselors, and administrators who meet any minimum qualifications established by the State, where applicable, and who have access to high-quality professional development, including through electronic means;

(10) Whether the eligible provider coordinates with other available education, training, and social service resources in the community, such as by establishing strong links with elementary schools and secondary schools, postsecondary educational institutions, institutions of higher education, Local WDBs, one-stop centers, job training programs, and social service agencies, business, industry, labor organizations, community-based organizations, nonprofit organizations, and intermediaries, in the development of career pathways;

(11) Whether the eligible provider's activities offer the flexible schedules and coordination with Federal, State, and local support services (such as child care, transportation, mental health services, and career planning) that are necessary to enable individuals, including individuals with disabilities or other special needs, to attend and complete programs;

(12) Whether the eligible provider maintains a high-quality information management system that has the capacity to report measurable participant outcomes (consistent with section § 666.100) and to monitor program performance; and

(13) Whether the local area in which the eligible provider is located has a demonstrated need for additional English language acquisition programs and civics education programs.

(Authority: 29 U.S.C. 3321)

§ 463.21 What processes must be in place to determine the extent to which a local application for grants or contracts to provide adult education and literacy services is aligned with a local plan under section 108 of WIOA?

(a) An eligible agency must establish, within its grant or contract competition, a process that provides for the submission of all applications for funds under AEFLA to the appropriate Local Boards.

(b) The process must include—

(1) Submission of the applications to the appropriate Local Board for its review for consistency with the local plan within the appropriate timeframe; and

(2) An opportunity for the local board to make recommendations to the eligible agency to promote alignment with the local plan.

(c) The eligible agency must consider the results of the review by the Local Board in determining the extent to which the application addresses the required considerations in § 463.20.

(Authority: 29 U.S.C. 3122(d)(11), 3321(e), 3322)

§ 463.22 What must be included in the eligible provider's application for a grant or contract?

(a) Each eligible provider seeking a grant or contract must submit an application to the eligible agency containing the information and assurances listed below, as well as any additional information required by the eligible agency, including:

(1) A description of how funds awarded under this title will be spent consistent with the requirements of title II of AEFLA;

(2) A description of any cooperative arrangements the eligible provider has with other agencies, institutions, or organizations for the delivery of adult education and literacy activities;

(3) A description of how the eligible provider will provide services in alignment with the local workforce development plan, including how such provider will promote concurrent enrollment in programs and activities under title I, as appropriate;

(4) A description of how the eligible provider will meet the State-adjusted levels of performance for the primary indicators of performance identified in the State's Unified or Combined State Plan, including how such provider will collect data to report on such performance indicators;

(5) A description of how the eligible provider will fulfill, as appropriate, required one-stop partner responsibilities to—

(i) Provide access through the one-stop delivery system to adult education and literacy activities;

(ii) Use a portion of the funds made available under the Act to maintain the one-stop delivery system, including payment of the infrastructure costs for the one-stop centers, in accordance with the methods agreed upon by the Local Board and described in the memorandum of understanding or the determination of the Governor regarding State one-stop infrastructure funding;

(iii) Enter into a local memorandum of understanding with the Local Board, relating to the operations of the one-stop system;

(iv) Participate in the operation of the one-stop system consistent with the terms of the memorandum of understanding, and the requirements of the Act; and

(v) Provide representation to the State board;

(6) A description of how the eligible provider will provide services in a manner that meets the needs of eligible individuals;

(7) Information that addresses the 13 considerations listed in § 463.20; and

(8) Documentation of the activities required by § 463.21(b).

(b) [Reserved]

(Authority: 29 U.S.C. 3322)

§ 463.23 Who is eligible to apply for a grant or contract for adult education and literacy activities?

An organization that has demonstrated effectiveness in providing adult education and literacy activities is eligible to apply for a grant or contract. These organizations may include, but are not limited to:

(a) A local educational agency;

(b) A community-based organization or faith-based organization;

(c) A volunteer literacy organization;

(d) An institution of higher education;

(e) A public or private nonprofit agency;

(f) A library;

(g) A public housing authority;

(h) A nonprofit institution that is not described in any of paragraphs (a) through (g) of this section and has the ability to provide adult education and literacy activities to eligible individuals;

(i) A consortium or coalition of the agencies, organizations, institutions, libraries, or authorities described in any of paragraphs (a) through (h) of this section; and

(j) A partnership between an employer and an entity described in any of paragraphs (a) through (i) of this section.

(Authority: 29 U.S.C. 3272(5))

§ 463.24 How must an eligible provider establish that it has demonstrated effectiveness?

(a) For the purposes of this section, an eligible provider must demonstrate past effectiveness by providing performance data on its record of improving the skills of eligible individuals, particularly eligible individuals who have low levels of literacy, in the content domains of reading, writing, mathematics, English language acquisition, and other subject areas relevant to the services contained in the State's application for funds. An eligible provider must also provide information regarding its outcomes for participants related to employment, attainment of secondary school diploma or its recognized equivalent, and transition to postsecondary education and training.

(b) There are two ways in which an eligible provider may meet the requirements in paragraph (a) of this section:

(1) An eligible provider that has been funded under title II of the Act must provide performance data required under section 116 to demonstrate past effectiveness.

(2) An eligible provider that has not been previously funded under title II of the Act must provide performance data to demonstrate its past effectiveness in serving basic skills deficient eligible individuals, including evidence of its success in achieving outcomes listed in paragraph (a) of this section.

(Authority: 29 U.S.C. 3272(5))

§ 463.25 What are the requirements related to local administrative cost limits?

Not more than five percent of a local grant to an eligible provider can be expended to administer a grant or contract under title II. In cases where five percent is too restrictive to allow for administrative activities, the eligible agency may increase the amount that can be spent on local administration. In such cases, the eligible provider must negotiate with the eligible agency to determine an adequate level of funds to be used for non-instructional purposes.

(Authority: 29 U.S.C. 3323)

§ 463.26 What activities are considered local administrative costs?

An eligible provider receiving a grant or contract under this part may consider costs incurred in connection with the following activities to be administrative costs:

(a) Planning;

(b) Administration, including carrying out performance accountability requirements;

(c) Professional development;

(d) Providing adult education and literacy services in alignment with local workforce plans, including promoting co-enrollment in programs and activities under title I, as appropriate; and

(e) Carrying out the one-stop partner responsibilities described in § 678.420, including contributing to the infrastructure costs of the one-stop delivery system.

(Authority: 29 U.S.C. 3323, 3322, 3151)

Subpart D—What Are Adult Education and Literacy Activities?

§ 463.30 What are adult education and literacy programs, activities, and services?

The term "adult education and literacy activities" means programs, activities, and services that include:

(a) Adult education,

(b) Literacy,

(c) Workplace adult education and literacy activities,

(d) Family literacy activities,

(e) English language acquisition activities,

(f) Integrated English literacy and civics education,

(g) Workforce preparation activities, or

(h) Integrated education and training.

(Authority: 29 U.S.C. 3272(2))

§ 463.31 What is an English language acquisition program?

The term "English language acquisition program" means a program of instruction—

(a) That is designed to help eligible individuals who are English language learners achieve competence in reading, writing, speaking, and comprehension of the English language; and

(b) That leads to—

(1) Attainment of a secondary school diploma or its recognized equivalent; and

(2) Transition to postsecondary education and training; or

(3) Employment.

(Authority: 29 U.S.C. 3272(6))

§ 463.32 How does a program that is intended to be an English language acquisition program meet the requirement that the program leads to attainment of a secondary school diploma or its recognized equivalent and transition to postsecondary education and training or leads to employment?

To meet the requirement in § 463.31(b) a program of instruction must:

(a) Have implemented State adult education content standards that are aligned with State-adopted challenging academic content standards, as adopted under the Elementary and Secondary

Education Act of 1965, as amended (ESEA) as described in the State's Unified or Combined State Plan and as evidenced by the use of a State or local curriculum, lesson plans, or instructional materials that are aligned with the State adult education content standards; or

(b) Offer educational and career counseling services that assist an eligible individual to transition to postsecondary education or employment; or

(c) Be part of a career pathway.

(Authority: 29 U.S.C. 3112(b)(2)(D)(ii), 3272)

§ 463.33 What are integrated English literacy and civics education services?

(a) Integrated English literacy and civics education services are education services provided to English language learners who are adults, including professionals with degrees or credentials in their native countries, that enable such adults to achieve competency in the English language and acquire the basic and more advanced skills needed to function effectively as parents, workers, and citizens in the United States.

(b) Integrated English literacy and civics education services must include instruction in literacy and English language acquisition and instruction on the rights and responsibilities of citizenship and civic participation and may include workforce training.

(Authority: 29 U.S.C. 3272(12))

§ 463.34 What are workforce preparation activities?

Workforce preparation activities include activities, programs, or services designed to help an individual acquire a combination of basic academic skills, critical thinking skills, digital literacy skills, and self-management skills, including competencies in:

(a) Utilizing resources;

(b) Using information;

(c) Working with others;

(d) Understanding systems;

(e) Skills necessary for successful transition into and completion of postsecondary education or training, or employment; and

(f) Other employability skills that increase an individual's preparation for the workforce.

(Authority: 29 U.S.C. 3272(17); P.L. 111–340)

§ 463.35 What is integrated education and training?

The term "integrated education and training" refers to a service approach that provides adult education and literacy activities concurrently and contextually with workforce preparation activities and workforce training for a specific occupation or occupational cluster for the purpose of educational and career advancement.

(Authority: 29 U.S.C. 3272(11))

§ 463.36 What are the required components of an integrated education and training program funded under title II?

An integrated education and training program must include three components:

(a) Adult education and literacy activities as described in § 463.30.

(b) Workforce preparation activities as described in § 463.34.

(c) Workforce training for a specific occupation or occupational cluster which can be any one of the training services defined in section 134(c)(3)(D) of the Act.

(Authority: 29 U.S.C. 3272, 3174)

§ 463.37 How does a program providing integrated education and training under title II meet the requirement that the three required components be "integrated"?

In order to meet the requirement that the adult education and literacy activities, workforce preparation activities, and workforce training be integrated, services must be provided concurrently and contextually such that—

(a) Within the overall scope of a particular integrated education and training program, the adult education and literacy activities, workforce preparation activities, and workforce training:

(1) Are each of sufficient intensity and quality, and based on the most rigorous research available, particularly with respect to improving reading, writing, mathematics, and English proficiency of eligible individuals;

(2) Occur simultaneously; and

(3) Use occupationally relevant instructional materials.

(b) The integrated education and training program has a single set of learning objectives that identifies specific adult education content, workforce preparation activities, and workforce training competencies, and the program activities are organized to function cooperatively.

(Authority: 29 U.S.C. 3272)

§ 463.38 How does a program providing integrated education and training under title II meet the requirement that the integrated education and training program be "for the purpose of educational and career advancement"?

A provider meets the requirement that the integrated education and training program provided is for the purpose of educational and career advancement if:

(a) The adult education component of the program is aligned with the State's content standards for adult education as described in the State's Unified or Combined State Plan; and

(b) The integrated education and training program is part of a career pathway.

(Authority: 29 U.S.C. 3272, 3112)

Subpart E—[Reserved]

Subpart F—What are Programs for Corrections Education and the Education of Other Institutionalized Individuals?

§ 463.60 What are programs for Corrections Education and the Education of other Institutionalized Individuals?

(a) Authorized under section 225 of the Act, programs for corrections education and the education of other institutionalized individuals require each eligible agency to carry out corrections education and education for other institutionalized individuals using funds provided under section 222 of the Act.

(b) The funds described in paragraph (a) of this section must be used for the cost of educational programs for criminal offenders in correctional institutions and other institutionalized individuals, including academic programs for—

(1) Adult education and literacy activities;

(2) Special education, as determined by the eligible agency;

(3) Secondary school credit;

(4) Integrated education and training;

(5) Career pathways;

(6) Concurrent enrollment;

(7) Peer tutoring; and

(8) Transition to re-entry initiatives and other post-release-services with the goal of reducing recidivism.

(Authority: 29 U.S.C. 3302, 3305)

§ 463.61 How does the eligible agency award funds to eligible providers under the program for Corrections Education and Education of other Institutionalized Individuals?

(a) States may award up to 20 percent of the 82.5 percent of the funds made available by the Secretary for local grants and contracts under section 231 of the Act for programs for corrections education and the education of other institutionalized individuals.

(b) The State must make awards to eligible providers in accordance with subpart C.

(Authority: 29 U.S.C. 3302, 3321)

§ 463.62 What is the priority for programs that receive funding through programs for Corrections Education and Education of other Institutionalized Individuals?

Each eligible agency using funds provided under Programs for Corrections Education and Education of Other Institutionalized Individuals to carry out a program for criminal offenders within a correctional institution must give priority to programs serving individuals who are likely to leave the correctional institution within five years of participation in the program.

(Authority: 29 U.S.C. 3305)

§ 463.63 How may funds under programs for Corrections Education and Education of other Institutionalized Individuals be used to support transition to re-entry initiatives and other post-release services with the goal of reducing recidivism?

Funds under Programs for Corrections Education and the Education of Other Institutionalized Individuals may be used to support educational programs for transition to re-entry initiatives and other post-release services with the goal of reducing recidivism. Such use of funds may include educational counseling or case work to support incarcerated individuals' transition to re-entry and other post-release services. Examples include assisting incarcerated individuals to develop plans for post-release education program participation, assisting students in identifying and applying for participation in post-release programs, and performing direct outreach to community-based program providers on behalf of re-entering students. Such funds may not be used for costs for participation in post-release programs or services.

(Authority: 29 U.S.C. 3305)

Subpart G—What Is the Integrated English Literacy and Civics Education Program?

§ 463.70 What is the Integrated English Literacy and Civics Education program?

(a) The Integrated English Literacy and Civics Education program refers to the use of funds provided under section 243 of the Act for education services for English language learners who are adults, including professionals with degrees and credentials in their native countries.

(b) The Integrated English Literacy and Civics Education program delivers educational services as described in § 463.33.

(c) Such educational services must be delivered in combination with integrated education and training activities as described in § 463.36.

(Authority: 29 U.S.C. 3272, 3333)

§ 463.71 How does the Secretary make an award under the Integrated English Literacy and Civics Education program?

(a) The Secretary awards grants under the Integrated English Literacy and Civics Education program to States that have an approved Unified State Plan in accordance with § 463.90 through § 463.145, or an approved Combined State Plan in accordance with § 463.90 through § 463.145.

(b) The Secretary allocates funds to States following the formula described in section 243(b) of the Act.

(1) Sixty-five percent is allocated on the basis of a State's need for integrated English literacy and civics education, as determined by calculating each State's share of a 10-year average of the data of the Office of Immigration Statistics of the Department of Homeland Security for immigrants admitted for legal permanent residence for the 10 most recent years; and

(2) Thirty-five percent is allocated on the basis of whether the State experienced growth, as measured by the average of the three most recent years for which the data of the Office of Immigration Statistics of the Department of Homeland Security for immigrants admitted for legal permanent residence are available.

(3) No State receives an allotment less than $60,000.

(Authority: 29 U.S.C. 3333)

§ 463.72 How does the eligible agency award funds to eligible providers for the Integrated English Literacy and Civics Education program?

States must award funds for the Integrated English Literacy and Civics Education program to eligible providers in accordance with subpart C.

(Authority: 29 U.S.C. 3321)

§ 463.73 What are the requirements for eligible providers that receive funding through the Integrated English Literacy and Civics Education program?

Eligible providers receiving funds through the Integrated English Literacy and Civics Education program must provide services that—

(a) Include instruction in literacy and English language acquisition and instruction on the rights and responsibilities of citizenship and civic participation; and

(b) Are designed to:

(1) Prepare adults who are English language learners for, and place such adults in, unsubsidized employment in in-demand industries and occupations that lead to economic self-sufficiency; and

(2) Integrate with the local workforce development system and its functions to carry out the activities of the program.

(Authority: 29 U.S.C. 3272, 3333)

§ 463.74 How does an eligible provider that receives funds through the Integrated English Literacy and Civics Education program meet the requirement to use funds for Integrated English Literacy and Civics Education in combination with integrated education and training activities?

An eligible provider that receives funds through the Integrated English Literacy and Civics Education program may meet the requirement to use funds for integrated English literacy and civics education in combination with integrated education and training activities by:

(a) Co-enrolling participants in integrated education and training as described in subpart D of this part that is provided within the local or regional workforce development area from sources other than section 243 of the Act; or

(b) Using funds provided under section 243 of the Act to support integrated education and training activities as described in subpart D of this part.

(Authority: 29 U.S.C. 3333, 3121, 3122, 3123)

§ 463.75 Who is eligible to receive education services through the Integrated English Literacy and Civics Education program?

Individuals who otherwise meet the definition of "eligible individual" and are English language learners, including professionals with degrees and credentials obtained in their native countries, may receive Integrated English Literacy and Civics Education services.

(Authority: 29 U.S.C. 3272)

Subpart H–K—[Reserved]

PART 464 [REMOVED AND RESERVED]

■ 17. Remove and reserve part 464.

PART 472 [REMOVED AND RESERVED]

■ 18. Remove and reserve part 472.

PART 477 [REMOVED AND RESERVED]

■ 19. Remove and reserve part 477.

PART 489 [REMOVED AND RESERVED]

■ 20. Remove and reserve part 489.

PART 490 [REMOVED AND RESERVED]

■ 21. Remove and reserve part 490.

[FR Doc. 2016–16049 Filed 8–8–16; 11:15 am]
BILLING CODE 4000–01–P

FEDERAL REGISTER

Vol. 81 Friday,

No. 161 August 19, 2016

Part III

Department of Education

34 CFR Parts 367, 369, 370, et al.
Workforce Innovation and Opportunity Act, Miscellaneous Program Changes; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 367, 369, 370, 371, 373, 376, 377, 379, 381, 385, 386, 387, 388, 389, 390, and 396

[Docket No. 2015–ED–OSERS–0002]

RIN 1820–AB71

Workforce Innovation and Opportunity Act, Miscellaneous Program Changes

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Final Regulations.

SUMMARY: The Secretary amends the regulations governing a number of programs administered by the Rehabilitation Services Administration (RSA) to implement changes to the Rehabilitation Act of 1973 (Act) made by the Workforce Innovation and Opportunity Act, signed on July 22, 2014.

The Secretary also implements changes to the Act made by the Workforce Investment Act of 1998, signed on August 7, 1998, that have not previously been implemented in regulations, and otherwise updates, clarifies, and improves RSA's current regulations.

DATES: This final rule is effective September 19, 2016, except the removal of part 388, amendatory instruction 13, is effective on October 1, 2016.

FOR FURTHER INFORMATION CONTACT: Ed Anthony, U.S. Department of Education, 400 Maryland Avenue SW., Room 5086 PCP, Washington, DC 20202–2800. *Telephone:* (202) 245–7488, or by email: *Edward.Anthony@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

The Secretary amends the regulations governing a number of programs administered by the Rehabilitation Services Administration (RSA) to implement changes to the Rehabilitation Act of 1973 (Act) made by the Workforce Innovation and Opportunity Act (WIOA), signed on July 22, 2014 (Pub. L. 113–128). These programs and their corresponding regulations are:

- The Independent Living Services for Older Individuals Who Are Blind (OIB) program, 34 CFR part 367;
- The Client Assistance Program (CAP), 34 CFR part 370;
- The American Indian Vocational Rehabilitation Services (AIVRS) program, 34 CFR part 371 (formerly known as "Vocational Rehabilitation Service Projects for American Indians with Disabilities");
- The Rehabilitation National Activities program, 34 CFR part 373 (formerly known as "Special Demonstration Projects");
- The Protection and Advocacy of Individual Rights (PAIR) program, 34 CFR part 381;
- The Rehabilitation Training program, 34 CFR part 385;
- The Rehabilitation Long-Term Training program, 34 CFR part 386;
- The Innovative Rehabilitation Training program, 34 CFR part 387 (formerly known as the "Experimental and Innovative Training");
- The Training of Interpreters for Individuals Who are Deaf or Hard of Hearing and Individuals who are Deaf-Blind program, 34 CFR part 396 (formerly known as the "Training of Interpreters for Individuals Who are Deaf and Individuals who are Deaf-Blind program").

WIOA also repealed the statutory authority for four programs, and the Secretary, therefore, removes their corresponding regulations. These programs and regulations are:

- Vocational Rehabilitation Service Projects for Migratory Agricultural Workers and Seasonal Farmworkers with Disabilities (Migrant Workers) program, portions of 34 CFR part 369;
- Projects for Initiating Special Recreation Programs for Individuals with Disabilities (Recreational programs), portions of 34 CFR part 369;
- Projects with Industry, 34 CFR part 379 and portions of part 369; and
- The State Vocational Rehabilitation Unit In-Service Training program, 34 CFR part 388.

In addition, the Secretary implements changes to the Act made by the Workforce Investment Act of 1998 (WIA), signed into law August 7, 1998 (Pub. L. 105–220). These changes were not previously implemented in the OIB, CAP, AIVRS, and PAIR program regulations, and the Secretary now makes these changes in the applicable regulations.

Separate and apart from amendments to the Act made by WIOA and WIA, the Secretary updates and clarifies the regulations governing the various rehabilitation training programs—34 CFR parts 373, 385, 386, 387, and 396—and 34 CFR part 390, which governs the Rehabilitation Short-Term Training program. These regulations have not been updated in some time, and updating them now is intended to improve how these programs function.

Finally, as part of this update, the Secretary removes regulations that are superseded or obsolete and consolidates regulations, where appropriate. In addition to removing portions of 34 CFR part 369 pertaining to specific programs whose statutory authority was repealed under WIOA (*i.e.,* Migrant Workers program, the Recreational Programs, and the Projects With Industry program), the Secretary is removing the remaining portions of the Part 369 regulations. The Secretary is also removing parts 376, 377, and 389.

Public Comment

On April 16, 2015, the Secretary published a notice of proposed rulemaking (NPRM) for these programs in the **Federal Register** (80 FR 20988). In response to our invitation in the NPRM, more than 100 parties submitted comments on the proposed regulations. Because the amendments described in these final regulations are so many and varied, we first discuss those programs whose regulations we amend and do not remove. We discuss these programs in the order in which their parts appear in the Code of Federal Regulations (CFR). For each part, we provide a summary of the changes we proposed, a summary of the differences between the proposed regulations and these final regulations, and a detailed discussion of the public comment we received on the proposed regulations. We then discuss those programs whose regulations we remove. Generally, we do not address technical and other minor changes.

Independent Living Services for Older Individuals who are Blind (OIB), 34 CFR Part 367

Summary of Changes

In the preamble of the NPRM, we discussed on pages 20989 through 20991 the major changes proposed to part 367 implementing the amendments to the OIB program made by WIOA. These included a requirement that not less than 1.8 percent and not more than 2 percent of the funds for this program be reserved to provide training and technical assistance to designated State agencies (DSA) or other providers of independent living services for older individuals who are blind.

In addition, we proposed to incorporate into part 367 the text of relevant provisions of parts 364 and 365 regarding general independent living and State independent living services that were previously incorporated only by reference.

There are five differences between the NPRM and these final regulations. As a result of our further review, we add the

entities eligible to apply for awards under the training and technical assistance funding in § 367.21; we revise § 367.24 to give the Secretary the discretion to conduct the application process and make the subsequent award in accordance with 34 CFR part 75, but not require it; we clarify in §§ 367.65 and 367.66 requirements for the use of program income; we address in a new § 367.67 the financial participation by consumers served by the OIB program; and we revise § 367.69 by requiring that designated State agencies and other service providers enter into written agreements when sharing personal information with entities and organizations for the purpose of evaluations, audits, research, and other program purposes. We also make other, minor technical changes.

Public Comment

In response to our invitation in the NPRM, eight parties submitted comments on the proposed regulations amending the OIB program. One commenter agreed with all of the proposed regulations as written. Another expressed specific support for incorporating into part 367 the independent living (IL) services from section 7(17) of the Act, including the requisite supports and services that facilitate the transition of individuals from nursing homes and other institutions to home- and community-based residences and services to assist older individuals who are blind and who are at risk of entering institutions to remain in their communities. We address those commenters that requested clarifications or proposed additions to the regulations. Because we made a number of structural and numbering revisions to part 367, we provide an analysis of public comment by subpart and, within each subpart, by subject or section. We do not address areas about which we did not receive public comments, *i.e.* Subpart D—How Does the Secretary Award Discretionary Grants? and Subpart E—How Does the Secretary Award Formula Grants?

Subpart A—General

Comment: An organization representing State agencies for the blind and that supports the concept of "employment first" recommended that part 367 refer all consumers presumed eligible for the OIB program based upon age to the State VR services program to be assessed for employment potential prior to being served under the OIB program. The commenter stated that this would relieve the "underfunded" OIB program of the costs of eligibility and assessment and allow for these costs to be met by the VR program.

Discussion: We appreciate the commenter's support for "employment first," which regards employment as the preferred option for individuals of working age. However, we understand that many older individuals with vision loss may not believe that employment is an option for them. The purpose of the OIB program is to provide IL services to individuals age 55 or older whose significant visual impairment makes competitive employment extremely difficult but for whom IL goals are feasible. Individuals served by the OIB program who subsequently express an interest in employment during or after receiving OIB services may be referred at any time to the VR program; however, there is no statutory authority to require that all potential OIB consumers be referred to the VR program before receiving OIB services.

We acknowledge the commenter's concerns about relieving the OIB program of the costs of eligibility and assessments; however, to require that all individuals presumed eligible for the OIB program be referred first to the VR program for assessment of employment potential is not appropriate, as it shifts those costs to the VR program for individuals for whom competitive employment may not be likely.

What activities may the Secretary fund? (§ 367.3(b))

Comments: Some commenters asked for clarification about whether it is mandatory to provide all independent living (IL) services that may be funded under this part. Commenters were concerned about their capacity to provide all IL services, particularly those defined in proposed § 367.5(b)(10). The commenters noted that some of the services are duplicative of those provided by Centers for Independent Living (CILs), while others may not usually apply to the OIB program (*e.g.* shelter, supported living, physical rehabilitation, therapeutic treatment, and prostheses).

Additionally, commenters stated that vision rehabilitation specialists would require extensive training to gain the qualifications needed to provide all services and that providing the full array of services would affect the quality of vision services provided to clients by an already overstretched staff.

Discussion: We acknowledge the concerns expressed by some commenters about whether providing all IL services identified in § 367.3(b)—particularly the catchall in § 367.3(b)(8), "Other IL services as defined in § 367.5"—is required. While § 367.3(a) specifies that the DSA may use funds under part 367 for activities described in § 367.1 and § 367.5(b), it does not require the DSA to provide the full array of services and activities that the Secretary may fund. In fact, many of these IL services and activities may also be provided under title VII, chapter 1 of the Act, and older individuals who are blind may be referred to these programs, which include CILs, for services that may not be specific to the vision-related services traditionally provided by the OIB program. However, the broad scope of IL services that an OIB program may provide allows the program to determine what array of services and activities it will provide and to individualize services according to need.

Changes: None.

Transfer of Title VII, Chapter 1 IL Programs

Comment: One commenter requested further clarification about how the Department intends to work with the Department of Health and Human Services (HHS) throughout the IL program transition process to assure that older individuals who are blind continue to receive the necessary services that provide the greatest opportunity for complete and full independence.

Discussion: The Department has worked collaboratively with HHS to ensure the efficient and effective transfer of the Title VII, Chapter 1 programs from the Department of Education to HHS. The OIB program, which continues to be administered by the Department, was transferred within RSA to staff in the Technical Assistance Unit who have the knowledge and expertise necessary to administer the OIB program.

Change: None.

Subpart B—Training and Technical Assistance

Comment: One commenter strongly recommended that a portion of the technical assistance and training funds be required to be used to train service providers on techniques and best practices for serving older individuals who are deaf-blind, including those who are blind or visually impaired and hard of hearing. This specialized training would increase understanding of the needs of deaf-blind individuals, assist service providers who routinely work with individuals who are blind to recognize those who also have hearing loss, and provide techniques designed to maximize independence.

Discussion: We appreciate the commenter's recommendation.

Individuals who are deaf-blind, including those who are blind or visually impaired and hard of hearing, encompass a growing population within those who may be served under the OIB program. As such, we anticipate that training and technical assistance for DSAs and other service providers will address the needs of this dual sensory loss group, as well as of other individuals who are blind or visually impaired and have multiple disabilities.

Change: None.

Eligible Entities for Grants, Contracts, or Cooperative Agreements (§ 367.21(a))

Comment: None.

Discussion: In proposed § 367.21(a), we did not describe the entities eligible to compete for funds reserved under § 367.20 to carry out training and technical assistance through grants, contracts, or cooperative agreements. This was an oversight.

Change: We added eligible entities to final § 367.21(a): State and public or non-profit agencies and organizations and institutions of higher education.

How does the Secretary evaluate an application? (§ 367.24)

Comments: None.

Discussion: When WIOA added a training and technical assistance authority to the OIB program it gave the Secretary the ability to make awards by grant, cooperative agreement or contract. Since the Department generally makes these awards by grants using the procedures in part 75, which uses the peer review process identified in the statute, we added a subsection in the NPRM that provided that the Secretary would use the procedures in part 75, even when awarding a contract. However, upon further reflection, we have determined that there may be circumstances when the Department has an amount of funds that is too small to compete but could be used to support a contract consistent with the training and technical assistance authority, in the form of a task order or modification under an existing Department contract for example, in which case, the Department would not want to use the grant processes in part 75. Therefore, we have determined that it is more appropriate to change the language in this subsection to give the Secretary the authority to use part 75 if awarding a contract, where the Secretary determines it is appropriate but not require its use.

Changes: We have revised final § 367.24(b) to give the Secretary the discretion to conduct the application process and make the subsequent award in accordance with 34 CFR part 75, but not require it.

Subpart C—What are the application requirements under this part?

Removal of State Plan for Independent Living OIB Requirements

Comments: Two commenters, an organization representing agencies for the blind and an individual, acknowledged that WIOA eliminated the requirement for including a reference to the OIB program in the State Plan for Independent Living (SPIL) and expressed concern that this would disenfranchise and remove the "voice" of older individuals with vision loss. These commenters recommended that an OIB section be added to the Vocational Rehabilitation (VR) portion of the Unified or Combined State Plans submitted by States, with the requirement that plans require coordination with VR, CILs, aging, and other entities that would further the independence of older persons with visual impairments.

Discussion: We appreciate the commenters' concerns surrounding the potential elimination of the "voice" of older individuals who are blind or visually impaired that resulted from the transfer of the IL programs to HHS. However, the previous SPIL requirements for IL coordination with the OIB program and for including any new methods or approaches for providing OIB services were minimal.

In addition, nothing prohibits older individuals who are blind or visually impaired from participating in the development of the SPIL. In fact, for the periodic review and revision of the SPIL, section 704(a)(3)(C)(ii)(II) of the Act requires collaboration and working relationships with, among others, entities carrying out programs that provide independent living services and that serve older individuals. Furthermore, some State OIB programs have developed advisory committees to provide input into determining the needs of the older blind population and developing the services required to meet those needs.

While we appreciate the recommendation to add an OIB section to the VR services portion of the Unified or Combined State Plan, section 101(a) of the Act dictates its required components, which do not include the OIB program. We encourage OIB consumers to make their views known to the DSA and other service providers, and we encourage State OIB programs to develop strategies to coordinate and link OIB programs with other disability and aging-related activities and programs within each State to maximize collaboration and availability of services.

Change: None.

Subpart F—What conditions must be met after an award?

Use of Program Income (§ 367.65(a)(2) and (b)(2))

Comment: None.

Discussion: After further review, we have revised § 367.65 to clarify that payments received by the State agency, subrecipients, or contractors for IL services provided under the OIB program to individual consumers will be treated as program income. We have also revised final § 367.65(b)(2) to require OIB grantees to use program income only to supplement the OIB grant. Grantees will not be permitted to deduct program income from the grant.

Upon closer examination of the grant formula set forth in the statute, we have concluded that the use of the deduction method would, in effect, result in a reduction of an OIB program grantee's allotment. Absent specific statutory authority, these reductions would be inconsistent with the statute and general appropriations law principles. In reviewing the grantees' financial reports, we have found that very few, if any, OIB programs elect to use the deduction method. Instead, most, if not all, grantees elect to use the addition method, which is still permissible and, in fact, will be the only permissible use of program income under the OIB final regulations. We do not believe this change will negatively affect any grantee.

Changes: We have added § 367.65(a)(2), stating that payments received by the State agency, subrecipients, or contractors from insurers, consumers, or others for IL services provided under the OIB program to defray part or all of the costs of services provided to individual consumers will be treated as program income. We have revised final § 367.65(b)(2) to permit grantees to use program income only to supplement their OIB grant and have removed all references to the deduction method.

The Requirements That Apply to the Obligation of Federal Funds and Program Income (§ 367.66)

Comment: None.

There has been a long-standing, government-wide requirement under the common rule implementing former OMB Circular A–102 and the former OMB guidance in Circular A–110, as codified by the Department of Education at former 34 CFR 80.21(f)(2) and

74.22(g), respectively, that non-Federal grantees must expend program income prior to drawing down Federal grant funds. The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance), codified at 2 CFR part 200, were adopted by the Department at 2 CFR 3474 on December 19, 2014 (79 FR 76091), and apply to all new and continuing awards made after December 26, 2014.

The new 2 CFR 200.305(a) specifies the payment procedures that States must use to draw down Federal funds; however, these procedures appear, on the surface, to apply only to funds included in a Treasury-State Agreement (TSA), and not all Federal program funds made available to States are subject to TSAs. For this reason, 2 CFR 200.305(a) has created an ambiguity about how States should draw Federal funds under non-TSA programs.

Moreover, TSAs do not cover program income earned by State grantees, and 2 CFR 200.305(a) does not address whether States should expend available program income funds before requesting additional Federal cash, which had been the long-standing government-wide requirement in OMB Circular A–102 and codified for Department grantees at 34 CFR 80.21(f)(2). This silence creates concern because, for all other non-Federal entities, 2 CFR 200.305(b)(5) requires them to expend available program income funds before requesting payments of Federal funds.

While the silence in 2 CFR 200.305(a) creates an unintended ambiguity, we do not believe that it should be construed to change the prior rule and remove the requirement that States must expend program income funds before requesting additional Federal cash. No such policy change was discussed in the preambles to either the final guidance in 2 CFR part 200, which was published on December 26, 2013 (78 FR 78589), or in the Interim Final Guidance published on December 19, 2014 (79 FR 75867).

Further, § 361.63(c)(2) permits the transfer of VR Social Security reimbursement program income to carry out programs under title VII, Chapter 2 of the Act (Independent Living Services for Older Individuals Who Are Blind). For this reason, we believe it is essential that we resolve this unintended ambiguity for the OIB program.

We proposed in the NPRM to incorporate the requirement to expend program income before requesting payment of funds by referencing 2 CFR 200.305(a). Given the ambiguity in that section, however, the proposed rule did not clearly state the requirement. We resolve the ambiguity by revising § 367.66(c) to explicitly require States to expend available program income funds before requesting additional cash payments, as was the long-standing requirement under former 34 CFR 80.21(f)(2).

We believe this change is essential to protect the Federal interest by using program income to increase the funds devoted to this program, to which VR Social Security reimbursement program income may also be transferred, keeping to a minimum the interest costs to the Federal government of making grant funds available to the States. This change should not negatively affect States because it merely maintains the status quo that existed under 34 CFR 80.21(f)(2).

Changes: We have revised final § 367.66(c) to make clear that all designated agencies must disburse program income prior to drawing down Federal funds or, as stated in 2 CFR 200.305(b)(5), "requesting additional cash payments." Finally, we have made other technical and conforming edits.

Financial Participation

Comment: One commenter pointed out that the proposed regulations did not address how a grantee should consider a consumer's ability to pay.

Discussion: We agree that the proposed regulations did not address the subject of financial participation by consumers of the OIB program. Since there is neither a Federal requirement for, nor prohibition of, consumers of the OIB program to participate in the cost of IL services, we believe it is beneficial to address the commenter's suggestion by including regulatory language to provide guidance to States that might want to consider this as an option.

Change: We added new § 367.67—*May an individual's ability to pay be considered in determining his or her participation in the costs of OIB services?* A State is neither required to charge, nor is it prohibited from charging, consumers for the cost of IL services provided under the OIB program. Also, a State is neither required to, nor prohibited from, considering the ability of individual consumers to pay for the cost of OIB services in determining how much a particular consumer must contribute to the costs of a particular service. However, specific requirements apply if the State does choose to charge consumers or allow providers of services to charge consumers for services provided under the OIB program. Specific requirements also apply if the State considers, or allows providers of services to consider, the ability of individual consumers to pay for the cost of OIB services. These requirements are outlined in the new § 367.67. Because this is a new section added to the regulations, the sections after it are renumbered accordingly.

CAP (§ 367.68)

Comment: One commenter, noting the inclusion of the notice of the availability of CAP in this subpart, remarked that the OIB regulations should, but do not, address appeals procedures.

Discussion: The Act does not include an appeals procedure for the OIB program; therefore, there is no statutory authority to include any regulations beyond those relating to the availability of CAP to the OIB program.

Change: None.

What are the special requirements pertaining to the protection, use, and release of personal information? (§ 367.69)

Comments: None.

Discussion: We anticipate that other Federal and State agencies, and researchers will have an increased interest in using the data required to be collected by programs established under the Act, including the OIB program. Therefore, after further departmental review, we have strengthened the protection of the confidentiality of personal information collected by the OIB program by requiring in final § 367.69 that designated State agencies and service providers enter into written agreements with any entity seeking access to this information for the purpose of audits, evaluations, research, or for other program purposes. This change is consistent with revisions to final 34 CFR 361.38 governing the protection of confidentiality of personal information collected by the VR program.

Changes: We have revised final § 367.69(a), (d), and (e)(1) by requiring that designated State agencies and service providers enter into written agreements with other organizations and entities receiving personal OIB program information during the conduct of audits, evaluations, research, and for other program purposes.

Client Assistance Program (CAP), 34 CFR Part 370

Summary of Changes

In the preamble of the NPRM, we discussed on pages 20991 through 20994 the major changes proposed to part 370 that would implement the amendments to the CAP made by WIOA and WIA. To implement those changes made by WIA, the Secretary proposed amending the regulations governing the redesignation of a designated CAP

agency to require the governor to redesignate the designated CAP agency if it is internal to the designated State agency (DSA) for the Vocational Rehabilitation program and that DSA undergoes a significant reorganization that meets certain statutory criteria.

The Secretary also proposed making three substantive changes to incorporate statutory changes made to section 112 by WIOA. First, we proposed adding the protection and advocacy system serving the American Indian Consortium as an entity eligible to receive a CAP grant. Second, we proposed requiring the Secretary to reserve funds from the CAP appropriation, once it reaches a specified level, to award a grant for the provision of training and technical assistance to designated CAP agencies. Finally, we proposed clarifying that authorized activities under the CAP include assisting client and client-applicants who are receiving services under sections 113 and 511 of the Act.

In addition to substantive changes required by statutory amendments, the Secretary proposed making other changes to update part 370 so that it, among other things, conforms with RSA practice (*i.e.,* with regard to submission of application and assurances), reflects current CAP grantee practice (*i.e.,* with regard to contracts with centers for independent living), and conforms to the new Uniform Guidance at 2 CFR part 200.

There are no differences between the NPRM and these final regulations, except that, as a result of our further review, we clarify in final § 370.47 requirements related to the use of program income and make other minor technical changes.

Public Comment: In response to our invitation in the NPRM, 41 parties submitted comments on the proposed regulations amending the CAP (part 370). In general, these comments supported the proposed regulations. We provide an analysis of public comments by subject and section only for those regulations about which we received opposing comments or requests for clarification. In addition, we provide an explanation of the clarification in § 370.47 regarding requirements related to the use of program income.

Clients and Client-Applicants (§ 370.1)

Comments: A few commenters supported the revision to § 370.1 clarifying that CAP services are available to assist individuals seeking or receiving services under sections 113 and 511 of the Act. Yet, a few other commenters believe the same proposed regulations were confusing in that the terms "clients" and "client-applicants" would not include those individuals who are potentially eligible to receive pre-employment transition services. These commenters recommended that we incorporate the definitions of "student with a disability" and "youth with a disability" within this part to clarify that these individuals are clients and client-applicants. These commenters also recommended that we amend this section to prohibit the provision of CAP services to youth with disabilities seeking subminimum wage employment in sheltered settings.

Discussion: We appreciate the commenters' support for this regulation. We disagree that there is a need to clarify in the regulation that students and youth with a disability, including those students with disabilities seeking or receiving pre-employment transition services, are clients and client-applicants for the purposes of this part. As defined in § 370.6, "client or client-applicant" means an individual receiving or seeking services under the Act, respectively. Moreover, section 112(a) makes clear that CAPs may serve clients and client-applicants who are receiving services under section 113—*e.g.,* students with disabilities. In fact, students and youth with disabilities may be eligible to receive a wide range of services under the Act, such as transition services, training, transportation, supported employment, and independent living. Therefore, students and youth with disabilities who are receiving services under the Act are clients and client-applicants for purposes of part 370 and are, therefore, eligible to receive CAP services.

We also appreciate the commenter's concerns about the payment of subminimum wages to youth with disabilities. However, we disagree that we should prohibit the provision of CAP services to youth with disabilities seeking subminimum wage employment. Section 112(a) of the Act, as amended by WIOA, specifically establishes CAPs to assist clients and client-applicants with all benefits and services available under the Act, including those required by section 511. Given this mandate, there is no authority under the Act for the Secretary to prohibit the provision of CAP services to youth with disabilities seeking subminimum wage employment, regardless of the setting. We believe that the final regulation is consistent with the statute.

Change: None.

Requirements for Redesignation (§ 370.10)

Comments: One commenter supported the proposed changes in this section. However, another commenter suggested that redesignation should ultimately be based on criteria, such as the efficiency and effectiveness of the grantee as assessed by RSA through its monitoring activities, in addition to the determination of "good cause" by the governor.

Discussion: We appreciate the comment supporting this regulation, as well as the recommendation from the commenter regarding criteria on which to base the redesignation of a CAP grantee. However, other than a determination of good cause by the governor, the Act does not provide the Secretary with authority to specify criteria that would require the redesignation of a designated CAP agency. We believe that the final regulation is consistent with the statute.

Change: None.

Access to Records and Monitoring

Comments: Several commenters were concerned that the proposed regulations did not provide CAPs with the authority to access records and conduct monitoring to help carry out the mandate to assist individuals seeking or receiving services under sections 113 and 511 of the Act. These commenters recommended that CAPs be given the same authority to access records as do other component programs, including the PAIR program, of the protection and advocacy system established under the Developmental Disabilities Assistance and Bill of Rights Act of 2000, believing this general authority would enable CAP grantees to access records and documentation developed under both sections 113 and 511 of the Act.

Discussion: We disagree with the commenters' recommendation. Although many CAPs are housed within a State's protection and advocacy system, section 112 of the Act neither establishes the CAP as a mandatory component of the protection and advocacy system nor requires that the CAP have the same general authorities as those established in part C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000.

Rather, section 112(a) of the Act establishes CAPs to: (1) Advise and inform clients and client-applicants of all services and benefits available to them under the Act; (2) upon the request of these clients and client-applicants, assist and advocate for these individuals in their relationships with projects, programs, and services provided under the Act; and (3) inform individuals with disabilities of the services and benefits available to them under the Act and under Title I of the Americans with Disabilities Act.

In assisting and advocating for clients and client-applicants upon their request, section 112(a) of the Act authorizes the CAP to pursue legal, administrative, or other appropriate remedies to ensure the protection of their rights under the Act and to facilitate access to, and services funded under, the Act through individual and systemic advocacy, as defined at § 370.6(b). This advocacy, whether individual or systemic, must be at the request of the client or client-applicant and must be solely for the purpose of protecting the rights of clients and client-applicants under the Act or to facilitate their access to services under the Act. In this situation alone, the CAPs could access relevant records so long as they follow the requirements of the holder of those records, which typically would require the informed written consent of the client or client-applicant. There is no authority under section 112 for the CAP to engage in advocacy for the sole purpose of gaining general access to records or conducting monitoring.

For these reasons, section 112 of the Act does not provide a basis on which to amend these regulations, as recommended by commenters, to include the same general authorities as those established in part C of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 for mandatory components of the protection and advocacy system, which the CAP is not.

Change: None.

Program Income (§ 370.47)

Comments: None.

Discussion: In further reviewing the interplay between § 370.47 and 2 CFR 200.305, the Department has determined additional clarification is necessary in final § 370.47, particularly with regard to the use of available program income.

There has been a long-standing government-wide requirement under the common rule implementing former OMB Circular A–102 and the former OMB guidance in Circular A–110, as codified by the Department at former 34 CFR 80.21(f)(2) and 74.22(g), respectively, that non-Federal grantees must expend program income prior to drawing down Federal grant funds. The Uniform Guidance, codified at 2 CFR part 200, was adopted by the Department at 2 CFR part 3474 on December 19, 2014 (79 FR 76091) and applies to all new and continuing awards made after December 26, 2014.

The new 2 CFR 200.305 specifies the payment procedures that non-Federal entities must use to draw down Federal funds; however, 2 CFR 200.305(a), which applies to State agencies, does not address whether designated agencies that are State agencies should expend available program income funds before drawing down Federal funds, as had been the long-standing government-wide requirement under OMB Circulars A–102 and A–110.

This silence creates concern because 2 CFR 200.305(b)(5), which appears to apply to non-Federal entities other than States, requires that those entities expend available program income funds before requesting payments of Federal funds. While the silence in 2 CFR 200.305(a) creates an unintended ambiguity, we do not believe that this ambiguity should be construed to change the prior rule and remove the requirement that State agencies must expend program income funds before requesting additional Federal cash. No such policy change was discussed in the preambles to either the OMB final guidance in 2 CFR part 200, which was published on December 26, 2013 (78 FR 78589), or in the Interim Final Guidance published on December 19, 2014 (79 FR 75867).

Therefore, we believe it is essential that we resolve this unintended ambiguity here. To that end, we have amended § 370.47 in these final regulations to make clear that all designated CAP agencies, regardless of their organizational structure, must expend program income before drawing down Federal funds. In so doing, we have revised final § 370.47(b)(2)(ii) to explicitly require CAP grantees to expend available program income funds before requesting additional cash payments, as was the long-standing requirement under former 34 CFR 74.22(g) and 80.21(f)(2).

We believe the change is essential to protect the Federal interest by using program income to increase the funds devoted to the CAP program and keeping to a minimum the interest costs to the Federal government of making grant funds available to the designated agencies. This change should not negatively affect designated CAP agencies that are State agencies because it merely maintains the status quo that existed under 34 CFR 80.21(f)(2).

We also have revised final § 370.47(b)(2) by requiring CAP grantees to use program income only to supplement the CAP grant. Upon closer examination of the grant formula set forth in the statute, we have concluded that the use of the deduction method would, in effect, result in a reduction of a CAP's grant allotment. Absent specific statutory authority, such reductions would be inconsistent with the statute and general appropriations law principles. In reviewing the grantees' financial reports, we have found that very few, if any, designated CAP agencies elect to use the deduction method. Instead, most, if not all, grantees elect to use the addition method, which is still permissible and, in fact, will be the only permissible use of program income under these CAP final regulations. We do not believe this change will negatively affect any grantee.

Changes: We have revised final § 370.47(b)(2) to permit grantees to use program income only to supplement their CAP grant and to remove all references to the deduction method. We have also added a new § 370.47(b)(2)(ii) to make clear that all designated CAP agencies must disburse program income prior to drawing down Federal funds or, as stated in 2 CFR 200.305(b)(5), "requesting additional cash payments." Finally, we have made other technical and conforming edits.

American Indian Vocational Rehabilitation Services Program (AIVRS), 34 CFR Part 371

Tribal Consultation

Consistent with Executive Order 13175, "Consultation and Coordination With Indian Tribal Governments," in addition to seeking input from Indian tribal governments through the public comment process, the Department conducted tribal consultations to obtain input on the proposed changes in the AIVRS program. We hosted a webinar on June 9, 2015, and invited written comments from tribal officials, tribal governments, tribal organizations, and affected tribal members. We provided an overview of the AIVRS NPRM and the proposed changes to the regulations governing the program as a result of WIOA and WIA, and we asked for tribal input regarding those proposed changes.

When announcing the tribal consultation, the Department acknowledged that it was somewhat unusual to ask for tribal input after an NPRM was published, but WIOA's requirement to publish an NPRM within six months for all the programs contained in the Rehabilitation Act, including regulations with the Department of Labor implementing the requirements for a joint state plan for the State Vocational Rehabilitation program, precluded the Department from engaging in a tribal consultation process before it needed to publish the NPRM. The consultation process also had to proceed quickly so that the Department could receive the comments before the public comment period for the NPRM ended in order for those

comments to be considered. Despite these constraints, the Indian community responded thoughtfully during the consultation process and provided 42 comments, many of them unique. Those comments were considered and are addressed along with the other public comments here.

Summary of Changes

In the preamble of the NPRM, we discussed on pages 20994 through 20998 the major changes proposed to part 371 implementing the amendments to the AIVRS program made by WIOA. These included (1) the expansion of the definition of "Indian" to include natives and descendants of natives under the Alaska Native Claims Settlement Act, (2) the amendment of the definition of "Indian tribe" to include a "tribal organization," and (3) amendments to subpart B to require the reservation of not less than 1.8 percent and not more than 2 percent of the funds for the AIVRS program for the provision of training and technical assistance to the governing bodies of Indian tribes and consortia of those governing bodies eligible for a grant under this program.

The amendments to part 371 also implement changes made by WIA in 1998 that have not previously been incorporated, such as the expansion of services to American Indians with disabilities living "near" a reservation, as well as "on" a reservation, and the change of the project period from up to three to up to five years. Additionally, we incorporate relevant sections of part 369, which the Department proposed in the NPRM to repeal, and relevant sections of part 361, particularly definitions found in each of those parts.

There are a few differences between the NPRM and these final regulations. Section 371.2(a)(2) now explicitly requires approval of the tribal government before a tribal organization may apply for an AIVRS grant and provide services to tribal members. We made a minor change in § 371.2(a)(3) to make the language consistent with § 371.2(a)(1). We modified the definition of "supported employment" in § 371.6 to reflect changes we made to the definition in 34 CFR 361.5(c)(53) so that the term is used identically in both the State VR program and the AIVRS program. We revised § 371.14 to give the Secretary the discretion to conduct the application process and make the subsequent award in accordance with 34 CFR part 75, but not require it. As a means of implementing the statutory requirement that the Secretary give priority consideration to applications for the continuation of programs that have been funded under section 121, we added paragraph (b) to § 371.32 to authorize the Secretary to provide a competitive preference to applicants who previously received an AIVRS grant. Finally, after further departmental review, we revised § 371.44 by requiring that Tribal Vocational Rehabilitation units enter into written agreements with organizations and entities when sharing personal information for the purposes of evaluations, audits, research and other program purposes.

Public Comment: In response to our invitation in the NPRM, 65 parties submitted comments on the proposed regulations amending the AIVRS program (part 371). We received comments in support of most of the proposed regulations, and we received comments questioning or opposing some. We thank the commenters for their support. We discuss only those comments that questioned or opposed particular regulations, and we organize our discussion by subject.

Funding for the AIVRS Program

Comments: Under Section 100(c)(1)–(2) of the Act, the AIVRS program is funded annually through a set-aside of not less than 1 percent and not more than 1.5 percent of the funds appropriated for the State Vocational Rehabilitation (VR) program. A number of commenters requested that the Department increase the funds available for AIVRS projects by setting aside the maximum allowable level of 1.5 percent. Most of these commenters argued that an increase in the set-aside was needed to offset the effect of the new training and technical assistance requirement on the funding available to operate AIVRS projects and asked the Department to take this into consideration in determining the annual set-aside.

Discussion: The level of funding set aside for the AIVRS program under Section 100(c)(1)–(2) of the Act is outside of the scope of the proposed rules. However, the Department is aware that the new reservation of funds for training and technical assistance, coupled with the sequester of mandatory funds under the Budget Control Act of 2011 (Pub. L. 112–25), has in recent years reduced the funds available to operate AIVRS projects and provide services to American Indians with disabilities. The Department will take these and other factors into account when determining the annual level of the AIVRS set-aside.

Changes: None.

Comments: One commenter objected generally to the amount provided for the AIVRS program, stating that the government funds minority groups inequitably and gives too much to American Indians "just for being Indian."

Discussion: The commenter's statement is outside the scope of this rulemaking. The Department is implementing a program funded by Congress based on a recognized need for vocational rehabilitation services for American Indians with disabilities.

Changes: None.

60-Month Project Period—§ 371.4

Comments: Some commenters proposed that, instead of limiting funding for AIVRS projects to five years, AIVRS projects ought to be funded permanently. These commenters stated that to compete for funds every five years, not knowing if the project will be re-funded, makes it difficult to ensure continuity of services and operate an efficient and effective program. Many of these commenters recommended that AIVRS projects, once funded, continue to be funded based on decisions from monitoring and technical assistance rather than competing for new awards every five years, much like the Centers for Independent Living program under Title VII of the Act, and some also recommended that each project receive an annual cost-of-living increase.

Discussion: Section 121(b)(3) provides that grants can be effective for up to 60 months. Because the AIVRS program is a discretionary grant program, there is no statutory authority for the Commissioner to provide permanent funding. Section 121 does not provide authority similar to that for the Centers for Independent Living program under Part C of Title VII of the Act, which permits continued funding without competition. The Department can only continue to provide funds to a grant beyond 60 months if, given exceptional circumstances, the Secretary publishes a rule that waives the requirements of 34 CFR 75.250 and 75.261(c)(2), which limit project periods to 60 months and restrict project period extensions that involve the obligation of additional Federal funds.

As for annual cost-of-living increases, there are no provisions in the statute that permit the Commissioner to provide automatic cost-of-living increases to all grantees. A grantee may request a cost-of-living increase when filing its annual performance report and budget, and the request must provide a justification for the increase. The Commissioner will review and approve or disapprove requests for a cost-of-living increase case-by-case.

Changes: None.

Consolidation of AIVRS With Other Employment and Training Programs

Comments: Two commenters requested that tribes that consolidate their employment and training programs under Public Law 102–477 (25 U.S.C. 3401, *et seq.*) be able to add the AIVRS program to the programs they are able to consolidate under that statute.

Discussion: This request is outside the scope of this rulemaking. In any event, the Department would be unable to grant it because the AIVRS program is not eligible for consolidation under Public Law 102–477 (25 U.S.C. 3401, *et seq.* The Indian Employment, Training and Related Services Demonstration Act of 1992 (Pub. L. 102–477) is a statute under which the Secretary of the Interior, in cooperation with the appropriate Secretary of Labor, Health and Human Services, or Education, upon the receipt of a plan submitted by an Indian tribal government, may authorize it to coordinate and integrate its federally funded employment, training, and related services programs into a single, coordinated, comprehensive program, which reduces administrative costs. Section 5 of that Act (25 U.S.C. 3404), however, makes clear that the only programs that may be integrated in a plan submitted by a tribe are those under which an Indian tribe is eligible for receipt of funds under a statutory or administrative formula. Because the AIVRS program is a discretionary grant program, not a formula grant program, it is not eligible for consolidation under Public Law 102–477.

Changes: None.

Training and Technical Assistance Funding (§§ 371.10–371.14)

Comments: A number of commenters recognized the value of training and technical assistance and expressed support for these activities. However, most of these commenters did not believe that these activities should be provided at the expense of services for tribal VR consumers. While some commenters stated that tribal consumers would be better served by continuing to fund direct services rather than training for tribal vocational rehabilitation programs, others expressed the need for more balance in the funding of these activities.

Discussion: New provisions in section 121(c) of the Act, implemented in subpart B of the AIVRS regulations, require the Commissioner to reserve not less than 1.8 percent and not more than 2 percent of the funds set aside for the AIVRS program for training and technical assistance to the governing bodies of Indian tribes, and consortia of those governing bodies, eligible for a grant under this program. While the Act provides the Department with the authority to determine the amount of the reservation within the statutory parameters, taking into consideration the needs of the AIVRS program, it must reserve at least 1.8 percent of the funds set aside for the AIVRS program. The Department believes that the rules in §§ 371.11 through 371.14 implementing section 121(c), as well as the rigorous requirements for training and technical assistance grantees contained in the regulatory priorities applicants must meet, will help to ensure that the training and technical assistance provided is designed to help improve the operation of AIVRS projects and the quality of services provided to their consumers.

Changes: None.

Comment: Two commenters recommended that the Department consider and explore alternate funding sources for training and technical assistance for the AIVRS program. One of these commenters suggested that these activities should be funded as a set-aside under the training and technical assistance component of the Act.

Discussion: While we appreciate the commenters' suggestions, the Department is required to reserve funds for this purpose from the AIVRS set-aside, consistent with section 121(c) of the Act.

Change: None.

Culturally Appropriate Services (§ 371.1)

Comments: A number of commenters expressed support for AIVRS providing culturally appropriate vocational rehabilitation services to American Indians with disabilities and for recognizing subsistence as a permissible employment outcome. Some commenters, however, criticized our illustration of culturally appropriate services in the NPRM preamble—"(*i.e.* services traditionally used by Indian tribes)"—as incomplete and requested that we include examples of culturally appropriate services that match the broad diversity of Indian country.

Discussion: We thank these commenters for their support. Given, however, the large number of American Indian tribes, including Alaskan Native villages and regional corporations, and their widely varying cultural practices, any list of further examples of culturally appropriate practices would also be incomplete and may exclude cultural practices that are unique to some tribes.

Changes: None.

Eligibility

Providing Services "On or Near" the Reservation (§ 371.3)

Comments: In response to the proposed language that AIVRS projects provide services to American Indians with disabilities who live on "or near" the reservation, some commenters requested guidance on how to define "near." Other commenters stated that as a matter of tribal sovereignty, it should be left to the tribes, not the Federal government, to define "near" and to define their service areas, which they do in other contexts such as working with the U.S. Census Bureau or in other Federal programs.

Discussion: We agree with the commenters that it should be the tribes who define "near" the reservation. The change allowing AIVRS projects to serve American Indians with disabilities who live "near" a reservation, as well as "on" a reservation, was made by the Workforce Investment Act (WIA), Public Law 105–120, in August 1998. We proposed adding "or near" to § 371.3 because, although we had implemented the statutory change in 1998, the regulations had not yet been updated to reflect the change. Consistent with our current practice under the statutory requirements, applicants for AIVRS grants will, as part of their applications, continue to define the service areas in which, and the populations to whom, they will provide services. RSA staff is always available to assist grantees or potential grantees in determining appropriate service areas for AIVRS grants that meet the criteria of "on or near" the applicant's reservation.

Changes: None.

Tribal Organizations (§ 371.2, § 371.6—definitions)

Comment: Some commenters objected to proposed § 371.2(a)(1)(ii), which makes tribal organizations eligible applicants under AIVRS. These commenters pointed out that tribal organizations, like some "urban" Indian organizations, need not be tribal governmental entities or even affiliated with tribes. As such, tribal organizations may not be sufficiently responsible to tribal governments, they may temporarily create programs just to establish eligibility, and they may take funding away from established AIVRS programs and from consumers in need of VR services.

Many other commenters requested that, while tribal organizations may be eligible for AIVRS grants, we should require an application from any tribal organization to have the approval of the tribe or tribes it plans to serve. A few

commenters asked who or what office must issue this approval; a few others noted that securing the necessary approvals may be difficult because an AIVRS project may provide services to members of several different tribes. Finally, some commenters suggested that there be a single tribal entity within the tribal government to conduct all AIVRS activities.

Discussion: The amendments to WIOA added "tribal organizations" to the definition of "Indian tribe" in section 7(19)(B) of the Act. Because Indian tribes are eligible for grants under the AIVRS program, in § 371.2, the Department is implementing a statutory requirement: Tribal organizations are eligible for AIVRS grants. Specifically, Section 7(19)(B) includes in the definition of "Indian tribe," "a tribal organization (as defined in section 4(l) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(l))." Section 371.6 of the regulations adopts that definition. Under § 371.6, a tribal organization is:

1. The recognized governing body of any Indian tribe; or
2. Any legally established organization of Indians that is controlled, sanctioned, or chartered by the governing body of an Indian tribe; or
3. Any legally established organization of Indians that is democratically elected by the adult members of the Indian community to be served by the organization and that includes the maximum participation of Indians in all phases of its activities.

As such, if the organization is not the actual governing body of the tribe, it nevertheless has close ties to the governing body because the body has created it, authorized it, or is actually controlling it, or the organization has close ties to the tribal members because they have elected the membership of the tribal organization. Therefore, we do not believe that the concern expressed about "urban" tribal organizations that are unaffiliated with tribes competing with existing AIVRS projects, perhaps by creating pretextual vocational rehabilitation programs, is a likely outcome of this regulatory change. We also note that the tribal organization must also meet the other eligibility requirements under § 371.2(a), including that they be located on Federal or State reservations. If the tribal organization is not a tribal governing body, then the tribes that make up the tribal organization have to meet the reservation requirement, again creating a close connection with the tribes themselves.

Although we believe that the definition of "tribal organization" already requires a close connection with an Indian tribe, we agree with the commenters that applications from tribal organizations should have the approval of the tribal governments the organizations seek to serve. In part, the proposed regulations already required this.

If a tribal organization serves more than one tribe, § 371.2(a)(3) requires the organization to obtain the approval of each of the tribes it seeks to serve. This requirement already applies to a consortium and a tribal government seeking to serve more tribes than its own. However, the proposed regulations did not explicitly require a tribal organization that is not a tribal government and seeks to serve only one tribe, to obtain approval to apply for an AIVRS grant from that tribal government.

We are, therefore, adding this requirement as § 371.2(a)(2)(ii). This will ensure that it is the tribal governments that ultimately have the authority to determine the services provided to their members and the entity authorized to provide those services.

Approval must be a formal action taken by the tribal government. It will often come in the form of a resolution from the tribal council. However, as the forms of government among the tribes are so many and varied, we cannot make an exhaustive list of the entity that must issue the approval or specify what form the approval must take. It may be sufficient for the tribal council to authorize a tribal organization to apply for any health or social service grant on its behalf and provide those services to its members. The council may not have to pass resolutions for each grant application. However, these are matters dictated by tribal law, as is the decision regarding the entity that will provide tribal vocational rehabilitation services to its members.

As for the difficulty of securing approvals when multiple tribes are to be served, this change merely applies the existing approval requirement for consortia and inter-tribal agreements to tribal organizations, and our experience suggests that there is no great difficulty in securing the necessary approvals. The number of approvals may, in fact, be smaller than commenters suggested. The tribal organization needs approvals only from those tribes on (or near) whose reservations the tribal organization plans to provide services. The tribal organization is under no obligation to identify the tribal affiliation of all residents of those service areas who the AIVRS project may serve and who may have a different tribal affiliation, nor must it seek approval from those tribes.

Changes: We have amended § 371.2(a)(2) and added new § 371.2(a)(2)(ii) to require that, in order to receive a grant under this section, a tribal organization that is not a governing body of an Indian tribe must have the approval of the tribe to be served by the organization.

Who may make an application under the AIVRS Program? (§ 371.2)

Comments: None.

Discussion: Section 371.2(a) implements the statutory authorization that permits applications for the AIVRS program to be made by the governing bodies of Indian tribes or consortia of those governing bodies. Section 371.2(a)(1) implements the Education Department General Administrative Requirement at 34 CFR 75.128 that groups of applicants can only apply either by designating one member of the group—one of the governing bodies—to apply on behalf of the group or by establishing a separate eligible legal entity to apply for the group. In the proposed regulations, § 371.2(a)(3) discussed grants being made to "the governing body of an Indian tribe, a consortium of those governing bodies, or a tribal organization." However, in order to be consistent with 34 CFR 75.128 and § 371.2(a)(1), § 371.2(a)(3) must recognize that grants cannot go to a consortium itself but must go to a tribal governing body or a tribal organization on behalf of the consortium.

Changes: We have revised final § 371.2(a)(3) to reflect that grants are made to "the governing body of an Indian tribe, either on its own behalf or on behalf of a consortium, or to a tribal organization. . . ."

Who Is Eligible To Receive Services (§ 371.3)

Comment: A few commenters expressed concern about providing services to descendants of Alaska Natives. They asked about who determines their tribal membership and how those services would be funded.

Discussion: Section 371.3 implements the statutory authorization in section 121(a) of the Act that makes American Indians with disabilities who reside on or near reservations eligible for services under AIVRS. WIOA amended Section 7(19)(A) to include within the definition of "American Indian" a "Native and a descendant of a Native as such terms are defined in subsections (b) and (r) of section 3 of the Alaska Native Claims

Settlement Act (ANCSA), 43 U.S.C. 1602."

"Native" is defined in subsection (b) of section 3 of ANCSA as a citizen of the United States who is a person of one-fourth degree or more Alaska Indian (including Tsimshian Indians not enrolled in the Metlakatla Indian Community) Eskimo, or Aleut blood, or combination thereof. The term includes any Native as so defined either or both of whose adoptive parents are not Natives. It also includes, in the absence of proof of a minimum blood quantum, any citizen of the United States who is regarded as an Alaska Native by the Native village or Native group of which he claims to be a member and whose father or mother is (or, if deceased, was) regarded as Native by any village or group. Alaska native villages and regional village corporations are included in the Rehabilitation Act's definition of "Indian tribe," and Alaska Natives are their members.

"Descendant of a Native" is defined in subsection (r) in section 3 of ANCSA as—

(1) A lineal descendant of a Native or of an individual who would have been a Native if such individual were alive on December 18, 1971, or

(2) An adoptee of a Native or of a descendant of a Native, whose adoption—

(A) Occurred prior to his or her majority,

and

(B) Is recognized at law or in equity.

We understand the essence of the commenters' concern to be that the Act makes descendants of natives eligible for services under AIVRS, but not all descendants of natives are members of their parents' native corporations or tribes, potentially resulting in AIVRS projects providing services to non-tribal members. However, the Act does not require tribes to make any determination about the membership status of those eligible; it merely prescribes the pool of individuals eligible for services funded by Federal money. While this change in the American Indians with disabilities eligible for services may increase the number of consumers seeking services, we do not believe it will be such a substantial increase that the affected AIVRS projects cannot absorb it.

Changes: None.

Definitions of "Competitive Integrated Employment," "Employment Outcome," and "Subsistence" (§ 371.6)

Comments: Some commenters expressed strong support for the definitions of "competitive integrated employment," "employment outcome," and "subsistence" in § 371.6. Several commenters recommended that the Secretary continue to recognize homemaker and unpaid family worker outcomes as appropriate vocational outcomes for purposes of the AIVRS program.

Alternatively, a few commenters suggested that we include homemaker and unpaid family worker outcomes within the definition of "subsistence." One commenter recommended that we include a note in the definition of "employment outcome" that subsistence occupations are approved employment outcomes. Another commenter asked if we intend that the definition of "subsistence" apply only to individuals served through the AIVRS program or if it applies to all individuals served through the VR program, including those individuals who live in rural areas where few opportunities for competitive integrated employment exist. This commenter also asked if we propose any limits on hobby-type activities as self-employment outcomes.

One commenter requested that we clarify the meaning of "culturally appropriate" as used in the definition of "subsistence" and the preamble to the NPRM covering the VR program regulations by providing examples.

Finally, one commenter recommended that we standardize the definition of "competitive integrated employment" in § 371.6 with the definition of that term in 34 CFR 361.5(c)(9) for the State Vocational Rehabilitation (VR) Services program, noting that the two definitions vary in some technical respects.

In light of the interrelationship between the terms "competitive integrated employment," "employment outcome," and "subsistence," we address the comments on these definitions together.

Discussion: We appreciate the support expressed by the commenters. We believe that consistency in interpretation and implementation of the regulations governing the AIVRS and VR programs is essential given the large number of American Indians and Alaskan Natives with disabilities who are eligible for services from both programs, some of whom may be served by the programs sequentially or even simultaneously.

This is imperative for the definition of "employment outcome," which is the basis for services provided by both programs. As explained in more detail in the final regulations governing the VR program published elsewhere in this issue of the **Federal Register**, we have eliminated uncompensated outcomes, including homemaker and unpaid family worker outcomes, from the scope of the definition of "employment outcome" in 34 CFR 361.5(c)(15). Although section 7(5) of the Act, as amended by WIOA, permits the Secretary to include within this definition other appropriate vocational outcomes, the Secretary must exercise this discretion in a manner consistent with the Act.

Because of the extensive emphasis on competitive integrated employment throughout the Act, as amended by WIOA, it is no longer consistent with the Act to include uncompensated outcomes within the scope of the definition of "employment outcome." Because we believe it is necessary to implement the term consistently under both the VR and AIVRS programs, we cannot include homemaker and unpaid family worker outcomes within the scope of the definition of "employment outcome" solely for the purposes of the AIVRS program as the commenters requested. For these reasons also, we disagree with the recommendation to include homemaker and unpaid family worker outcomes within the definition of "subsistence" in § 371.6, which is defined as a form of self-employment and, thus, considered an allowable employment outcome under both the AIVRS and VR programs.

We define "subsistence" in § 371.6 for purposes of the AIVRS program to mean a form of self-employment in which individuals use culturally relevant or traditional methods to produce goods or services for household consumption or non-commercial barter and trade that constitute an important basis for the individual's livelihood. The definition of "employment outcome" in 34 CFR 361.5(c)(15) encompasses all forms of competitive integrated employment and specifically mentions self-employment. Because we consider subsistence occupations to be a form of self-employment, these occupations are already within the scope of the definition of "employment outcome," and it is not necessary to revise the definition to refer specifically to subsistence as recommended by the commenters.

To ensure consistency in the interpretation of "competitive integrated employment" under both the VR and the AIVRS programs, we stated in the preamble to the NPRM for the VR program that we understand subsistence employment as a form of self-employment common to cultures of many American Indian tribes (see NPRM, State Vocational Rehabilitation Services Program, Supported Employment Services Program, and

Limitations on the Use of Subminimum Wage, 80 FR 21059, April 16, 2015). We do not intend that statement, or the inclusion of the definition of "subsistence" only in § 371.6, to limit services designed to assist individuals to achieve subsistence occupations to those served through the AIVRS program.

In addition, while we believe that subsistence occupations are most culturally relevant to American Indian and Alaskan Native tribes, we recognize that individuals may engage in traditional occupations in other native cultures. Thus, DSUs may find it appropriate to assist individuals from cultures other than American Indian and Alaskan Native tribes, such as individuals living in the Territories, to achieve self-employment in subsistence occupations. However, because the definition of "subsistence" in § 371.6 requires that the subsistence occupation be culturally relevant to the individual, we decline to extend the applicability of subsistence occupations to other individuals solely on the basis of their location in rural areas, even though there may be few opportunities for competitive integrated employment in those areas. Examples of subsistence occupations that are culturally relevant to American Indian or Alaskan Native tribes can include the exchange of fish caught, or grain raised, by the individual with the disability for other goods produced by other members of the tribe that are needed by the individual to live and maintain his or her home. Given, however, the large number of American Indian tribes, including Alaskan Native villages and regional corporations, and their widely varying cultural practices, any list of further examples of culturally relevant practices would also be incomplete and may exclude cultural practices that are unique to some tribes.

Since the definition of "subsistence" in § 371.6 requires that the activity be important to the individual's livelihood, AIVRS grantees cannot provide services to enable individuals to engage in mere hobbies, as hobbies do not meet the criteria for self-employment as an employment outcome.

Finally, to avoid any misperception that the definitions of "competitive integrated employment" in 34 CFR 361.5(c)(9) pertaining to the VR program and that in § 371.6 applicable to the AIVRS program differ based on the lack of technical consistency, we have made the definitions identical.

Changes: We have made the definition of "competitive integrated employment" in final § 371.6 consistent with the definition of that term in 34 CFR 361.5(c)(9) by making technical changes.

Definition of "Supported Employment" (§ 371.6)

Comment: One commenter noted that the definition of "supported employment" in the Act no longer includes "transitional employment for individuals with mental illness" and recommended that we remove reference to this type of employment from the definition of "supported employment."

Discussion: Many other organizations and individuals submitted comments, in addition to the one comment discussed here submitted in connection with the AIVRS regulations, on the definition of "supported employment" in the proposed State VR regulation, 34 CFR 361.5(c)(53). We discuss all of these comments in detail in the final rule amending 34 CFR 363, published elsewhere in this issue of the **Federal Register**. As a result of those comments, we have removed the reference to "transitional employment" from the definition of "supported employment" in § 361.5(c)(53) and have made other conforming changes to the definition of "supported employment" in § 371.6 so that it is consistent with the definition in § 361.5(c)(53).

Changes: We have revised the definition of "supported employment" in final § 371.6 so that it is substantively identical to the definition of that term in § 361.5(c)(53). The only difference between the two definitions is that where § 361.5(c)(53) refers to a "Designated State Unit," the service provider under the State VR program, the definition in § 371.6 refers to the "Tribal Vocational Rehabilitation Unit," the appropriate term for the service provider under AIVRS.

Pre-Employment Transition Services and Coordination With AIVRS Projects (34 CFR 361.48(a), 34 CFR 361.24(d), and 34 CFR 361.65)

Comment: Some commenters recommended that State VR agencies be required to include in their formal interagency agreements with AIVRS projects and to address in agreements with Tribal Education Agencies in the State how the State VR agency plans to provide equitable pre-employment transition services to American Indian students and American Indian youth with disabilities and how services to American Indian students with disabilities will be incorporated into the budgeting and spending plans for the State's 15% set aside for transition of students with disabilities.

Discussion: We note at the outset that only American Indian students with disabilities, rather than American Indian youth with disabilities, are eligible for pre-employment transitions services, as explained in more detail in the discussion of comments on 34 CFR 361.48(a) in the final rule amending part 361 published elsewhere in this issue of the **Federal Register**. While we understand the commenters' concerns regarding the need to ensure that coordination among the DSU, AIVRS program, and educational agencies is taking place and that transition services, including pre-employment transition services, are provided to American Indian students with disabilities, the Department believes that the final regulations in part 361 accomplish this. The final regulation at 34 CFR 361.24 addresses the need for coordination among these entities and for providing transition services to American Indians living on or near a reservation. Section 361.24(d)(1) requires the VR services portion of the Unified or Combined State Plan to include a formal cooperative agreement with AIVRS programs. Section 361.24(d)(2) sets out requirements for that cooperative agreement, and those include strategies for providing transition planning under § 361.24(d)(2)(iii). Furthermore, the Federal funds reserved in accordance with 34 CFR 361.65, and any funds made available from State, local, or private funding sources, are to be used to provide pre-employment transition services to all students with disabilities, including American Indian students with disabilities, in need of such services. We also discuss comments on these sections in more detail in the final rule amending 34 CFR part 361 published elsewhere in this issue of the **Federal Register**.

Changes: None.

Definition of "Transition Services" (34 CFR 361.5(c)(55) and 371.6)

Comments: None.

Discussion: We have made changes to the definition of "transition services" in final § 371.6 to make it consistent with the definition of that term in final 34 CFR 361.5(c)(55) for purposes of the AIVRS program. Specifically, we revised the definition to clarify that it applies to students and youth with disabilities and includes outreach to parents, or, if appropriate, representatives of the student or youth.

Changes: We have revised the final § 371.6 so that the definition of "transition services" is consistent with the definition of the term in final 34 CFR 361.5(c)(55).

Evaluation of an Application for a Training and Technical Assistance Award (§ 371.14(b))

Comment: A number of commenters recommended that, for a training and technical assistance award, the Secretary make mandatory a 10-point competitive preference priority for applications that include as project personnel in a substantive role individuals who have been employed by a tribal VR unit as a project director or VR counselor.

Discussion: While we believe that this competitive preference priority in final § 371.14(b) should be available to the Secretary to implement the training and technical assistance requirement of section 121(c)(2) of the Act, we disagree with the commenters that the priority should be mandatory and that it should always be worth 10 points. When appropriate to an AIVRS training and technical assistance competition, we will publish this competitive preference priority, and its point value, in the notice inviting applications for the competition.

Changes: None.

How does the Secretary evaluate an application? (§ 371.14(c))

Comments: None.

Discussion: When WIOA added a training and technical assistance authority to the AIVRS program, it gave the Secretary the ability to make awards by grant, cooperative agreement or contract. Since the Department generally makes these awards by grants using the procedures in part 75, which uses the peer review process identified in the statute, we added a subsection to the NPRM that provided that the Secretary would use the procedures in part 75, even when awarding a contract. However, upon further reflection, we have determined that there may be circumstances when the Department has an amount of funds that is too small to compete but could be used to support a contract consistent with the training and technical assistance authority, in the form of a task order or modification under an existing Department contract for example, in which case, the Department would not want to use the grant processes in part 75. Therefore, we have determined that it is more appropriate to change the language in this subsection to give the Secretary the authority to use part 75 if awarding a contract, where the Secretary determines it is appropriate but not require its use.

Changes: We have revised final § 371.14(c) to give the Secretary the discretion to conduct the application process and make the subsequent award in accordance with 34 CFR part 75, but not require it.

What other factors does the Secretary consider in reviewing an application? (§ 371.32)

Comment: A number of commenters recommended that, in addition to the competitive preference priority for the training and technical assistance award in § 371.14(b), the Secretary also make mandatory a 10-point competitive preference priority for applications for the AIVRS program that include as project personnel in a substantive role individuals who have been employed by a tribal VR unit as a project director or VR counselor.

Discussion: We do not believe that this competitive preference is appropriate for the AIVRS program, whereas it is appropriate for the training and technical assistance program. While the quality of the project personnel is part of the selection criteria for both projects, the training and technical assistance applicants generally have a primary background in providing training, not necessarily VR services or VR services to American Indians. The competitive preference for training and technical assistance is a way to encourage applicants to consider personnel who have a background in the appropriate training and familiarity with the community that will be receiving the technical assistance. By contrast, the AIVRS projects require personnel with experience in tribal VR services.

We do think, however, that this regulatory section should include a provision implementing the statutory requirement to give priority consideration to applications for the continuation of programs that have been funded under section 121. Although the Department has implemented this statutory requirement through its notices inviting applications, we believe it is appropriate to have a corresponding regulatory provision for the statutory requirement.

Changes: We have added final § 371.32(b), which provides that the Secretary may award a competitive preference to applications for the continuation of programs that have previously been funded under this program.

Stipends

Comment: One commenter stated that tribal vocational rehabilitation programs should be able to pay a stipend for on-the-job training and work experiences as is done under the State VR program.

Discussion: On-the-job training (OJT) and other work experiences (*e.g.* internships) are allowable vocational rehabilitation services for individuals under the State VR program (34 CFR 361.48(b)(6)) and the definition section of the AIVRS program regulations (final § 371.6(b)). A VR agency or AIVRS project may provide paid work experiences, such as OJT and internships, as a VR service so long as the agency determines that it is necessary for the individual to achieve an employment outcome. In all instances, the VR agency purchases goods or a service that benefit the consumer. Since the work experience is considered the goods or service, the VR agency "purchases" it from the employer and reimbursement is provided to employers for these paid work experiences. This is typically done through a contract between the vocational rehabilitation program and an employer under which funds may be included that would assist the employer in providing compensation to the trainee.

Changes: None.

What are the special requirements pertaining to the protection, use, and release of personal information? (§ 371.44)

Comments: None.

Discussion: We anticipate that other Federal and State agencies, and researchers will have an increased interest in using the data required to be collected by programs established under the Act, including the AIVRS program. Therefore, after further departmental review, we have strengthened the protection of the confidentiality of personal information collected by the AIVRS program by requiring in final § 371.44 that Tribal Vocational Rehabilitation units enter into written agreements with any entity seeking access to this information for the purpose of audits, evaluations, research, or for other program purposes. This change is consistent with revisions to final 34 CFR 361.38 governing the protection of confidentiality of personal information collected by the VR program.

Changes: We have revised final § 371.44(a), (d), and (e)(1) by requiring that Tribal Vocational Rehabilitation units enter into written agreements with other organizations and entities receiving personal AIVRS program information during the conduct of audits, evaluations, research, and for other program purposes.

Rehabilitation National Activities Program, 34 CFR Part 373

Summary of Changes

In the preamble of the NPRM, we discussed on pages 20998 through 20999 the major changes proposed to part 373 implementing the amendments to the Rehabilitation National Activities Program made by WIOA. These include: (1) A new name for the program—the Rehabilitation National Activities Program—that better describes the broad nature of the types of activities that may be funded under this authority; (2) as appropriate, the addition of a definition of "vocational rehabilitation services" and the replacement of the term "rehabilitation services" with "vocational rehabilitation services;" (3) the addition of two new statutory priorities pertaining to transition from education to employment and competitive integrated employment; and (4) the addition of four priorities to address the technical assistance and training needs of State vocational rehabilitation agencies and their personnel.

In addition to minor editorial and technical revisions, there is one difference between the NPRM and these final regulations. In final § 373.4, we added a paragraph (3) to the definition of "early intervention" that lists individuals receiving disability benefits from an employer's disability insurance policy.

Public Comment: In response to our invitation in the NPRM, four parties submitted comments on the proposed regulations amending the Rehabilitation National Activities Program (part 373). We set out our analysis by section.

§ 373.4 Definitions, Early Intervention

Comment: One commenter noted that people with emerging disabilities or disabilities that have increased in severity are among those most at risk for loss of employment. For these people, entering onto an employer's disability insurance plan is often the first step to public disability benefits. The commenter therefore recommended that we add this population to the list of example populations in the definition of "early intervention" in proposed § 373.4 that may receive early intervention services.

Discussion: We agree with the commenter. As the populations listed in the definition are illustrative and not exclusive, we believe it is appropriate to call attention to this at-risk population.

Change: We add a new paragraph (3) to the definition of "early intervention" that lists individuals receiving disability benefits from an employer's disability insurance policy.

§ 373.4 Definitions, "Individual With a Disability"

Comment: One commenter suggested updating the definition of "Individual with a Disability" to follow 2008 statutory changes in the Americans With Disabilities Act.

Discussion: This definition is based upon the definition in section 7 of the Act and thus cannot be changed to conform to a definition in another statute.

Changes: None.

Protection and Advocacy of Individual Rights Program (PAIR), 34 CFR Part 381

Summary of Changes

In the preamble of the NPRM, we discussed on pages 20999 through 21001 the major changes proposed to part 381 that would implement the amendments to the PAIR program made by WIOA and WIA. With regard to the statutory changes made to section 509 by WIA, we proposed adding the protection and advocacy system serving the American Indian Consortium as an entity eligible to receive a PAIR grant.

With regard to statutory changes made to section 509 by WIOA, we proposed: (1) Clarifying that PAIR grantees have the same general authorities, including to access records and program income, as the protection and advocacy system established under the Developmental Disabilities Assistance and Bill of Rights Act of 2000; and (2) clarifying that the Secretary may award funds for the provision of training and technical assistance for PAIR grantees through a grant, contract, or cooperative agreement.

There are no differences between the NPRM and these final regulations, except that, as a result of further Departmental review, we clarify in final § 381.33(e) requirements governing the use of program income.

Public Comment: In response to our invitation in the NPRM, three parties submitted comments on the proposed regulations amending the PAIR program (part 381). In general, these commenters support the proposed regulations. We provide an analysis of public comments by subject and section only for the regulation about which we received a request for clarification. In addition, we provide an explanation of the clarification in final § 381.33(e) about the use of program income.

Access to Records (§ 381.10)

Comments: A few commenters supported the proposed changes to this section that PAIR grantees have the same authority to access records as the protection and advocacy system established under the Developmental Disabilities Assistance and Bill of Rights Act of 2000. However, one commenter recommended further clarifying when PAIR grantees can exercise this access authority by including specific examples. The commenter noted that, while this access authority has been challenged in the States, PAIR grantees ultimately have been successful in exercising this authority.

Discussion: We appreciate the comments supporting this regulation. We disagree with the comment requesting that we further clarify the circumstances in which PAIR grantees can exercise their authority to access records by including examples in the regulation. As stated in the NPRM, the change is technical in nature as this long-standing authority existed prior to enactment of WIA or WIOA.

Therefore, we believe the proposed regulation was clear that PAIR grantees, as part of the protection and advocacy system, have the same authority to access records provided for under the Developmental Disabilities Assistance and Bill of Rights Act of 2000. For this reason, we believe these final regulations are consistent with the statute and no further change is warranted.

Change: None.

Program Income (§ 381.33(e))

Comments: None.

Discussion: In further reviewing the interplay between § 381.33(e) and 2 CFR 200.305, the Department has determined additional clarification is necessary in final § 381.33(e), particularly with regard to the use of available program income.

There has been a long-standing government-wide requirement under the common rule implementing former OMB Circular A–102, and the former OMB guidance in Circular A–110, as codified by the Department at former 34 CFR 80.21(f)(2) and 74.22(g), respectively, that non-Federal grantees must expend program income prior to drawing down Federal grant funds. The Uniform Guidance, codified at 2 CFR part 200, was adopted by the Department at 2 CFR part 3474 on December 19, 2014 (79 FR 76091) and applies to all new and continuing awards made after December 26, 2014.

The new 2 CFR 200.305 specifies the payment procedures that non-Federal entities must use to draw down Federal funds; however, 2 CFR 200.305(a), which applies to State agencies, does not address whether designated

agencies that are State agencies should expend available program income funds before drawing down Federal funds, as had been the long-standing government-wide requirement under OMB Circulars A–102 and A–110.

This silence creates concern because 2 CFR 200.305(b)(5), which appears to apply to non-Federal entities other than States, requires that those entities expend available program income funds before requesting payments of Federal funds. While the silence in 2 CFR 200.305(a) creates an unintended ambiguity, we do not believe that this ambiguity should be construed to change the prior rule and remove the requirement that State agencies must expend program income funds before requesting additional Federal cash. No such policy change was discussed in the preambles to either the OMB final guidance in 2 CFR part 200, which was published on December 26, 2013 (78 FR 78589), or in the Interim Final Guidance published on December 19, 2014 (79 FR 75867).

Therefore, we believe it is essential that we resolve this unintended ambiguity here. To that end, we have amended § 381.33(e) in these final regulations to make clear that all designated agencies, regardless of their organizational structure, must expend program income before drawing down Federal funds. In so doing, we have revised final § 381.33(e)(2)(ii) to explicitly require PAIR grantees to expend available program income funds before requesting additional cash payments, as was the long-standing requirement under former 34 CFR 74.22(g) and 80.21(f)(2).

We believe this change is essential to protect the Federal interest by using program income to increase the funds devoted to the PAIR program and keeping to a minimum the interest costs to the Federal government of making grant funds available to the designated agencies. This change should not negatively affect designated agencies that are State agencies because this change merely maintains the status quo that existed under 34 CFR 80.21(f)(2).

We also have revised final § 381.33(e)(2) by requiring PAIR grantees to use program income only to supplement the PAIR grant. Upon closer examination of the grant formula set forth in the statute, we have concluded that the use of the deduction method would, in effect, result in a reduction of a PAIR's grant allotment. Absent specific statutory authority, such reductions would be inconsistent with the statute and general appropriations law principles. In reviewing the grantees' financial reports, we have found that very few, if any, designated agencies elect to use the deduction method. Instead, most, if not all, grantees elect to use the addition method, which is still permissible and, in fact, will be the only permissible use of program income under the PAIR program final regulations. We do not believe this change will negatively affect any grantee.

Changes: We have revised final § 381.33(e)(2) to permit grantees to use program income only to supplement their PAIR grant and removed all references to the deduction method. We have also added a new § 381.33(e)(2)(ii) to make clear that all designated agencies must disburse program income prior to drawing down Federal funds or, as stated in 2 CFR 200.305(b)(5), before "requesting additional cash payments." Finally, we have made other technical and conforming edits in final § 381.33.

Rehabilitation Training Program, 34 CFR Part 385

Summary of Changes

In the preamble of the NPRM, we discussed on pages 21001 through 21002 the major changes proposed to part 385 implementing the amendments to the Rehabilitation Training Program made by WIOA. These include: (1) Adding supported employment and economic and business development programs to the list of programs that may benefit individuals with disabilities; (2) emphasizing the importance of maintaining and upgrading the skills of personnel who provide supported employment services and customized employment services to individuals with the most significant disabilities, as well as personnel assisting individuals with disabilities whose employment outcome is self-employment, business ownership, or telecommuting; (3) adding a definition of "vocational rehabilitation services" and replacing the term "rehabilitation services" with "vocational rehabilitation services" as appropriate; and (4) adding definitions of "supported employment" and "assistive technology" consistent with definitions in title I of the Act.

Except for minor editorial and technical revisions, there are no differences between the NPRM and these final regulations.

Public Comment: In response to our invitation in the NPRM, four parties submitted comments on the proposed regulations amending the Rehabilitation Training Program (part 385). We provide our analysis by subject.

General

Comment: One commenter recommended a requirement that training program personnel consult with small business development centers. This commenter also recommended a requirement that training programs consult with workforce board business representatives about effective telecommuting and entrepreneurship practices in their area.

Discussion: We agree that training personnel should consult with other professionals knowledgeable about small business development, since self-employment is an excellent employment option for some individuals with disabilities. For the same reason, we agree that consultation about telecommuting and entrepreneurship is appropriate. Nothing in the proposed regulations would preclude training programs or their personnel from consulting as the commenter recommends, but requiring this consultation is potentially burdensome and unnecessary.

Changes: None.

§ 385.4 Definitions, "Individual with a Disability"

Comment: One commenter suggested updating the definition of "Individual with a Disability" to align it with 2008 statutory changes in the Americans With Disabilities Act.

Discussion: This definition is based upon the definition in section 7 of the Act and thus cannot be changed to conform to a definition in another statute.

Changes: None.

Rehabilitation Long-Term Training Program, 34 CFR Part 386

Summary of Changes

In the preamble of the NPRM, we discussed on pages 21002 through 21006 the major changes proposed to part 386 implementing the amendments to the Rehabilitation Long-Term Training program made by WIOA, as well as those changes needed to update and improve the regulations. We proposed: (1) adding two areas to the training areas supported by this program (assisting and supporting individuals with disabilities pursuing self-employment, business ownership, and telecommuting; and supported employment services and customized employment services to individuals with the most significant disabilities); (2) reducing from 75 percent to 65 percent the required percentage of the total award that grantees must spend on financial assistance to scholars; (3) prohibiting scholars from concurrently

receiving financial assistance from multiple grants; and (4) requiring the grantee to document that the scholar will seek employment in the field of study in which the scholar was trained or where the field of study is directly relevant to the job functions being performed.

We also proposed a number of changes to the exit processes that will help scholars be more aware of the requirements of their service obligation, including: (1) setting out the consequences for a grantee that has failed to request or maintain the required documentation for a scholar who does not meet the service obligation; (2) allowing some scholars to start satisfying the service obligation before completion of the program of study but to prohibit other scholars who do not complete the program of study from performing the service obligation; and (3) disallowing internships, practicums, or any other work-related requirement necessary to complete the educational program as qualifying employment for the service obligation.

Finally, we proposed some changes regarding deferrals and exceptions. For an exception based on disability, the scholar must have a disability either that did not exist at the time the scholar entered the program or that has worsened since the scholar entered the program. The documentation of disability must be less than three months old. With regard to deferrals, the proposed changes included: (1) allowing for up to four years deferral for a member on active duty in the Armed Forces, an increase from the three years in prior regulations; and (2) restricting a deferral based on a scholar's pursuing higher education only to advanced education that is in the rehabilitation field.

There are four differences between the NPRM and these final regulations.

- We clarify in final § 386.20(b)(2)(iii) that the selection criterion applies only to those programs that require practica and field experiences as part of their curricula.
- To clarify allowable travel costs, we conform the language about student travel in final § 386.32(d) to the language of student travel in the definition of "scholarship" in final § 386.4.
- In final § 386.31(c), we clarify the prohibition on concurrent scholarships by setting out the grantee's obligation to make a good-faith effort to avoid awarding a scholarship to any scholar who is currently receiving another scholarship under this program.
- We further clarify the prohibition on concurrent scholarships by adding a new § 386.40(a)(4) stating that scholars are prohibited from receiving concurrent scholarships under this program.

Public Comment: In response to our invitation in the NPRM, four parties submitted comments on the proposed regulations amending the Rehabilitation Long-Term Training program (part 386). We organize our discussion by section number.

§ 386.20 Selection Criteria

Comment: One commenter stated that the selection criterion in proposed § 386.20(b)(2)(iii), evidence of focused practical and other field experiences, could not by its terms apply to short-term certificate programs that do not require practica or field experiences.

Discussion: We agree that the language in § 386.20(b)(2)(iii) is potentially unclear in this way.

Change: We have revised final § 386.20(b)(2)(iii) to state that evidence of focused practical and other field experiences is not required when those experiences are not part of the curricula of a short-term certificate program.

§ 386.31 Grant Funds

Comment: One commenter raised concerns about the provision in proposed § 386.31(c) that prohibits a scholar from receiving concurrent scholarships from multiple projects, noting that this could inadvertently bar students from certificate areas that could increase their employability. The prohibition could, for example, bar a scholar on summer break from a program leading to a master's degree from receiving a scholarship to participate in a certificate program.

Discussion: The prohibition in § 386.31(c) was intended to prevent the practice of funding scholars from multiple grants for the same academic term. This practice leads to complications in reporting and in accurately tracking whether the scholar is meeting the service obligation.

The provision at final 386.31(c) does not prohibit a scholar from receiving a scholarship for a summer certificate program while that scholar is in a master's degree supported by a scholarship under this program, so long as the scholar is not also enrolled in the master's degree program during the summer.

Changes: Because final § 386.31(c) describes grantee responsibilities, we have reworded the provision to better reflect the intent behind it—that the grantee must make good faith efforts to ensure that concurrent scholarships under this program are not awarded to a scholar. In addition, in order to ensure that scholars understand their responsibilities, we have added a provision under final § 386.40(a)(4) that sets out the scholar's responsibility not to accept concurrent scholarships under this program and clarified that this prohibition applies to scholarships for the same academic term.

§ 386.32 Allowable Costs

Comment: One commenter requested that limited travel to professional conferences be explicitly listed in § 386.32 as an allowable cost. The commenter pointed out that, in the past, grantees have been able to support scholars in this way.

Discussion: We agree that limited travel to professional conferences has been, and should continue to be, an allowable cost. Section 386.4 defines "scholarship," in part, as an award of financial assistance to a scholar for training and includes student travel in conjunction with training assignments. Limited travel to professional conferences would generally be allowable under this description.

Change: We modified final § 386.32(d) to use this language and make clear that limited travel to professional conferences is an allowable cost.

§ 386.33 Requirements for Grantees

Comment: One commenter stated that the requirement in proposed § 386.33(c)(2), that a scholar's job functions be "directly relevant" to the field of study in which his or her training was received, is potentially ambiguous and difficult to apply. The commenter noted, for example, that many States do not have a job category of Rehabilitation Counselor for the Deaf. A person might graduate from a deafness training program but get a job as a generalist and still see deaf, hard of hearing, and general caseload customers. It is unclear if this job is "directly relevant" to the scholar's field of study.

Discussion: We agree with the commenter that decisions about the relationship between a scholar's training and eventual employment are complex and that decisions about whether the employment qualifies to repay the service obligation need to be made case-by-case. The proposed § 386.33 was our effort to address this issue. We believe this language provides the necessary flexibility for sometimes difficult case-by-case analyses. For example, an individual graduating from a program focused on rehabilitation of individuals who are deaf but who ultimately finds employment as a general VR counselor has job functions "directly relevant" to his or her field of study. The individual

is providing services for which he or she was specifically trained, and, as a practical matter, it is unrealistic in this case to expect all consumers served to be deaf.

Changes: None.

§ 386.43 Failure To Meet Terms and Conditions of the Scholarship Agreement

Comment: One commenter sought clarification about calculating the date in which repayment status begins under proposed § 386.43(e)(2). The commenter referred to a situation in which the grace period has ended but a scholar finds qualifying employment only several months later, asking specifically whether the scholar enters repayment immediately upon expiration or whether it is possible to be granted an extension in order to complete the service obligation.

Discussion: According to final § 386.43(e)(2), a scholar enters into repayment status when the failure to enter into employment makes it impossible for that scholar to complete the employment obligation within the number of years required in final § 386.40(a)(8). Given that a scholar who has not entered into qualifying employment at the time the grace period has ended cannot satisfy the requirements in final § 386.40(a)(8), the scholar referenced above by the commenter would immediately be placed in repayment status once the grace period has ended. The Secretary has no explicit authority to grant an extension of time to this scholar based solely upon the failure to complete the service obligation by the time the grace period has ended. Section 386.41(c), however, allows the Secretary to grant a deferral of the repayment requirement under limited circumstances and based upon credible evidence submitted on behalf of the scholar. There is nothing in this provision that would prohibit the Secretary from considering the granting of a deferral of the repayment requirement for scholars that need only a limited amount of extra time to satisfy the service obligation.

Changes: None.

Innovative Rehabilitation Training Program, 34 CFR Part 387

Summary of Changes

In the preamble of the NPRM, we discussed on pages 21006 through 21007 the major changes proposed to part 387 implementing the amendments to the Innovative Rehabilitation Training program made by WIOA. These include: (1) Adopting a new name for the program—Innovative Rehabilitation Training—that better describes the nature of activities to be funded under this authority; (2) clarifying that the Secretary may award grants to develop new and improved methods of training not only for the rehabilitation personnel of State vocational rehabilitation agencies, but also for rehabilitation personnel of other public or non-profit rehabilitation service agencies or organizations; and (3) addressing new statutory language in section 101(a)(7) of the Act related to rehabilitation personnel having a 21st century understanding of the evolving labor force and the needs of individuals with disabilities so they can more effectively provide vocational rehabilitation services to individuals with disabilities.

There are no differences between the NPRM and these final regulations.

Public Comment: In response to our invitation in the NPRM, no parties submitted comments on the proposed regulations amending the Innovative Rehabilitation Training program (part 387).

Rehabilitation Short-Term Training Program, 34 CFR Part 390

Summary of Changes

In the preamble of the NPRM, we discussed on page 21007 the major change proposed to part 390 needed to improve the Rehabilitation Short-Term Training program. In the NPRM, we proposed to add an additional selection criterion for grant competitions under this program—evidence of training needs as identified through training needs assessment.

There are no differences between the NPRM and these final regulations.

Public Comment: In response to our invitation in the NPRM, no parties submitted comments on the proposed regulation amending the Rehabilitation Short-Term Training program (part 390).

Training of Interpreters for Individuals Who are Deaf or Hard of Hearing and Individuals Who are Deaf-Blind, 34 CFR Part 396

Summary of Proposed Changes

In the preamble of the NPRM, we discussed on pages 21007 through 21009 the major changes proposed in part 396 implementing the amendments to the Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who Are Deaf-Blind program, as well as changes needed to improve the program. These included: (1) Adding individuals who are hard of hearing to the individuals served by this program; (2) amending the regulations to ensure that the program accurately reflects the training needs of qualified interpreters in order to effectively meet the communication needs of individuals who are deaf or hard of hearing and individuals who are deaf-blind; (3) amending the definition of a qualified professional in order to ensure that the highest level of competency is incorporated into the training of interpreters; (4) adding selection criteria for the program to encourage evidence-based and promising practices; and (5) adding priorities for increasing the skill level of interpreters in unserved or underserved geographic areas, existing programs that have demonstrated their ability to raise the skill level of interpreters to meet the highest standards approved by certifying associations, and specialized topical training.

There are a number of changes between the NRPM and these final regulations:

- In final § 396.1(a), we modified the description of the interpreter training program to more accurately describe what interpreters for the deaf, hard of hearing, and deaf-blind do.
- In final § 396.4(c), we modified the definitions of *individual who is hard of hearing* and *individual who is deaf* to remove phrases offensive to some.
- In § 396.4(c), we added a definition of *novice interpreter*.
- In final § 396.31(c), we clarified that the selection criterion applies to any curricula submitted by an applicant.
- In final § 396.33(b), and with a conforming change in final § 396.20(b), we added a priority for serving unserved or underserved deaf, hard of hearing, and deaf-blind populations that are not defined by geographic area.

Public Comment: In response to our invitation in the NPRM, four parties submitted comments on the proposed regulations amending the Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who Are Deaf-Blind program (part 396). We organize our discussion by section and subject.

§ 396.1 Description of the Program

Comment: One commenter stated that the description of the program in proposed § 396.1(a) was not accurate. The commenter stated that the description of interpretation and transliteration is too narrow, involving only spoken language and limiting training activities to interpreters who can hear spoken language. Deaf interpreters, the commenter stated, are precluded from training described in this way.

The commenter also stated that the term "transliterate" is not always the correct term when describing the

activity of conveying spoken language messages into tactile mode (or vice versa); rather, this is often interpretation.

Discussion: We agree with the commenter that our proposed description was inadequate.

Changes: We have changed the description of the program in final § 396.1(a) to be more inclusive and to use the terms "transliterate" and "interpret" more accurately.

§ 396.2 Eligibility

Comment: One commenter stated that the types of institutions that can apply for grant funds to train interpreters under this program should be limited to bachelor's degree granting institutions, because an individual must have a bachelor's degree in order to sit for the national performance examination for sign language interpreters.

Discussion: Entities eligible for grants under this program are set by the Act and reflected in § 396.2.

Changes: None.

§ 396.4 Definitions

Individual Who is Hard of Hearing

Comment: One commenter recommended replacing the term "hearing impairment" in the definition of "individual who is hard of hearing" because it is offensive to some. The commenter proposed using "deaf, hard of hearing and DeafBlind individual" instead, because this language more accurately reflects language used by the deaf, hard of hearing, and DeafBlind communities.

Discussion: We agree that we should try to avoid the use of language that some may find offensive.

Changes: We have removed "hearing impairment" from the definition of "individual who is hard of hearing" in final § 396.4(c). Rather than inserting the language the commenter proposed, however, we have streamlined the definition. We made similar changes in the definition of "individual who is deaf" in this section.

However, the definition of "individual who is deaf-blind," which also contains the phrase "hearing impairment," is, in our experience, one that is more widely accepted. Therefore, we have not made changes to this definition.

Novice Interpreter

Comment: One commenter noted that the NPRM contained no definition of "novice interpreter," yet the term was defined in the August 3, 2005, notice of final priority (70 FR 44834). The commenter expressed uncertainty whether the absence of the term in the NPRM meant that we were removing the 2005 definition and recommended that we include an updated definition of "novice interpreter" in the final rule. The commenter suggested an updated definition.

Discussion: The omission of the definition of "novice interpreter" in the NPRM was an oversight. In this final rule, we have built upon the 2005 definition of "novice interpreter," taking into consideration the comment we received on the NPRM. There, we proposed an amendment to the definition of "qualified professional" to be consistent with the final priority published in the **Federal Register** on September 1, 1999 (64 FR 48068), and to mean an individual who has (1) met existing certification or evaluation requirements equivalent to the highest standards approved by certifying associations; or (2) successfully demonstrated interpreting skills that reflect the highest standards approved by certifying associations through prior work experience.

We proposed this change to ensure that the highest level of competency is incorporated into the training of interpreters in interpreter training programs funded by RSA. Since 2000, the Department has funded national and regional interpreter education centers that train qualified interpreters to meet the competencies equivalent to the highest standards approved by certifying associations. Thus, this standard has been in effect for 15 years, and we proposed to change the definition to reflect this reality.

The updated definition of "novice interpreter" complements the update to the definition of "qualified professional," and we are making the update to the definition of "novice interpreter" for the same reasons. This definition of "novice interpreter" is also consistent with the update suggested in the comment we received.

Change: We have revised final § 396.4(c) to include an updated definition of "novice interpreter."

§ 396.31 Selection Criteria

Comment: One commenter pointed out that the selection criterion proposed in § 396.31(c) says only that the Secretary will evaluate a proposed "curriculum" for the training of interpreters based upon evidence-based or promising practices when many curricula, in fact, could be and have been proposed.

Discussion: We had no intention to suggest that only a single, universal curriculum existed or that applicants may propose only one curriculum in future competitions under this program.

Change: We have modified the selection criterion to apply to "any curricula."

§ 396.33 Priorities

Unserved and Underserved Populations

Comment: One commenter supported the priority in proposed § 396.33(b)(1) for increasing the skills of interpreters for the deaf, hard of hearing, or the deaf-blind in unserved or underserved geographic areas. The commenter expressed concern, however, that this section does not include a priority for these individuals in unserved and underserved populations, who may not be located in easily defined geographic areas. The commenter observed that there are growing segments of deaf, hard of hearing, and deaf-blind communities that will increasingly challenge the interpreting workforce, including but not limited to individuals considered "Deaf+," individuals from minority and immigrant communities, individuals with cochlear implants, individuals pursuing high-level professional training and careers, and individuals who lose their hearing later in life and have limited communication skills.

Discussion: We agree with the commenter that we should have a priority for training interpreters to serve individuals who are deaf, hard of hearing, or deaf-blind in both unserved and underserved populations and in unserved and underserved geographic areas.

Changes: We have amended final § 396.33(b)(1) to add a priority for serving unserved or underserved deaf, hard of hearing, or deaf-blind populations that may not be limited to specific geographic areas. We have made a conforming change in final § 396.20(b).

Bachelors' Degree, Accredited, Existing Programs

Comment: One commenter urged RSA to include a priority for applications from postsecondary institutions that offer at least a bachelor's degree in interpreter education. The commenter also recommended an additional priority giving preference to programs that have achieved Commission on Collegiate Interpreter Education (CCIE) accreditation.

Discussion: We created the priority for postsecondary institutions that offer at least a bachelors' degree in the August 3, 2005, notice of final priorities for the Interpreter Training Program (70 FR 44834). It is not necessary to recreate the priority here because the 2005 priority

still exists and can be used in future competitions.

Further, § 396.33(b)(2) already encompasses the accreditation priority the commenter described. The phrase "existing programs" refers to any program, including those at postsecondary institutions that offer and have awarded at least a bachelor's degree in interpreter education. While we will not give preference to CCIE or other certifying organizations, the phrase "highest standards approved by certifying associations" already includes them.

Changes: None.

Comment: One commenter asked whether the term "programs" in proposed § 396.33(b)(2) means either a pre-service or an in-service program.

Discussion: The term "programs" in final § 396.33(b)(2) refers both to pre-service and in-service programs.

Changes: None.

Consumer Education

Comment: One commenter expressed concern about the lack of mention of consumer education in proposed § 396.33(b). The commenter indicated that this was a new area in the competitions for this program in 2005 and again in 2010, and the resulting deaf advocacy training has been important.

Discussion: As the commenter indicated, interpreter training centers funded under this program have addressed consumer education over the past 10 years. We believe that promising practices and resources developed for consumer education, specifically those developed under final § 396.33(b)(3)—specialized topical training based on the needs of individuals who are deaf or hard of hearing and individuals who are deaf-blind—have been particularly effective. We agree that deaf advocacy training has been an important focus area for the training of interpreters for individuals who are deaf, hard of hearing, and individuals who are deaf-blind, and we can continue the training without adding a priority here.

Changes: None.

§ 396.34—Cost Matching

Comment: One commenter suggested that the requirement in proposed § 396.34 that the grantee contribute to the cost of a project under this program in an amount satisfactory to the Secretary may conflict with 2 CFR 200.306. The commenter also indicated that having the Secretary determine the amount of the match at the time of the grant award may delay grant activity.

Discussion: The matching amount will be specified in the notice inviting applications for the program competition published in the **Federal Register** and will occur prior to the submittal of the grant application and prior to the grant award. This provision, therefore, does not conflict with 2 CFR 200.306.

Changes: None.

General Comments

Comment: One commenter indicated that replacing the term "skilled interpreter" with "qualified interpreter" does not accomplish much since neither term is particularly precise.

Discussion: We use "qualified interpreter" simply to conform part 396 to section 302(f) of the Act.

Changes: None.

Comment: One commenter suggested changing the number of centers that receive funding under this program. Currently, five regional centers and one national center receive funding. The commenter suggested one national center, with three regional centers that focus on three areas: educating those individuals who are preparing interpreters, ensuring a strong language foundation in both American Sign Language and English for sign language interpreters, and developing a national interpreter education curriculum.

Discussion: The proposed regulations do not address the structure of this program. When we run a competition to meet new and emerging needs of deaf consumers and the training of interpreters, we will publish a notice of proposed priority in the **Federal Register** and seek public comment about how to structure the program.

Changes: None.

Regulations To Be Removed

In the preamble of the NPRM, we discussed on page 21009 those regulations that we proposed to remove as required by WIOA, which deauthorized the Projects with Industry program (part 379), the State Vocational Rehabilitation Unit In-Service Training program (part 388), the Migrants and Seasonal Farmworkers program (§ 369.1(b)(3) and § 369.2(c)), and the Recreation Programs for Individuals with Disabilities program (§ 369.1(b)(5) and § 369.2(d)).

We also proposed to remove, as duplicative or superseded, the balance of part 369 pertaining to three other kinds of vocational rehabilitation (VR) service projects: VR service projects for American Indians with disabilities, special projects and demonstrations for providing VR services to individuals with disabilities, and special projects and demonstrations for providing transitional rehabilitation services to youth with disabilities.

We proposed to remove as outdated part 376 governing the Special Projects and Demonstrations for Providing Transitional Rehabilitation Services to Youth with Disabilities program and part 377 governing the Demonstration Projects to Increase Client Choice program.

We proposed to remove as duplicative and outdated part 389 governing the Rehabilitation Continuing Education programs.

Because the Department's administration of grants under the State Vocational Rehabilitation Unit In-Service Training program and the Migrants and Seasonal Farmworkers Program will be complete on September 30, 2016, we proposed to make the removal of part 369 and part 388 effective on September 30, 2016.

Comment: In response to our invitation in the NPRM, no parties submitted comments on the removal of any of these regulations.

Discussion: Upon further review, the Department has determined that the remaining grant for the Migrants and Seasonal Farmworkers program can incorporate the pertinent provisions of Part 369 into its terms and conditions. Therefore, there is no need to delay the effective date for which part 369 will be removed because the terms and conditions will still apply to the one remaining grant after part 369 is removed. We have also determined that it makes more sense to make the removal of the part 388 regulations coincide with the start of the new fiscal year, rather than the end of the old fiscal year. Therefore, we have moved the removal date for part 388 forward one day to October 1, 2016.

Changes: Part 369 will be removed when the final regulations take effect. Part 388 will be removed on October 1, 2016.

Regulatory Impact Analysis

Executive Order 12866

Under Executive Order 12866, the Secretary must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or

State, local, or tribal governments or communities in a material way (also referred to as an "economically significant" rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

We have also determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs associated with this regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities. In assessing the potential costs and benefits—both quantitative and qualitative—of these regulations, we have determined that the benefits would justify the costs.

Part 367—Independent Living Services for Older Individuals Who Are Blind

In general, unless expressly noted below, we do not estimate that changes to this part will result in any additional costs to grantees.

Subpart B—Training and Technical Assistance

New Subpart B of Part 367 implements the WIOA amendment requiring the Department to reserve from 1.8 to 2 percent of appropriated funds for training and technical assistance to grantees. While this reservation will result in a reduction in funding available to grantees, we believe that these training and technical assistance projects will increase the efficiency of the program and provide substantial benefits to both grantees and the older individuals who are blind that they serve.

To ensure that grantees receive the maximum amount of funds available for the provision of services to individuals, we will initially provide funding for training and technical assistance at the minimum allowable level of 1.8 percent. Prior to this regulation, grantees have been largely responsible for meeting the training needs of their program staff. This may have contributed to duplicative training and technical assistance efforts across grantees that could have easily been coordinated nationally. The coordination of these efforts by RSA will generate efficiencies across the entire program, thus providing more benefits to grantees than they would have realized if the funds had been directly provided to them.

Based on the FY 2016 authorized appropriation of $33,317,000 for the OIB program under WIOA, the estimated set-aside is $599,706, calculated from the minimum percentage established by the Act. Therefore, if grantees were to receive no benefit from the training and technical assistance supported by the Department, the 56 grantees would experience a collective loss in benefits of $599,706. However, since the Department will sponsor training and technical assistance services directly for this group in the amount of $599,706, we expect there to be no net loss of benefits. Additionally, as noted above, the efficiencies realized by this centralization of training and technical assistance efforts may actually result in a net increase in benefits for grantees.

Subpart C—What are the application requirements under this part?

Under this Subpart, we have removed the requirement for States to seek to incorporate into the State Plan for Independent Living (SPIL) any new methods and approaches relating to independent living services for older individuals who are blind. Incorporating this information into the SPIL required minimal time (approximately 15 minutes) every three years upon submission of the SPIL; therefore, any savings realized from this change will be negligible.

Subpart E—How does the Secretary award formula grants?

Under Subpart E, we have clarified that OIB grantees are to inform the Secretary 45 days prior to the end of the fiscal year whether funds will be available for reallotment. We do not believe that this requirement will generate additional costs to grantees, as the change only provides a timeline for an action that is already occurring and does not, therefore, generate any new burden on grantees.

Part 370—Client Assistance Program

WIOA requires that the set-aside for training and technical assistance for CAP take effect in any fiscal year in which the appropriation equals or exceeds $14,000,000. Section 112(e)(1)(F) of the Act, as amended by WIOA, requires the Secretary to reserve not less than 1.8 percent and not more than 2.2 percent of the CAP appropriation for this purpose. In FY 2016, the appropriation for CAP is $13,000,000, and so the set-aside for training and technical assistance would not take effect. An increase of 7.7 percent in the program's appropriation would be required before the set-aside would become effective. Thus, the set-aside will not have a substantial impact on the activities of grantees for some time. Assuming the Department sets aside a minimum of 1.8 percent to ensure that grantees receive the maximum amount of funds available for

the provision of services to individuals when the appropriation reaches $14,000,000, the Department would be required to reserve $252,000 to provide training and technical assistance support to grantees. Additionally, as noted above in the discussion of costs and benefits associated with Part 367, we believe that the consolidation of training and technical assistance activities at the national level will ultimately yield net benefits to grantees greater than if those activities were coordinated locally.

Part 371—American Indian Vocational Rehabilitation Services Program

New Subpart B of Part 371 implements the WIOA amendment requiring the Department to reserve from 1.8 to 2 percent of appropriated funds for training and technical assistance to grantees. While this reservation will result in a reduction in funding available to grantees, we believe that these training and technical assistance projects will increase the efficiency of the program and provide substantial benefits to both grantees and American Indians with disabilities.

Based on the FY 2016 amount set aside by the Department from the State VR program for the AIVRS program (approximately $43,000,000), the estimated reservation of funds for training and technical assistance is $774,000. As noted above, since these funds are being used to provide services and support to grantees, we do not anticipate any net loss of benefit. However, if efficiencies are realized due to centralized coordination of these activities, grantees may experience a net gain in benefits.

Part 373—Rehabilitation National Activities Program

We do not anticipate any changes to this section resulting in increased burden or costs for grantees.

Part 381– Protection and Advocacy for Individual Rights Program

As it had in prior regulations, § 381.20(a)(1) requires the Secretary, when the PAIR appropriation equals or exceeds $5,500,000, to set aside between 1.8 and 2.2 percent of these funds for training and technical assistance. The amendments made by WIOA simply clarify that the funding mechanism for the training and technical assistance may include a grant, contract, or cooperative agreement, all of which had been available to the Secretary previously. We amended § 381.20(a)(1) to clarify explicitly the availability of these funding mechanisms for training and technical assistance. Since the requirement to provide training and technical assistance was triggered in FY 1994, the Department has historically funded the training and technical assistance at the 1.8 percent level to ensure that grantees receive the maximum amount of funds available for the provision of services to individuals. Therefore, the revision to § 381.20(a)(1) in these final regulations will have no impact on PAIR grantees since the amendment was primarily technical in nature.

Part 385—Rehabilitation Training

We do not anticipate any changes to this section resulting in increased burden or costs for grantees.

Part 386—Rehabilitation Long-Term Training

Except as detailed below, we do not anticipate changes to this section to result in increased burden or costs for grantees.

§ 386.31 (Funding Requirement)

Section 386.31 requires that program grantees dedicate 65 percent to scholarships rather than 75 percent as required by prior regulations. This requirement will apply to both the federal award and the non-federal share. This change acknowledges the fact that grantees incur costs in administering these programs, particularly in terms of staff time needed to track scholar progress in completing their program of study and their service obligation. This decrease in the cost to grantees brought about by changes in § 386.31 balances some of the increased costs created by changes made in other sections of the regulations. In FY 2014, the Department made approximately $17,075,000 in new or continuation awards under the Rehabilitation Long-Term Training program. Assuming all grantees made the minimum match of 10 percent of the project cost, the reduction in the scholarship requirement will free up approximately $1,897,000 in project funding to be used for activities other than scholarship support. While this does not represent any additional funding for grantees, it does represent additional flexibility provided by the regulation.

§ 386.33 (Disbursing Scholarships)

Changes to this section require grantees to document that scholars will seek employment in the field of study in which the scholar was provided training or employment where it can be demonstrated that the field of study is directly relevant to the job functions being performed. Currently, grantees obtain sufficient documentation of other requirements that we do not believe this new requirement will represent a substantial burden on grantees. However, if we assume that obtaining this additional documentation will take, on average, 10 minutes per scholar, and using a wage rate of $17.69 (the mean hourly wage for office and administrative support staff at colleges, universities, and professional schools) and the 1,367 scholars receiving support in FY 2014, we estimate this provision will cost $4,030.37.

§ 386.34 (Assurances)

Changes to this section require grantees to annually obtain signed executed agreements with scholars containing the terms and conditions outlined in this section. It has been the Department's policy to encourage annual updating of scholar information; these regulations simply formalize this policy. As such, we estimate that these changes to the regulation will have little actual impact on grantees or scholars. However, if grantees were previously only collecting these agreements once per scholar rather than every year that support is received, there will be additional costs. Of all scholars reported in qualifying employment in FY 2014, 88.4 percent received support for more than one year. If we assumed that this change required an additional half hour of time each year beyond the first year of support to update their information with their program, and using an average wage rate of $17.69, we estimate an additional cost of $10,641 (given that we estimate that 1,203 of the 1,367 scholars receiving support in FY 2014 were multi-year scholars). We emphasize that this is an overestimate, as this change simply conforms the regulations to current practice.

§ 386.40 (Requirements for Scholars)

In § 386.40(a)(7), we clarify the type of employment a scholar must obtain to complete the service obligation in order to ensure that the funds used for scholarships will benefit individuals with disabilities served through the State vocational rehabilitation program and related agencies. This change largely reflects current policy and should not result in an increased burden on grantees or scholars. Changes to § 386.40(b) establishes a new policy addressing when scholars may begin qualifying employment while § 386.40(c) affirms the longstanding RSA practice that scholars who pursued coursework on a part-time basis should have their service obligations calculated on a full-time equivalent basis. As noted above, 88.4 percent of the scholars completing their service obligations in

FY 2014 received support for more than one year and would have been, therefore, eligible to benefit from the changes in § 386.40(b). However, because the changes in § 386.40(b) do not change the length of a scholar's service obligation and § 386.40(c) simply codifies existing RSA practice, we do not estimate that these provisions will result in any net costs or savings. Finally, changes in § 386.40(d) make scholars in repayment status responsible for any collection costs if they do not provide appropriate information to the grantee in a timely manner but provide that information after being placed in repayment status. In FY 2014, the Department referred 44 scholars for repayment totaling $486,471. Assuming that collection costs total 3 percent of the balance of the repayment, we estimate total collection costs of $14,594. However, we note that collection costs, if the debts are referred to third-party collection agencies, can range as high as 30 percent. Nonetheless, if 5 percent of this repayment amount involved scholars who were referred to repayment based upon failing to provide the information in paragraph (a)(10) of this section and these scholars became eligible for a refund of any debts paid based upon the scholars subsequently providing the correct information, this additional requirement could save the Department $729.70 (using the assumption of a 3 percent collection cost) by making these scholars responsible for the collection costs. If we assume a higher rate of collection costs, the savings would be higher.

§ 386.41 (Granting Deferrals and Exceptions) and § 386.42 (Applying for Deferrals and Exceptions)

Sections 386.41 and 386.42 contain stricter regulations around exceptions and deferrals, particularly for individuals with disabilities, in order to assure that individuals who benefit from scholarships funded by this program are more likely to complete their service obligation. While these changes may have impacts on the specific decisions made by scholars, they will not have a financial impact on the costs or benefits for grantees, and will likely increase the benefits to individuals with disabilities served by State VR agencies and related agencies by ensuring that training is aligned with practice and that a greater percentage of scholars complete their service obligations rather than just repaying the cost of their scholarships.

Part 387—Innovative Rehabilitation Training Program

We do not anticipate any changes to this section resulting in increased burden or costs for grantees.

Part 390—Rehabilitation Short-Term Training Program

Changes to § 390.30 adds a selection criterion that the Secretary will review each application for evidence of training needs as identified through training needs assessments. While conducting a training needs assessment prior to application may result in increased costs for applicants, because the regulation simply adds this as one selection criterion among several and allows applicants to use needs assessments conducted by other entities, we do not anticipate that applicants will realize any actual increased costs associated with this provision.

Part 396—Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who Are Deaf-Blind

Changes to § 396.34 require grantees to provide matching funds to support projects in an amount determined by the Secretary at the time of the grant award. While this matching requirement did not previously exist in the regulations, it was a statutory requirement and, while the Department did not require grantees to document the match, we do not believe that any prior grantees did not contribute any funds to the project, either in cash or in kind. As such, we do not believe this provision will result in any increased costs for grantees.

Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 does not require you to respond to a collection of information unless it displays a valid OMB control number. We display the valid OMB control numbers assigned to the collections of information in these final regulations at the end of the affected sections of the regulations.

Intergovernmental Review

These programs, except for the American Indian Vocational Rehabilitation Services Program, are subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for these programs.

Assessment of Educational Impact

In the NPRM we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available. We received no comments, and we do not believe that these final regulations would require transmission of this sort of information.

Federalism

Executive Order 13132 requires us to ensure meaningful and timely input by State and local elected officials in the development of regulatory policies that have federalism implications. "Federalism implications" means substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. In the NPRM, we stated that the proposed regulations may have federalism implications and encouraged State and local elected officials to review and provide comments on the proposed regulations. We received no comments on this subject.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the person listed under **FOR FURTHER INFORMATION CONTACT**.

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(Catalog of Federal Domestic Assistance Numbers: 84.240A Protection and Advocacy of Individual Rights; 84.161A Client Assistance Program; 84.177B Independent Living Services for Older Individuals Who

Are Blind; 84.250J American Indian Vocational Rehabilitation Services; 84.128G Vocational Rehabilitation Service Projects for Migratory Agricultural Workers and Seasonal Farmworkers with Disabilities Program; 84.234 Projects With Industry; 84.128J Recreational Programs; and 84.265 State Vocational Rehabilitation Services Unit In Service Training)

List of Subjects

34 CFR Part 367

Aged, Blind, Grant programs-education, Grant programs-social programs, Reporting and recordkeeping requirements, Vocational rehabilitation

34 CFR Part 369

Grant programs-social programs, Reporting and recordkeeping requirements, Vocational rehabilitation

34 CFR Part 370

Administrative practice and procedure, Grant programs-social programs, Reporting and recordkeeping requirements, Vocational rehabilitation

34 CFR Part 371

Grant programs-Indians, Grant programs-social programs, Indians, Vocational rehabilitation

34 CFR Part 373

Grant programs-education, Vocational rehabilitation

34 CFR Part 376

Grant programs-social programs, Reporting and recordkeeping requirements, Vocational rehabilitation, Youth

34 CFR Part 377

Grant programs-social programs, Reporting and recordkeeping requirements, Vocational rehabilitation

34 CFR Part 379

Business and industry, Grant programs-social programs, Reporting and recordkeeping requirements, Vocational rehabilitation

34 CFR Part 381

Grant programs-social programs, Reporting and recordkeeping requirements, Vocational rehabilitation

34 CFR Part 385

Grant programs-education, Reporting and recordkeeping requirements, Vocational rehabilitation

34 CFR Part 386

Grant programs-education, Reporting and recordkeeping requirements, Vocational rehabilitation

34 CFR Part 387

Grant programs-education, Reporting and recordkeeping requirements, Vocational rehabilitation

34 CFR Part 388

Grant programs-education, Reporting and recordkeeping requirements, Vocational rehabilitation

34 CFR Part 389

Grant programs-education, Reporting and recordkeeping requirements, Vocational rehabilitation

34 CFR Part 390

Grant programs-education, Reporting and recordkeeping requirements, Vocational rehabilitation

34 CFR Part 396

Education of individuals with disabilities, Grant programs-education, Individuals with disabilities, Reporting and recordkeeping requirements

Dated: June 30, 2016.

John B. King, Jr.,

Secretary of Education.

For the reasons discussed in the preamble, under the authority of section 503(f) of the Workforce Innovation and Opportunity Act (WIOA) (Pub. L. 113–128) and section 12(c) of the Rehabilitation Act of 1973, as amended by WIOA (29 U.S.C. 709(c)), the Secretary of Education amends chapter III of title 34 of the Code of Federal Regulations as follows:

■ 1. Part 367 is revised to read as follows:

PART 367—INDEPENDENT LIVING SERVICES FOR OLDER INDIVIDUALS WHO ARE BLIND

Subpart A—General

Sec.
367.1 What is the independent living services for older individuals who are blind program?
367.2 Who is eligible for an award?
367.3 What activities may the Secretary fund?
367.4 What regulations apply?
367.5 What definitions apply?

Subpart B—Training and Technical Assistance

367.20 What are the requirements for funding training and technical assistance under this chapter?
367.21 How does the Secretary use these funds to provide training and technical assistance?
367.22 How does the Secretary make an award?
367.23 How does the Secretary determine funding priorities?
367.24 How does the Secretary evaluate an application?

Subpart C—What are the application requirements under this Part?

367.30 How does a designated State agency (DSA) apply for an award?
367.31 What assurances must a DSA include in its application?

Subpart D—How does the Secretary award discretionary grants?

367.40 Under what circumstances does the Secretary award discretionary grants to States?
367.41 How does the Secretary evaluate an application for a discretionary grant?

Subpart E—How does the Secretary award formula grants?

367.50 Under what circumstances does the Secretary award formula grants to States?
367.51 How are allotments made?
367.52 How does the Secretary reallot funds under this program?

Subpart F—What conditions must be met after an award?

367.60 When may a DSA make subawards or contracts?
367.61 What matching requirements apply?
367.62 What requirements apply if the State's non-Federal share is in cash?
367.63 What requirements apply if the State's non-Federal share is in kind?
367.64 What is the prohibition against a State's condition of an award of a sub-award or contract based on cash or in-kind contributions?
367.65 What is program income and how may it be used?
367.66 What requirements apply to the obligation of Federal funds and program income?
367.67 May an individual's ability to pay be considered in determining his or her participation in the costs of OIB services?
367.68 What notice must be given about the Client Assistance Program (CAP)?
367.69 What are the special requirements pertaining to the protection, use, and release of personal information?
367.70 What access to records must be provided?
367.71 What records must be maintained?

Authority: Sections 751–753 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796j–796l, unless otherwise noted.

Subpart A—General

§ 367.1 What is the Independent Living Services for Older Individuals Who Are Blind program?

This program supports projects that—

(a) Provide any of the independent living (IL) services to older individuals who are blind that are described in § 367.3(b);

(b) Conduct activities that will improve or expand services for these individuals; and

(c) Conduct activities to help improve public understanding of the challenges of these individuals.

(Authority: Section 752 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796k(a) and (d))

§ 367.2 Who is eligible for an award?

Any designated State agency (DSA) is eligible for an award under this program if the DSA—

(a) Is authorized to provide rehabilitation services to individuals who are blind; and

(b) Submits to and obtains approval from the Secretary of an application that meets the requirements of section 752(h) of the Act and §§ 367.30–367.31.

(Authority: Section 752(a)(2) and 752(h) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796k(a)(2) and (h))

§ 367.3 What activities may the Secretary fund?

(a) The DSA may use funds awarded under this part for the activities described in § 367.1 and paragraph (b) of this section.

(b) For purposes of § 367.1(a), IL services for older individuals who are blind include—

(1) Services to help correct blindness, such as—

(i) Outreach services;

(ii) Visual screening;

(iii) Surgical or therapeutic treatment to prevent, correct, or modify disabling eye conditions; and

(iv) Hospitalization related to these services;

(2) The provision of eyeglasses and other visual aids;

(3) The provision of services and equipment to assist an older individual who is blind to become more mobile and more self-sufficient;

(4) Mobility training, Braille instruction, and other services and equipment to help an older individual who is blind adjust to blindness;

(5) Guide services, reader services, and transportation;

(6) Any other appropriate service designed to assist an older individual who is blind in coping with daily living activities, including supportive services and rehabilitation teaching services;

(7) IL skills training, information and referral services, peer counseling, individual advocacy training, facilitating the transition from nursing homes and other institutions to home and community-based residences with the requisite supports and services, and providing assistance to older individuals who are blind who are at risk of entering institutions so that the individuals may remain in the community; and

(8) Other IL services, as defined in § 367.5.

(Authority: Section 752(d) and (e) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796k (d) and (e))

§ 367.4 What regulations apply?

The following regulations apply to the Independent Living Services for Older Individuals Who Are Blind program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 75 (Direct Grant Programs), with respect to grants under subpart B and D.

(2) 34 CFR part 76 (State-Administered Programs), with respect to grants under subpart E.

(3) 34 CFR part 77 (Definitions That Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(6) 34 CFR part 82 (New Restrictions on Lobbying).

(7) 2 CFR part 180 (OMB Guidelines to Agencies on Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485.

(8) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

(b) The regulations in this part 367.

(Authority: Sections 12(c) and 752 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 796k)

§ 367.5 What definitions apply?

(a) The definitions of terms used in this part that are included in the regulations identified in § 367.4 as applying to this program.

(b) In addition, the following definitions also apply to this part:

(1) *Act* means the Rehabilitation Act, as amended by WIOA.

(2) *Advocacy* means pleading an individual's cause or speaking or writing in support of an individual. To the extent permitted by State law or the rules of the agency before which an individual is appearing, a non-lawyer may engage in advocacy on behalf of another individual. Advocacy may—

(i) Involve representing an individual—

(A) Before private entities or organizations, government agencies (whether State, local, or Federal), or in a court of law (whether State or Federal); or

(B) In negotiations or mediation, in formal or informal administrative proceedings before government agencies (whether State, local, or Federal), or in legal proceedings in a court of law; and

(ii) Be on behalf of—

(A) A single individual, in which case it is individual advocacy;

(B) A group or class of individuals, in which case it is systems (or systemic) advocacy; or

(C) Oneself, in which case it is self advocacy.

(3) *Attendant care* means a personal assistance service provided to an individual with significant disabilities in performing a variety of tasks required to meet essential personal needs in areas such as bathing, communicating, cooking, dressing, eating, homemaking, toileting, and transportation.

(4) *Contract* means a legal instrument by which RSA in subpart B or the DSA receiving a grant under this part purchases property or services needed to carry out the program under this Part. The term as used in this part does not include a legal instrument, even if RSA or the DSA considers it a contract, when the substance of the transaction meets the definition of a Federal award or subaward.

(Authority: 20 U.S.C. 1221e–3)

(5) *Designated State Agency* means the agency described in section 101(a)(2)(A)(i) of the Rehabilitation Act as the sole State agency authorized to provide rehabilitation services to individuals who are blind and administer the OIB grant.

(6) *Independent living services for older individuals who are blind* means those services listed in § 367.3(b).

(7) *Legally authorized advocate or representative* means an individual who is authorized under State law to act or advocate on behalf of another individual. Under certain circumstances, State law permits only an attorney, legal guardian, or individual with a power of attorney to act or advocate on behalf of another individual. In other circumstances, State law may permit other individuals to act or advocate on behalf of another individual.

(8) *Minority group* means Alaska Natives, American Indians, Asians, Blacks (African Americans), Hispanics (Latinos), Native Hawaiians, and Pacific Islanders.

(9) *Older individual who is blind* means an individual age fifty-five or older whose severe visual impairment makes competitive employment extremely difficult to obtain but for whom IL goals are feasible.

(10) *Other IL services* include:

(i) Counseling services, including psychological, psychotherapeutic, and related services;

(ii) Services related to securing housing or shelter, including services

related to community group living, that are supportive of the purposes of the Act, and adaptive housing services, including appropriate accommodations to and modifications of any space used to serve, or to be occupied by, older individuals who are blind;

(iii) Rehabilitation technology;

(iv) Services and training for older individuals who are blind who also have cognitive and sensory disabilities, including life skills training and interpreter services;

(v) Personal assistance services, including attendant care and the training of personnel providing these services;

(vi) Surveys, directories, and other activities to identify appropriate housing, recreation opportunities, and accessible transportation, and other support services;

(vii) Consumer information programs on rehabilitation and IL services available under the Act, especially for minorities and other older individuals who are blind who have traditionally been unserved or underserved by programs under the Act;

(viii) Education and training necessary for living in a community and participating in community activities;

(ix) Supported living;

(x) Transportation, including referral and assistance for transportation;

(xi) Physical rehabilitation;

(xii) Therapeutic treatment;

(xiii) Provision of needed prostheses and other appliances and devices;

(xiv) Individual and group social and recreational services;

(xv) Services under other Federal, State, or local programs designed to provide resources, training, counseling, or other assistance of substantial benefit in enhancing the independence, productivity, and quality of life of older individuals who are blind;

(xvi) Appropriate preventive services to decrease the need of older individuals who are blind who are assisted under the Act for similar services in the future;

(xvii) Community awareness programs to enhance the understanding and integration into society of older individuals who are blind; and

(xviii) Any other services that may be necessary to improve the ability of an older individual who is blind to function, continue functioning, or move toward functioning independently in the family or community or to continue in employment and that are not inconsistent with any other provisions of the Act.

(11) *Peer relationships* mean relationships involving mutual support and assistance among individuals with significant disabilities who are actively pursuing IL goals.

(12) *Peer role models* means individuals with significant disabilities whose achievements can serve as a positive example for other older individuals who are blind.

(13) *Personal assistance services* means a range of IL services, provided by one or more persons, designed to assist an older individual who is blind to perform daily living activities on or off the job that the individual would typically perform if the individual was not blind. These IL services must be designed to increase the individual's control in life and ability to perform everyday activities on or off the job.

(14) *Service provider* means—

(i) The DSA that directly provides services authorized under § 367.3; or

(ii) Any other entity that receives a subaward or contract from the DSA to provide services authorized under § 367.3.

(15) *Significant disability* means a severe physical, mental, cognitive, or sensory impairment that substantially limits an individual's ability to function independently in the family or community or to obtain, maintain, or advance in employment.

(16) *State* means, except where otherwise specified in the Act, in addition to each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(17) *Subaward* means a grant or a cooperative agreement provided by the DSA to a subrecipient for the subrecipient to carry out part of the Federal award received by the DSA under this part. It does not include payments to a contractor or payments to an individual that is a beneficiary of a program funded under this part. A subaward may be provided through any form of legal agreement, including an agreement that the DSA considers a contract.

(Authority: 20 U.S.C. 1221e–3)

(18) *Subrecipient* means a non-Federal entity that receives a subaward from the DSA to carry out part of the program funded under this part; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.

(Authority: 20 U.S.C. 1221e–3)

(19) *Transportation* means travel and related expenses that are necessary to enable an older individual who is blind to benefit from another IL service and travel and related expenses for an attendant or aide if the services of that attendant or aide are necessary to enable an older individual who is blind to benefit from that IL service.

(20) *Unserved and underserved groups or populations,* with respect to groups or populations of older individuals who are blind in a State, include, but are not limited to, groups or populations of older individuals who are blind who—

(i) Have cognitive and sensory impairments;

(ii) Are members of racial and ethnic minority groups;

(iii) Live in rural areas; or

(iv) Have been identified by the DSA as unserved or underserved.

(Authority: Unless otherwise noted, Section 7 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705)

Subpart B—Training and Technical Assistance

§ 367.20 What are the requirements for funding training and technical assistance under this chapter?

For any fiscal year, beginning with fiscal year 2015, the Secretary shall first reserve not less than 1.8 percent and not more than 2 percent of funds appropriated and made available to carry out this chapter to provide training and technical assistance to DSAs, or other providers of independent living services for older individuals who are blind, that are funded under this chapter for such fiscal year.

(Authority: Section 751A(a) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796j–1(a))

§ 367.21 How does the Secretary use these funds to provide training and technical assistance?

(a) The Secretary uses these funds to provide training and technical assistance, either directly or through grants, contracts, or cooperative agreements with State and public or non-profit agencies and organizations and institutions of higher education that have the capacity to provide technical assistance and training in the provision of independent living services for older individuals who are blind.

(b) An entity receiving assistance in accordance with paragraph (a) of this section shall provide training and technical assistance to DSAs or other service providers to assist them in improving the operation and performance of programs and services for older individuals who are blind resulting in their enhanced independence and self-sufficiency.

(Authority: Section 751A(a) and (c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796j–1(a) and (c))

§ 367.22 How does the Secretary make an award?

(a) To be eligible to receive a grant or enter into a contract or cooperative agreement under section 751A of the Act and this subpart, an applicant shall submit an application to the Secretary containing a proposal to provide training and technical assistance to DSAs or other service providers of IL services to older individuals who are blind and any additional information at the time and in the manner that the Secretary may require.

(b) The Secretary shall provide for peer review of applications by panels that include persons who are not Federal or State government employees and who have experience in the provision of services to older individuals who are blind.

(Authority: Section 751A(a) and (c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796j–1(a) and (c))

§ 367.23 How does the Secretary determine funding priorities?

The Secretary shall conduct a survey of DSAs that receive grants under section 752 regarding training and technical assistance needs in order to inform funding priorities for such training and technical assistance.

(Authority: Section 751A(b) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796j–1(b))

§ 367.24 How does the Secretary evaluate an application?

(a) The Secretary evaluates each application for a grant, cooperative agreement or contract under this subpart on the basis of the selection criteria chosen from the general selection criteria found in EDGAR regulations at 34 CFR 75.210.

(b) If using a contract to award funds under this subpart, the Secretary may conduct the application process and make the subsequent award in accordance with 34 CFR part 75.

(Authority: Section 751A of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796j–1(b), 20 U.S.C. 1221e–3, and 3474)

Subpart C—What Are the Application Requirements Under This Part?

§ 367.30 How does a designated State agency (DSA) apply for an award?

To receive a grant under section 752(h) or a reallotment grant under section 752(i)(4) of the Act, a DSA must submit to and obtain approval from the Secretary of an application for assistance under this program at the time, in the form and manner, and containing the agreements, assurances, and information, that the Secretary determines to be necessary to carry out this program.

(Approved by the Office of Management and Budget under control number 1820–0660)

(Authority: Sections 752 (h) and (i)(4) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796k(h) and (i))

§ 367.31 What assurances must a DSA include in its application?

An application for a grant under section 752(h) or a reallotment grant under section 752(i)(4) of the Act must contain an assurance that—

(a) Grant funds will be expended only for the purposes described in § 367.1;

(b) With respect to the costs of the program to be carried out by the State pursuant to this part, the State will make available, directly or through donations from public or private entities, non-Federal contributions toward these costs in an amount that is not less than $1 for each $9 of Federal funds provided in the grant;

(c) At the end of each fiscal year, the DSA will prepare and submit to the Secretary a report, with respect to each project or program the DSA operates or administers under this part, whether directly or through a grant or contract, that contains information that the Secretary determines necessary for the proper and efficient administration of this program, including—

(1) The number and demographics of older individuals who are blind, including older individuals who are blind from minority backgrounds, and are receiving services;

(2) The types of services provided and the number of older individuals who are blind and are receiving each type of service;

(3) The sources and amounts of funding for the operation of each project or program;

(4) The amounts and percentages of resources committed to each type of service provided;

(5) Data on actions taken to employ, and advance in employment, qualified—

(i) Individuals with significant disabilities; and

(ii) Older individuals with significant disabilities who are blind;

(6) A comparison, if appropriate, of prior year activities with the activities of the most recent year; and

(7) Any new methods and approaches relating to IL services for older individuals who are blind that are developed by projects funded under this part;

(d) The DSA will—

(1) Provide services that contribute to the maintenance of, or the increased independence of, older individuals who are blind; and

(2) Engage in—

(i) Capacity-building activities, including collaboration with other agencies and organizations;

(ii) Activities to promote community awareness, involvement, and assistance; and

(iii) Outreach efforts; and

(e) The applicant has been designated by the State as the sole State agency authorized to provide rehabilitation services to individuals who are blind.

(Approved by the Office of Management and Budget under control numbers 1820–0660 and 1820–0608)

(Authority: Section 752(h) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796k(h))

Subpart D—How does the Secretary award discretionary grants?

§ 367.40 Under what circumstances does the Secretary award discretionary grants to States?

(a) In the case of a fiscal year for which the amount appropriated under section 753 of the Act is less than $13,000,000, the Secretary awards discretionary grants under this part on a competitive basis to States in accordance with section 752(b) of the Act and EDGAR regulations at 34 CFR part 75 (Direct Grant Programs).

(b) The Secretary awards noncompetitive continuation grants for a multi-year project to pay for the costs of activities for which a grant was awarded under this part—as long as the grantee satisfies the applicable requirements in this part, the terms of the grant, and 34 CFR 75.250 through 75.253 (Approval of Multi-year Projects).

(c) Subparts A, C, D, and F of this part govern the award of competitive grants under this part.

(Authority: Section 752(b) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796k(b); 20 U.S.C. 1221e–3 and 3474)

§ 367.41 How does the Secretary evaluate an application for a discretionary grant?

(a) The Secretary evaluates an application for a discretionary grant based on the selection criteria chosen from the general selection criteria found in EDGAR regulations at 34 CFR 75.210.

(b) In addition to the selection criteria, the Secretary considers the geographic distribution of projects in making an award.

(Authority: Section 752(b) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796k(b); 20 U.S.C. 1221e–3 and 3474)

Subpart E—How Does the Secretary Award Formula Grants?

§ 367.50 Under what circumstances does the Secretary award formula grants to States?

(a) In the case of a fiscal year for which the amount appropriated under section 753 of the Act is equal to or greater than $13,000,000, grants under this part are made to States from allotments under section 752(c)(2) of the Act.

(b) Subparts A, C, E, and F of this part govern the award of formula grants under this part.

(Authority: Section 752(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796k(c))

§ 367.51 How are allotments made?

(a) For purposes of making grants under section 752(c) of the Act and this subpart, the Secretary makes an allotment to each State in an amount determined in accordance with section 752(i) of the Act.

(b) The Secretary makes a grant to a DSA in the amount of the allotment to the State under section 752(i) of the Act if the DSA submits to and obtains approval from the Secretary of an application for assistance under this program that meets the requirements of section 752(h) of the Act and §§ 367.30 and 367.31.

(Approved by the Office of Management and Budget under control number 1820–0660)

(Authority: Section 752(c)(2) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796k(c)(2))

§ 367.52 How does the Secretary reallot funds under this program?

(a) From the amounts specified in paragraph (b) of this section, the Secretary may make reallotment grants to States, as determined by the Secretary, whose population of older individuals who are blind has a substantial need for the services specified in section 752(d) of the Act and § 367.3(b), relative to the populations in other States of older individuals who are blind.

(b) The amounts referred to in paragraph (a) of this section are any amounts that are not paid to States under section 752(c)(2) of the Act and § 367.51 as a result of—

(1) The failure of a DSA to prepare, submit, and receive approval of an application under section 752(h) of the Act and in accordance with §§ 367.30 and 367.31; or

(2) Information received by the Secretary from the DSA that the DSA does not intend to expend the full amount of the State's allotment under section 752(c) of the Act and this subpart.

(c) A reallotment grant to a State under paragraph (a) of this section is subject to the same conditions as grants made under section 752(a) of the Act and this part.

(d) Any funds made available to a State for any fiscal year pursuant to this section are regarded as an increase in the allotment of the State under § 367.51 for that fiscal year only.

(e) A State that does not intend to expend the full amount of its allotment must notify RSA at least 45 days prior to the end of the fiscal year that its grant, or a portion of it, is available for reallotment.

(Approved by the Office of Management and Budget under control number 1820–0660)

(Authority: Section 752(i)(4) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796k(i)(4))

Subpart F—What Conditions Must Be Met After an Award?

§ 367.60 When may a DSA make subawards or contracts?

A DSA may operate or administer the program or projects under this part to carry out the purposes specified in § 367.1, either directly or through—

(a) Subawards to public or private nonprofit agencies or organizations; or

(b) Contracts with individuals, entities, or organizations that are not public or private nonprofit agencies or organizations.

(Authority: Sections 752(g) and (h) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796k(g) and (h)(2)(A))

§ 367.61 What matching requirements apply?

Non-Federal contributions required by § 367.31(b) must meet the requirements in 2 CFR 200.306 (Cost sharing or matching).

(Authority: Section 752(f) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796k(f))

§ 367.62 What requirements apply if the State's non-Federal share is in cash?

(a) Expenditures that meet the non-Federal share requirements of 2 CFR 200.306 may be used to meet the non-Federal share matching requirement. Expenditures used as non-Federal share must also meet the following requirements:

(1) The expenditures are made with funds made available by appropriation directly to the DSA or with funds made available by allotment or transfer from any other unit of State or local government;

(2) The expenditures are made with cash contributions from a donor that are deposited in the account of the DSA in accordance with State law for expenditure by, and at the sole discretion of, the DSA for activities authorized by § 367.3; or

(3) The expenditures are made with cash contributions from a donor that are earmarked for meeting the State's share for activities listed in § 367.3;

(b) Cash contributions are permissible under paragraph (a)(3) of this section only if the cash contributions are not used for expenditures that benefit or will benefit in any way the donor, an individual to whom the donor is related by blood or marriage or with whom the donor has a close personal relationship, or an individual, entity, or organization with whom the donor shares a financial interest.

(c) The receipt of a subaward or contract under section 752(g) of the Act from the DSA is not considered a benefit to the donor of a cash contribution for purposes of paragraph (b) of this section if the subaward or contract was awarded under the State's regular competitive procedures. The State may not exempt the awarding of the subaward or contract from its regular competitive procedures.

(d) For purposes of this section, a donor may be a private agency, a profit-making or nonprofit organization, or an individual.

(Authority: Section 752(f) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796k(f))

§ 367.63 What requirements apply if the State's non-Federal share is in kind?

In-kind contributions may be—

(a) Used to meet the matching requirement under section 752(f) of the Act if the in-kind contributions meet the requirements and are allowable under 2 CFR 200.306; and

(b) Made to the program or project by the State or by a third party (*i.e.*, an individual, entity, or organization, whether local, public, private, for profit, or nonprofit), including a third party that is a subrecipient or contractor that is receiving or will receive assistance under section 752(g) of the Rehabilitation Act.

(Authority: Section 752(f) and (g) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796k(f) and (g))

§ 367.64 What is the prohibition against a State's condition of an award of a subaward or contract based on cash or in-kind contributions?

(a) A State may not condition the making of a subaward or contract under section 752(g) of the Act on the requirement that the applicant for the subaward or contract make a cash or in-

kind contribution of any particular amount or value to the State.

(b) An individual, entity, or organization that is a subrecipient or contractor of the State, may not condition the award of a subcontract on the requirement that the applicant for the subcontract make a cash or in-kind contribution of any particular amount or value to the State or to the subrecipient or contractor of the State.

(Authority: Section 752(f) and (g) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 796k(f) and (g))

§ 367.65 What is program income and how may it be used?

(a) *Definition—Program income* means gross income earned by the grantee, subrecipient, or contractor that is directly generated by a supported activity or earned as a result of the grant, subaward, or contract.

(1) Program income received through the transfer of Social Security Administration program income from the State Vocational Rehabilitation Services program (Title I) in accordance with 34 CFR 361.63(c)(2) will be treated as program income received under this part.

(2) Payments received by the State agency, subrecipients, or contractors from insurers, consumers, or other for IL services provided under the Independent Living Services for Older Individuals Who Are Blind program to defray part or all of the costs of services provided to individual consumers will be treated as program income received under this part.

(b) *Use of program income.* (1) Program income, whenever earned, must be used for the provision of services authorized under § 367.3.

(2) Program income must be added to the Federal Award in accordance with 2 CFR 200.307(e)(2).

(3) Program income may not be used to meet the non-Federal share requirement under § 367.31(b).

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c))

§ 367.66 What requirements apply to the obligation of Federal funds and program income?

(a) Except as provided in paragraph (b) of this section, any Federal funds, including reallotted funds, that are appropriated for a fiscal year to carry out a program under this part that are not obligated or expended by the DSA prior to the beginning of the succeeding fiscal year, and any program income received during a fiscal year that is not obligated or expended by the DSA prior to the beginning of the succeeding fiscal year in which the program income was received, remain available for obligation and expenditure by the DSA during that succeeding fiscal year.

(b) Federal funds appropriated for a fiscal year under this part remain available for obligation in the succeeding fiscal year only to the extent that the DSA complied with its matching requirement by obligating, in accordance with 34 CFR 76.707, the non-Federal share in the fiscal year for which the funds were appropriated.

(c) Program income is considered earned in the fiscal year in which it is received. Program income earned during the fiscal year must be disbursed during the time in which new obligations may be incurred to carry out the work authorized under the award, and prior to requesting additional cash payments.

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c))

§ 367.67 May an individual's ability to pay be considered in determining his or her participation in the costs of OIB services?

(a) *Participation of individuals in cost of services.* (1) A State is neither required to charge nor prohibited from charging consumers for the cost of IL services provided under the Independent Living Services for Older Individuals Who Are Blind program;

(2) If a State charges consumers or allows other service providers to charge for the cost of IL services provided under the Independent Living Services for Older Individuals Who Are Blind program, a State is neither required to nor prohibited from considering the ability of individual consumers to pay for the cost of these services in determining how much a particular consumer must contribute to the costs of a particular service.

(b) *State policies on cost of services.* If a State chooses to charge or allow other service providers to charge consumers for the cost of IL services provided under the Independent Living Services for Older Individuals Who Are Blind program and if a State chooses to consider and allow other service providers to consider the ability of individual consumers to pay for the cost of IL services provided under the Independent Living Services for Older Individual Who Are Blind program, the State must maintain policies that—

(1) Specify the type of IL services for which costs may be charged and the type of IL services for which a financial need test may be applied;

(2) Explain the method for determining the amount charged for the IL services and how any financial need test will be applied;

(3) Ensure costs are charged uniformly so that all individuals are treated equally;

(4) Ensure that if costs are charged or financial need is considered, the consumer's required participation is not so high that it effectively denies the individual a necessary service;

(5) Require documentation of an individual's participation in the cost of any IL services provided, including the determination of an individual's financial need; and

(6) Provide that individuals who have been determined eligible for Social Security benefits under Titles II and XVI of the Social Security Act may not be charged any cost to receive IL services under this program.

(c) *Policies on consumer financial participation.* If a State permits other service providers to charge the costs of IL services provided under the Independent Living Services for Older Individuals Who Are Blind program, or chooses to allow other service providers to consider the ability of individual consumers to contribute to the cost of IL services provided through the Independent Living Services for Older Individuals Who Are Blind program, the State must require that such service providers comply with the State's written policies regarding consumer financial participation in the cost of IL services.

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c)).

§ 367.68 What notice must be given about the Client Assistance Program (CAP)?

The DSA and all other service providers under this part shall use formats that are accessible to notify individuals seeking or receiving services under this part about—

(a) The availability of CAP authorized by section 112 of the Act;

(b) The purposes of the services provided under the CAP; and

(c) How to contact the CAP.

(Authority: Section 20 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 717)

§ 367.69 What are the special requirements pertaining to the protection, use, and release of personal information?

(a) *General provisions.* The DSA and all other service providers under this part shall adopt and implement policies and procedures to safeguard the confidentiality of all personal information, including photographs and lists of names. These policies and procedures must assure that—

(1) Specific safeguards protect current and stored personal information, including a requirement that data only

be released when governed by a written agreement between the DSA and other service providers and the receiving entity under paragraphs (d) and (e)(1) of this section, which addresses the requirements in this section;

(2) All applicants for, or recipients of, services under this part and, as appropriate, those individuals' legally authorized representatives, service providers, cooperating agencies, and interested persons are informed of the confidentiality of personal information and the conditions for gaining access to and releasing this information;

(3) All applicants or their legally authorized representatives are informed about the service provider's need to collect personal information and the policies governing its use, including—

(i) Identification of the authority under which information is collected;

(ii) Explanation of the principal purposes for which the service provider intends to use or release the information;

(iii) Explanation of whether providing requested information to the service provider is mandatory or voluntary and the effects to the individual of not providing requested information;

(iv) Identification of those situations in which the service provider requires or does not require informed written consent of the individual or his or her legally authorized representative before information may be released; and

(v) Identification of other agencies to which information is routinely released;

(4) Persons who do not speak, listen, read, or write English proficiently or who rely on alternative modes of communication must be provided an explanation of service provider policies and procedures affecting personal information through methods that can be meaningfully understood by them;

(5) At least the same protections are provided to individuals served under this part as provided by State laws and regulations; and

(6) Access to records is governed by rules established by the service provider and any fees charged for copies of records are reasonable and cover only extraordinary costs of duplication or making extensive searches.

(b) *Service provider use.* All personal information in the possession of the service provider may be used only for the purposes directly connected with the provision of services under this part and the administration of the program under which services are provided under this part. Information containing identifiable personal information may not be shared with advisory or other bodies that do not have official responsibility for the provision of services under this part or the administration of the program under which services are provided under this part. In the provision of services under this part or the administration of the program under which services are provided under this part, the service provider may obtain personal information from other service providers and cooperating agencies under assurances that the information may not be further divulged, except as provided under paragraphs (c), (d), and (e) of this section.

(c) *Release to recipients of services under this part.* (1) Except as provided in paragraphs (c)(2) and (3) of this section, if requested in writing by a recipient of services under this part, the service provider shall release all information in that individual's record of services to the individual or the individual's legally authorized representative in a timely manner.

(2) Medical, psychological, or other information that the service provider determines may be harmful to the individual may not be released directly to the individual, but must be provided through a qualified medical or psychological professional or the individual's legally authorized representative.

(3) If personal information has been obtained from another agency or organization, it may be released only by, or under the conditions established by, the other agency or organization.

(d) *Release for audit, evaluation, and research.* Personal information may be released to an organization, agency, or individual engaged in audit, evaluation, or research activities only for purposes directly connected with the administration of a program under this part, or for purposes that would significantly improve the quality of life for individuals served under this part and only if, in accordance with a written agreement, the organization, agency, or individual assures that—

(1) The information will be used only for the purposes for which it is being provided;

(2) The information will be released only to persons officially connected with the audit, evaluation, or research;

(3) The information will not be released to the involved individual;

(4) The information will be managed in a manner to safeguard confidentiality; and

(5) The final product will not reveal any personally identifying information without the informed written consent of the involved individual or the individual's legally authorized representative.

(e) *Release to other programs or authorities.* (1) Upon receiving the informed written consent of the individual or, if appropriate, the individual's legally authorized representative, the service provider may release personal information to another agency or organization, in accordance with a written agreement, for the latter's program purposes only to the extent that the information may be released to the involved individual and only to the extent that the other agency or organization demonstrates that the information requested is necessary for the proper administration of its program.

(2) Medical or psychological information may be released pursuant to paragraph (e)(1) of this section if the other agency or organization assures the service provider that the information will be used only for the purpose for which it is being provided and will not be further released to the individual.

(3) The service provider shall release personal information if required by Federal laws or regulations.

(4) The service provider shall release personal information in response to investigations in connection with law enforcement, fraud, or abuse, unless expressly prohibited by Federal or State laws or regulations, and in response to judicial order.

(5) The service provider also may release personal information to protect the individual or others if the individual poses a threat to his or her safety or to the safety of others.

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c))

§ 367.70 What access to records must be provided?

For the purpose of conducting audits, examinations, and compliance reviews, the DSA and all other service providers shall provide access to the Secretary and the Comptroller General, or any of their duly authorized representatives, to—

(a) The records maintained under this part;

(b) Any other books, documents, papers, and records of the recipients that are pertinent to the financial assistance received under this part; and

(c) All individual case records or files or consumer service records of individuals served under this part, including names, addresses, photographs, and records of evaluation included in those individual case records or files or consumer service records.

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c))

§ 367.71 What records must be maintained?

The DSA and all other service providers shall maintain—

(a) Records that fully disclose and document—

(1) The amount and disposition by the recipient of that financial assistance;

(2) The total cost of the project or undertaking in connection with which the financial assistance is given or used;

(3) The amount of that portion of the cost of the project or undertaking supplied by other sources; and

(4) Compliance with the requirements of this part; and

(b) Other records that the Secretary determines to be appropriate to facilitate an effective audit.

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c))

PART 369 [REMOVED AND RESERVED]

■ 2. Part 369 is removed and reserved.

■ 3. Part 370 is revised to read as follows:

PART 370—CLIENT ASSISTANCE PROGRAM

Subpart A—General

Sec.
370.1 What is the Client Assistance Program (CAP)?
370.2 Who is eligible for an award?
370.3 Who is eligible for services and information under the CAP?
370.4 What kinds of activities may the Secretary fund?
370.5 What regulations apply?
370.6 What definitions apply?
370.7 What shall the designated agency do to make its services accessible?

Subpart B—What Requirements Apply to Redesignation?

370.10 When do the requirements for redesignation apply?
370.11 What requirements apply to a notice of proposed redesignation?
370.12 How does a designated agency preserve its right to appeal a redesignation?
370.13 What are the requirements for a decision to redesignate?
370.14 How does a designated agency appeal a written decision to redesignate?
370.15 What must the Governor of a State do upon receipt of a copy of a designated agency's written appeal to the Secretary?
370.16 How does the Secretary review an appeal of a redesignation?
370.17 When does a redesignation become effective?

Subpart C—What Are the Requirements for Requesting a Grant?

370.20 What must be included in a request for a grant?

Subpart D—How Does the Secretary Allocate and Reallocate Funds to a State?

370.30 How does the Secretary allocate funds?
370.31 How does the Secretary reallocate funds?

Subpart E—What Post-Award Conditions Must Be Met by a Designated Agency?

370.40 What are allowable costs?
370.41 What conflict of interest provision applies to employees of a designated agency?
370.42 What access must the CAP be afforded to policymaking and administrative personnel?
370.43 What requirement applies to the use of mediation procedures?
370.44 What reporting requirement applies to each designated agency?
370.45 What limitation applies to the pursuit of legal remedies?
370.46 What consultation requirement applies to a Governor of a State?
370.47 What is program income and how may it be used?
370.48 When must grant funds and program income be obligated?
370.49 What are the special requirements pertaining to the protection, use, and release of personal information?

Authority: Section 112 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 732, unless otherwise noted.

Subpart A—General

§ 370.1 What is the Client Assistance Program (CAP)?

The purpose of this program is to establish and carry out CAPs that—

(a) Advise and inform clients and client-applicants of all services and benefits available to them through programs authorized under the Rehabilitation Act of 1973, as amended (Act), including activities carried out under sections 113 and 511;

(b) Assist and advocate for clients and client-applicants in their relationships with projects, programs, and community rehabilitation programs providing services under the Act; and

(c) Inform individuals with disabilities in the State, especially individuals with disabilities who have traditionally been unserved or underserved by vocational rehabilitation programs, of the services and benefits available to them under the Act and under title I of the Americans with Disabilities Act of 1990 (ADA) (42 U.S.C. 12111 *et seq.*).

(Authority: Section 112(a) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 732(a))

§ 370.2 Who is eligible for an award?

(a)(1) Any State, through its Governor, and the protection and advocacy system serving the American Indian Consortium are eligible for an award under this part if the State or eligible protection and advocacy system submits, and receives approval of, an application in accordance with § 370.20.

(2) For purposes of this part, the terms—

(i) "American Indian Consortium" has the meaning given the term in section 102 of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (DD Act) (42 U.S.C. 15002); and

(ii) "Protection and advocacy system" means a protection and advocacy system established under subtitle C of title I of the DD Act (42 U.S.C. 15041 *et seq.*).

(b) Notwithstanding the protection and advocacy system serving the American Indian Consortium, the Governor of each State shall designate a public or private agency to conduct the State's CAP under this part.

(c) Except as provided in paragraph (d) of this section, the Governor shall designate an agency that is independent of any agency that provides treatment, services, or rehabilitation to individuals under the Act.

(d) The Governor may, in the initial designation, designate an agency that provides treatment, services, or rehabilitation to individuals with disabilities under the Act if, at any time before February 22, 1984, there was an agency in the State that both—

(1) Was a grantee under section 112 of the Act by serving as a client assistance agency and directly carrying out a CAP; and

(2) Was, at the same time, a grantee under any other provision of the Act.

(e) An agency designated by the Governor of a State to conduct the State's CAP or the protection and advocacy system serving the American Indian Consortium under this part may not make a subaward to or enter into a contract with an agency that provides services under this Act either to carry out the CAP or to provide services under the CAP.

(f) A designated agency, including the protection and advocacy system serving the American Indian Consortium, that contracts to provide CAP services with another entity or individual remains responsible for—

(1) The conduct of a CAP that meets all of the requirements of this part;

(2) Ensuring that the entity or individual expends CAP funds in accordance with—

(i) The regulations in this part; and

(ii) The regulations at 2 CFR part 200 applicable to the designated agency identified in paragraph (b) or the protection and advocacy system serving the American Indian Consortium, as

described in paragraph (a) of this section; and

(3) The direct day-to-day supervision of the CAP services being carried out by the contractor. This day-to-day supervision must include the direct supervision of the individuals who are employed or used by the contractor to provide CAP services.

(Authority: Sections 12(c) and 112(a), (c)(1)(A), and (e)(1)(E) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 732(a), (c)(1)(A), and (e)(1)(E))

§ 370.3 Who is eligible for services and information under the CAP?

(a) Any client or client-applicant is eligible for the services described in § 370.4.

(b) Any individual with a disability is eligible to receive information on the services and benefits available to individuals with disabilities under the Act and title I of the ADA.

(Authority: Section 112(a) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 732(a))

§ 370.4 What kinds of activities may the Secretary fund?

(a) Funds made available under this part must be used for activities consistent with the purposes of this program, including—

(1) Advising and informing clients, client-applicants, and individuals with disabilities in the State, especially individuals with disabilities who have traditionally been unserved or underserved by vocational rehabilitation programs, of—

(i) All services and benefits available to them through programs authorized under the Act; and

(ii) Their rights in connection with those services and benefits;

(2) Informing individuals with disabilities in the State, especially individuals with disabilities who have traditionally been unserved or underserved by vocational rehabilitation programs, of the services and benefits available to them under title I of the ADA;

(3) Upon the request of the client or client-applicant, assisting and advocating on behalf of the client or client-applicant in his or her relationship with projects, programs, and community rehabilitation programs that provide services under the Act by engaging in individual or systemic advocacy and pursuing, or assisting and advocating on behalf of the client or client-applicant to pursue, legal, administrative, and other available remedies, if necessary—

(i) To ensure the protection of the rights of a client or client-applicant under the Act; and

(ii) To facilitate access by individuals with disabilities, including students and youth with disabilities who are making the transition from school programs, to services funded under the Act; and

(4) Providing information to the public concerning the CAP.

(b) In providing assistance and advocacy services under this part with respect to services under title I of the Act, a designated agency may provide assistance and advocacy services to a client or client-applicant to facilitate the individual's employment, including assistance and advocacy services with respect to the individual's claims under title I of the ADA, if those claims under title I of the ADA are directly related to services under title I of the Act that the individual is receiving or seeking.

(Authority: Sections 12(c) and 112(a) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 732(a))

§ 370.5 What regulations apply?

The following regulations apply to the expenditure of funds and the administration of the program under this part:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 75 (Direct Grant Programs) for purposes of an award made under § 370.30(d)(1) when the CAP appropriation equals or exceeds $14,000,000.

(2) 34 CFR part 76 (State-Administered Programs) applies to the State and, if the designated agency is a State or local government agency, to the designated agency, except for—

(i) Section 76.103;

(ii) Sections 76.125 through 76.137;

(iii) Sections 76.300 through 76.401;

(iv) Section 76.708;

(v) Section 76.734; and

(vi) Section 76.740.

(3) 34 CFR part 77 (Definitions That Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 81 (General Education Provisions Act—Enforcement) applies to both the State and the designated agency, whether or not the designated agency is the actual recipient of the CAP grant. As the entity that eventually, if not directly, receives the CAP grant funds, the designated agency is considered a recipient for purposes of Part 81.

(6) 34 CFR part 82 (New Restrictions on Lobbying).

(b) Other regulations as follows:

(1) 2 CFR part 180 (OMB Guidelines to Agencies on Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485.

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

(c) The regulations in this part 370.

Note to § 370.5: Any funds made available to a State under this program that are transferred by a State to a designated agency do not make a subaward as that term is defined in 2 CFR 200.330. The designated agency is not, therefore, in these circumstances a subrecipient, as that term is defined in 2 CFR 200.330.

(Authority: Sections 12(c) and 112 of the Rehabilitation Act, as amended; 29 U.S.C. 709(c) and 732)

§ 370.6 What definitions apply?

(a) Definitions in EDGAR at 34 CFR part 77.

(b) Definitions in 2 CFR part 200, subpart A.

(c) Other definitions. The following definitions also apply to this part:

Act means the Rehabilitation Act of 1973, as amended.

Advocacy means pleading an individual's cause or speaking or writing in support of an individual. Advocacy may be formal, as in the case of a lawyer representing an individual in a court of law or in formal administrative proceedings before government agencies (whether tribal, State, local, or Federal). Advocacy also may be informal, as in the case of a lawyer or non-lawyer representing an individual in negotiations, mediation, or informal administrative proceedings before government agencies (whether tribal, State, local, or Federal), or as in the case of a lawyer or non-lawyer representing an individual's cause before private entities or organizations, or government agencies (whether tribal, State, local, or Federal). Advocacy may be on behalf of—

(1) A single individual, in which case it is individual advocacy;

(2) More than one individual or a group of individuals, in which case it is systems (or systemic) advocacy, but systems or systemic advocacy, for the purposes of this part, does not include class actions, or

(3) Oneself, in which case it is self advocacy.

American Indian Consortium means that entity described in § 370.2(a).

Class action means a formal legal suit on behalf of a group or class of individuals filed in a Federal or State court that meets the requirements for a "class action" under Federal or State law. "Systems (or systemic) advocacy" that does not include filing a formal class action in a Federal or State court

is not considered a class action for purposes of this part.

Client or client-applicant means an individual receiving or seeking services under the Act, respectively.

Designated agency means the agency designated by the Governor under § 370.2 or the protection and advocacy system serving the American Indian Consortium that is conducting a CAP under this part.

Mediation means the act or process of using an independent third party to act as a mediator, intermediary, or conciliator to settle differences or disputes between persons or parties. The third party who acts as a mediator, intermediary, or conciliator may not be any entity or individual who is connected in any way with the eligible system or the agency, entity, or individual with whom the individual with a disability has a dispute. Mediation may involve the use of professional mediators or any other independent third party mutually agreed to by the parties to the dispute.

Protection and Advocacy System has the meaning set forth at § 370.2(a).

Services under the Act means vocational rehabilitation, independent living, supported employment, and other similar rehabilitation services provided under the Act. For purposes of the CAP, the term "services under the Act" does not include activities carried out under the protection and advocacy program authorized by section 509 of the Act (*i.e.*, the Protection and Advocacy of Individual Rights (PAIR) program, 34 CFR part 381).

State means, in addition to each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, The United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, except for purposes of the allotments under § 370.30, in which case "State" does not mean or include Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

(Authority: Sections 7(34), 12(c), and 112 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(34), 709(c), and 732)

§ 370.7 What shall the designated agency do to make its services accessible?

The designated agency shall provide, as appropriate, the CAP services described in § 370.4 in formats that are accessible to clients or client-applicants who seek or receive CAP services.

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c))

Subpart B—What Requirements Apply to Redesignation?

§ 370.10 When do the requirements for redesignation apply?

(a) The Governor shall redesignate the designated agency for carrying out the CAP to an agency that is independent of any agency that provides treatment, services, or rehabilitation to individuals under the Act if, after August 7, 1998—

(1) The designated State agency undergoes any change in the organizational structure of the agency that results in one or more new State agencies or departments, or results in the merger with one or more other State agencies or departments, and

(2) The designated State agency contains an office or unit conducting the CAP.

(3) For purposes of paragraph (a) of this section, the designated State agency has the meaning given to that term at 34 CFR 361.5(c)(12) and described at 34 CFR 361.13.

(b) The Governor may not redesignate the agency designated pursuant to section 112(c) of the Act and § 370.2(b) without good cause and without complying with the requirements of §§ 370.10 through 370.17.

(c) For purposes of §§ 370.10 through 370.17, a "redesignation of" or "to redesignate" a designated agency means any change in or transfer of the designation of an agency previously designated by the Governor to conduct the State's CAP to a new or different agency, unit, or organization, including—

(1) A decision by a designated agency to cancel its existing contract with another entity with which it has previously contracted to carry out and operate all or part of its responsibilities under the CAP (including providing advisory, assistance, or advocacy services to eligible clients and client-applicants); or

(2) A decision by a designated agency not to renew its existing contract with another entity with which it has previously contracted. Therefore, an agency that is carrying out a State's CAP under a contract with a designated agency is considered a designated agency for purposes of §§ 370.10 through 370.17.

(d) For purposes of paragraph (b) of this section, a designated agency that does not renew a contract for CAP services because it is following State procurement laws that require contracts to be awarded through a competitive bidding process is presumed to have good cause for not renewing an existing contract. However, this presumption may be rebutted.

(e) If State procurement laws require a designated agency to award a contract through a competitive bidding process, the designated agency must hold public hearings on the request for proposal before awarding the new contract.

(Authority: Sections 12(c) and 112(c)(1)(B) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 732(c)(1)(B))

§ 370.11 What requirements apply to a notice of proposed redesignation?

(a) Prior to any redesignation of the agency that conducts the CAP, the Governor shall give written notice of the proposed redesignation to the designated agency, the State Rehabilitation Council (SRC), and the State Independent Living Council (SILC) and publish a public notice of the Governor's intention to redesignate. Both the notice to the designated agency, the SRC, and the SILC and the public notice must include, at a minimum, the following:

(1) The Federal requirements for the CAP (section 112 of the Act).

(2) The goals and function of the CAP.

(3) The name of the current designated agency.

(4) A description of the current CAP and how it is administered.

(5) The reason or reasons for proposing the redesignation, including why the Governor believes good cause exists for the proposed redesignation.

(6) The effective date of the proposed redesignation.

(7) The name of the agency the Governor proposes to administer the CAP.

(8) A description of the system that the redesignated (*i.e.*, new) agency would administer.

(b) The notice to the designated agency must—

(1) Be given at least 30 days in advance of the Governor's written decision to redesignate; and

(2) Advise the designated agency that it has at least 30 days from receipt of the notice of proposed redesignation to respond to the Governor and that the response must be in writing.

(c) The notice of proposed redesignation must be published in a place and manner that provides the SRC, the SILC, individuals with disabilities or their representatives, and the public with at least 30 days to submit oral or written comments to the Governor.

(d) Following public notice, public hearings concerning the proposed redesignation must be conducted in an accessible format that provides individuals with disabilities or their representatives an opportunity for comment. The Governor shall maintain

a written public record of these hearings.

(e) The Governor shall fully consider any public comments before issuing a written decision to redesignate.

(Authority: Sections 12(c) and 112(c)(1)(B) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 732(c)(1)(B))

§ 370.12 How does a designated agency preserve its right to appeal a redesignation?

(a) To preserve its right to appeal a Governor's written decision to redesignate (see § 370.13), a designated agency must respond in writing to the Governor within 30 days after it receives the Governor's notice of proposed redesignation.

(b) The designated agency shall send its response to the Governor by registered or certified mail, return receipt requested, or other means that provides a record that the Governor received the designated agency's response.

(Approved by the Office of Management and Budget under control number 1820–0520)

(Authority: Sections 12(c) and 112(c)(1)(B) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 732(c)(1)(B))

§ 370.13 What are the requirements for a decision to redesignate?

(a) If, after complying with the requirements of § 370.11, the Governor decides to redesignate the designated agency, the Governor shall provide to the designated agency a written decision to redesignate that includes the rationale for the redesignation. The Governor shall send the written decision to redesignate to the designated agency by registered or certified mail, return receipt requested, or other means that provides a record that the designated agency received the Governor's written decision to redesignate.

(b) If the designated agency submitted to the Governor a timely response to the Governor's notice of proposed redesignation, the Governor shall inform the designated agency that it has at least 15 days from receipt of the Governor's written decision to redesignate to file a formal written appeal with the Secretary.

(Approved by the Office of Management and Budget under control number 1820–0520)

(Authority: Sections 12(c) and 112(c)(1)(B) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 732(c)(1)(B))

§ 370.14 How does a designated agency appeal a written decision to redesignate?

(a) A designated agency may appeal to the Secretary a Governor's written decision to redesignate only if the designated agency submitted to the Governor a timely written response to the Governor's notice of proposed redesignation in accordance with § 370.12.

(b) To appeal to the Secretary a Governor's written decision to redesignate, a designated agency shall file a formal written appeal with the Secretary within 15 days after the designated agency's receipt of the Governor's written decision to redesignate. The date of filing of the designated agency's written appeal with the Secretary will be determined in a manner consistent with the requirements of 34 CFR 81.12.

(c) If the designated agency files a written appeal with the Secretary, the designated agency shall send a separate copy of this appeal to the Governor by registered or certified mail, return receipt requested, or other means that provides a record that the Governor received a copy of the designated agency's appeal to the Secretary.

(d) The designated agency's written appeal to the Secretary must state why the Governor has not met the burden of showing that good cause for the redesignation exists or has not met the procedural requirements under §§ 370.11 and 370.13.

(e) The designated agency's written appeal must be accompanied by the designated agency's written response to the Governor's notice of proposed redesignation and may be accompanied by any other written submissions or documentation the designated agency wishes the Secretary to consider.

(f) As part of its submissions under this section, the designated agency may request an informal meeting with the Secretary at which representatives of both parties will have an opportunity to present their views on the issues raised in the appeal.

(Approved by the Office of Management and Budget under control number 1820–0520)

(Authority: Sections 12(c) and 112(c)(1)(B) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 732(c)(1)(B))

§ 370.15 What must the Governor of a State do upon receipt of a copy of a designated agency's written appeal to the Secretary?

(a) If the designated agency files a formal written appeal in accordance with § 370.14, the Governor shall, within 15 days of receipt of the designated agency's appeal, submit to the Secretary copies of the following:

(1) The written notice of proposed redesignation sent to the designated agency.

(2) The public notice of proposed redesignation.

(3) Transcripts of all public hearings held on the proposed redesignation.

(4) Written comments received by the Governor in response to the public notice of proposed redesignation.

(5) The Governor's written decision to redesignate, including the rationale for the decision.

(6) Any other written documentation or submissions the Governor wishes the Secretary to consider.

(7) Any other information requested by the Secretary.

(b) As part of the submissions under this section, the Governor may request an informal meeting with the Secretary at which representatives of both parties will have an opportunity to present their views on the issues raised in the appeal.

(Approved by the Office of Management and Budget under control number 1820–0520)

(Authority: Sections 12(c) and 112(c)(1)(B) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 732(c)(1)(B))

§ 370.16 How does the Secretary review an appeal of a redesignation?

(a) If either party requests a meeting under § 370.14(f) or § 370.15(b), the meeting is to be held within 30 days of the submissions by the Governor under § 370.15, unless both parties agree to waive this requirement. The Secretary promptly notifies the parties of the date and place of the meeting.

(b) Within 30 days of the informal meeting permitted under paragraph (a) of this section or, if neither party has requested an informal meeting, within 60 days of the submissions required from the Governor under § 370.15, the Secretary issues to the parties a final written decision on whether the redesignation was for good cause.

(c) The Secretary reviews a Governor's decision based on the record submitted under §§ 370.14 and 370.15 and any other relevant submissions of other interested parties. The Secretary may affirm or, if the Secretary finds that the redesignation is not for good cause, remand for further findings or reverse a Governor's redesignation.

(d) The Secretary sends copies of the decision to the parties by registered or certified mail, return receipt requested, or other means that provide a record of receipt by both parties.

(Approved by the Office of Management and Budget under control number 1820–0520)

(Authority: Sections 12(c) and 112(c)(1)(B) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 732(c)(1)(B))

§ 370.17 When does a redesignation become effective?

A redesignation does not take effect for at least 15 days following the

designated agency's receipt of the Governor's written decision to redesignate or, if the designated agency appeals, for at least 5 days after the Secretary has affirmed the Governor's written decision to redesignate.

(Authority: Sections 12(c) and 112(c)(1)(B) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 732(c)(1)(B))

Subpart C—What are the Requirements for Requesting a Grant?

§ 370.20 What must be included in a request for a grant?

(a) Each State and the protection and advocacy system serving the American Indian Consortium seeking assistance under this part shall submit to the Secretary, in writing, at the time and in the manner determined by the Secretary to be appropriate, an application that includes, at a minimum—

(1) The name of the designated agency; and

(2) An assurance that the designated agency meets the independence requirement of section 112(c)(1)(A) of the Act and § 370.2(c), or that the State is exempted from that requirement under section 112(c)(1)(A) of the Act and § 370.2(d).

(b)(1) Each State and the protection and advocacy system serving the American Indian Consortium also shall submit to the Secretary an assurance that the designated agency has the authority to pursue legal, administrative, and other appropriate remedies to ensure the protection of the rights of clients or client-applicants within the State or American Indian Consortium.

(2) The authority to pursue remedies described in paragraph (b)(1) of this section must include the authority to pursue those remedies against the State vocational rehabilitation agency and other appropriate State agencies. The designated agency meets this requirement if it has the authority to pursue those remedies either on its own behalf or by obtaining necessary services, such as legal representation, from outside sources.

(c) Each State and the protection and advocacy system serving the American Indian Consortium also shall submit to the Secretary assurances that—

(1) All entities conducting, administering, operating, or carrying out programs within the State that provide services under the Act to individuals with disabilities in the State will advise all clients and client-applicants of the existence of the CAP, the services provided under the program, and how to contact the designated agency;

(2) The designated agency will meet each of the requirements in this part; and

(3) The designated agency will provide the Secretary with the annual report required by section 112(g)(4) of the Act and § 370.44.

(d) To allow a designated agency to receive direct payment of funds under this part, a State or the protection and advocacy system serving the American Indian Consortium must provide to the Secretary, as part of its application for assistance, an assurance that direct payment to the designated agency is not prohibited by or inconsistent with State or tribal law, regulation, or policy.

(Approved by the Office of Management and Budget under control number 1820–0520)

(Authority: Sections 12(c) and 112(b) and (f) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 732(b) and (f))

Subpart D—How Does the Secretary Allocate and Reallocate Funds to a State?

§ 370.30 How does the Secretary allocate funds?

(a) After reserving funds required under paragraphs (c) and (d) of this section, the Secretary shall allot the remainder of the sums appropriated for each fiscal year under this section among the States on the basis of relative population of each State, except that no such entity shall receive less than $50,000.

(b) The Secretary allocates $30,000 each, unless the provisions of section 112(e)(1)(D) of the Act are applicable, to American Samoa, Guam, the Virgin Islands, and the Commonwealth of Northern Mariana Islands.

(c) The Secretary shall reserve funds, from the amount appropriated to carry out this part, to make a grant to the protection and advocacy system serving the American Indian Consortium to provide services in accordance with this part. The amount of the grant to the protection and advocacy system serving the American Indian Consortium shall be the same amount as is provided to a territory under paragraph (b) of this section.

(d)(1) For any fiscal year for which the amount appropriated equals or exceeds $14,000,000, the Secretary may reserve not less than 1.8 percent and not more than 2.2 percent of such amount to provide a grant for training and technical assistance for the programs established under this part.

(2) All training and technical assistance shall be coordinated with activities provided under 34 CFR 381.22.

(3) The Secretary shall make a grant pursuant to paragraph (d)(1) of this section to an entity that has experience in or knowledge related to the provision of services authorized under this part.

(4) An entity receiving a grant under paragraph (d)(1) of this section shall provide training and technical assistance to the designated agencies or entities carrying out the CAP to assist them in improving the provision of services authorized under this part and the administration of the program.

(e)(1) Unless prohibited or otherwise provided by State or tribal law, regulation, or policy, the Secretary pays to the designated agency, from the State allotment under paragraph (a), (b), or (c) of this section, the amount specified in the State's or the eligible protection and advocacy system's approved request. Because the designated agency, including the protection and advocacy system serving the American Indian Consortium, is the eventual, if not the direct, recipient of the CAP funds, 34 CFR part 81 and 2 CFR part 200 apply to the designated agency, whether or not the designated agency is the actual recipient of the CAP grant.

(2) Notwithstanding the grant made to the protection and advocacy system serving the American Indian Consortium under paragraph (c) of this section, the State remains the grantee for purposes of 34 CFR part 76 and 2 CFR part 200 because it is the State that submits an application for and receives the CAP grant. In addition, both the State and the designated agency are considered recipients for purposes of 34 CFR part 81.

(Authority: Sections 12(c) and 112(b) and (e) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 732(b) and (e))

§ 370.31 How does the Secretary reallocate funds?

(a) The Secretary reallocates funds in accordance with section 112(e)(2) of the Act.

(b) A designated agency shall inform the Secretary at least 45 days before the end of the fiscal year for which CAP funds were received whether the designated agency is making available for reallotment any of those CAP funds that it will be unable to obligate in that fiscal year or the succeeding fiscal year.

(Approved by the Office of Management and Budget under control number 1820–0520)

(Authority: Sections 12(c), 19, and 112(e)(2) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 716, and 732(e)(2))

Subpart E—What Post-Award Conditions Must Be Met by a Designated Agency?

§ 370.40 What are allowable costs?

(a) The designated agency, including the eligible protection and advocacy system serving the American Indian Consortium, shall apply the regulations at 2 CFR part 200.

(b) Consistent with the program activities listed in § 370.4, the cost of travel in connection with the provision to a client or client-applicant of assistance under this program is allowable, in accordance with 2 CFR part 200. The cost of travel includes the cost of travel for an attendant if the attendant must accompany the client or client-applicant.

(c)(1) The State and the designated agency are accountable, both jointly and severally, to the Secretary for the proper use of funds made available under this part. However, the Secretary may choose to recover funds under the procedures in 34 CFR part 81 from either the State or the designated agency, or both, depending on the circumstances of each case.

(2) For purposes of the grant made under this part to the protection and advocacy system serving the American Indian Consortium, such entity will be solely accountable to the Secretary for the proper use of funds made available under this part. If the Secretary determines it necessary, the Secretary may recover funds from the protection and advocacy system serving the American Indian Consortium pursuant to the procedures in 34 CFR part 81.

(Authority: Sections 12(c) and 112(c)(3) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 732(c)(3))

§ 370.41 What conflict of interest provision applies to employees of a designated agency?

(a) Except as permitted by paragraph (b) of this section, an employee of a designated agency, or of an entity or individual under contract with a designated agency, who carries out any CAP duties or responsibilities, while so employed, may not—

(1) Serve concurrently as a staff member of, consultant to, or in any other capacity within, any other rehabilitation project, program, or community rehabilitation program receiving assistance under the Act in the State; or

(2) Provide any services under the Act, other than CAP and PAIR services.

(b) An employee of a designated agency under contract with a designated agency, may—

(1) Receive a traineeship under section 302 of the Act;

(2) Provide services under the PAIR program;

(3) Represent the CAP on any board or council (such as the SRC) if CAP representation on the board or council is specifically permitted or mandated by the Act; and

(4) Consult with policymaking and administrative personnel in State and local rehabilitation programs, projects, and community rehabilitation programs, if consultation with the designated agency is specifically permitted or mandated by the Act.

(Authority: Sections 12(c) and 112(g)(1) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 732(g)(1))

§ 370.42 What access must the CAP be afforded to policymaking and administrative personnel?

The CAP must be afforded reasonable access to policymaking and administrative personnel in State and local rehabilitation programs, projects, and community rehabilitation programs. One way in which the CAP may be provided that access would be to include the director of the designated agency among the individuals to be consulted on matters of general policy development and implementation, as required by section 101(a)(16) of the Act.

(Authority: Sections 12(c), 101(a)(16), and 112(g)(2) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 721(a)(16), and 732(g)(2))

§ 370.43 What requirement applies to the use of mediation procedures?

(a) Each designated agency shall implement procedures designed to ensure that, to the maximum extent possible, good faith negotiations and mediation procedures are used before resorting to formal administrative or legal remedies. In designing these procedures, the designated agency may take into account its level of resources.

(b) For purposes of this section, mediation may involve the use of professional mediators, other independent third parties mutually agreed to by the parties to the dispute, or an employee of the designated agency who—

(1) Is not assigned to advocate for or otherwise represent or is not involved with advocating for or otherwise representing the client or client-applicant who is a party to the mediation; and

(2) Has not previously advocated for or otherwise represented or been involved with advocating for or otherwise representing that same client or client-applicant.

(Authority: Section 112(g)(3) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 732(g)(3))

§ 370.44 What reporting requirement applies to each designated agency?

In addition to the program and fiscal reporting requirements in 34 CFR 76.720 and 2 CFR 200.327 that are applicable to this program, each designated agency shall submit to the Secretary, no later than 90 days after the end of each fiscal year, an annual report on the operation of its CAP during the previous year, including a summary of the work done and the uniform statistical tabulation of all cases handled by the program. The annual report must contain information on—

(a) The number of requests received by the designated agency for information on services and benefits under the Act and title I of the ADA;

(b) The number of referrals to other agencies made by the designated agency and the reason or reasons for those referrals;

(c) The number of requests for advocacy services received by the designated agency from clients or client-applicants;

(d) The number of requests for advocacy services from clients or client-applicants that the designated agency was unable to serve;

(e) The reasons that the designated agency was unable to serve all of the requests for advocacy services from clients or client-applicants; and

(f) Any other information that the Secretary may require.

(Approved by the Office of Management and Budget under control number 1820–0520)

(Authority: Sections 12(c) and 112(g)(4) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 732(g)(4))

§ 370.45 What limitation applies to the pursuit of legal remedies?

A designated agency may not bring any class action in carrying out its responsibilities under this part.

(Authority: Section 112(d) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 732(d))

§ 370.46 What consultation requirement applies to a Governor of a State?

In designating a client assistance agency under § 370.2, redesignating a client assistance agency under § 370.10, and carrying out the other provisions of this part, the Governor shall consult with the director of the State vocational rehabilitation agency (or, in States with both a general agency and an agency for the blind, the directors of both agencies), the head of the developmental disability protection and

advocacy agency, and representatives of professional and consumer organizations serving individuals with disabilities in the State.

(Authority: Section 112(c)(2) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 732(c)(2))

§ 370.47 What is program income and how may it be used?

(a) *Definition.* (1) Consistent with 2 CFR 200.80 and for purposes of this part, *program income* means gross income earned by the designated agency that is directly generated by an activity supported under this part.

(2) Funds received through the transfer of Social Security Administration payments from the designated State unit, as defined in 34 CFR 361.5(c)(13), in accordance with 34 CFR 361.63(c)(2) will be treated as program income received under this part.

(b) *Use of program income.* (1) Program income, whenever earned or received, must be used for the provision of services authorized under § 370.4.

(2)(i) The designated agency must use program income to supplement Federal funds that support program activities that are subject to this part. See, for example 2 CFR 200.307(e)(2).

(ii) Notwithstanding 2 CFR 200.305(a) and consistent with 2 CFR 200.305(b)(5), and to the extent that program income funds are available, a designated agency, regardless of whether it is a State agency, must disburse those funds (including repayments to a revolving fund), rebates, refunds, contract settlements, audit recoveries, and interest earned on such funds before requesting additional funds from the Department.

(Authority: Sections 12(c) and 108 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 728; and 20 U.S.C. 3474);

§ 370.48 When must grant funds and program income be obligated?

Any Federal funds, including reallotted funds, that are appropriated for a fiscal year to carry out the activities under this part that are not obligated or expended by the designated agency prior to the beginning of the succeeding fiscal year, and any program income received during a fiscal year that is not obligated or expended by the designated agency prior to the beginning of the succeeding fiscal year in which the program income was received, remain available for obligation and expenditure by the designated agency during that succeeding fiscal year in accordance with section 19 of the Act.

(Authority: Sections 12(c) and 19 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 716)

§ 370.49 What are the special requirements pertaining to the protection, use, and release of personal information?

(a) All personal information about individuals served by any designated agency under this part, including lists of names, addresses, photographs, and records of evaluation, must be held strictly confidential.

(b) The designated agency's use of information and records concerning individuals must be limited only to purposes directly connected with the CAP, including program evaluation activities. Except as provided in paragraphs (c) and (e) of this section, this information may not be disclosed, directly or indirectly, other than in the administration of the CAP, unless the consent of the individual to whom the information applies, or his or her parent, legal guardian, or other legally authorized representative or advocate (including the individual's advocate from the designated agency), has been obtained in writing. A designated agency may not produce any report, evaluation, or study that reveals any personally identifying information without the written consent of the individual or his or her representative.

(c) Except as limited in paragraphs (d) and (e) of this section, the Secretary or other Federal or State officials responsible for enforcing legal requirements are to have complete access to all—

(1) Records of the designated agency that receives funds under this program; and

(2) All individual case records of clients served under this part without the consent of the client.

(d) For purposes of conducting any periodic audit, preparing or producing any report, or conducting any evaluation of the performance of the CAP established or assisted under this part, the Secretary does not require the designated agency to disclose the identity of, or any other personally identifiable information related to, any individual requesting assistance under the CAP.

(e) Notwithstanding paragraph (d) of this section and consistent with paragraph (f) of this section, a designated agency shall disclose to the Secretary, if the Secretary so requests, the identity of, or any other personally identifiable information (*i.e.,* name, address, telephone number, social security number, or any other official code or number by which an individual may be readily identified) related to, any individual requesting assistance under the CAP if—

(1) An audit, evaluation, monitoring review, State plan assurance review, or other investigation produces reliable evidence that there is probable cause to believe that the designated agency has violated its legislative mandate or misused Federal funds; or

(2) The Secretary determines that this information may reasonably lead to further evidence that is directly related to alleged misconduct of the designated agency.

(f) In addition to the protection afforded by paragraph (d) of this section, the right of a person or designated agency not to produce documents or disclose information to the Secretary is governed by the common law of privileges, as interpreted by the courts of the United States.

(Authority: Sections 12(c) and 112(g)(4) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 732(g)(4))

■ 4. Part 371 is revised to read as follows:

PART 371—AMERICAN INDIAN VOCATIONAL REHABILITATION SERVICES

Subpart A—General

Sec.
371.1 What is the American Indian Vocational Rehabilitation Services program?
371.2 Who is eligible for assistance under this program?
371.3 What types of projects are authorized under this program?
371.4 What is the length of the project period under this program?
371.5 What regulations apply to this program?
371.6 What definitions apply to this program?

Subpart B—Training and Technical Assistance

371.10 What are the requirements for funding training and technical assistance under this subpart?
371.11 How does the Secretary use these funds to provide training and technical assistance?
371.12 How does the Secretary make an award?
371.13 How does the Secretary determine funding priorities?
371.14 How does the Secretary evaluate an application?

Subpart C—How Does One Apply for a Grant?

371.20 What are the application procedures for this program?
371.21 What are the special application requirements related to the projects funded under this part?

Subpart D—How Does the Secretary Make a Grant?

371.31 How are grants awarded?

371.32 What other factors does the Secretary consider in reviewing an application?

Subpart E—What Conditions Apply to a Grantee Under this Program?

371.40 What are the matching requirements?
371.41 What are allowable costs?
371.42 How are services to be administered under this program?
371.43 What other special conditions apply to this program?
371.44 What are the special requirements pertaining to the protection, use, and release of personal information?
371.45 What notice must be given about the Client Assistance Program (CAP)?

Authority: Sections 12(c) and 121 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741, unless otherwise noted.

Subpart A—General

§ 371.1 What is the American Indian Vocational Rehabilitation Services program?

This program is designed to provide vocational rehabilitation services, including culturally appropriate services, to American Indians with disabilities who reside on or near Federal or State reservations, consistent with such eligible individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, so that such individual may prepare for, and engage in, high-quality employment that will increase opportunities for economic self-sufficiency.

(Authority: Section 121(a) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 741(a))

§ 371.2 Who is eligible for assistance under this program?

(a) Applications may be made only by Indian tribes and consortia of those Indian tribes located on Federal and State reservations.

(1) The applicant for the grant must be

(i) The governing body of an Indian tribe, either on behalf the Indian tribe or on behalf of a consortium of Indian tribes; or

(ii) A tribal organization that is a separate legal organization from an Indian tribe.

(2) In order to receive a grant under this section, a tribal organization that is not a governing body of an Indian tribe must:

(i) Have as one of its functions the vocational rehabilitation of American Indians with disabilities; and

(ii) Have the approval of the tribe to be served by such organization.

(3) If a grant is made to the governing body of an Indian tribe, either on its own behalf or on behalf of a consortium, or to a tribal organization to perform services benefiting more than one Indian tribe, the approval of each such Indian tribe shall be a prerequisite to the making of such a grant.

(b) Applications for awards under Subpart B may be made by State, local or tribal governments, non-profit organizations, or institutions of higher education.

(Authority: Sections 12(c) and 121(a) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(a))

§ 371.3 What types of projects are authorized under this program?

The American Indian Vocational Rehabilitation Services program provides financial assistance for the establishment and operation of tribal vocational rehabilitation services programs for American Indians with disabilities who reside on or near Federal or State reservations.

(Authority: Sections 12(c) and 121(a) of the Rehabilitation Act of 1973, as amended Act, 29 U.S.C. 709(c) and 741(a))

§ 371.4 What is the length of the project period under this program?

The Secretary approves a project period of up to sixty months.

(Authority: Sections 12(c) and 121(b)(3) of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 709(c) and 121(b)(3))

§ 371.5 What regulations apply to this program?

The following regulations apply to this program—

(a) The regulations in this part 371.

(b) 2 CFR part 180 (OMB Guidelines to Agencies on Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485;

(c) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards) as adopted at 2 CFR part 3474.

(d) 34 CFR part 75 Direct Grant Programs

(e) 34 CFR part 77 Definitions that Apply to Department Regulations

(f) 34 CFR part 81 General Education Provisions Act—Enforcement

(g) 34 CFR part 82 New Restrictions on Lobbying

(h) 34 CFR part 84 Governmentwide Requirements for Drug-Free Workplace

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c))

§ 371.6 What definitions apply to this program?

(a) The definitions of terms included in the applicable regulations listed in § 371.5;

(b) The following definitions also apply to this program—

Act means the Rehabilitation Act of 1973, as amended.

Assessment for determining eligibility and vocational rehabilitation needs means as appropriate in each case—

(i)(A) A review of existing data—

(*1*) To determine if an individual is eligible for vocational rehabilitation services; and

(*2*) To assign priority for an order of selection described in an approved plan or the approved grant application; and

(B) To the extent necessary, the provision of appropriate assessment activities to obtain necessary additional data to make the eligibility determination and assignment;

(ii) To the extent additional data are necessary to make a determination of the employment outcomes, and the nature and scope of vocational rehabilitation services, to be included in the individualized plan for employment of an eligible individual, a comprehensive assessment to determine the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, including the need for supported employment, of the eligible individual, this comprehensive assessment—

(A) Is limited to information that is necessary to identify the rehabilitation needs of the individual and to develop the individualized plan for employment of the eligible individual;

(B) Uses as a primary source of information, to the maximum extent possible and appropriate and in accordance with confidentiality requirements—

(*1*) Existing information obtained for the purposes of determining the eligibility of the individual and assigning priority for an order of selection described in an approved plan or the approved grant application for the individual; and

(*2*) Information that can be provided by the individual and, if appropriate, by the family of the individual;

(C) May include, to the degree needed to make such a determination, an assessment of the personality, interests, interpersonal skills, intelligence and related functional capacities, educational achievements, work experience, vocational aptitudes, personal and social adjustments, and employment opportunities of the individual, and the medical, psychiatric, psychological, and other pertinent vocational, educational, cultural, social, recreational, and environmental factors, that affect the

employment and rehabilitation needs of the individual;

(D) May include, to the degree needed, an appraisal of the patterns of work behavior of the individual and services needed for the individual to acquire occupational skills, and to develop work attitudes, work habits, work tolerance, and social and behavior patterns necessary for successful job performance, including the use of work in real job situations to assess and develop the capacities of the individual to perform adequately in a work environment; and

(E) To the maximum extent possible, relies on information obtained from experiences in integrated employment settings in the community, and other integrated community settings;

(iii) Referral, for the provision of rehabilitation technology services to the individual, to assess and develop the capacities of the individual to perform in a work environment; and

(iv) An exploration of the individual's abilities, capabilities, and capacity to perform in work situations, which must be assessed periodically during trial work experiences, including experiences in which the individual is provided appropriate supports and training.

(Authority: Sections 7(2) and 12(c) of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 705(2) and 709(c))

Community rehabilitation program means a program that provides directly, or facilitates the provision of, one or more of the following vocational rehabilitation services to individuals with disabilities to enable those individuals to maximize their opportunities for employment, including career advancement—

(i) Medical, psychiatric, psychological, social, and vocational services that are provided under one management;

(ii) Testing, fitting, or training in the use of prosthetic and orthotic devices;

(iii) Recreational therapy;

(iv) Physical and occupational therapy;

(v) Speech, language, and hearing therapy;

(vi) Psychiatric, psychological, and social services, including positive behavior management;

(vii) Assessment for determining eligibility and vocational rehabilitation needs;

(viii) Rehabilitation technology;

(ix) Job development, placement, and retention services;

(x) Evaluation or control of specific disabilities;

(xi) Orientation and mobility services for individuals who are blind;

(xii) Extended employment;

(xiii) Psychosocial rehabilitation services;

(xiv) Supported employment services and extended services;

(xv) Customized employment;

(xvi) Services to family members if necessary to enable the applicant or eligible individual to achieve an employment outcome;

(xvii) Personal assistance services; or

(xviii) Services similar to the services described in paragraphs (i) through (xvii) of this definition.

(Authority: Sections 7(4) and 12(c) of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 705(4) and 709(c))

Comparable services and benefits means—

(i) Services and benefits, including accommodations and auxiliary aids and services, that are—

(A) Provided or paid for, in whole or in part, by other Federal, State, or local public agencies, by health insurance, or by employee benefits;

(B) Available to the individual at the time needed to ensure the progress of the individual toward achieving the employment outcome in the individual's individualized plan for employment; and

(C) Commensurate to the services that the individual would otherwise receive from the Tribal Vocational Rehabilitation unit.

(ii) For the purposes of this definition, comparable benefits do not include awards and scholarships based on merit.

(Authority: Sections 12(c) and 101(a)(8)(A) of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 709(c) and 721(a)(8)(A))

Competitive integrated employment means work that—

(i) Is performed on a full-time or part-time basis (including self-employment) and for which an individual is compensated at a rate that—

(A) Is not less than the higher of the rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) or the rate required under the applicable State or local minimum wage law;

(B) Is not less than the customary rate paid by the employer for the same or similar work performed by other employees who are not individuals with disabilities and who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills; and

(C) In the case of an individual who is self-employed, yields an income that is comparable to the income received by other individuals who are not individuals with disabilities and who are self-employed in similar occupations or on similar tasks and who have similar training, experience, and skills; and

(D) Is eligible for the level of benefits provided to other employees; and

(ii) Is at a location—

(A) Typically found in the community; and

(B) Where the employee with a disability interacts for the purpose of performing the duties of the position with other employees within the particular work unit and the entire work site, and, as appropriate to the work performed, other persons (*e.g.*, customers and vendors), who are not individuals with disabilities (not including supervisory personnel or individuals who are providing services to such employee) to the same extent that employees who are not individuals with disabilities and who are in comparable positions interact with these persons; and

(C) Presents, as appropriate, opportunities for advancement that are similar to those for other employees who are not individuals with disabilities and who have similar positions.

(Authority: Sections 7(5) and 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(5) and 709(c))

Consortium means two or more eligible governing bodies of Indian tribes that apply for an award under this program by either:

(i) Designating one governing body to apply for the grant; or

(ii) Establishing and designating a tribal organization to apply for a grant.

(Authority: Sections 12(c) and 121 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(a))

Customized employment means competitive integrated employment, for an individual with a significant disability, that is based on an individualized determination of the unique strengths, needs, and interests of the individual with a significant disability, is designed to meet the specific abilities of the individual with a significant disability and the business needs of the employer, and is carried out through flexible strategies, such as—

(i) Job exploration by the individual;

(ii) Working with an employer to facilitate placement, including—

(A) Customizing a job description based on current employer needs or on previously unidentified and unmet employer needs; and

(B) Developing a set of job duties, a work schedule and job arrangement, and specifics of supervision (including performance evaluation and review), and determining a job location;

(iii) Using a professional representative chosen by the individual, or if elected self-representation, to work with an employer to facilitate placement; and

(iv) Providing services and supports at the job location.

(Authority: Sections 7(7) and 12(c) of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 705(7) and 709(c))

Eligible individual means an applicant for vocational rehabilitation services who meets the eligibility requirements of Section 102(a)(1) of the Act.

(Authority: Sections 7(20)(A), 12(c), and 102(a)(1) of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 705(20)(A), 709(c), and 722)

Employment outcome means, with respect to an individual, entering, advancing in or retaining full-time or, if appropriate, part-time competitive integrated employment (including customized employment, self-employment, telecommuting or business ownership), or supported employment, that is consistent with an individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(Authority: Sections 7(11) and 12(c) of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 705(11), and 709(c))

Family member for purposes of receiving vocational rehabilitation services means an individual—

(i) Who either—

(A) Is a relative or guardian of an applicant or eligible individual; or

(B) Lives in the same household as an applicant or eligible individual;

(ii) Who has a substantial interest in the well-being of that individual; and

(iii) Whose receipt of vocational rehabilitation services is necessary to enable the applicant or eligible individual to achieve an employment outcome.

(Authority: Sections 12(c) and 103(a)(19) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 723(a)(19))

Governing bodies of Indian tribes means those duly elected or appointed representatives of an Indian tribe or of an Alaskan native village. These representatives must have the authority to enter into contracts, agreements, and grants on behalf of their constituency.

(Authority: Sections 12(c) and 121(a) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(a))

Indian; American Indian; Indian American; Indian tribe means—

(i) *Indian, American Indian,* and *Indian American* mean an individual who is a member of an Indian tribe and includes a Native and a descendant of a Native, as such terms are defined in subsections (b) and (r) of section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

(ii) *Indian tribe* means any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaskan native village or regional village corporation (as defined in or established pursuant to the Alaska Native Claims Settlement Act) and a tribal organization (as defined in section 4(l) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450(b)(l)) and this section.

(Authority: Section 7(19) of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 705(19))

Individual with a disability means—

In general any individual—

(i) Who has a physical or mental impairment;

(ii) Whose impairment constitutes or results in a substantial impediment to employment; and

(iii) Who can benefit in terms of an employment outcome from the provision of vocational rehabilitation services.

(Authority: Section 7(20)(A) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(20)(A))

Individual with a significant disability means—

In general an individual with a disability—

(i) Who has a severe physical or mental impairment that seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;

(ii) Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

(iii) Who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, intellectual disability, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), spinal cord conditions (including paraplegia and quadriplegia), sickle cell anemia, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation.

(Authority: Section 7(21) of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 705(21))

Maintenance means monetary support provided to an individual for expenses, such as food, shelter, and clothing, that are in excess of the normal expenses of the individual and that are necessitated by the individual's participation in an assessment for determining eligibility and vocational rehabilitation needs or the individual's receipt of vocational rehabilitation services under an individualized plan for employment.

(Authority: Sections 12(c) and 103(a)(7) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 723(a)(7))

Examples: The following are examples of expenses that would meet the definition of maintenance. The examples are illustrative, do not address all possible circumstances, and are not intended to substitute for individual counselor judgment.

Example 1: The cost of a uniform or other suitable clothing that is required for an individual's job placement or job-seeking activities.

Example 2: The cost of short-term shelter that is required in order for an individual to participate in assessment activities or vocational training at a site that is not within commuting distance of an individual's home.

Example 3: The initial one-time costs, such as a security deposit or charges for the initiation of utilities, that are required in order for an individual to relocate for a job placement.

Physical and mental restoration services means—

(i) Corrective surgery or therapeutic treatment that is likely, within a reasonable period of time, to correct or modify substantially a stable or slowly progressive physical or mental impairment that constitutes a substantial impediment to employment;

(ii) Diagnosis of and treatment for mental or emotional disorders by qualified personnel in accordance with State licensure laws;

(iii) Dentistry;

(iv) Nursing services;

(v) Necessary hospitalization (either inpatient or outpatient care) in connection with surgery or treatment and clinic services;

(vi) Drugs and supplies;

(vii) Prosthetic and orthotic devices;

(viii) Eyeglasses and visual services, including visual training, and the examination and services necessary for the prescription and provision of eyeglasses, contact lenses, microscopic lenses, telescopic lenses, and other special visual aids prescribed by

personnel that are qualified in accordance with State licensure laws;

(ix) Podiatry;

(x) Physical therapy;

(xi) Occupational therapy;

(xii) Speech or hearing therapy;

(xiii) Mental health services;

(xiv) Treatment of either acute or chronic medical complications and emergencies that are associated with or arise out of the provision of physical and mental restoration services, or that are inherent in the condition under treatment;

(xv) Special services for the treatment of individuals with end-stage renal disease, including transplantation, dialysis, artificial kidneys, and supplies; and

(xvi) Other medical or medically related rehabilitation services.

(xvii) Services reflecting the cultural background of the American Indian being served, including treatment provided by native healing practitioners in accordance with 34 CFR 371.41(a)(2).

(Authority: Sections 12(c), 103(a)(6), and 121(b)(1)(B) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 723(a)(6), and 741(b)(1)(B))

Physical or mental impairment means—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological, musculo-skeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine; or

(ii) Any mental or psychological disorder such as intellectual or developmental disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(Authority: Sections 7(20)(A) and 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(20)(A) and 709(c))

Post-employment services means one or more of the services that are provided subsequent to the achievement of an employment outcome and that are necessary for an individual to maintain, regain, or advance in employment, consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(Authority: Sections 12(c) and 103(a)(18) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c)) and 723(a)(18))

Note to definition of post-employment services. Post-employment services are intended to ensure that the employment outcome remains consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. These services are available to meet rehabilitation needs that do not require a complex and comprehensive provision of services and, thus, should be limited in scope and duration. If more comprehensive services are required, then a new rehabilitation effort should be considered. Post-employment services are to be provided under an amended individualized plan for employment; thus, a re-determination of eligibility is not required. The provision of post-employment services is subject to the same requirements in this part as the provision of any other vocational rehabilitation service. Post-employment services are available to assist an individual to maintain employment, *e.g.*, the individual's employment is jeopardized because of conflicts with supervisors or co-workers, and the individual needs mental health services and counseling to maintain the employment; or the individual requires assistive technology to maintain the employment; to regain employment, *e.g.*, the individual's job is eliminated through reorganization and new placement services are needed; and to advance in employment, *e.g.*, the employment is no longer consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

Representatives of the Tribal Vocational Rehabilitation program means, consistent with 34 CFR 371.21(b), those individuals specifically responsible for determining eligibility, the nature and scope of vocational rehabilitation services, and the provision of those services.

(Authority: Sections 12(c) and 121(b)(1)(D) of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 709(c) and 741(b)(1)(D))

Reservation means a Federal or State Indian reservation, public domain Indian allotment, former Indian reservation in Oklahoma, land held by incorporated Native groups, regional corporations and village corporations under the provisions of the Alaska Native Claims Settlement Act; or a defined area of land recognized by a State or the Federal Government where there is a concentration of tribal members and on which the tribal government is providing structured activities and services.

(Authority: Sections 12(c) and 121(e) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(e))

Subsistence means a form of self-employment in which individuals produce, using culturally relevant and traditional methods, goods or services that are predominantly consumed by their own household or used for noncommercial customary trade or barter and that constitute an important basis for the worker's livelihood.

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c))

Substantial impediment to employment means that a physical or mental impairment (in light of attendant medical, psychological, vocational, educational, communication, and other related factors) hinders an individual from preparing for, entering into, engaging in, advancing in or retaining employment consistent with the individual's abilities and capabilities.

(Authority: Sections 7(20)(A) and 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(20)(A) and 709(c))

Supported employment—(i) *Supported employment* means competitive integrated employment, including customized employment, or employment in an integrated work setting in which an individual with a most significant disability, including a youth with a most significant disability, is working on a short-term basis toward competitive integrated employment that is individualized, consistent with the unique strengths, abilities, interests, and informed choice of the individual, including with ongoing support services for individuals with the most significant disabilities—

(A) For whom competitive integrated employment has not historically occurred, or for whom competitive integrated employment has been interrupted or intermittent as a result of a significant disability; and

(B) Who, because of the nature and severity of their disability, need intensive supported employment services and extended services after the transition from support provided by the Tribal Vocational Rehabilitation Unit, in order to perform this work.

(ii) For purposes of this part, an individual with the most significant disabilities, whose supported employment in an integrated setting does not satisfy the criteria of competitive integrated employment is considered to be working on a short-term basis toward competitive integrated employment so long as the individual can reasonably anticipate achieving competitive integrated employment:

(A) Within six months of achieving a supported employment outcome; or

(B) Within a period not to exceed 12 months from the achievement of the supported employment outcome, if a longer period is necessary based on the needs of the individual, and the individual has demonstrated progress toward competitive earnings based on information contained in the service record.

(Authority: Sections 7(38) and 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(38) and 709(c))

Supported employment services means ongoing support services, including customized employment, and other appropriate services needed to support and maintain an individual with a most significant disability, including a youth with a most significant disability, in supported employment that are:

(i) Organized and made available, singly or in combination, in such a way as to assist an eligible individual to achieve competitive integrated employment;

(ii) Based on a determination of the needs of an eligible individual, as specified in an individualized plan for employment;

(iii) Provided by the Tribal Vocational Rehabilitation Unit for a period of time not to exceed 24 months, unless under special circumstances the eligible individual and the rehabilitation counselor or coordinator jointly agree to extend the time to achieve the employment outcome identified in the individualized plan for employment; and

(iv) Following transition, as post-employment services that are unavailable from an extended services provider and that are necessary to maintain or regain the job placement or advance in employment.

(Authority: Sections 7(39) and 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(39) and 709(c))

Transition services means a coordinated set of activities for a student or youth with a disability—

(i) Designed within an outcome-oriented process that promotes movement from school to post-school activities, including postsecondary education, vocational training, competitive integrated employment, supported employment, continuing and adult education, adult services, independent living, or community participation;

(ii) Based upon the individual student's or youth's needs, taking into account the student's or youth's preferences and interests;

(iii) That includes instruction, community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocational evaluation;

(iv) That promotes or facilitates the achievement of the employment outcome identified in the student's or youth's individualized plan for employment; and

(v) That includes outreach to and engagement of the parents, or, as appropriate, the representative of such a student or youth with a disability.

(Authority: Sections 12(c), 103(a)(15), and (b)(7) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 723(a)(15), and (b)(7))

Transportation means travel and related expenses that are necessary to enable an applicant or eligible individual to participate in a vocational rehabilitation service, including expenses for training in the use of public transportation vehicles and systems.

(Authority: Sections 12(c) and 103(a)(8) of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 709(c) and 723(a)(8))

Tribal organization means the recognized governing body of any Indian tribe or any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities.

(Authority: Sections 7(19) and 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(19) and 709(c); Section 4 of the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450(b))

Tribal Vocational Rehabilitation program means the unit designated by the governing bodies of an Indian Tribe, or consortia of governing bodies, to implement and administer the grant under this program in accordance with the purpose of the grant and all applicable programmatic and fiscal requirements.

(Authority: Sections 12(c) and 121(b)(1) of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 709(c) and 741(b)(1))

Vocational Rehabilitation Services for Individuals means any services described in an individualized plan for employment necessary to assist an individual with a disability in preparing for, securing, retaining, advancing in or regaining an employment outcome that is consistent with the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individual, including, but not limited to—

(i) An assessment for determining eligibility, priority for services, and vocational rehabilitation needs by qualified personnel, including, if appropriate, an assessment by personnel skilled in rehabilitation technology.

(ii) Vocational rehabilitation counseling and guidance, including information and support services to assist an individual in exercising informed choice.

(iii) Referral and other services necessary to assist applicants and eligible individuals to secure needed services from other agencies and to advise those individuals about client assistance programs established under 34 CFR part 370.

(iv) Physical and mental restoration services, to the extent that financial support is not readily available from a source other than the Tribal Vocational Rehabilitation unit (such as through health insurance or a comparable service or benefit).

(v) Vocational and other training services, including personal and vocational adjustment training, advanced training (particularly advanced training in a field of science, technology, engineering, or mathematics (including computer science), medicine, law or business); books, tools, and other training materials, except that no training or training services in an institution of higher education (universities, colleges, community or junior colleges, vocational schools, technical institutes, or hospital schools of nursing or any other postsecondary education institution) may be paid for with funds under this part unless maximum efforts have been made by the Tribal Vocational Rehabilitation unit and the individual to secure grant assistance in whole or in part from other sources to pay for that training.

(vi) Maintenance.

(vii) Transportation in connection with the provision of any vocational rehabilitation service.

(viii) Vocational rehabilitation services to family members of an applicant or eligible individual if necessary to enable the applicant or eligible individual to achieve an employment outcome.

(ix) Interpreter services, including sign language and oral interpreter services, for individuals who are deaf or hard of hearing and tactile interpreting services for individuals who are deaf-blind provided by qualified personnel.

(x) Reader services, rehabilitation teaching services, and orientation and mobility services for individuals who are blind.

(xi) Job-related services, including job search and placement assistance, job retention services, follow-up services, and follow-along services.

(xii) Supported employment services.

(xiii) Personal assistance services.

(xiv) Post-employment services.

(xv) Occupational licenses, tools, equipment, initial stocks, and supplies.

(xvi) Rehabilitation technology, including vehicular modification, telecommunications, sensory, and other technological aids and devices.

(xvii) Transition services for students and youth with disabilities that facilitate the transition from school to postsecondary life, such as achievement of an employment outcome in competitive integrated employment.

(xviii) Technical assistance and other consultation services to conduct market analyses, develop business plans, and otherwise provide resources to eligible individuals who are pursuing self-employment or telecommuting or establishing a small business operation as an employment outcome.

(xix) Customized employment.

(x) Other goods and services determined necessary for the individual with a disability to achieve an employment outcome.

Vocational Rehabilitation Services for Groups of Individuals provided for the benefit of groups of individuals with disabilities—

(i) May be provided by the Tribal Vocational Rehabilitation Unit and may include the following:

(A) In the case of any small business enterprise operated by individuals with significant disabilities under the supervision of the Tribal Vocational Rehabilitation unit, management services and supervision provided by the Tribal Vocational Rehabilitation unit, along with the acquisition by the Tribal Vocational Rehabilitation unit of vending facilities or other equipment and initial stocks and supplies in accordance with the following requirements:

(*1*) Management services and supervision includes inspection, quality control, consultation, accounting, regulating, in-service training, and related services provided on a systematic basis to support and improve small business enterprises operated by individuals with significant disabilities. Management services and supervision may be provided throughout the operation of the small business enterprise.

(*2*) Initial stocks and supplies include those items necessary to the establishment of a new business enterprise during the initial establishment period, which may not exceed 6 months.

(*3*) Costs of establishing a small business enterprise may include operational costs during the initial establishment period, which may not exceed six months.

(*4*) If the Tribal Vocational Rehabilitation unit provides for these services, it must ensure that only individuals with significant disabilities will be selected to participate in this supervised program.

(*5*) If the Tribal Vocational Rehabilitation unit provides for these services and chooses to set aside funds from the proceeds of the operation of the small business enterprises, the Tribal Vocational Rehabilitation unit must maintain a description of the methods used in setting aside funds and the purposes for which funds are set aside. Funds may be used only for small business enterprises purposes, and benefits that are provided to operators from set-aside funds must be provided on an equitable basis.

(B) The establishment, development, or improvement of a community rehabilitation program that is used to provide vocational rehabilitation services that promote integration into the community and prepare individuals with disabilities for competitive integrated employment, including supported employment and customized employment, and under special circumstances, the construction of a community rehabilitation facility. Examples of "special circumstances" include the destruction by natural disaster of the only available center serving an area or a Tribal Vocational Rehabilitation unit determination that construction is necessary in a rural area because no other public agencies or private nonprofit organizations are currently able to provide vocational rehabilitation services to individuals.

(C) Telecommunications systems (that have the potential for substantially improving vocational rehabilitation service delivery methods and developing appropriate programming to meet the particular needs of individuals with disabilities including telephone, television, video description services, satellite, tactile-vibratory devices, and similar systems, as appropriate.

(D) Special services to provide nonvisual access to information for individuals who are blind, including the use of telecommunications, Braille, sound recordings, or other appropriate media; captioned television, films, or video cassettes for individuals who are deaf or hard of hearing; tactile materials for individuals who are deaf-blind; and other special services that provide information through tactile, vibratory, auditory, and visual media.

(E) Technical assistance to businesses that are seeking to employ individuals with disabilities.

(F) Consultation and technical assistance services to assist State educational agencies and local educational agencies, and, where appropriate, Tribal Educational agencies, in planning for the transition of students with disabilities from school to postsecondary life, including employment.

(G) Transition services to youth with disabilities and students with disabilities, for which a vocational rehabilitation counselor works in concert with educational agencies, providers of job training programs, providers of services under the Medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 *et seq.*), entities designated by the Tribal Vocational Rehabilitation unit to provide services for individuals with developmental disabilities, centers for independent living (as defined in section 702 of the Act), housing and transportation authorities, workforce development systems, and businesses and employers. These specific transition services are to benefit a group of students with disabilities or youth with disabilities and are not individualized services directly related to a goal in an individualized plan for employment (IPE). Services may include, but are not limited to group tours of universities and vocational training programs, employer or business site visits to learn about career opportunities, career fairs coordinated with workforce development and employers to facilitate mock interviews and resume writing, and other general services applicable to groups of students with disabilities and youth with disabilities.

(H) The establishment, development, or improvement of assistive technology demonstration, loan, reutilization, or financing programs in coordination with activities authorized under the Assistive Technology Act of 1998 (29 U.S.C. 3001 *et seq.*) to promote access to assistive technology for individuals with disabilities and employers.

(I) Support (including, as appropriate, tuition) for advanced training in a field of science, technology, engineering, or mathematics (including computer science), medicine, law, or business, provided after an individual eligible to receive services under this title, demonstrates:

(*1*) Such eligibility;

(*2*) Previous completion of a bachelor's degree program at an institution of higher education or scheduled completion of such degree program prior to matriculating in the program for which the individual proposes to use the support; and

(*3*) Acceptance by a program at an institution of higher education in the United States that confers a master's degree in a field of science, technology, engineering, or mathematics (including computer science), a juris doctor degree,

a master of business administration degree, or a doctor of medicine degree, except that—

(*i*) No training provided at an institution of higher education shall be paid for with funds under this program unless maximum efforts have been made by the Tribal Vocational Rehabilitation unit and the individual to secure grant assistance, in whole or in part, from other sources to pay for such training; and

(*ii*) Nothing in this paragraph prevents any Tribal Vocational Rehabilitation unit from providing similar support to individuals with disabilities pursuant to their approved IPEs who are eligible to receive support under this program and who are not served under this paragraph.

(ii) If the Tribal Vocational Rehabilitation Unit provides for vocational rehabilitation services for groups of individuals it must —

(A) Develop and maintain written policies covering the nature and scope of each of the vocational rehabilitation services it provides and the criteria under which each service is provided; and

(B) Maintain information to ensure the proper and efficient administration of those services in the form and detail and at the time required by the Secretary, including the types of services provided, the costs of those services, and to the extent feasible, estimates of the numbers of individuals benefiting from those services.

(Authority: Sections 12(c) and 103(a) and (b) of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 709(c) and 723(a) and (b))

Subpart B—Training and Technical Assistance

§ 371.10 What are the requirements for funding training and technical assistance under this subpart?

The Secretary shall first reserve not less than 1.8 percent and not more than 2 percent of funds appropriated and made available to carry out this program to provide training and technical assistance to the governing bodies of Indian tribes and consortia of those governing bodies awarded a grant under this program.

(Authority: Sections 12(c) and Section 121(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(c))

§ 371.11 How does the Secretary use these funds to provide training and technical assistance?

(a) The Secretary uses these funds to make grants to, or enter into contracts or other cooperative agreements with, entities that have staff with experience in the operation of vocational rehabilitation services programs under this part.

(b) An entity receiving assistance in accordance with paragraph (a) of this section shall provide training and technical assistance with respect to developing, conducting, administering, and evaluating tribal vocational rehabilitation programs funded under this part.

(Authority: Sections 12(c) and Section 121(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(c))

§ 371.12 How does the Secretary make an award?

(a) To be eligible to receive a grant or enter into a contract or cooperative agreement under section 121(c) of the Act and this subpart, an applicant shall submit an application to the Secretary at such time, in such manner, and containing a proposal to provide such training and technical assistance, and any additional information as the Secretary may require.

(b) The Secretary shall provide for peer review of applications by panels that include persons who are not Federal or State government employees and who have experience in the operation of vocational rehabilitation services programs under this part.

(Authority: Sections 12(c) and Section 121(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(c))

§ 371.13 How does the Secretary determine funding priorities?

The Secretary shall conduct a survey of the governing bodies of Indian tribes funded under this part regarding training and technical assistance needs in order to determine funding priorities for such training and technical assistance.

(Authority: Sections 12(c) and Section 121(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(c))

§ 371.14 How does the Secretary evaluate an application?

(a) The Secretary evaluates each application for a grant, cooperative agreement or contract under this subpart on the basis of the selection criteria chosen from the general selection criteria found in EDGAR regulations at 34 CFR 75.210.

(b) The Secretary may award a competitive preference consistent with 34 CFR 75.102(c)(2) to applications that include as project personnel in a substantive role, individuals that have been employed as a project director or VR counselor by a Tribal Vocational Rehabilitation unit funded under this part.

(c) If using a contract to award funds under this subpart, the Secretary may conduct the application process and make the subsequent award in accordance with 34 CFR part 75.

(Authority: Sections 12(c) and Section 121(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(c))

Subpart C—How Does One Apply for a Grant?

§ 371.20 What are the application procedures for this program?

(a) In the development of an application, the applicant is required to consult with the designated State unit (DSU) for the state vocational rehabilitation program in the State or States in which vocational rehabilitation services are to be provided.

(b) The procedures for the review and comment by the DSU or the DSUs of the State or States in which vocational rehabilitation services are to be provided on applications submitted from within the State that the DSU or DSUs serve are in 34 CFR 75.155–75.159.

(Authority: Sections 12(c) and 121(b)(1)(C) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(b)(1)(C))

§ 371.21 What are the special application requirements related to the projects funded under this part?

Each applicant under this program must provide evidence that—

(a) Effort will be made to provide a broad scope of vocational rehabilitation services in a manner and at a level of quality at least comparable to those services provided by the designated State unit.

(Authority: Sections 12(c) and 121(b)(1)(B) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(b)(1)(B))

(b) All decisions affecting eligibility for vocational rehabilitation services, the nature and scope of available vocational rehabilitation services and the provision of such services will be made by a representative of the tribal vocational rehabilitation program funded through this grant and such decisions will not be delegated to another agency or individual.

(Authority: Sections 12(c) and 121(b)(1)(D) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(b)(1)(D))

(c) Priority in the delivery of vocational rehabilitation services will be given to those American Indians with disabilities who are the most significantly disabled.

(Authority: Sections 12(c) and 101(a)(5) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 721(a)(5))

(d) An order of selection of individuals with disabilities to be served under the program will be specified if services cannot be provided to all eligible American Indians with disabilities who apply.

(Authority: Sections 12(c) and 101(a)(5) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709 (c) and 721(a)(5))

(e) All vocational rehabilitation services will be provided according to an individualized plan for employment which has been developed jointly by the representative of the tribal vocational rehabilitation program and each American Indian with disabilities being served.

(Authority: Sections 12(c) and 101(a)(9) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 721 (a)(9))

(f) American Indians with disabilities living on or near Federal or State reservations where tribal vocational rehabilitation service programs are being carried out under this part will have an opportunity to participate in matters of general policy development and implementation affecting vocational rehabilitation service delivery by the tribal vocational rehabilitation program.

(Authority: Sections 12(c) and 101(a)(16) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 721(a)(16))

(g) Cooperative working arrangements will be developed with the DSU, or DSUs, as appropriate, which are providing vocational rehabilitation services to other individuals with disabilities who reside in the State or States being served.

(Authority: Sections 12(c) and 101(a)(11)(F) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 721(a)(11)(F))

(h) Any comparable services and benefits available to American Indians with disabilities under any other program, which might meet in whole or in part the cost of any vocational rehabilitation service, will be fully considered in the provision of vocational rehabilitation services.

(Authority: Sections 12(c) and 101(a)(8) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 721(a)(8))

(i) Any American Indian with disabilities who is an applicant or recipient of services, and who is dissatisfied with a determination made by a representative of the tribal vocational rehabilitation program and files a request for a review, will be afforded a review under procedures developed by the grantee comparable to those under the provisions of section 102(c)(1)–(5) and (7) of the Act.

(Authority: Sections 12(c) and 102(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 722(c)(1)–(5) and (7))

(j) The tribal vocational rehabilitation program funded under this part must assure that any facility used in connection with the delivery of vocational rehabilitation services meets facility and program accessibility requirements consistent with the requirements, as applicable, of the Architectural Barriers Act of 1968, the Americans with Disabilities Act of 1990, section 504 of the Act, and the regulations implementing these laws.

(Authority: Sections 12(c) and 101(a)(6)(C) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 721(a)(6)(C))

(k) The tribal vocational rehabilitation program funded under this part must ensure that providers of vocational rehabilitation services are able to communicate in the native language of, or by using an appropriate mode of communication with, applicants and eligible individuals who have limited English proficiency, unless it is clearly not feasible to do so.

(Authority: Sections 12(c) and 101(a)(6)(A) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 721(a)(6)(A))

Subpart D—How Does the Secretary Make a Grant?

§ 371.31 How are grants awarded?

To the extent that funds have been appropriated under this program, the Secretary approves all applications which meet acceptable standards of program quality. If any application is not approved because of deficiencies in proposed program standards, the Secretary provides technical assistance to the applicant Indian tribe with respect to any areas of the proposal which were judged to be deficient.

(Authority: Sections 12(c) and 121(b)(1)(A) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(b)(1)(A))

§ 371.32 What other factors does the Secretary consider in reviewing an application?

(a) In addition to the selection criteria used in accordance with the procedures in 34 CFR part 75, the Secretary, in making an award under this program, considers the past performance of the applicant in carrying out similar activities under previously awarded grants, as indicated by such factors as compliance with grant conditions, soundness of programmatic and financial management practices and attainment of established project objectives.

(b) The Secretary may award a competitive preference consistent with 34 CFR 75.102(c)(2) to applications for the continuation of programs which have been funded under this program.

(Authority: Sections 12(c), 121(b)(1)(A), and 121(b)(4) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 741(b)(1)(A)), and 741(b)(4).

Subpart E—What Conditions Apply to a Grantee Under this Program?

§ 371.40 What are the matching requirements?

(a) *Federal share* Except as provided in paragraph (c) of this section, the Federal share may not be more than 90 percent of the total cost of the project.

(b) *Non-Federal share* The non-Federal share of the cost of the project may be in cash or in kind, fairly valued pursuant to match requirements in 2 CFR 200.306.

(c) *Waiver of non-Federal share* In order to carry out the purposes of the program, the Secretary may waive the non-Federal share requirement, in part or in whole, only if the applicant demonstrates that it does not have sufficient resources to contribute the non-Federal share of the cost of the project.

(Authority: Sections 12(c) and 121(a) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(a))

§ 371.41 What are allowable costs?

(a) In addition to those allowable cost established in 2 CFR 200.400—200.475, the following items are allowable costs under this program—

(1) Expenditures for the provision of vocational rehabilitation services and for the administration, including staff development, of a program of vocational rehabilitation services.

(2) Expenditures for services reflecting the cultural background of the American Indians being served, including treatment provided by native healing practitioners who are recognized as such by the tribal vocational rehabilitation program when the services are necessary to assist an individual with disabilities to achieve his or her vocational rehabilitation objective.

(b) Expenditures may not be made under this program to cover the costs of providing vocational rehabilitation services to individuals with disabilities not residing on or near Federal or State reservations.

(Authority: Sections 12(c) and 121(a) and (b)(1) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(a) and (b)(1))

§ 371.42 How are services to be administered under this program?

(a) *Directly or by contract.* A grantee under this part may provide the vocational rehabilitation services directly or it may contract or otherwise enter into an agreement with a DSU, a community rehabilitation program, or another agency to assist in the implementation of the tribal vocational rehabilitation program.

(b) *Inter-tribal agreement.* A grantee under this part may enter into an inter-tribal arrangement with governing bodies of other Indian tribes for carrying out a project that serves more than one Indian tribe.

(c) *Comparable services.* To the maximum extent feasible, services provided by a grantee under this part must be comparable to vocational rehabilitation services provided under the State vocational rehabilitation program to other individuals with disabilities residing in the State.

(Authority: Sections 12(c) and 121(b)(1)(B) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(b)(1)(B))

§ 371.43 What other special conditions apply to this program?

(a) Any American Indian with disabilities who is eligible for services under this program but who wishes to be provided services by the DSU must be referred to the DSU for such services.

(Authority: Sec. 12(c) and 121(b)(3) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(b)(3))

(b) Preference in employment in connection with the provision of vocational rehabilitation services under this section must be given to American Indians, with a special priority being given to American Indians with disabilities.

(Authority: Sections 12(c) and 121(b)(2) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(b)(2))

(c) The provisions of sections 5, 6, 7, and 102(a) of the Indian Self-Determination and Education Assistance Act also apply under this program (25 U.S.C. 450c, 450d, 450e, and 450f(a)). These provisions relate to grant reporting and audit requirements, maintenance of records, access to records, availability of required reports and information to Indian people served or represented, repayment of unexpended Federal funds, criminal activities involving grants, penalties, wage and labor standards, preference requirements for American Indians in the conduct and administration of the grant, and requirements affecting requests of tribal organizations to enter into contracts. For purposes of applying these requirements to this program, the Secretary carries out those responsibilities assigned to the Secretary of Interior.

(Authority: Sec. 12(c) and 121(b)(2) of the Rehabilitation Act of 1973, as amended; 29 U.S.C 709(c) and 741(b)(2))

(d) The Tribal Vocational Rehabilitation unit must develop and maintain written policies regarding the provision of vocational rehabilitation services that ensure that the provision of services is based on the vocational rehabilitation needs of each individual as identified in that individual's IPE and is consistent with the individual's informed choice. The written policies may not establish any arbitrary limits on the nature and scope of vocational rehabilitation services to be provided to the individual to achieve an employment outcome. The policies must be developed in accordance with the following provisions:

(1) *Off-reservation services.* (i) The Tribal Vocational Rehabilitation unit may establish a preference for on- or near-reservation services, provided that the preference does not effectively deny an individual a necessary service. If the individual chooses an equivalent off-reservation service at a higher cost than an available on- or near-reservation service, the Tribal Vocational Rehabilitation unit is not responsible for those costs in excess of the cost of the on- or near-reservation service, if either service would meet the individual's rehabilitation needs.

(ii) The Tribal Vocational Rehabilitation unit may not establish policies that effectively prohibit the provision of off-reservation services.

(2) *Payment for services* (i) The Tribal Vocational Rehabilitation unit must establish and maintain written policies to govern the rates of payment for all purchased vocational rehabilitation services.

(ii) The Tribal Vocational Rehabilitation unit may establish a fee schedule designed to ensure the program pays a reasonable cost for each service, as long as the fee schedule—

(A) Is not so low as effectively to deny an individual a necessary service; and

(B) permits exceptions so that individual needs can be addressed.

(C) The Tribal Vocational Rehabilitation unit may not place absolute dollar limits on the amount it will pay for specific service categories or on the total services provided to an individual.

(3) *Duration of services* (i) The Tribal Vocational Rehabilitation unit may establish reasonable time periods for the provision of services provided that the time periods—

(A) Are not so short as effectively to deny an individual a necessary service; and

(B) Permit exceptions so that individual needs can be addressed.

(ii) The Tribal Vocational Rehabilitation unit may not place time limits on the provision of specific services or on the provision of services to an individual. The duration of each service needed by an individual must be determined on the basis of that individual's needs and reflected in that individual's individualized plan for employment.

(4) *Authorization of services.* The Tribal Vocational Rehabilitation unit must establish policies related to the timely authorization of services.

(Authority: Sections 12(c) and 121(b) of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 709(c) and 741(b))

(e) *Informed choice.* Each individual who is an applicant for or eligible to receive vocational rehabilitation services must be afforded the opportunity to exercise informed choice throughout the vocational rehabilitation process carried out under programs funded under this part. The Tribal Vocational Rehabilitation unit must develop and maintain written policies and procedures that require it—

(1) To inform each applicant and eligible individual, through appropriate modes of communication, about the availability of, and opportunities to exercise, informed choice, including the availability of support services for individuals with cognitive or other disabilities who require assistance in exercising informed choice, throughout the vocational rehabilitation process;

(2) To assist applicants and eligible individuals in exercising informed choice in decisions related to the provision of assessment services;

(3) To develop and implement flexible procurement policies and methods that facilitate the provision of vocational rehabilitation services, and that afford eligible individuals meaningful choices among the methods used to procure vocational rehabilitation services;

(4) To provide or assist eligible individuals in acquiring information that enables them to exercise informed choice in the development of their IPEs and selection of—

(i) The employment outcome;

(ii) The specific vocational rehabilitation services needed to achieve the employment outcome;

(iii) The entity that will provide the services;

(iv) The employment setting and the settings in which the services will be provided; and

(v) The methods available for procuring the services; and

(5) To ensure that the availability and scope of informed choice is consistent with the obligations of the Tribal Vocational Rehabilitation unit.

(6) Information and assistance in the selection of vocational rehabilitation services and service providers: In assisting an applicant and eligible individual in exercising informed choice during the assessment for determining eligibility and vocational rehabilitation needs and during development of the IPE, the Tribal Vocational Rehabilitation unit must provide the individual or the individual's representative, or assist the individual or the individual's representative in acquiring, information necessary to make an informed choice about the specific vocational rehabilitation services, including the providers of those services, that are needed to achieve the individual's employment outcome. This information must include, at a minimum, information relating to the—

(i) Cost, accessibility, and duration of potential services;

(ii) Consumer satisfaction with those services to the extent that information relating to consumer satisfaction is available;

(iii) Qualifications of potential service providers;

(iv) Types of services offered by the potential providers;

(v) Degree to which services are provided in integrated settings; and

(vi) Outcomes achieved by individuals working with service providers, to the extent that such information is available.

(7) Methods or sources of information: In providing or assisting the individual or the individual's representative in acquiring the information required under paragraph (c) of this section, the Tribal Vocational Rehabilitation unit may use, but is not limited to, the following methods or sources of information:

(i) Lists of services and service providers.

(ii) Periodic consumer satisfaction surveys and reports.

(iii) Referrals to other consumers, consumer groups, or disability advisory councils qualified to discuss the services or service providers.

(iv) Relevant accreditation, certification, or other information relating to the qualifications of service providers.

(v) Opportunities for individuals to visit or experience various work and service provider settings.

(Approved by the Office of Management and Budget under control number 1820–0500)

(Authority: Sections 12(c), 102(b)(2)(B), and 102(d) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 722(b)(2)(B), and 722(d))

§ 371.44 What are the special requirements pertaining to the protection, use, and release of personal information?

(a) *General provisions.* (1) The Tribal Vocational Rehabilitation unit must adopt and implement written policies and procedures to safeguard the confidentiality of all personal information, including photographs and lists of names. These policies and procedures must ensure that—

(i) Specific safeguards are established to protect current and stored personal information, including a requirement that data only be released when governed by a written agreement between the Tribal Vocational Rehabilitation unit and receiving entity under paragraphs (d) and (e)(1) of this section, which addresses the requirements in this section;

(ii) All applicants and eligible individuals and, as appropriate, those individuals' representatives, service providers, cooperating agencies, and interested persons are informed through appropriate modes of communication of the confidentiality of personal information and the conditions for accessing and releasing this information;

(iii) All applicants or their representatives are informed about the Tribal Vocational Rehabilitation unit's need to collect personal information and the policies governing its use, including—

(A) Identification of the authority under which information is collected;

(B) Explanation of the principal purposes for which the Tribal Vocational Rehabilitation unit intends to use or release the information;

(C) Explanation of whether providing requested information to the Tribal Vocational Rehabilitation unit is mandatory or voluntary and the effects of not providing requested information;

(D) Identification of those situations in which the Tribal Vocational Rehabilitation unit requires or does not require informed written consent of the individual before information may be released; and

(E) Identification of other agencies to which information is routinely released;

(iv) An explanation of the Tribal Vocational Rehabilitation unit's policies and procedures affecting personal information will be provided to each individual in that individual's native language or through the appropriate mode of communication; and

(v) These policies and procedures provide no fewer protections for individuals than State laws and regulations.

(2) The Tribal Vocational Rehabilitation unit may establish reasonable fees to cover extraordinary costs of duplicating records or making extensive searches and must establish policies and procedures governing access to records.

(b) *Tribal Vocational Rehabilitation Program Use.* All personal information in the possession of the Tribal Vocational Rehabilitation unit must be used only for the purposes directly connected with the administration of the Tribal Vocational Rehabilitation program. Information containing identifiable personal information may not be shared with advisory or other bodies or other tribal agencies that do not have official responsibility for administration of the program. In the administration of the program, the Tribal Vocational Rehabilitation unit may obtain personal information from service providers and cooperating agencies under assurances that the information may not be further divulged, except as provided under paragraphs (c), (d), and (e) of this section.

(c) *Release to applicants and eligible individuals.* (1) Except as provided in paragraphs (c)(2) and (3) of this section, if requested in writing by an applicant or eligible individual, the Tribal Vocational Rehabilitation unit must make all requested information in that individual's record of services accessible to and must release the information to the individual or the individual's representative in a timely manner.

(2) Medical, psychological, or other information that the Tribal Vocational Rehabilitation unit determines may be harmful to the individual may not be released directly to the individual, but must be provided to the individual through a third party chosen by the individual, which may include, among others, an advocate, a family member, or a qualified medical or mental health professional, unless a representative has been appointed by a court to represent the individual, in which case the information must be released to the court-appointed representative.

(3) If personal information has been obtained from another agency or organization, it may be released only by, or under the conditions established by, the other agency or organization.

(4) An applicant or eligible individual who believes that information in the individual's record of services is inaccurate or misleading may request

that the Tribal Vocational Rehabilitation unit amend the information. If the information is not amended, the request for an amendment must be documented in the record of services.

(d) *Release for audit, evaluation, and research.* Personal information may be released to an organization, agency, or individual engaged in audit, evaluation, or research only for purposes directly connected with the administration of the tribal vocational rehabilitation program or for purposes that would significantly improve the quality of life for applicants and eligible individuals and only if, in accordance with a written agreement, the organization, agency, or individual assures that—

(1) The information will be used only for the purposes for which it is being provided;

(2) The information will be released only to persons officially connected with the audit, evaluation, or research;

(3) The information will not be released to the involved individual;

(4) The information will be managed in a manner to safeguard confidentiality; and

(5) The final product will not reveal any personal identifying information without the informed written consent of the involved individual or the individual's representative.

(e) *Release to other programs or authorities.* (1) Upon receiving the informed written consent of the individual or, if appropriate, the individual's representative, the Tribal Vocational Rehabilitation unit may release personal information to another agency or organization, in accordance with a written agreement, for its program purposes only to the extent that the information may be released to the involved individual or the individual's representative and only to the extent that the other agency or organization demonstrates that the information requested is necessary for its program.

(2) Medical or psychological information that the Tribal Vocational Rehabilitation unit determines may be harmful to the individual may be released if the other agency or organization assures the Tribal Vocational Rehabilitation unit that the information will be used only for the purpose for which it is being provided and will not be further released to the individual.

(3) The Tribal Vocational Rehabilitation unit must release personal information if required by Federal law or regulations.

(4) The Tribal Vocational Rehabilitation unit must release personal information in response to investigations in connection with law enforcement, fraud, or abuse, unless expressly prohibited by Federal or State laws or regulations, and in response to an order issued by a judge, magistrate, or other authorized judicial officer.

(5) The Tribal Vocational Rehabilitation unit also may release personal information in order to protect the individual or others if the individual poses a threat to his or her safety or to the safety of others.

(Authority: Sections 12(c) and 121(b)(1) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 741(b)(1))

§ 371.45 What notice must be given about the Client Assistance Program (CAP)?

The Tribal Vocational Rehabilitation unit shall use formats that are accessible to notify individuals seeking or receiving services under this part, or as appropriate, the parents, family members, guardians, advocates, or authorized representatives of those individuals, about—

(a) The availability of CAP authorized by section 112 of the Act;

(b) The purposes of the services provided under the CAP; and

(c) How to contact the CAP.

(Authority: Section 20 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 717)

■ 5. Part 373 is revised to read as follows:

PART 373—REHABILITATION NATIONAL ACTIVITIES PROGRAM

Subpart A—General

Sec.

373.1 What is the purpose of the Rehabilitation National Activities program?
373.2 Who is eligible for assistance?
373.3 What regulations apply?
373.4 What definitions apply?
373.5 Who is eligible to receive services and to benefit from activities conducted by eligible entities?
373.6 What types of projects may be funded?
373.7 What are the priorities and other factors and requirements for competitions?

Subpart B—How Does the Secretary Make a Grant?

373.10 What selection criteria does the Secretary use?
373.11 What other factors does the Secretary consider when making a grant?

Subpart C—What Conditions Must Be Met By a Grantee?

373.20 What are the matching requirements?
373.21 What are the reporting requirements under this part?
373.22 What are the limitations on indirect costs?
373.23 What additional requirements must be met?
373.24 What are the special requirements pertaining to the protection, use, and release of personal information?

Authority: Section 303(b) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 773(b), unless otherwise noted.

Subpart A—General

§ 373.1 What is the purpose of the Rehabilitation National Activities program?

The purpose of this program is to provide competitive grants, including cooperative agreements, to, or enter into contracts with, eligible entities to expand and improve the provision of vocational rehabilitation and other services authorized under the Rehabilitation Act of 1973, as amended (Act), or to further the purposes and policies in sections 2(b) and (c) of the Act by supporting activities that increase the provision, extent, availability, scope, and quality of rehabilitation services under the Act, including related research and evaluation activities.

(Authority: Sections 2(b) and (c), 7(40), 12(c), and 303(b) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 701(b) and (c), 705(40), 709(c), and 773(b))

§ 373.2 Who is eligible for assistance?

(a) The following types of organizations are eligible for assistance under this program:

(1) State vocational rehabilitation agencies.

(2) Community rehabilitation programs.

(3) Indian tribes or tribal organizations.

(4) Other public or nonprofit agencies or organizations, including institutions of higher education.

(5) For-profit organizations, if the Secretary considers them to be appropriate.

(6) Consortia that meet the requirements of 34 CFR 75.128 and 75.129.

(7) Other organizations identified by the Secretary and published in the **Federal Register**.

(b) In competitions held under this program, the Secretary may limit competitions to one or more types of these organizations.

(Authority: Sections 12(c) and 303(b)(2) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 773(b)(2))

§ 373.3 What regulations apply?

The following regulations apply to this program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 75 (Direct Grant Programs).

(2) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(3) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(4) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(5) 35 CFR part 82 (New Restrictions on Lobbying).

(6) 34 CFR part 84 (Governmentwide Requirements for Drug-Free Workplace (Financial Assistance).

(7) 34 CFR part 86 (Drug and Alcohol Abuse Prevention).

(8) 34 CFR part 97 (Protection of Human Subjects).

(9) 34 CFR part 98 (Student Rights in Research, Experimental Programs, and Testing.

(10) 34 CFR part 99 (Family Educational Rights and Privacy).

(b) The regulations in this part 373.

(c) The regulations in 48 CFR part 31 (Contracts Cost Principles and Procedures).

(d)(1) 2 CFR part 180 (Nonprocurement Debarment and Suspension), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards) as adopted at 2 CFR part 3474.

(Authority: Sections 12(c) and 303(b) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c)) and 773(b)

§ 373.4 What definitions apply?

The following definitions apply to this part:

Act means the Rehabilitation Act of 1973, as amended.

(Authority: 29 U.S.C. 701 *et seq.*)

Competitive integrated employment is defined in 34 CFR 361.5(c)(9).

(Authority: Section 7(5) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(5))

Early intervention means a service delivery or model demonstration program for adults with disabilities designed to begin the rehabilitation services as soon as possible after the onset or identification of actually or potentially disabling conditions. The populations served may include, but are not limited to, the following:

(1) Individuals with chronic and progressive diseases that may become more disabling, such as multiple sclerosis, progressive visual disabilities, or HIV.

(2) Individuals in the acute stages of injury or illness, including, but not limited to, diabetes, traumatic brain injury, stroke, burns, or amputation.

(3) Individuals receiving an employer's short-term or long-term disability insurance benefits.

(Authority: Sections 12(c) and 303(b) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 773(b))

Employment outcome is defined in 34 CFR 361.5.

(Authority: Section 7(11) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(11))

Individual with a disability is defined as follows:

(1) For an individual who will receive rehabilitation services under this part, an individual with a disability means an individual—

(i) Who has a physical or mental impairment which, for that individual, constitutes or results in a substantial impediment to employment; and

(ii) Who can benefit in terms of an employment outcome from vocational rehabilitation services.

(2) For all other purposes of this part, an individual with a disability means an individual—

(i) Who has a physical or mental impairment that substantially limits one or more major life activities;

(ii) Who has a record of such an impairment; or

(iii) Who is regarded as having such an impairment.

(3) For purposes of paragraph (2) of this definition, projects that carry out services or activities pertaining to Title V of the Act must also meet the requirements for "an individual with a disability" in section 7(20)(c) through (e) of the Act, as applicable.

(Authority: Section 7(20) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(20))

Individual with a significant disability means an individual—

(1) Who has a severe physical or mental impairment that seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;

(2) Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

(3) Who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, intellectual disability, respiratory or pulmonary dysfunction, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia and other spinal cord conditions, sickle-cell anemia, specific learning disabilities, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation.

(Authority: Section 7(21)(A) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(21)(A))

Informed choice means the provision of activities whereby individuals with disabilities served by projects under this part have the opportunity to be active, full partners in the rehabilitation process, making meaningful and informed choices as follows:

(1) During assessments of eligibility and vocational rehabilitation needs.

(2) In the selection of employment outcomes, services needed to achieve the outcomes, entities providing these services, and the methods used to secure these services.

(Authority: Sections 2(c) and 12(c) of the Act 29 U.S.C. 701(c) and 709(c))

Rehabilitation services means services, including vocational, medical, social, and psychological rehabilitation services and other services under the Rehabilitation Act, provided to individuals with disabilities in performing functions necessary in preparing for, securing, retaining, or regaining an employment or independent living outcome.

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c))

Substantial impediment to employment means that a physical or mental impairment (in light of attendant medical, psychological, vocational, educational, and other related factors) hinders an individual from preparing for, entering into, engaging in, or retaining employment consistent with the individual's abilities and capabilities.

(Authority: Section 7(20)(A) and 12(c) of the Act 29; U.S.C. 705(20)(A) and 709(c))

Supported employment is defined in 34 CFR 361.5(c)(53).

(Authority: Section 7(38) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(38))

Vocational Rehabilitation Services means services provided to an individual with a disability in preparing for, securing, retaining, or regaining an employment outcome that is consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individual. Vocational Rehabilitation

Services for an individual with a disability may include—

(1) An assessment for determining eligibility and vocational rehabilitation needs by qualified personnel, including, if appropriate, an assessment by personnel skilled in rehabilitation technology;

(2) Counseling and guidance, including information and support services to assist an individual in exercising informed choice;

(3) Referral and other services to secure needed services from other agencies;

(4) Job-related services, including job search and placement assistance, job retention services, follow-up services, and follow-along services;

(5) Vocational and other training services, including the provision of personal and vocational adjustment services, books, tools, and other training materials;

(6) Diagnosis and treatment of physical and mental impairments;

(7) Maintenance for additional costs incurred while the individual is receiving services;

(8) Transportation;

(9) On-the-job or other related personal assistance services;

(10) Interpreter and reader services;

(11) Rehabilitation teaching services, and orientation and mobility services;

(12) Occupational licenses, tools, equipment, and initial stocks and supplies;

(13) Technical assistance and other consultation services to conduct market analysis, develop business plans, and otherwise provide resources to eligible individuals who are pursuing self-employment or telecommuting or establishing a small business operation as an employment outcome;

(14) Rehabilitation technology, including telecommunications, sensory, and other technological aids and devices;

(15) Transition services for individuals with disabilities that facilitate the achievement of employment outcomes;

(16) Supported employment services;

(17) Services to the family of an individual with a disability necessary to assist the individual to achieve an employment outcome;

(18) Post-employment services necessary to assist an individual with a disability to retain, regain, or advance in employment; and

(19) Expansion of employment opportunities for individuals with disabilities, which includes, but is not limited to—

(i) Self-employment, business ownership, and entreprenuership;

(ii) Non-traditional jobs, professional employment, and work settings;

(iii) Collaborating with employers, Economic Development Councils, and others in creating new jobs and career advancement options in local job markets through the use of job restructuring and other methods; and

(iv) Other services as identified by the Secretary and published in the **Federal Register**.

(Authority: Section 7(40) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(40))

Youth or Young adults with disabilities means individuals with disabilities who are between the ages of 14 and 24 inclusive when entering the program.

(Authority: Section 7(42) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(42)

(Authority: Sections 7(40), 12(c), and 103(a) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(40), 709(c) and 723(a))

§ 373.5 Who is eligible to receive services and to benefit from activities conducted by eligible entities?

(a)(1) For projects that provide rehabilitation services or activities to expand and improve the provision of rehabilitation services and other services authorized under Titles I, III, and VI of the Act, individuals are eligible who meet the definition in paragraph (a) of an "individual with a disability" as stated in § 373.4.

(2) For projects that provide independent living services or activities, individuals are eligible who meet the definition in paragraph (b) of an "individual with a disability" as stated in § 373.4.

(3) For projects that provide other services or activities that further the purposes of the Act, individuals are eligible who meet the definition in paragraph (b) of an "individual with a disability" as stated in § 373.4.

(b) By publishing a notice in the **Federal Register**, the Secretary may identify individuals determined to be eligible under one or more of the provisions in paragraph (a) of this section.

(Authority: Sections 12(c), 103(a), and 303(b) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 723(a), and 773(b))

§ 373.6 What types of projects may be funded?

The Secretary may fund the following types of projects under this program:

(a) Special projects of service delivery.

(b) Model demonstration.

(c) Technical assistance.

(d) Systems change.

(e) Special studies, research, or evaluations.

(f) Dissemination and utilization.

(Authority: Sections 12(c) and 303(b)(4) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 773(b)(4))

§ 373.7 What are the priorities and other factors and requirements for competitions?

(a) In announcing competitions for grants and contracts, the Secretary gives priority consideration to—

(1) Initiatives focused on improving transition from education, including postsecondary education, to employment, particularly in competitive integrated employment, for youth who are individuals with significant disabilities.

(2) Supported employment, including community-based supported employment programs to meet the needs of individuals with the most significant disabilities or to provide technical assistance to States and community organizations to improve and expand the provision of supported employment services.

(3) Increasing competitive integrated employment for individuals with significant disabilities.

(b) In announcing competitions for grants and contracts, the Secretary may also identify one or more of the following as priorities—

(1) Expansion of employment opportunities for individuals with disabilities, as authorized in paragraph(s) of the definition of "vocational rehabilitation services" as stated in § 373.4.

(2) System change projects to promote meaningful access of individuals with disabilities to employment-related services under subtitle B of title I of the Workforce Innovation and Opportunity Act and under other Federal laws.

(3) Innovative methods of promoting achievement of high-quality employment outcomes.

(4) The demonstration of the effectiveness of early intervention activities in improving employment outcomes.

(5) Projects to find alternative methods of providing affordable transportation services to individuals with disabilities.

(6) Technical assistance to designated State units and their personnel in working with employers to identify competitive integrated employment opportunities and career exploration opportunities in order to facilitate the provision of vocational rehabilitation services and transition services for youth with disabilities and students with disabilities.

(7) Consultation, training and technical assistance to businesses that have hired or are interested in hiring individuals with disabilities.

(8) Technical assistance and training to designated State units and their personnel on establishment and maintenance of education and experience requirements, to ensure that the personnel have a 21st century understanding of the evolving labor force and the needs of individuals with disabilities.

(9) Technical assistance to State vocational rehabilitation agencies or State vocational rehabilitation units to improve management practices that will improve the provision of vocational rehabilitation services and increase competitive employment outcomes for individuals with disabilities.

(10) Other projects that will expand and improve the provision, extent, availability, scope, and quality of rehabilitation and other services under the Act or that further the purpose and policy of the Act as stated in sections 2(b) and (c) of the Act.

(c) In announcing competitions of grants and contract the Secretary may limit the priorities listed in paragraphs (a) and (b) of this section to address one or more of the following factors:

(1) Age ranges.

(2) Types of disabilities.

(3) Types of services.

(4) Models of service delivery.

(5) Stages of the vocational rehabilitation process;

(6) Unserved and underserved populations.

(7) Unserved and underserved geographical areas.

(8) Individuals with significant disabilities.

(9) Low-incidence disability populations.

(10) Individuals residing in federally designated Empowerment Zones and Enterprise Communities.

(d) The Secretary may require that an applicant certify that the project does not include building upon or expanding activities that have previously been conducted or funded, for that applicant or in that service area.

(e) The Secretary may require that the project widely disseminate the methods of vocational rehabilitation service delivery or model proven to be effective, so that they may be adapted, replicated, or purchased under fee-for-service arrangements by State vocational rehabilitation agencies and other disability organizations in the project's targeted service area or other locations.

(Authority: Sections 12(c), 101(a)(7)(B)(ii) and (11)(E), 103(b)(5), 108a, and 303(b)(5) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 721(a)(7)(B)(ii) and (11)(E), 723(b)(5), 728a, and 773(b)(5))

Subpart B—How Does the Secretary Make a Grant?

§ 373.10 What selection criteria does the Secretary use?

The Secretary publishes in the **Federal Register** or includes in the application package the selection criteria for each competition under this program. To evaluate the applications for new grants under this program, the Secretary may use the following:

(a) Selection criteria established under 34 CFR 75.209.

(b) Selection criteria in 34 CFR 75.210.

(c) Any combination of selection criteria from paragraphs (a) and (b) of this section.

(Authority: Sections 12(c) and 103(a) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 723(a))

§ 373.11 What other factors does the Secretary consider when making a grant?

(a) The Secretary funds only those applications submitted in response to competitions announced in the **Federal Register**.

(b) The Secretary may consider the past performance of the applicant in carrying out activities under previously awarded grants.

(c) The Secretary awards bonus points if identified and published in the **Federal Register** for specific competitions.

(Authority: Sections 12(c) and 103(a) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 723(a))

Subpart C—What Conditions Must Be Met By a Grantee?

§ 373.20 What are the matching requirements?

The Secretary may make grants to pay all or part of the cost of activities covered under this program. If the Secretary determines that the grantee is required to pay part of the costs, the amount of grantee participation is specified in the application notice, and the Secretary will not require grantee participation to be more than 10 percent of the total cost of the project.

(Authority: Sections 12(c) and 303(b)(1) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 773(b)(1))

§ 373.21 What are the reporting requirements under this part?

(a) In addition to the program and fiscal reporting requirements in 34 CFR 75.720 and 2 CFR 200.327 that are applicable to projects funded under this program, the Secretary may require that recipients of grants under this part submit information determined by the Secretary to be necessary to measure project outcomes and performance, including any data needed to comply with the Government Performance and Results Act.

(b) Specific reporting requirements for competitions will be identified by the Secretary and published in the **Federal Register**.

(Authority: Sections 12(c), 303(b)(2)(B), and 306 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 773(b)(2)(B), and 776)

§ 373.22 What are the limitations on indirect costs?

(a) Indirect cost reimbursement for grants under this program is limited to the recipient's actual indirect costs, as determined by its negotiated indirect cost rate agreement, or 10 percent of the total direct cost base, whichever amount is less.

(b) Indirect costs in excess of the 10 percent limit may be used to satisfy matching or cost-sharing requirements.

(c) The 10 percent limit does not apply to federally recognized Indian tribal governments and their tribal representatives.

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c))

§ 373.23 What additional requirements must be met?

(a) Each grantee must do the following:

(1) Ensure equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disabilities.

(2) Encourage applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disabilities.

(3) Advise individuals with disabilities who are applicants for or recipients of the services, or the applicants' representatives or the individuals' representatives, of the availability and purposes of the Client Assistance Program, including information on means of seeking assistance under that program.

(4) Provide, through a careful appraisal and study, an assessment and evaluation of the project that indicates the significance or worth of processes, methodologies, and practices implemented by the project.

(b) A grantee may not make a subgrant under this part. However, a grantee may

contract for supplies, equipment, and other services, in accordance with 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards) as adopted at 2 CFR part 3474.

(Authority: Sections 12(c) and 303(b)(2)(B) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 773(b)(2)(B))

§ 373.24 What are the special requirements pertaining to the protection, use, and release of personal information?

(a) All personal information about individuals served by any project under this part, including lists of names, addresses, photographs, and records of evaluation, must be confidential.

(b) The use of information and records concerning individuals must be limited only to purposes directly connected with the project, including project reporting and evaluation activities. This information may not be disclosed, directly or indirectly, other than in the administration of the project unless the consent of the agency providing the information and the individual to whom the information applies, or his or her representative, has been obtained in writing. The Secretary or other Federal officials responsible for enforcing legal requirements have access to this information without written consent being obtained. The final products of the project may not reveal any personal identifying information without written consent of the individual or his or her representative.

(Authority: Sections 12(c) and 303(b)(2)(B) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), and 773(b)(2)(B))

PART 376 [REMOVED AND RESERVED]

■ 6. Part 376 is removed and reserved.

PART 377 [REMOVED AND RESERVED]

■ 7. Part 377 is removed and reserved.

PART 379 [REMOVED AND RESERVED]

■ 8. Part 379 is removed and reserved.

■ 9. Part 381 is revised to read as follows:

PART 381—PROTECTION AND ADVOCACY OF INDIVIDUAL RIGHTS

Subpart A—General

Sec.
381.1 What is the Protection and Advocacy of Individual Rights program?
381.2 Who is eligible for an award?
381.3 What activities may the Secretary fund?
381.4 What regulations apply?
381.5 What definitions apply?

Subpart B—How Does One Apply for an Award?

381.10 What are the application requirements?

Subpart C—How Does the Secretary Make an Award?

381.20 How does the Secretary evaluate an application?
381.22 How does the Secretary allocate funds under this program?

Subpart D—What Conditions Must Be Met After an Award?

381.30 How are services to be administered?
381.31 What are the requirements pertaining to the protection, use, and release of personal information?
381.32 What are the reporting requirements under this part?
381.33 What are the requirements related to the use of funds provided under this part?

Authority: Section 509 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 794e, unless otherwise noted.

Subpart A—General

§ 381.1 What is the Protection and Advocacy of Individual Rights program?

This program is designed to support a system in each State to protect the legal and human rights of eligible individuals with disabilities.

(Authority: Section 509(a) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 794e(a))

§ 381.2 Who is eligible for an award?

(a)(1) A protection and advocacy system that is established under part C of title I of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (DD Act), 42 U.S.C. 15041 *et seq.*, and that meets the requirements of § 381.10 is eligible to apply for a grant award under this part.

(2)(i) For any fiscal year in which the appropriation to carry out the activities of this part equals or exceeds $10,500,000, the eligible system serving the American Indian Consortium is eligible to apply for a grant award under this part.

(ii) For purposes of this part, an eligible system is defined at § 381.5(c).

(iii) For purposes of this part, the American Indian Consortium means a consortium established as described in section 102 of the DD Act (42 U.S.C. 15002).

(b) In any fiscal year in which the amount appropriated to carry out this part is less than $5,500,000, a protection and advocacy system from any State or from Guam, American Samoa, the United States Virgin Islands, or the Commonwealth of the Northern Mariana Islands, may apply for a grant under the Protection and Advocacy of Individual Rights (PAIR) program to plan for, develop outreach strategies for, and carry out a protection and advocacy program authorized under this part.

(c) In any fiscal year in which the amount appropriated to carry out this part is equal to or greater than $5,500,000, an eligible system from any State and from any of the jurisdictions named in paragraph (b) of this section may apply to receive the amount allotted pursuant to section 509(c)-(e) of the Act.

(Authority: Section 509(b), (c), and (m) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 794e(b), (c), and (m))

§ 381.3 What activities may the Secretary fund?

(a) Funds made available under this part must be used for the following activities:

(1) Establishing a system to protect, and advocate for, the rights of individuals with disabilities.

(2) Pursuing legal, administrative, and other appropriate remedies or approaches to ensure the protection of, and advocacy for, the rights of eligible individuals with disabilities within the State or the American Indian Consortium.

(3) Providing information on and making referrals to programs and services addressing the needs of individuals with disabilities in the State or American Indian Consortium, including individuals with disabilities who are exiting from school programs.

(4) Coordinating the protection and advocacy program provided through an eligible system with the advocacy programs under—

(i) Section 112 of the Act (the Client Assistance Program (CAP));

(ii) The Older Americans Act of 1965 (the State long-term care ombudsman program) (42 U.S.C. 3001 *et seq.*);

(iii) Part C of the DD Act; and

(iv) The Protection and Advocacy for Individuals with Mental Illness Act of 2000 (PAIMI) (42 U.S.C. 10801–10807).

(5) Developing a statement of objectives and priorities on an annual basis and a plan for achieving these objectives and priorities.

(6) Providing to the public, including individuals with disabilities and, as appropriate, their representatives, an opportunity to comment on the objectives and priorities described in § 381.10(a)(6).

(7) Establishing a grievance procedure for clients or prospective clients of the eligible system to ensure that individuals with disabilities are afforded equal access to the services of the eligible system.

(b) Funds made available under this part also may be used to carry out any other activities consistent with the purpose of this part and the activities listed in paragraph (a) of this section.

(Authority: Sections 12(c) and 509(f) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 794e(f)).

§ 381.4 What regulations apply?

The following regulations apply to the PAIR program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 75 (Direct Grant Programs) for purposes of an award made under §§ 381.20 or 381.22(a)(1).

(2) 34 CFR part 76 (State-Administered Programs), if the appropriation for the PAIR program is equal to or greater than $5,500,000 and the eligible system is a State or local government agency, except for—

(i) Section 76.103;

(ii) Sections 76.125 through 76.137;

(iii) Sections 76.300 through 76.401;

(iv) Section 76.704;

(v) Section 76.734; and

(vi) Section 76.740.

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(6) 34 CFR part 82 (New Restrictions on Lobbying).

(b) 2 CFR part 180 (OMB Guidelines to Agencies on Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485.

(c) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted at 2 CFR part 3474.

(d) The regulations in this part 381.

(Authority: Sections 12(c) and 509 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 794e)

§ 381.5 What definitions apply?

(a) Definitions in EDGAR at 34 CFR part 77.

(b) Definitions in 2 CFR part 200 subpart A.

(c) *Other definitions.* The following definitions also apply to this part:

Act means the Rehabilitation Act of 1973, as amended.

Advocacy means pleading an individual's cause or speaking or writing in support of an individual. Advocacy may be formal, as in the case of a lawyer representing an individual in a court of law or in formal administrative proceedings before government agencies (whether tribal, State, local, or Federal). Advocacy also may be informal, as in the case of a lawyer or non-lawyer representing an individual in negotiations, mediation, or informal administrative proceedings before government agencies (whether tribal, State, local, or Federal), or as in the case of a lawyer or non-lawyer representing an individual's cause before private entities or organizations, or government agencies (whether tribal, State, local, or Federal). Advocacy may be on behalf of—

(i) A single individual, in which case it is individual advocacy;

(ii) More than one individual or a group or class of individuals, in which case it is systems (or systemic) advocacy; or

(iii) Oneself, in which case it is self advocacy.

Eligible individual with a disability means an individual who—

(i) Needs protection and advocacy services that are beyond the scope of services authorized to be provided by the CAP under section 112 of the Act; and

(ii) Is ineligible for—

(A) Protection and advocacy programs under part C of the DD Act; and

(B) Protection and advocacy programs under the PAIMI.

Eligible system means a protection and advocacy system that is established under part C of the DD Act and that meets the requirements of § 381.10.

Mediation means the act or process of using an independent third party to act as a mediator, intermediary, or conciliator to settle differences or disputes between persons or parties. The third party who acts as a mediator, intermediary, or conciliator must not be any entity or individual who is connected in any way with the eligible system or the agency, entity, or individual with whom the individual with a disability has a dispute. Mediation may involve the use of professional mediators or any other independent third party mutually agreed to by the parties to the dispute.

State means, in addition to each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, except for purposes of sections 509(c)(3)(B) and (c)(4) of the Act, in which case State does not mean or include Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

(Authority: Sections 7(34), 12(c), and 509 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(34), 709(c) and 794e)

Subpart B—How Does One Apply for an Award?

§ 381.10 What are the application requirements?

(a) Regardless of the amount of funds appropriated for the PAIR program in a fiscal year, an eligible system shall submit to the Secretary an application for assistance under this part at the time and in the form and manner determined by the Secretary that contains all information that the Secretary determines necessary, including assurances that the eligible system will—

(1) Have in effect a system to protect, and advocate for, the rights of eligible individuals with disabilities;

(2) Have the same general authorities, including the authority to access records and program income, as in part C of title I of the DD Act;

(3) Have the authority to pursue legal, administrative, and other appropriate remedies or approaches to ensure the protection of, and advocacy for, the rights of eligible individuals with disabilities within the State and the American Indian Consortium;

(4) Provide information on and make referrals to programs and services addressing the needs of individuals with disabilities in the State and the American Indian Consortium, including individuals with disabilities who are exiting from school programs;

(5) Develop a statement of objectives and priorities on an annual basis and a plan for achieving these objectives and priorities;

(6) Provide to the public, including individuals with disabilities and, as appropriate, their representatives, an opportunity to comment on the objectives and priorities established by, and activities of, the eligible system including—

(i) The objectives and priorities for the activities of the eligible system for each year and the rationale for the establishment of those objectives and priorities; and

(ii) The coordination of the PAIR program provided through eligible systems with the advocacy programs under—

(A) Section 112 of the Act (CAP);

(B) The Older Americans Act of 1965 (the State long-term care ombudsman program);

(C) Part C of the DD Act; and

(D) The PAIMI;

(7) Establish a grievance procedure for clients or prospective clients of the

eligible system to ensure that individuals with disabilities are afforded equal access to the services of the eligible system;

(8) Use funds made available under this part to supplement and not supplant the non-Federal funds that would otherwise be made available for the purpose for which Federal funds are provided; and

(9) Implement procedures designed to ensure that, to the maximum extent possible, mediation (and other alternative dispute resolution) procedures, which include good faith negotiation, are used before resorting to formal administrative or legal remedies.

(b) To receive direct payment of funds under this part, an eligible system must provide to the Secretary, as part of its application for assistance, an assurance that direct payment is not prohibited by or inconsistent with tribal or State law, regulation, or policy.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: Sections 12(c) and 509(f) and (g)(1) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 794e(f) and (g)(1))

Subpart C—How Does the Secretary Make an Award?

§ 381.20 How does the Secretary evaluate an application?

In any fiscal year in which the amount appropriated for the PAIR program is less than $5,500,000, the Secretary evaluates applications under the procedures in 34 CFR part 75.

(Authority: Sections 12(c) and 509(b) and (f) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 794e(b) and (f))

§ 381.22 How does the Secretary allocate funds under this program?

(a) In any fiscal year in which the amount appropriated for this program is equal to or greater than $5,500,000—

(1) The Secretary sets aside not less than 1.8 percent but not more than 2.2 percent of the amount appropriated to provide a grant, contract, or cooperative agreement for training and technical assistance to eligible systems carrying out activities under this part.

(2) After the reservation required by paragraph (a)(1) of this section, the Secretary makes allotments from the remainder of the amount appropriated in accordance with section 509(c)(2)–(d) of the Act.

(b) Notwithstanding any other provision of law, in any fiscal year in which the amount appropriated for this program is equal to or greater than $5,500,000, the Secretary pays directly to an eligible system that submits an application that meets the requirements of § 381.10 the amount of the allotment to the State pursuant to section 509 of the Act, unless the State provides otherwise.

(c) For any fiscal year in which the amount appropriated to carry out this program equals or exceeds $10,500,000, the Secretary shall reserve a portion, and use the portion to make a grant for the eligible system serving the American Indian Consortium. The Secretary shall make the grant in an amount of not less than $50,000 for the fiscal year.

(d) Reallotment:

(1) For any fiscal year in which the amount appropriated to carry out this program equals or exceeds $5,500,000 and if the Secretary determines that any amount of an allotment to an eligible system within a State will not be expended by such system in carrying out the provisions of this part, the Secretary shall make such amount available to one or more of the eligible systems that the Secretary determines will be able to use additional amounts during such year for carrying out this part.

(2) Any reallotment amount made available to an eligible system for any fiscal year shall, for the purposes of this section, be regarded as an increase in the eligible system's allotment under this part for that fiscal year.

(Authority: Sections 12(c) and 509(c)–(e) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 794e(c)–(e))

Subpart D—What Conditions Must Be Met After an Award?

§ 381.30 How are services to be administered?

(a) Each eligible system shall carry out the protection and advocacy program authorized under this part.

(b) An eligible system may not award a grant or make a subaward to another entity to carry out, in whole or in part, the protection and advocacy program authorized under this part.

(c) An eligible system may contract with another agency, entity, or individual to carry out the PAIR program in whole or in part, but only if the agency, entity, or individual with whom the eligible system has contracted—

(1) Does not provide services under the Act or does not provide treatment, services, or habilitation to persons with disabilities; and

(2) Is independent of, and not connected financially or through a board of directors to, an entity or individual that provides services under the Act or that provides treatment, services, or habilitation to persons with disabilities.

(d) For purposes of paragraph (c) of this section, "services under the Act" and "treatment, services, or habilitation" does not include client assistance services under CAP, protection and advocacy services authorized under the protection and advocacy programs under part C of the DD Act and the PAIMI, or any other protection and advocacy services.

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c))

§ 381.31 What are the requirements pertaining to the protection, use, and release of personal information?

(a) All personal information about individuals served by any eligible system under this part, including lists of names, addresses, photographs, and records of evaluation, must be held confidential.

(b) The eligible system's use of information and records concerning individuals must be limited only to purposes directly connected with the protection and advocacy program, including program evaluation activities. Except as provided in paragraph (c) of this section, an eligible system may not disclose personal information about an individual, directly or indirectly, other than in the administration of the protection and advocacy program, unless the consent of the individual to whom the information applies, or his or her guardian, parent, or other authorized representative or advocate (including the individual's advocate from the eligible system), has been obtained in writing. An eligible system may not produce any report, evaluation, or study that reveals any personally identifying information without the written consent of the individual or his or her representative.

(c) Except as limited in paragraph (d) of this section, the Secretary or other Federal or State officials responsible for enforcing legal requirements must be given complete access to all—

(1) Records of the eligible system receiving funds under this program; and

(2) All individual case records of clients served under this part without the consent of the client.

(d)(1) The privilege of a person or eligible system not to produce documents or provide information pursuant to paragraph (c) of this section is governed by the principles of common law as interpreted by the courts of the United States, except that, for purposes of any periodic audit, report, or evaluation of the performance of the eligible system established or

assisted under this part, the Secretary does not require the eligible system to disclose the identity of, or any other personally identifiable information related to, any individual requesting assistance under the PAIR program.

(2) However, notwithstanding paragraph (d)(1) of this section, if an audit, monitoring review, State plan assurance review, evaluation, or other investigation has already produced independent and reliable evidence that there is probable cause to believe that the eligible system has violated its legislative mandate or misused Federal funds, the eligible system shall disclose, if the Secretary so requests, the identity of, or any other personally identifiable information (*i.e.*, name, address, telephone number, social security number, or other official code or number by which an individual may be readily identified) related to, any individual requesting assistance under the PAIR program, in accordance with the principles of common law as interpreted by the courts of the United States.

(Authority: Sections 12(c) and 509(h) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 794e(h))

§ 381.32 What are the reporting requirements under this part?

Each eligible system shall provide to the Secretary, no later than 90 days after the end of each fiscal year, an annual report that includes information on the following:

(a) The types of services and activities undertaken by the eligible system and how these services and activities addressed the objectives and priorities developed pursuant to § 381.10(a)(6).

(b) The total number of individuals, by race, color, national origin, gender, age, and disabling condition, who requested services from the eligible system and the total number of individuals, by race, color, national origin, gender, age, and disabling condition, who were served by the eligible system.

(c) The types of disabilities represented by individuals served by the eligible system.

(d) The types of issues being addressed on behalf of individuals served by the eligible system.

(e) Any other information that the Secretary may require.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: Sections 12(c), 13, and 509(k) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 710, and 794e(k))

§ 381.33 What are the requirements related to the use of funds provided under this part?

(a) Funds made available under this part must be used to supplement and not supplant the non-Federal funds that would otherwise be made available for the purpose for which Federal funds are provided under this part.

(b) In any State in which an eligible system is located within a State agency, that State or State agency may not use more than five percent of any allotment for the costs of administration of the eligible system supported under this part. For purposes of this paragraph, "costs of administration" include, but are not limited to, administrative salaries (including salaries for clerical and support staff), supplies, depreciation, the cost of operating and maintaining facilities, equipment, and grounds (*e.g.*, rental of office space or equipment, telephone, postage, maintenance agreements), and other similar types of costs that may be incurred by the State or State agency to administer the eligible system.

(c) Funds paid to an eligible system within a State for a fiscal year, including reallotment funds, to carry out this program that are not expended or obligated prior to the end of that fiscal year remain available to the eligible system within a State for obligation during the succeeding fiscal year in accordance with sections 19 and 509(g) of the Act.

(d) For determining when an eligible system makes an obligation for various kinds of property or services, 34 CFR 75.707 and 76.707, as appropriate, apply to this program. If the appropriation for the PAIR program is less than $5,500,000, § 75.707 applies. If the appropriation for the PAIR program is equal to or greater than $5,500,000, § 76.707 applies. An eligible system is considered a State for purposes of § 76.707.

(e) Program income:

(1) Consistent with 2 CFR 200.80 and for purposes of this part, *program income* means gross income earned by the designated agency that is directly generated by an activity supported under this part.

(2)(i) The designated agency must use program income to supplement Federal funds that support program activities that are subject to this part. See, for example 2 CFR 200.307(e)(2).

(ii) Notwithstanding 2 CFR 200.305(a) and consistent with 2 CFR 200.305(b)(5), and to the extent that program income funds are available, all designated agencies, regardless of whether they are a State agency, must disburse those funds (including repayments to a revolving fund), rebates, refunds, contract settlements, audit recoveries, and interest earned on such funds before requesting additional funds from the Department.

(3) Any program income received during a fiscal year that is not obligated or expended prior to the beginning of the succeeding fiscal year in which the program income was received, remain available for obligation and expenditure by the grantee during that succeeding fiscal year.

(Authority: Sections 12(c), 19, and 509(f)(7), (g), and (i) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 716, and 794e(f)(7), (g), and (i); and 20 U.S.C. 3474)

■ 10. Part 385 is revised to read as follows:

PART 385—REHABILITATION TRAINING

Subpart A—General

Sec.
385.1 What is the Rehabilitation Training program?
385.2 Who is eligible for assistance under these programs?
385.3 What regulations apply to these programs?
385.4 What definitions apply to these programs?

Subpart B [Reserved]

Subpart C—How Does One Apply for a Grant?

385.20 What are the application procedures for these programs?

Subpart D—How Does the Secretary Make a Grant?

385.30 [Reserved]
385.31 How does the Secretary evaluate an application?
385.33 What other factors does the Secretary consider in reviewing an application?

Subpart E—What Conditions Must Be Met by a Grantee?

385.40 What are the requirements pertaining to the membership of a project advisory committee?
385.41 What are the requirements affecting the collection of data from designated State agencies?
385.42 What are the requirements affecting the dissemination of training materials?
385.43 What requirements apply to the training of rehabilitation counselors and other rehabilitation personnel?
385.44 What requirement applies to the training of individuals with disabilities?
385.45 What additional application requirements apply to the training of individuals for rehabilitation careers?
385.46 What limitations apply to the rate of pay for experts or consultants appointed or serving under contract under the Rehabilitation Training program?

Authority: Sections 12(c), 301, and 302 of the Rehabilitation Act of 1973, as amended;

29 U.S.C. 709(c), 771 and 772, unless otherwise noted.

Subpart A—General

§ 385.1 What is the Rehabilitation Training program?

(a) *Purpose.* The Rehabilitation Training program is designed to—

(1) Ensure that skilled personnel are available to provide rehabilitation services to individuals with disabilities through vocational, medical, social, and psychological rehabilitation programs (including supported employment programs), through economic and business development programs, through independent living services programs, and through client assistance programs;

(2) Maintain and upgrade basic skills and knowledge of personnel employed, including personnel specifically trained to deliver rehabilitation services, including supported employment services and customized employment services, to individuals with the most significant disabilities, and personnel specifically trained to deliver services to individuals with disabilities whose employment outcome is self-employment, business ownership, or telecommuting, to provide state-of-the-art service delivery and rehabilitation technology services; and

(3) Provide training and information to individuals with disabilities, the parents, families, guardians, advocates, and authorized representatives of the individuals, and other appropriate parties to develop the skills necessary for individuals with disabilities to access the rehabilitation system and to become active decision makers in the vocational rehabilitation process.

(b) The Secretary awards grants and contracts on a competitive basis to pay part of the costs of projects for training, traineeships or scholarships, and related activities, including the provision of technical assistance, to assist in increasing the numbers of qualified personnel trained in providing vocational rehabilitation services and other services provided under the Act, to individuals with disabilities. Financial assistance is provided through multiple training programs, including:

(1) Rehabilitation Long-Term Training (34 CFR part 386).

(2) Innovative Rehabilitation Training (34 CFR part 387).

(3) Rehabilitation Short-Term Training (34 CFR part 390).

(4) Training of Interpreters for Individuals Who Are Deaf and Hard of Hearing and Individuals Who Are Deaf-Blind (34 CFR part 396).

(Authority: Sections 12(c), 301 and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 771 and 772)

§ 385.2 Who is eligible for assistance under these programs?

States and public or private nonprofit agencies and organizations, including Indian tribes and institutions of higher education, are eligible for assistance under the Rehabilitation Training program.

(Authority: Sections 7(19), 301, and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(19), 771 and 772)

§ 385.3 What regulations apply to these programs?

The following regulations apply to the Rehabilitation Training program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 75 (Direct Grant Programs).

(2) 34 CFR part 77 (Definitions That Apply to Department Regulations).

(3) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(4) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(5) 34 CFR part 82 (New Restrictions on Lobbying).

(6) 34 CFR part 84 (Governmentwide Requirements for Drug-Free Workplace (Financial Assistance).

(7) 34 CFR part 86 (Drug-Free Schools and Campuses).

(8) 34 CFR part 97 (Protection of Human Subjects).

(9) 34 CFR part 98 (Student Rights in Research, Experimental Programs, and Testing.

(10) 34 CFR part 99 (Family Educational Rights and Privacy).

(b) The regulations in this part 385.

(c) [Reserved]

(d)(1) 2 CFR part 180 (OMB Guidelines to Agencies on Debarment and Suspension (Nonprocurement)), as adopted at 2 CFR part 3485; and

(2) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards) as adopted at 2 CFR part 3474.

(Authority: Sections 12(c) and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 711(c) and 772)

§ 385.4 What definitions apply to these programs?

(a) The following definitions in 34 CFR part 77 apply to the programs under the Rehabilitation Training Program—

Applicant
Application
Award
Budget Period
Department
EDGAR
Grantee
Nonprofit
Private
Project
Project Period
Public
Secretary

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c))

(b) The following definitions also apply to programs under the Rehabilitation Training program:

Act means the Rehabilitation Act of 1973, as amended (29 U.S.C. 701 *et seq.*).

Assistive technology means technology designed to be utilized in an assistive technology device or assistive technology service.

Assistive technology device means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of individuals with disabilities.

Assistive technology service means any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device. The term includes—

(i) The evaluation of the needs of an individual with a disability, including a functional evaluation of the individual in the individual's customary environment;

(ii) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by individuals with disabilities;

(iii) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing of assistive technology devices;

(iv) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(v) Training or technical assistance for an individual with disabilities, or, if appropriate, the family of an individual with disabilities;

(vi) Training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of individuals with disabilities; and

(vii) A service consisting of expanding the availability of access to technology, including electronic and information technology, to individuals with disabilities.

Community rehabilitation program means a program that provides directly or facilitates the provision of vocational rehabilitation services to individuals with disabilities, and that provides, singly or in combination, for an individual with a disability to enable the individual to maximize opportunities for employment, including career advancement—

(i) Medical, psychiatric, psychological, social, and vocational services that are provided under one management;

(ii) Testing, fitting, or training in the use of prosthetic and orthotic devices;

(iii) Recreational therapy;

(iv) Physical and occupational therapy;

(v) Speech, language, and hearing therapy;

(vi) Psychiatric, psychological, and social services, including positive behavior management;

(vii) Assessment for determining eligibility and vocational rehabilitation needs;

(viii) Rehabilitation technology;

(ix) Job development, placement, and retention services;

(x) Evaluation or control of specific disabilities;

(xi) Orientation and mobility services for individuals who are blind;

(xii) Extended employment;

(xiii) Psychosocial rehabilitation services;

(xiv) Supported employment services and extended services;

(xv) Services to family members when necessary to the vocational rehabilitation of the individual;

(xvi) Personal assistance services; or

(xvii) Services similar to the services described in paragraphs (i) through (xvi) of this definition.

Designated State agency means an agency designated under section 7(8) and 101(a)(2)(A) of the Act.

Designated State unit means

(i) Any State agency unit required under section 7(8) and 101(a)(2)(B) of the Act, or

(ii) In cases in which no State agency unit is required, the State agency described in section 101(a)(2)(B)(ii) of the Act.

Independent living core services means—

(i) Information and referral services;

(ii) Independent living skills training;

(iii) Peer counseling, including cross-disability peer counseling; and

(iv) Individual and systems advocacy.

Independent living services includes—

(i) Independent living core services; and

(ii)(A) Counseling services, including psychological, psychotherapeutic, and related services;

(B) Services related to securing housing or shelter, including services related to community group living, and supportive of the purposes of this Act and of the titles of this Act, and adaptive housing services (including appropriate accommodations to and modifications of any space used to serve, or occupied by, individuals with disabilities);

(C) Rehabilitation technology;

(D) Mobility training;

(E) Services and training for individuals with cognitive and sensory disabilities, including life skills training, and interpreter and reader services;

(F) Personal assistance services, including attendant care and the training of personnel providing these services;

(G) Surveys, directories, and other activities to identify appropriate housing, recreation opportunities, and accessible transportation, and other support services;

(H) Consumer information programs on rehabilitation and independent living services available under this Act, especially for minorities and other individuals with disabilities who have traditionally been unserved or underserved by programs under this Act;

(I) Education and training necessary for living in the community and participating in community activities;

(J) Supported living;

(K) Transportation, including referral and assistance for transportation;

(L) Physical rehabilitation;

(M) Therapeutic treatment;

(N) Provision of needed prostheses and other appliances and devices;

(O) Individual and group social and recreational services;

(P) Training to develop skills specifically designed for youths who are individuals with disabilities to promote self-awareness and esteem, develop advocacy and self-empowerment skills, and explore career options;

(Q) Services for children;

(R) Services under other Federal, State, or local programs designed to provide resources, training, counseling, or other assistance of substantial benefit in enhancing the independence, productivity, and quality of life of individuals with disabilities;

(S) Appropriate preventive services to decrease the need of individuals assisted under this Act for similar services in the future;

(T) Community awareness programs to enhance the understanding and integration of individuals with disabilities; and

(U) Such other services as may be necessary and not inconsistent with the provisions of this Act.

Individual with a disability means any individual who—

(i) Has a physical or mental impairment, which for that individual constitutes or results in a substantial impediment to employment;

(ii) Can benefit in terms of an employment outcome from vocational rehabilitation services provided pursuant to title I, III, or VI of the Rehabilitation Act of 1973, as amended; and

(iii) Has a disability as defined in section 7(20)(B) of the Act.

Individual with a significant disability means an individual with a disability—

(i) Who has a severe physical or mental impairment that seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;

(ii) Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

(iii) Who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, intellectual disability, respiratory or pulmonary dysfunction, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia and other spinal cord conditions, sickle-cell anemia, specific learning disabilities, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs.

Institution of higher education has the meaning given the term in section 101(a) of the Higher Education Act (20 U.S.C. 1001(a)).

Personal assistance services means a range of services provided by one or more persons designed to assist an individual with a disability to perform daily living activities on or off the job that the individual would typically perform if the individual did not have a disability. The services shall be designed to increase the individual's

control in life and ability to perform everyday activities on or off the job.

Qualified personnel. (i) For designated State agencies or designated State units, means personnel who have met standards that are consistent with existing national or State approved or recognized certification, licensing, registration, or other comparable requirements that apply to the area in which such personnel are providing vocational rehabilitation services.

(ii) For other than designated State agencies or designated State units, means personnel who have met existing State certification or licensure requirements, or, in the absence of State requirements, have met professionally accepted requirements established by national certification boards.

Rehabilitation services means services, including vocational, medical, social, and psychological rehabilitation services and other services under the Rehabilitation Act, provided to individuals with disabilities in performing functions necessary in preparing for, securing, retaining, or regaining an employment or independent living outcome.

Rehabilitation technology means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of and address the barriers confronted by individuals with disabilities in areas that include education, rehabilitation, employment, transportation, independent living, and recreation. The term includes rehabilitation engineering, assistive technology devices, and assistive technology services.

State includes, in addition to each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

Stipend means financial assistance on behalf of individuals in support of their training, as opposed to salary payment for services provided within the project.

Supported employment means competitive integrated employment, including customized employment, or employment in an integrated work setting in which individuals are working on a short-term basis toward competitive integrated employment, that is individualized and customized consistent with the strengths, abilities, interests, and informed choice of the individuals involved, for individuals with the most severe disabilities—

(i)(A) For whom competitive integrated employment has not traditionally occurred; or

(B) For whom competitive employment has been interrupted or intermittent as a result of a severe disability; and

(ii) Who, because of the nature and severity of their disability, need intensive supported employment services from the designated State unit and extended services after transition in order to perform the work involved.

Supported employment services means ongoing support services, including customized employment, and other appropriate services needed to support and maintain an individual with most severe disability in supported employment, that are—

(i) Provided singly or in combination and are organized and made available in such a way as to assist an eligible individual in entering or maintaining integrated, competitive employment;

(ii) Based on a determination of the needs of an eligible individual, as specified in an individualized written rehabilitation program; and

(iii) Provided by the designated State unit for a period of time not more than 24 months, unless under special circumstances the eligible individual and the rehabilitation counselor or coordinator jointly agree to extend the time in order to achieve the rehabilitation objectives identified in the individualized plan for employment.

Vocational rehabilitation services means services provided to an individual with a disability in preparing for, securing, retaining, or regaining an employment outcome that is consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individual, and services provided for the benefit of groups of individuals with disabilities. Vocational Rehabilitation Services for an individual with a disability may include—

(i) An assessment for determining eligibility and vocational rehabilitation needs by qualified personnel, including, if appropriate, an assessment by personnel skilled in rehabilitation technology;

(ii) Counseling and guidance, including information and support services to assist an individual in exercising informed choice;

(iii) Referral and other services to secure needed services from other agencies;

(iv) Job-related services, including job search and placement assistance, job retention services, follow-up services, and follow-along services;

(v) Vocational and other training services, including the provision of personal and vocational adjustment services, books, tools, and other training materials;

(vi) Diagnosis and treatment of physical and mental impairments;

(vii) Maintenance for additional costs incurred while the individual is receiving services;

(viii) Transportation;

(ix) On-the-job or other related personal assistance services;

(x) Interpreter and reader services;

(xi) Rehabilitation teaching services, and orientation and mobility services;

(xii) Occupational licenses, tools, equipment, and initial stocks and supplies;

(xiii) Technical assistance and other consultation services to conduct market analysis, develop business plans, and otherwise provide resources to eligible individuals who are pursuing self-employment or telecommuting or establishing a small business operation as an employment outcome;

(xiv) Rehabilitation technology, including telecommunications, sensory, and other technological aids and devices;

(xv) Transition services for individuals with disabilities that facilitate the achievement of employment outcomes;

(xvi) Supported employment services;

(xvii) Services to the family of an individual with a disability necessary to assist the individual to achieve an employment outcome;

(xviii) Post-employment services necessary to assist an individual with a disability to retain, regain, or advance in employment; and

(xix) Expansion of employment opportunities for individuals with disabilities, which includes, but is not limited to—

(A) Self-employment, business ownership, and entrepreneurship;

(B) Non-traditional jobs, professional employment, and work settings;

(C) Collaborating with employers, Economic Development Councils, and others in creating new jobs and career advancement options in local job markets through the use of job restructuring and other methods; and

(D) Other services as identified by the Secretary and published in the **Federal Register**.

(Authority: Sections 7(40), 12(c), and 101(a)(7) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(40), 709(c), and 721(a)(7))

Subpart B [Reserved]

Subpart C—How Does One Apply for a Grant?

§ 385.20 What are the application procedures for these programs?

The Secretary gives the designated State agency an opportunity to review and comment on applications submitted from within the State that it serves. The procedures to be followed by the applicant and the State are in 34 CFR 75.155 through 75.159.

(Authority: Sections 12(c) and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772)

Subpart D—How Does the Secretary Make a Grant?

§ 385.30 [Reserved]

§ 385.31 How does the Secretary evaluate an application?

(a) The Secretary evaluates applications under the procedures in 34 CFR part 75.

(b) The Secretary evaluates each application using selection criteria identified in parts 386, 387, and 390, as appropriate.

(c) In addition to the selection criteria described in paragraph (b) of this section, the Secretary evaluates each application using—

(1) Selection criteria in 34 CFR 75.210;

(2) Selection criteria established under 34 CFR 75.209; or

(3) A combination of selection criteria established under 34 CFR 75.209 and selection criteria in 34 CFR 75.210.

(Authority: Sections 12(c) and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772)

§ 385.33 What other factors does the Secretary consider in reviewing an application?

In addition to the selection criteria listed in § 75.210 and parts 386, 387, and 390, the Secretary, in making awards under this program, considers such factors as—

(a) The geographical distribution of projects in each Rehabilitation Training Program category throughout the country; and

(b) The past performance of the applicant in carrying out similar training activities under previously awarded grants, as indicated by such factors as compliance with grant conditions, soundness of programmatic and financial management practices and attainment of established project objectives.

(Authority: Sections 12(c) and 302(b) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772(b))

Subpart E—What Conditions Must Be Met by a Grantee?

§ 385.40 What are the requirements pertaining to the membership of a project advisory committee?

If a project establishes an advisory committee, its membership must include individuals with disabilities or parents, family members, guardians, advocates, or other authorized representatives of the individuals; members of minority groups; trainees; and providers of vocational rehabilitation and independent living rehabilitation services.

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c))

§ 385.41 What are the requirements affecting the collection of data from designated State agencies?

If the collection of data is necessary from individuals with disabilities being served by two or more designated State agencies or from employees of two or more of these agencies, the project director must submit requests for the data to appropriate representatives of the affected agencies, as determined by the Secretary. This requirement also applies to employed project staff and individuals enrolled in courses of study supported under these programs.

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c))

§ 385.42 What are the requirements affecting the dissemination of training materials?

A set of any training materials developed under the Rehabilitation Training Program must be submitted to any information clearinghouse designated by the Secretary.

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c))

§ 385.43 What requirements apply to the training of rehabilitation counselors and other rehabilitation personnel?

Any grantee who provides training of rehabilitation counselors or other rehabilitation personnel must train those counselors and personnel on the services provided under this Act, and, in particular, services provided in accordance with amendments made to the Rehabilitation Act by the Workforce Innovation and Opportunity Act of 2014. The grantee must also furnish training to these counselors and personnel regarding applications of rehabilitation technology in vocational rehabilitation services, the applicability of section 504 of this Act, title I of the Americans with Disabilities Act of 1990, and the provisions of titles II and XVI of the Social Security Act that are related to work incentives for individuals with disabilities.

(Authority: Sections 12(c), 101(a), and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 721(a) and 772)

§ 385.44 What requirement applies to the training of individuals with disabilities?

Any grantee or contractor who provides training shall give due regard to the training of individuals with disabilities as part of its effort to increase the number of qualified personnel available to provide rehabilitation services.

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c)

§ 385.45 What additional application requirements apply to the training of individuals for rehabilitation careers?

(a) All applicants for a grant or contract to provide training shall demonstrate how the training they plan to provide will prepare rehabilitation professionals to address the needs of individuals with disabilities from minority backgrounds.

(b) All applicants for a grant shall include a detailed description of strategies that will be utilized to recruit and train persons so as to reflect the diverse populations of the United States, as part of the effort to increase the number of individuals with disabilities, individuals who are members of minority groups, who are available to provide rehabilitation services.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: Sections 21(a) and (b) and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 718(a) and (b) and 772)

§ 385.46 What limitations apply to the rate of pay for experts or consultants appointed or serving under contract under the Rehabilitation Training program?

An expert or consultant appointed or serving under contract pursuant to this section shall be compensated at a rate subject to approval of the Commissioner which shall not exceed the daily equivalent of the rate of pay for level 4 of the Senior Executive Service Schedule under section 5382 of title 5, United States Code. Such an expert or consultant may be allowed travel and transportation expenses in accordance with section 5703 of title 5, United States Code.

(Authority: Section 302(b)(3) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 772(b)(3))

■ 11. Part 386 is revised to read as follows:

PART 386—REHABILITATION TRAINING: REHABILITATION LONG-TERM TRAINING

Subpart A—General

Sec.
386.1 What is the Rehabilitation Long-Term Training program?
386.2 Who is eligible for an award?
386.3 What regulations apply?
386.4 What definitions apply?

Subpart B [Reserved]

Subpart C—How Does the Secretary Make an Award?

386.20 What additional selection criteria are used under this program?
386.21 What are the application procedures for these programs?

Subpart D—What Conditions Must Be Met After an Award?

386.30 What are the matching requirements?
386.31 What are the requirements for directing grant funds?
386.32 What are allowable costs?
386.33 What are the requirements for grantees in disbursing scholarships?
386.34 What assurances must be provided by a grantee that intends to provide scholarships?
386.35 What information must be provided by a grantee that is an institution of higher education to assist designated State agencies?
386.36 What is a grantee's liability for failing to provide accurate and complete scholar information to the Department?

Subpart E—What Conditions Must Be Met by a Scholar?

386.40 What are the requirements for scholars?
386.41 Under what circumstances does the Secretary grant a deferral or exception to performance or repayment under a scholarship agreement?
386.42 What must a scholar do to obtain an exception or a deferral to performance or repayment under a scholarship agreement?
386.43 What are the consequences of a scholar's failure to meet the terms and conditions of a scholarship agreement?

Authority: Sections 12(c) and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772, unless otherwise noted.

Subpart A—General

§ 386.1 What is the Rehabilitation Long-Term Training program?

(a) The Rehabilitation Long-Term Training program provides financial assistance for—

(1) Projects that provide basic or advanced training leading to an academic degree in one of those fields of study identified in paragraph (b) of this section;

(2) Projects that provide a specified series of courses or program of study leading to award of a certificate in one of those fields of study identified in paragraph (b) of this section; and

(3) Projects that provide support for medical residents enrolled in residency training programs in the specialty of physical medicine and rehabilitation.

(b) The Rehabilitation Long-Term Training program is designed to provide academic training that leads to an academic degree or academic certificate in areas of personnel shortages identified by the Secretary and published in a notice in the **Federal Register**. These areas may include—

(1) Assisting and supporting individuals with disabilities pursuing self-employment, business ownership, and telecommuting;

(2) Vocational rehabilitation counseling;

(3) Rehabilitation technology, including training on its use, applications, and benefits;

(4) Rehabilitation medicine;

(5) Rehabilitation nursing;

(6) Rehabilitation social work;

(7) Rehabilitation psychiatry;

(8) Rehabilitation psychology;

(9) Rehabilitation dentistry;

(10) Physical therapy;

(11) Occupational therapy;

(12) Speech pathology and audiology;

(13) Physical education;

(14) Therapeutic recreation;

(15) Community rehabilitation program personnel;

(16) Prosthetics and orthotics;

(17) Rehabilitation of individuals who are blind or visually impaired, including rehabilitation teaching and orientation and mobility;

(18) Rehabilitation of individuals who are deaf or hard of hearing;

(19) Rehabilitation of individuals who are mentally ill;

(20) Undergraduate education in the rehabilitation services;

(21) Independent living;

(22) Client assistance;

(23) Administration of community rehabilitation programs;

(24) Rehabilitation administration;

(25) Vocational evaluation and work adjustment;

(26) Services to individuals with specific disabilities or specific impediments to rehabilitation, including individuals who are members of populations that are unserved or underserved by programs under this Act;

(27) Job development and job placement services to individuals with disabilities;

(28) Supported employment services and customized employment services for individuals with the most significant disabilities;

(29) Specialized services for individuals with significant disabilities;

(30) Other fields contributing to the rehabilitation of individuals with disabilities.

(Authority: Sections 12 and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709 and 772)

§ 386.2 Who is eligible for an award?

Those agencies and organizations eligible for assistance under this program are described in 34 CFR 385.2.

(Authority: Section 302(a) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 772(a))

§ 386.3 What regulations apply?

The following regulations apply to the Rehabilitation Training: Rehabilitation Long-Term Training program:

(a) The regulations in this part 386.

(b) The regulations in 34 CFR part 385.

(Authority: Section 302(a) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 772(a))

§ 386.4 What definitions apply?

The following definitions apply to this program:

(a) Definitions in 34 CFR 385.4.

(b) *Other definitions.* The following definitions also apply to this part:

Academic year means a full-time course of study—

(i) Taken for a period totaling at least nine months; or

(ii) Taken for the equivalent of at least two semesters, two trimesters, or three quarters.

Certificate means a recognized educational credential awarded by a grantee under this part that attests to the completion of a specified series of courses or program of study.

Professional corporation or professional practice means—

(i) A professional service corporation or practice formed by one or more individuals duly authorized to render the same professional service, for the purpose of rendering that service; and

(ii) The corporation or practice and its members are subject to the same supervision by appropriate State regulatory agencies as individual practitioners.

Related agency means—

(i) An American Indian rehabilitation program; or

(ii) Any of the following agencies that provide services to individuals with disabilities under an agreement or other arrangement with a designated State

agency in the area of specialty for which training is provided:

(A) A Federal, State, or local agency.

(B) A nonprofit organization.

(C) A professional corporation or professional practice group.

Scholar means an individual who is enrolled in a certificate or degree granting course of study in one of the areas listed in § 386.1(b) and who receives scholarship assistance under this part.

Scholarship means an award of financial assistance to a scholar for training and includes all disbursements or credits for student stipends, tuition and fees, books and supplies, and student travel in conjunction with training assignments.

State vocational rehabilitation agency means the designated State agency as defined in 34 CFR 361.5(c)(13).

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c))

Subpart B [Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 386.20 What additional selection criteria are used under this program?

In addition to the criteria in 34 CFR 385.31(c), the Secretary uses the following additional selection criteria to evaluate an application:

(a) *Relevance to State-Federal vocational rehabilitation service program.* (1) The Secretary reviews each application for information that shows that the proposed project appropriately relates to the mission of the State-Federal vocational rehabilitation service program.

(2) The Secretary looks for information that shows that the project can be expected either—

(i) To increase the supply of trained personnel available to State and other public or nonprofit agencies involved in the rehabilitation of individuals with disabilities through degree or certificate granting programs; or

(ii) To improve the skills and quality of professional personnel in the rehabilitation field in which the training is to be provided through the granting of a degree or certificate.

(b) *Nature and scope of curriculum.* (1) The Secretary reviews each application for information that demonstrates the adequacy of the proposed curriculum.

(2) The Secretary looks for information that shows—

(i) The scope and nature of the coursework reflect content that can be expected to enable the achievement of the established project objectives;

(ii) The curriculum and teaching methods provide for an integration of theory and practice relevant to the educational objectives of the program;

(iii) For programs whose curricula require them, there is evidence of educationally focused practical and other field experiences in settings that ensure student involvement in the provision of vocational rehabilitation, supported employment, customized employment, pre-employment transition services, transition services, or independent living rehabilitation services to individuals with disabilities, especially individuals with significant disabilities;

(iv) The coursework includes student exposure to vocational rehabilitation, supported employment, customized employment, employer engagement, and independent living rehabilitation processes, concepts, programs, and services; and

(v) If applicable, there is evidence of current professional accreditation by the designated accrediting agency in the professional field in which grant support is being requested.

(Authority: Section 12(c) and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772)

§ 386.21 What are the application procedures for these programs?

(a) *Application.* No grant shall be awarded or contract entered into under the Rehabilitation Long-Term Training program unless the applicant has submitted to the Secretary an application at such time, in such form, in accordance with such procedures identified by the Secretary and, and including such information as the Secretary may require, including—

(1) A description of how the designated State unit or units will participate in the project to be funded under the grant or contract, including, as appropriate, participation on advisory committees, as practicum sites, in curriculum development, and in other ways so as to build closer relationships between the applicant and the designated State unit and to encourage students to pursue careers in public vocational rehabilitation programs;

(2) The identification of potential employers that provide employment that meets the requirements in § 386.33(c); and

(3) An assurance that data on the employment of graduates or trainees who participate in the project is accurate.

(b) The Secretary gives the designated State agency an opportunity to review and comment on applications submitted from within the State that it serves. The procedures to be followed by the applicant and the State are in 34 CFR 75.155–75.159.

(Authority: Sections 12(c) and 302(b)(2) and (d) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772(b)(2) and (d))

Subpart D—What Conditions Must Be Met After an Award?

§ 386.30 What are the matching requirements?

The grantee is required to contribute at least ten percent of the total cost of a project under this program. However, if the grantee can demonstrate that it has insufficient resources to contribute the entire match but that it can fulfill all other requirements for receiving an award, the Secretary may waive part of the non-Federal share of the cost of the project after negotiations with Department staff.

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c))

§ 386.31 What are the requirements for directing grant funds?

(a) A grantee must use at least 65 percent of the total cost of a project under this program for scholarships as defined in § 386.4.

(b) The Secretary may waive the requirement in (a) and award grants that use less than 65 percent of the total cost of the project for scholarships based upon the unique nature of the project, such as the establishment of a new training program or long-term training in an emerging field that does not award degrees or certificates.

(c) Before providing a scholarship to a scholar, a grantee must make good faith efforts to determine that the scholar is not concurrently receiving more than one scholarship under this program for the same academic term.

(Authority: Sections 12(c) and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772)

§ 386.32 What are allowable costs?

In addition to those allowable costs established in the Education Department General Administrative Regulations in 34 CFR 75.530 through 75.562, the following items are allowable under long-term training projects:

(a) Student stipends.

(b) Tuition and fees.

(c) Books and supplies.

(d) Student travel in conjunction with training assignments.

(Authority: Sections 12(c) and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772)

§ 386.33 What are the requirements for grantees in disbursing scholarships?

Before disbursement of scholarship assistance to an individual, a grantee—

(a)(1) Must obtain documentation that the individual is—

(i) A U.S. citizen or national; or

(ii) A permanent resident of the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands;

(2) Must confirm from documentation issued to the individual by the U.S. Department of Homeland Security that he or she—

(i) Is a lawful permanent resident of the United States; or

(ii) Is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; and

(b) Must confirm that the applicant has expressed interest in a career in clinical practice, administration, supervision, teaching, or research in the vocational rehabilitation, supported employment, or independent living rehabilitation of individuals with disabilities, especially individuals with significant disabilities;

(c) Must obtain documentation, as described in § 386.40(a)(7), that the individual expects to seek and maintain employment in a designated State agency or in a related agency as defined in § 386.4 where

(1) The employment is in the field of study in which the training was received or

(2) Where the job functions are directly relevant to the field of study in which the training was received.

(d) Must ensure that the scholarship, when added to the amount of financial aid the scholar receives for the same academic year under title IV of the Higher Education Act, does not exceed the scholar's cost of attendance;

(e) Must limit scholarship assistance to no more than four academic years, unless the grantee provides an extension consistent with the institution's accommodations under section 504 of the Act; and

(f) Must obtain a Certification of Eligibility for Federal Assistance from each scholar as prescribed in 34 CFR 75.60, 75.61, and 75.62.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: Sections 12(c) and 302(b) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772(b))

§ 386.34 What assurances must be provided by a grantee that intends to provide scholarships?

A grantee under this part that intends to grant scholarships for any academic year must provide the following assurances before an award is made:

(a) *Requirement for agreement.* No individual will be provided a scholarship without entering into a written agreement containing the terms and conditions required by this section. An individual will sign and date the agreement prior to the initial disbursement of scholarship funds to the individual for payment of the individual's expenses. An agreement must be executed between the grantee and scholar for each subsequent year that scholarship funds are disbursed and must contain the terms and conditions required by this section.

(b) *Disclosure to applicants.* The terms and conditions of the agreement between the grantee and a scholar will be fully disclosed in the application for scholarship.

(c) *Form and terms of agreement.* Prior to granting each year of a scholarship, the grantee will require each scholar to enter into a signed written agreement in which the scholar agrees to the terms and conditions set forth in § 386.40. This agreement must be in the form and contain any additional terms and conditions that the Secretary may require.

(d) *Executed agreement.* The grantee will provide an original signed executed payback agreement upon request to the Secretary.

(e) *Standards for satisfactory progress.* The grantee will establish, publish, and apply reasonable standards for measuring whether a scholar is maintaining satisfactory progress in the scholar's course of study. The Secretary considers an institution's standards to be reasonable if the standards—

(1) Conform with the standards of satisfactory progress of the nationally recognized accrediting agency that accredits the institution's program of study, if the institution's program of study is accredited by such an agency, and if the agency has those standards;

(2) For a scholar enrolled in an eligible program who is to receive assistance under the Rehabilitation Act, are the same as or stricter than the institution's standards for a student enrolled in the same academic program who is not receiving assistance under the Rehabilitation Act; and

(3) Include the following elements:

(i) Grades, work projects completed, or comparable factors that are measurable against a norm.

(ii) A maximum timeframe in which the scholar must complete the scholar's educational objective, degree, or certificate.

(iii) Consistent application of standards to all scholars within categories of students; *e.g.*, full-time, part-time, undergraduates, graduate students, and students attending programs established by the institution.

(iv) Specific policies defining the effect of course incompletes, withdrawals, repetitions, and noncredit remedial courses on satisfactory progress.

(v) Specific procedures for appeal of a determination that a scholar is not making satisfactory progress and for reinstatement of aid.

(f) *Exit certification.* (1) At the time of exit from the program, the grantee will provide the following information to the scholar:

(i) The name of the institution and the number of the Federal grant that provided the scholarship.

(ii) the total amount of scholarship assistance received subject to § 386.40(a)(7).

(iii) The scholar's field of study and the obligation of the scholar to perform the service obligation with employment that meets the requirements in § 386.40(a)(7)(i).

(iv) The number of years the scholar needs to work to satisfy the work requirements in § 386.40(a)(7)(ii).

(v) The time period during which the scholar must satisfy the work requirements in § 386.40(a)(8).

(vi) As applicable, all other obligations of the scholar in § 386.40.

(2) Upon receipt of this information from the grantee, the scholar must provide written and signed certification to the grantee that the information is correct.

(g) *Tracking system.* The grantee has established policies and procedures to determine compliance of the scholar with the terms of the signed payback agreement. In order to determine whether a scholar has met the terms and conditions set forth in § 386.40, the tracking system must include for each employment position maintained by the scholar—

(1) Documentation of the employer's name, address, dates of the scholar's employment, name of supervisor, position title, a description of the duties the scholar performed, and whether the employment is full- or part-time;

(2) Documentation of how the employment meets the requirements in § 386.40(a)(7); and

(3) In the event a grantee is experiencing difficulty locating a scholar, documentation that the grantee has checked with existing tracking systems operated by alumni organizations.

(h) *Reports.* The grantee will make annual reports to the Secretary, unless more frequent reporting is required by

the Secretary, that are necessary to carry out the Secretary's functions under this part.

(i) *Repayment status.* The grantee will immediately report to the Secretary whenever a scholar has entered repayment status under § 386.43(e) and provide all necessary documentation in support thereof.

(j) *Records.* The grantee will maintain accurate and complete records as outlined in paragraphs (g) and (h) of this section for a period of time not less than one year beyond the date that all scholars provided financial assistance under the grant—

(1) Have completed their service obligation or

(2) Have entered into repayment status pursuant to § 386.43(e).

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: Sections 12(c) and 302(b) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772(b))

§ 386.35 What information must be provided by a grantee that is an institution of higher education to assist designated State agencies?

A grantee that is an institution of higher education provided assistance under this part must cooperate with the following requests for information from a designated State agency:

(a) Information required by section 101(a)(7) of the Act which may include, but is not limited to—

(1) The number of students enrolled by the grantee in rehabilitation training programs; and

(2) The number of rehabilitation professionals trained by the grantee who graduated with certification or licensure, or with credentials to qualify for certification or licensure, during the past year.

(b) Information on the availability of rehabilitation courses leading to certification or licensure, or the credentials to qualify for certification or licensure, to assist State agencies in the planning of a program of staff development for all classes of positions that are involved in the administration and operation of the State vocational rehabilitation program.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: Sections 12(c) and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772)

§ 386.36 What is a grantee's liability for failing to provide accurate and complete scholar information to the Department?

The Department may recover, in whole or in part, from the grantee the debt amount and any collection costs described in §§ 386.40(d) and 386.43, if the Department:

(a) Is unable to collect, or improperly collected, some or all of these amounts or costs from a scholar and

(b) Determines that the grantee failed to provide to the Department accurate and complete documentation described in § 386.34.

(Authority: Sections 12(c) and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772)

Subpart E—What Conditions Must Be Met by a Scholar?

§ 386.40 What are the requirements for scholars?

(a) A scholar must—

(1) Be enrolled in a course of study leading to a certificate or degree in one of the fields designated in § 386.1(b);

(2) Receive the training at the educational institution or agency designated in the scholarship;

(3) Not accept payment of educational allowances from any other entity if that allowance conflicts with the scholar's obligation under section 302 of the Act and this part;

(4) Not receive concurrent scholarships for the same academic term from more than one project under this program;

(5) Enter into a signed written agreement with the grantee, prior to the receipt of scholarship funds, as required in § 386.34(c);

(6) Maintain satisfactory progress toward the certificate or degree as determined by the grantee;

(7) Upon exiting the training program under paragraph (a)(1) of this section, subsequently maintain employment on a full- or part-time basis subject to the provisions in paragraph (b) of this section—

(i)(A) In a State vocational rehabilitation agency or related agency as defined in § 386.4; and

(B)(*1*) In the field of study for which training was received, or

(*2*) Where the field of study is directly relevant to the job functions performed; and

(ii) For a period of at least the full-time equivalent of two years for every academic year for which assistance under this section was received subject to the provisions in paragraph (c) of this section for part-time coursework;

(8) Complete the service obligation within a period, beginning after the recipient exits the training program for which the scholarship was awarded, of not more than the sum of the number of years in the period described in paragraph (a)(7)(ii) of this section and two additional years;

(9) Repay all or part of any scholarship received, plus interest, if the individual does not fulfill the requirements of this section, except as provided for in § 386.41 for exceptions and deferrals; and

(10) Provide the grantee all requested information necessary for the grantee to meet the exit certification requirements in § 386.34(f) and, as necessary, thereafter for any changes necessary for the grantee to monitor the scholar's service obligation under this section.

(b)(1) The period of qualifying employment that meets the requirements of paragraph (a)(7) of this section may begin—

(i) For courses of study of at least one year, only subsequent to the completion of one academic year of the training for which the scholarship assistance was received.

(ii) For courses of study of less than one year, only upon completion of the training for which the scholarship assistance was received.

(2) The work completed as part of an internship, practicum, or any other work-related requirement necessary to complete the educational program is not considered qualifying employment.

(c) If the scholar is pursuing coursework on a part-time basis, the service obligation for these part-time courses is based on the equivalent total of actual academic years of training received.

(d) If a scholar fails to provide the information in paragraph (a)(10) of this section or otherwise maintain contact with the grantee pursuant to the terms of the signed payback agreement and enters into repayment status pursuant to § 386.43, the scholar will be held responsible for any costs assessed in the collection process under that section even if that information is subsequently provided.

(Authority: Sections 12(c) and 302(b) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772(b))

§ 386.41 Under what circumstances does the Secretary grant a deferral or exception to performance or repayment under a scholarship agreement?

Based upon sufficient evidence to substantiate the grounds as detailed in § 386.42, a repayment exception to or deferral of the requirements of § 386.40(a)(7) may be granted, in whole or in part, by the Secretary as follows:

(a) Repayment is not required if the scholar—

(1) Is unable to continue the course of study or perform the work obligation because of a permanent disability that meets one of the following conditions:

(i) The disability had not been diagnosed at the time the scholar signed the agreement in § 386.34(c); or

(ii) The disability did not prevent the scholar from performing the requirements of the course of study or the work obligation at the time the scholar signed the agreement in § 386.34(c) but subsequently worsened; or

(2) Has died.

(b) Repayment of a scholarship may be deferred during the time the scholar is—

(1) Engaging in a full-time course of study in the field of rehabilitation at an institution of higher education;

(2) Serving on active duty as a member of the armed services of the United States for a period not in excess of four years;

(3) Serving as a volunteer under the Peace Corps Act;

(4) Serving as a full-time volunteer under title I of the Domestic Volunteer Service Act of 1973;

(5) Experiencing a temporary disability that affects the scholar's ability to continue the course of study or perform the work obligation, for a period not to exceed three years; or

(c) Under limited circumstances as determined by the Secretary and based upon credible evidence submitted on behalf of the scholar, the Secretary may grant an exception to, or deferral of, the requirement to repay a scholarship in instances not specified in this section. These instances could include, but are not limited to, the care of a disabled spouse, partner, or child or the need to accompany a spouse or partner on active duty in the Armed Forces.

(Authority: Sections 12(c) and 302(b) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772(b))

§ 386.42 What must a scholar do to obtain an exception or a deferral to performance or repayment under a scholarship agreement?

To obtain an exception or a deferral to performance or repayment under a scholarship agreement under § 386.41, a scholar must provide the following:

(a) *Written application.* A written application must be made to the Secretary to request a deferral or an exception to performance or repayment of a scholarship.

(b) *Documentation.* Sufficient documentation must be provided to substantiate the grounds for all deferrals or exceptions, including the following, as appropriate.

(1) Documentation necessary to substantiate an exception under § 386.41(a)(1) or a deferral under § 386.41(b)(5) must include a letter from a qualified physician or other medical professional, on official stationery, attesting how the disability affects the scholar in completing the course of study or performing the work obligation. The documentation must be less than three months old and include the scholar's diagnosis and prognosis and ability to complete the course of study or work with accommodations.

(2) Documentation to substantiate an exception under § 386.41(a)(2) must include a death certificate or other evidence conclusive under State law.

(3) Documentation necessary to substantiate a deferral or exception under 386.41(c) based upon the disability of a spouse, partner, or child must meet the criteria, as relevant, in paragraph (b)(1) of this section.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: Sections 12(c) and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772)

§ 386.43 What are the consequences of a scholar's failure to meet the terms and conditions of a scholarship agreement?

In the event of a failure to meet the terms and conditions of a scholarship agreement or to obtain a deferral or an exception as provided in § 386.41, the scholar must repay all or part of the scholarship as follows:

(a) *Amount.* The amount of the scholarship to be repaid is proportional to the employment obligation not completed.

(b) *Interest rate.* The Secretary charges the scholar interest on the unpaid balance owed in accordance with 31 U.S.C. 3717.

(c) *Interest accrual.* (1) Interest on the unpaid balance accrues from the date the scholar is determined to have entered repayment status under paragraph (e) of this section.

(2) Any accrued interest is capitalized at the time the scholar's repayment schedule is established.

(3) No interest is charged for the period of time during which repayment has been deferred under § 386.41.

(d) *Collection costs.* Under the authority of 31 U.S.C. 3717, the Secretary may impose reasonable collection costs.

(e) *Repayment status.* A scholar enters repayment status on the first day of the first calendar month after the earliest of the following dates, as applicable:

(1) The date the scholar informs the Secretary he or she does not plan to fulfill the employment obligation under the agreement.

(2) Any date when the scholar's failure to begin or maintain employment makes it impossible for that individual to complete the employment obligation within the number of years required in § 386.40(a)(8).

(f) *Amounts and frequency of payment.* The scholar shall make payments to the Secretary that cover principal, interest, and collection costs according to a schedule established by the Secretary.

(Authority: Sections 12(c) and 302(b) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772(b))

■ 12. Part 387 is revised to read as follows:

PART 387—INNOVATIVE REHABILITATION TRAINING

Subpart A—General

Sec.
387.1 What is the Innovative Rehabilitation Training program?
387.2 Who is eligible for assistance under this program?
387.3 What regulations apply to this program?
387.4 What definitions apply to this program?
387.5 What types of projects are authorized under this program?

Subpart B—[Reserved]

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

387.30 What additional selection criteria are used under this program?

Subpart E—What Conditions Must Be Met by a Grantee?

387.40 What are the matching requirements?
387.41 What are allowable costs?

Authority: Sections 12(c) and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), and 772, unless otherwise noted.

Subpart A—General

§ 387.1 What is the Innovative Rehabilitation Training program?

This program is designed—

(a) To develop new types of training programs for rehabilitation personnel and to demonstrate the effectiveness of these new types of training programs for rehabilitation personnel in providing rehabilitation services to individuals with disabilities;

(b) To develop new and improved methods of training rehabilitation personnel so that there may be a more effective delivery of rehabilitation services to individuals with disabilities by designated State rehabilitation agencies and designated State rehabilitation units or other public or non-profit rehabilitation service agencies or organizations; and

(c) To develop new innovative training programs for vocational rehabilitation professionals and paraprofessionals to have a 21st century understanding of the evolving labor force and the needs of individuals with disabilities so they can more effectively provide vocational rehabilitation services to individuals with disabilities.

(Authority: Sections 12(c), 121(a)(7), and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 721(a)(7), and 772)

§ 387.2 Who is eligible for assistance under this program?

Those agencies and organizations eligible for assistance under this program are described in 34 CFR 385.2.

(Authority: Section 12(c) and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772)

§ 387.3 What regulations apply to this program?

(a) 34 CFR part 385 (Rehabilitation Training); and

(b) The regulations in this part 387.

(Authority: Sections 12(c) and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772)

§ 387.4 What definitions apply to this program?

The definitions in 34 CFR part 385 apply to this program.

(Authority: Sections 12(c) and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772))

§ 387.5 What types of projects are authorized under this program?

The Innovative Rehabilitation Training Program supports time-limited pilot projects through which new types of rehabilitation workers may be trained or through which innovative methods of training rehabilitation personnel may be demonstrated.

(Authority: Sections 12(c) and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772))

Subpart B—[Reserved]

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 387.30 What additional selection criteria are used under this program?

In addition to the criteria in 34 CFR 385.31(c), the Secretary uses the following additional selection criteria to evaluate an application:

(a) *Relevance to State-Federal rehabilitation service program.* (1) The Secretary reviews each application for information that shows that the proposed project appropriately relates to the mission of the State-Federal rehabilitation service program.

(2) The Secretary looks for information that shows that the project can be expected either—

(i) To increase the supply of trained personnel available to public and private agencies involved in the rehabilitation of individuals with disabilities; or

(ii) To maintain and improve the skills and quality of rehabilitation personnel.

(b) *Nature and scope of curriculum.* (1) The Secretary reviews each application for information that demonstrates the adequacy and scope of the proposed curriculum.

(2) The Secretary looks for information that shows that—

(i) The scope and nature of the training content can be expected to enable the achievement of the established project objectives of the training project;

(ii) The curriculum and teaching methods provide for an integration of theory and practice relevant to the educational objectives of the program;

(iii) There is evidence of educationally focused practicum or other field experiences in settings that assure student involvement in the provision of vocational rehabilitation or independent living rehabilitation services to individuals with disabilities, especially individuals with significant disabilities; and

(iv) The didactic coursework includes student exposure to vocational rehabilitation processes, concepts, programs, and services.

(Authority: Sections 12(c) and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772)

Subpart E—What Conditions Must Be Met by a Grantee?

§ 387.40 What are the matching requirements?

A grantee must contribute to the cost of a project under this program in an amount satisfactory to the Secretary. The part of the costs to be borne by the grantee is determined by the Secretary at the time of the grant award.

(Authority: Sections 12(c) and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772)

§ 387.41 What are allowable costs?

In addition to those allowable costs established under 34 CFR 75.530–75.562, the following items are allowable under Innovative Rehabilitation training projects—

(a) Student stipends;

(b) Tuition and fees; and

(c) Student travel in conjunction with training assignments.

(Authority: Sections 12(c) and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772)

PART 388—[REMOVED AND RESERVED]

■ 13. Effective October 1, 2016, part 388 is removed and reserved.

PART 389—[REMOVED AND RESERVED]

■ 14. Part 389 is removed and reserved.

■ 15. Part 390 is revised to read as follows:

PART 390—REHABILITATION SHORT-TERM TRAINING

Subpart A—General

Sec.
390.1 What is the Rehabilitation Short-Term Training program?
390.2 Who is eligible for assistance under this program?
390.3 What regulations apply to this program?
390.4 What definitions apply to this program?

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

390.10 What types of projects are authorized under this program?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

390.30 What additional selection criterion is used under this program?

Subpart E—What Conditions Must Be Met by a Grantee?

390.40 What are the matching requirements?
390.41 What are allowable costs?

Authority: Sections 12(a) and (c) and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(a) and (c) and 772, unless otherwise noted.

Subpart A—General

§ 390.1 What is the Rehabilitation Short-Term Training program?

This program is designed for the support of special seminars, institutes, workshops, and other short-term courses in technical matters relating to the vocational, medical, social, and psychological rehabilitation programs, independent living services programs, and client assistance programs.

(Authority: Sections 12(a)(2) and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(a)(2) and 772)

§ 390.2 Who is eligible for assistance under this program?

Those agencies and organizations eligible for assistance under this program are described in 34 CFR 385.2.

(Authority: Section 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 772)

§ 390.3 What regulations apply to this program?

(a) 34 CFR part 385 (Rehabilitation Training); and

(b) The regulations in this part 390.

(Authority: Section 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 772)

§ 390.4 What definitions apply to this program?

The definitions in 34 CFR part 385 apply to this program.

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c)

Subpart B—What Kinds of Projects Does the Department of Education Assist Under This Program?

§ 390.10 What types of projects are authorized under this program?

(a) Projects under this program are designed to provide short-term training and technical instruction in areas of special significance to the vocational, medical, social, and psychological rehabilitation programs, supported employment programs, independent living services programs, and client assistance programs.

(b) Short-term training projects may be of regional or national scope.

(c) Conferences and meetings in which training is not the primary focus may not be supported under this program.

(Authority: Section 12(a)(2) and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(a)(2) and 772)

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 390.30 What additional selection criterion is used under this program?

In addition to the criteria in 34 CFR 385.31(c), the Secretary uses the following additional selection criterion to evaluate an application:

(a) *Relevance to State-Federal rehabilitation service program.* (1) The Secretary reviews each application for information that shows that the proposed project appropriately relates to the mission of the State-Federal rehabilitation service programs.

(2) The Secretary looks for information that shows that the proposed project can be expected to improve the skills and competence of—

(i) Personnel engaged in the administration or delivery of rehabilitation services; and

(ii) Others with an interest in the delivery of rehabilitation services.

(b) *Evidence of training needs.* The Secretary reviews each application for evidence of training needs as identified through training needs assessment conducted by the applicant or by designated State agencies or designated State units or any other public and private nonprofit rehabilitation service agencies or organizations that provide rehabilitation services and other services authorized under the Act, whose personnel will receive the training.

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c))

Subpart E—What Conditions Must Be Met by a Grantee?

§ 390.40 What are the matching requirements?

A grantee must contribute to the cost of a project under this program in an amount satisfactory to the Secretary. The part of the costs to be borne by the grantee is determined by the Secretary at the time of the award.

(Authority: Section 12(c) and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772)

§ 390.41 What are allowable costs?

(a) In addition to those allowable costs established in 34 CFR 75.530–75.562, the following items are allowable under short-term training projects:

(1) Trainee per diem costs;

(2) Trainee travel in connection with a training course;

(3) Trainee registration fees; and

(4) Special accommodations for trainees with handicaps.

(b) The preparation of training materials may not be supported under a short-term training grant unless the materials are essential for the conduct of the seminar, institute, workshop or other short course for which the grant support has been provided.

(Authority: Section 12(c) and 302 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772)

■ 16. Part 396 is revised to read as follows:

PART 396—TRAINING OF INTERPRETERS FOR INDIVIDUALS WHO ARE DEAF OR HARD OF HEARING AND INDIVIDUALS WHO ARE DEAF–BLIND

Subpart A—General

Sec.
396.1 What is the Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who Are Deaf-Blind program?
396.2 Who is eligible for an award?
396.3 What regulations apply?
396.4 What definitions apply?
396.5 What activities may the Secretary fund?

Subpart B—[Reserved]

Subpart C—How Does One Apply for an Award?

396.20 What must be included in an application?

Subpart D—How Does the Secretary Make an Award?

396.30 How does the Secretary evaluate an application?
396.31 What additional selection criteria are used under this program?
396.32 What additional factors does the Secretary consider in making awards?
396.33 What priorities does the Secretary apply in making awards?
396.34 What are the matching requirements?

Authority: Sections 12(c) and 302(a) and (f) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772(a) and (f), unless otherwise noted.

Subpart A—General

§ 396.1 What is the Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who Are Deaf-Blind program?

The Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who Are Deaf-Blind program is designed to establish interpreter training programs or to provide financial assistance for ongoing interpreter programs to train a sufficient number of qualified interpreters throughout the country in order to meet the communication needs of individuals who are deaf or hard of hearing and individuals who are deaf-blind by—

(a) Training interpreters to effectively interpret and transliterate between spoken language and sign language and to transliterate between spoken language and oral or tactile modes of communication;

(b) Ensuring the maintenance of the interpreting skills of qualified interpreters; and

(c) Providing opportunities for interpreters to raise their skill level competence in order to meet the highest

standards approved by certifying associations.

(Authority: Sections 12(c) and 302(a) and (f) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772(a) and (f))

§ 396.2 Who is eligible for an award?

Public and private nonprofit agencies and organizations, including institutions of higher education, are eligible for assistance under this program.

(Authority: Section 302(f) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 772(f))

§ 396.3 What regulations apply?

The following regulations apply to the Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who Are Deaf-Blind program:

(a) 34 CFR part 385 (Rehabilitation Training), sections—

(1) 385.3(a) and (d);

(2) 385.40 through 385.46; and

(b) The regulations under this part 396.

(Authority: Sections 12(c) and 302(f) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772(f))

§ 396.4 What definitions apply?

(a) *Definitions in EDGAR.* The following terms defined in 34 CFR 77.1 apply to this part:

Applicant
Application
Award
Equipment
Grant
Nonprofit
Private
Project
Public
Secretary
Supplies

(b) *Definitions in the rehabilitation training regulations.* The following terms defined in 34 CFR 385.4(b) apply to this part:

Individual With a Disability
Institution of Higher Education

(c) *Other definitions.* The following definitions also apply to this part:

Existing program that has demonstrated its capacity for providing interpreter training services means an established program with—

(i) A record of training qualified interpreters who are serving the deaf, hard of hearing, and deaf-blind communities; and

(ii) An established curriculum that uses evidence-based practices in the training of interpreters and promising practices when evidence-based practices are not available.

Individual who is deaf means an individual who, in order to communicate, depends primarily upon visual modes, such as sign language, speech reading, and gestures, or reading and writing.

Individual who is deaf-blind means an individual—

(i)(A) Who has a central visual acuity of 20/200 or less in the better eye with corrective lenses, or a field defect such that the peripheral diameter of visual field subtends an angular distance no greater than 20 degrees, or a progressive visual loss having a prognosis leading to one or both of these conditions;

(B) Who has a chronic hearing impairment so severe that most speech cannot be understood with optimum amplification, or a progressive hearing loss having a prognosis leading to this condition; and

(C) For whom the combination of impairments described in paragraphs (i)(A) and (B) of this definition causes extreme difficulty in attaining independence in daily life activities, achieving psychosocial adjustment, or obtaining a vocation;

(ii) Who, despite the inability to be measured accurately for hearing and vision loss due to cognitive or behavioral constraints, or both, can be determined through functional and performance assessment to have severe hearing and visual disabilities that cause extreme difficulty in attaining independence in daily life activities, achieving psychosocial adjustment, or obtaining vocational objectives; or

(iii) Who meets any other requirements that the Secretary may prescribe.

Individual who is hard of hearing means an individual who, in order to communicate, needs to supplement auditory information by depending primarily upon visual modes, such as sign language, speech reading, and gestures, or reading and writing.

Interpreter for individuals who are deaf or hard of hearing means a qualified professional who uses sign language skills, cued speech, or oral interpreting skills, as appropriate to the needs of individuals who are deaf or hard of hearing, to facilitate communication between individuals who are deaf or hard of hearing and other individuals.

Interpreter for individuals who are deaf-blind means a qualified professional who uses tactile or other manual language or fingerspelling modes, as appropriate to the needs of individuals who are deaf-blind, to facilitate communication between individuals who are deaf-blind and other individuals.

Novice Interpreter means an interpreter who has graduated from an interpreter education program or enters the field through an alternate pathway, is at the start of his or her professional career with some level of proficiency in American Sign Language, and is working toward becoming a qualified professional.

Qualified professional means an individual who has—

(i) Met existing certification or evaluation requirements equivalent to the highest standards approved by certifying associations; and

(ii) Successfully demonstrated interpreting skills that reflect the highest standards approved by certifying associations through prior work experience.

Related agency means—

(i) An American Indian rehabilitation program; or

(ii) Any of the following agencies that provide services to individuals with disabilities under an agreement or other arrangement with a designated State agency in the area of specialty for which training is provided:

(A) A Federal, State, or local agency.

(B) A nonprofit organization.

(C) A professional corporation or professional practice group.

(Authority: Sections 12(c) and 302(f) of the Rehabilitation Act of 1973, as amended and Section 206 of Pub. L. 98–221; 29 U.S.C. 709(c) and 772(f) and 29 U.S.C 1905)

§ 396.5 What activities may the Secretary fund?

The Secretary may award grants to public or private nonprofit agencies or organizations, including institutions of higher educations, to provide assistance for establishment of interpreter training programs or for projects that provide training in interpreting skills for persons preparing to serve, and persons who are already serving, as interpreters for individuals who are deaf or hard of hearing, and as interpreters for individuals who are deaf-blind in public and private agencies, schools, and other service-providing institutions.

(Authority: Section 302(f) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 772(f))

Subpart B—[Reserved]

Subpart C—How Does One Apply for an Award?

§ 396.20 What must be included in an application?

Each applicant shall include in the application—

(a) A description of the manner in which the proposed interpreter training program will be developed and operated during the five-year period following the award of the grant;

(b) A description of the communication needs for training interpreters for the population(s) or in the geographical area(s) to be served by the project;

(c) A description of the applicant's capacity or potential for providing training of interpreters for individuals who are deaf or hard of hearing and interpreters for individuals who are deaf-blind that is evidence-based, and based on promising practices when evidence-based practices are not available;

(d) An assurance that any interpreter trained or retrained under this program shall meet those standards of competency for a qualified professional, that the Secretary may establish;

(e) An assurance that the project shall cooperate or coordinate its activities, as appropriate, with the activities of other projects funded under this program;

(f) The descriptions required in 34 CFR 385.45 with regard to the training of individuals with disabilities, including those from minority groups, for rehabilitation careers; and

(g) Such other information as the Secretary may require.

(Approved by the Office of Management and Budget under control number 1820–0018)

(Authority: Sections 12(c), 21(c), and 302(f) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 718(c), and 772(f))

Subpart D—How Does the Secretary Make an Award?

§ 396.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates applications under the procedures in 34 CFR part 75.

(b) The Secretary evaluates each application using selection criteria in § 396.31.

(c) In addition to the selection criteria described in paragraph (b) of this section, the Secretary evaluates each application using—

(1) Selection criteria in 34 CFR 75.210;

(2) Selection criteria established under 34 CFR 75.209; or

(3) A combination of selection criteria established under 34 CFR 75.209 and selection criteria in 34 CFR 75.210.

(Authority: Section 302(f) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 772(f))

§ 396.31 What additional selection criteria are used under this program?

In addition to the criteria in 34 CFR 396.30(c), the Secretary uses the following additional selection criterion to evaluate an application. The Secretary reviews each application to determine the extent to which—

(a) The proposed interpreter training project was developed in consultation with State Vocational Rehabilitation agencies and their related agencies and consumers;

(b) The training is appropriate to the needs of both individuals who are deaf or hard of hearing and individuals who are deaf-blind and to the needs of public and private agencies that provide services to either individuals who are deaf or hard of hearing or individuals who are deaf-blind in the geographical area to be served by the training project;

(c) Any curricula for the training of interpreters includes evidence-based practices and promising practices when evidence-based practices are not available;

(d) There is a working relationship between the interpreter training project and State Vocational Rehabilitation agencies and their related agencies, and consumers; and

(e) There are opportunities for individuals who are deaf or hard of hearing and individuals who are deaf-blind to provide input regarding the design and management of the training project.

(Authority: Sections 12(c) and 302(f) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772(f))

§ 396.32 What additional factors does the Secretary consider in making awards?

In addition to the selection criteria listed in § 396.31 and 34 CFR 75.210, the Secretary, in making awards under this part, considers the geographical distribution of projects throughout the country, as appropriate, in order to best carry out the purposes of this program. To accomplish this, the Secretary may in any fiscal year make awards of regional or national scope.

(Authority: Sections 12(c) and 302(f) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772(f))

§ 396.33 What priorities does the Secretary apply in making awards?

(a) The Secretary, in making awards under this part, gives priority to public or private nonprofit agencies or organizations, including institutions of higher education, with existing programs that have demonstrated their capacity for providing interpreter training.

(b) In announcing competitions for grants and contracts, the Secretary may give priority consideration to—

(1) Increasing the skill level of interpreters for individuals who are deaf or hard of hearing and individuals who are deaf-blind in unserved or underserved populations or in unserved or underserved geographic areas;

(2) Existing programs that have demonstrated their capacity for providing interpreter training services that raise the skill level of interpreters in order to meet the highest standards approved by certifying associations; and

(3) Specialized topical training based on the communication needs of individuals who are deaf or hard of hearing and individuals who are deaf-blind.

(Authority: Sections 12(c) and 302(f)(1)(C) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772(f)(1)(C))

§ 396.34 What are the matching requirements?

A grantee must contribute to the cost of a project under this program in an amount satisfactory to the Secretary. The part of the costs to be borne by the grantee is determined by the Secretary at the time of the grant award.

(Authority: Section 12(c) and 302(f) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 772(f))

[FR Doc. 2016–16046 Filed 8–8–16; 11:15 am]

BILLING CODE 4000–01–P

FEDERAL REGISTER

Vol. 81 Friday,

No. 161 August 19, 2016

Part IV

Department of Education

34 CFR Parts 361, 363, and 397

State Vocational Rehabilitation Services Program; State Supported Employment Services Program; Limitations on Use of Subminimum Wage; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 361, 363, and 397

[ED–2015–OSERS–0001]

RIN 1820–AB70

State Vocational Rehabilitation Services Program; State Supported Employment Services Program; Limitations on Use of Subminimum Wage

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the State Vocational Rehabilitation Services program and the State Supported Employment Services program to implement changes to the Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act (WIOA) signed into law on July 22, 2014. The Secretary also updates, clarifies, and improves the prior regulations.

Finally, the Secretary issues new regulations regarding limitations on the use of subminimum wages that are added by WIOA and under the purview of the Department.

DATES: These regulations are effective on September 19, 2016, except for amendatory instructions 2, 3, and 4 amending 34 CFR 361.10, 361.23, and 361.40, which are effective October 18, 2016.

FOR FURTHER INFORMATION CONTACT: Ed Anthony, U.S. Department of Education, 400 Maryland Avenue SW., Room 5086, Potomac Center Plaza (PCP), Washington, DC 20202–2800. Telephone: (202) 245–7488 or by email: *Edward.Anthony@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of This Regulatory Action: Individuals with disabilities represent a vital and integral part of our society, and we are committed to ensuring that individuals with disabilities have opportunities to compete for and enjoy high quality employment in the 21st century global economy. Some individuals with disabilities face particular barriers to employment in integrated settings that pays competitive wages, provides opportunities for advancement, and leads to economic self-sufficiency. Ensuring workers with disabilities have the supports and the opportunities to acquire the skills that they need to pursue in-demand jobs and careers is critical to growing our economy, assuring that everyone who works hard is rewarded, and building a strong middle class. To help achieve this priority for individuals with disabilities, the Rehabilitation Act of 1973 (Act), as amended by the Workforce Innovation and Opportunity Act (WIOA) (P.L. 113–128), signed into law on July 22, 2014, seeks to empower individuals with disabilities to maximize employment, economic self-sufficiency, independence, and inclusion in and integration into society.

To implement the changes to the Act made by WIOA, the Secretary amends the regulations governing the State Vocational Rehabilitation Services program (VR program) (34 CFR part 361) and State Supported Employment Services program (Supported Employment program) (34 CFR part 363), administered by the Rehabilitation Services Administration (RSA), within the Office of Special Education and Rehabilitative Services. In addition, the Secretary updates and clarifies prior regulations to improve the operation of the program. Finally, the Secretary promulgates regulations in new 34 CFR part 397 that implement the limitations on the payment of subminimum wages to individuals with disabilities in section 511 of the Act that fall under the purview of the Secretary.

Summary of the Major Provisions of This Regulatory Action: We summarize here those regulatory changes needed to implement the amendments to the Act made by WIOA for each part in the order it appears in the Code of Federal Regulations (CFR).

State Vocational Rehabilitation Services Program

WIOA makes significant changes to title I of the Act that affect the VR program. First, WIOA strengthens the alignment of the VR program with other core components of the workforce development system by imposing requirements governing unified strategic planning, common performance accountability measures, and the one-stop delivery system. This alignment brings together entities responsible for administering separate workforce and employment, educational, and other human resource programs to collaborate in the creation of a seamless customer-focused service delivery network that integrates service delivery across programs, enhances access to the programs' services, and improves long-term employment outcomes for individuals receiving assistance. In so doing, WIOA places heightened emphasis on coordination and collaboration at the Federal, State, and local levels to ensure a streamlined and coordinated service delivery system for job-seekers, including those with disabilities, and employers. Therefore, the Departments of Education and Labor are issuing joint final regulations to implement jointly administered activities under title I of WIOA (*e.g.*, those related to Unified or Combined State Plans, performance accountability, and the one-stop delivery system), applicable to the workforce development system's core programs (Adult, Dislocated Worker, and Youth programs; Adult Education and Family Literacy Act programs; Wagner-Peyser Employment Services program; and the VR program). The joint final regulations, along with the *Analysis of Comments and Changes* to those regulations, are set forth in a separate regulatory action published elsewhere in this issue of the **Federal Register**.

To implement WIOA's corresponding major changes to title I of the Act, we:

- Amend § 361.10 to require that all assurances and descriptive information previously submitted through the stand-alone VR State Plan and supported employment supplement be submitted through the VR services portion of the Unified or Combined State Plan under section 102 or section 103, respectively, of WIOA.
- Clarify in § 361.29 that States report to the Secretary updates to the statewide needs assessment and goals and priorities, estimates of the numbers of individuals with disabilities served through the VR program and the costs of serving them, and reports of progress on goals and priorities at such time and in such manner determined by the Secretary to align the reporting of this information with the submission of the Unified or Combined State Plans and their modifications.
- Clarify in § 361.20 when designated State agencies must conduct public hearings to obtain comment on substantive changes to policies and procedures governing the VR program.
- Remove § 361.80 through § 361.89 and replace with § 361.40 to cross-reference the joint regulations for the common performance accountability measures for the core programs of the workforce development system.
- Provide a cross-reference in § 361.23, regarding the roles and responsibilities of the VR program in the one-stop delivery system to the joint regulations implementing requirements for the one-stop delivery system.

Second, the Act, as amended by WIOA, emphasizes the achievement of competitive integrated employment. The foundation of the VR program is the principle that individuals with disabilities, including those with the most significant disabilities, are capable of achieving high quality, competitive integrated employment when provided the necessary services and supports. To increase the employment of individuals with disabilities in the competitive integrated labor market, the workforce system must provide individuals with disabilities opportunities to participate in job-driven training and to pursue high quality employment outcomes. The amendments to the Act—from the stated purpose of the Act, to the expansion of services designed to maximize the potential of individuals with disabilities, including those with the most significant disabilities, to achieve competitive integrated employment, and, finally, to the inclusion of limitations on the payment of subminimum wages to individuals with disabilities—reinforce the congressional intent that individuals with disabilities, with appropriate supports and services, are able to achieve the same kinds of competitive integrated employment as non-disabled individuals. Consequently, we make extensive changes to part 361, including:

- The inclusion of a new definition of "competitive integrated employment" in § 361.5(c)(9) that combines, clarifies, and enhances the two separate definitions of "competitive employment" and "integrated setting" for the purpose of employment under the VR program in prior § 361.5(b)(11) and (b)(33)(ii).
- The incorporation of the principle that individuals with disabilities, including those with the most significant disabilities, are capable of achieving high quality competitive integrated employment, when provided the necessary services and support, throughout part 361, from the statement of program purpose in § 361.1 to the requirement in § 361.46(a) that the individualized plan for employment include a specific employment goal consistent with the general goal of competitive integrated employment.
- The revision of the definition of "employment outcome" in § 361.5(c)(15) that specifically identifies customized employment as an employment outcome under the VR program, and requires that all employment outcomes achieved through the VR program be in competitive integrated employment or supported employment, thereby eliminating uncompensated outcomes, such as homemakers and unpaid family workers, from the scope of the definition for purposes of the VR program.

To assist designated State units (DSUs) to implement the change in the definition of "employment outcome" and to ensure that individuals with disabilities did not experience a disruption in services, the Department proposed in the Notice of Proposed Rulemaking (NPRM) published on April 16, 2015 (80 FR 21059), a transition period of six months following the effective date of the final regulations, during which period DSUs would complete the provision of vocational rehabilitation services to, and close the service records of, individuals pursuing uncompensated outcomes, such as homemakers and unpaid family workers, in accordance with individualized plans for employment that were approved prior to the effective date of these final regulations. In consideration of the comments received, the Secretary has extended the transition period in these final regulations. DSUs may continue to provide services to individuals with uncompensated employment goals on their individualized plans for employment, approved prior to the effective date of these final regulations, until June 30, 2017, unless a longer period of time is required based on the needs of the individual with the disability as determined by the vocational rehabilitation counselor and the individual with a disability, as documented in the individual's service record.

We also amend numerous other provisions throughout part 361 to address the expansion of available services, requirements related to the development of the individualized plan for employment, and order of selection for services, all of which are intended to maximize the potential for individuals with disabilities to prepare for, obtain, retain, and advance in the same high quality jobs and high-demand careers as persons without disabilities.

Third, WIOA emphasizes the provision of services to students and youth with disabilities to ensure that they have meaningful opportunities to receive the services, including training and other supports, they need to achieve employment outcomes in competitive integrated employment. The Act, as amended by WIOA, expands not only the population of students with disabilities who may receive vocational rehabilitation services but also the breadth of services that the VR agencies may provide to youth and students with disabilities who are transitioning from school to postsecondary education and employment. We implement the emphasis on serving students and youth with disabilities contained in the amendments to the Act made by WIOA in many regulatory changes to part 361 by:

- Including in § 361.5(c)(51) and (c)(58), respectively, new definitions of "student with a disability" and "youth with a disability." After further analysis of the comments received, the Department has determined that the definition of "student with a disability" applies to all students enrolled in educational programs, including postsecondary education programs, so long as they satisfy the age requirements set forth in final § 361.5(c)(51). The definition is also inclusive of secondary students who are homeschooled, as well as students in other non-traditional secondary educational programs. We have incorporated this broader interpretation of the definition in final § 361.5(c)(51), which we believe will increase the potential for DSUs to maximize the use of funds reserved for the provision of pre-employment transition services by increasing the number of students who may receive these services.
- Implementing in § 361.48(a) the requirements of new sections 110(d) and 113 of the Act requiring States to reserve at least 15 percent of their Federal allotment to provide and arrange for, in coordination with local educational agencies, the provision of pre-employment transition services to students with disabilities. We have maintained our interpretation of "potentially eligible," for purposes of pre-employment transition services, as meaning all students with disabilities, regardless of whether they have applied for or been determined eligible for the VR program. The Department believes this is the broadest legally supportable interpretation and is consistent with the congressional intent.
- Amending § 361.29(a) to require that the comprehensive statewide needs assessment include an assessment of the needs of students and youth with disabilities for vocational rehabilitation services, including the needs of students with disabilities for pre-employment transition services.
- Clarifying in § 361.49 the technical assistance DSUs may provide to educational agencies and permitting the provision of transition services for the benefit of groups of students and youth with disabilities.
- Clarifying in § 361.22(c) that nothing in this part is to be construed as reducing the responsibility of the local educational agencies or any other

agencies under the Individuals with Disabilities Education Act (IDEA) to provide or pay for transition services that are also considered to be special education or related services under the IDEA necessary for the provision of a free appropriate public education to students with disabilities.

In addition to the preceding changes implementing the three major goals of the Act, as amended by WIOA, we have made changes to the regulations governing the comprehensive system of personnel development and the fiscal administration of the VR program. In order for DSUs to recruit qualified personnel to provide services to individuals with disabilities, including students and youth with disabilities, and carry out their responsibilities under the Act, we have made changes by:

• Amending § 361.18 governing the comprehensive system of personnel development by establishing minimum educational and experience requirements and eliminating the requirement to retrain staff not meeting the DSU's personnel standard for qualified staff.

• Revising proposed § 361.18(c)(2)(ii) in these final regulations to provide a more complete list of the skills and knowledge needed to meet the needs of employers and individuals with disabilities in the 21st century evolving labor market.

Finally, we make changes to part 361 to improve the fiscal administration of the VR program by:

• Clarifying in § 361.5(b) the applicability to the VR program of the definitions contained in 2 CFR part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements and making numerous other conforming changes to align this part with 2 CFR part 200 to ensure consistency.

• Adding a new paragraph (a)(3) to § 361.65 requiring the State to reserve not less than 15 percent of its allotment for the provision of pre-employment transition services.

• Amending § 361.65(b)(2) to clarify that reallotment occurs in the fiscal year the funds were appropriated and the funds may be obligated or expended during the period of performance, provided that matching requirements are met.

• Adding a new paragraph (b)(3) to § 361.65 establishing the Secretary's authority to determine the criteria to be used to reallot funds when the amount requested exceeds the amount of funds available for reallotment.

Since publication of the NPRM, as a result of further Departmental review, we clarify in § 361.63 the requirements for the use of program income.

State Supported Employment Services Program

Under the State Supported Employment Services program (Supported Employment program) authorized under title VI of the Act (29 U.S.C. 795g *et seq.*), the Secretary provides grants to assist States in developing and implementing collaborative programs with appropriate entities to provide supported employment services for individuals with the most significant disabilities, including youth with the most significant disabilities, to enable them to achieve supported employment outcomes in competitive integrated employment. Grants made under the Supported Employment program supplement grants issued to States under the VR program (34 CFR part 361).

WIOA makes several significant changes to title VI of the Act, which governs the Supported Employment program. All of the amendments to title VI are consistent with those made throughout the Act, namely to maximize the potential of individuals with disabilities, especially those with the most significant disabilities, to achieve competitive integrated employment and to expand services for youth with the most significant disabilities. We implement the changes made to the Supported Employment program by WIOA in these final regulations by:

• Requiring in § 363.1 that supported employment be in competitive integrated employment or, if not, in an integrated setting in which the individual is working toward competitive integrated employment on a short-term basis. As a result of comments received, we revised the proposed short-term basis period to allow for an extension of the six-month period for up to a total of 12 months based on the needs of the individual, and the individual has demonstrated progress toward competitive earnings based on information contained in the service record.

• Extending in § 363.50(b)(1) the time from 18 months to 24 months for the provision of supported employment services.

• Requiring in § 363.22 a reservation of 50 percent of a State's allotment under this part for the provision of supported employment services, including extended services, to youth with the most significant disabilities.

• Requiring in § 363.23 not less than a 10 percent match for the amount of funds reserved to serve youth with the most significant disabilities.

• Reducing in § 363.51 the amount of funds that may be spent on administrative costs.

In response to comments received, we revised §§ 363.53, 363.54, and 363.55 to clarify the requirements for the transition of individuals with the most significant disabilities from supported employment services to extended services, the achievement of a supported employment outcome, and the closure of service records. We have redesignated proposed § 363.55 as final § 363.56.

Limitations on the Use of Subminimum Wage

Section 511 of the Act, as added by WIOA, imposes requirements on employers who hold special wage certificates under the Fair Labor Standards Act (FLSA) that must be satisfied before the employers may hire youth with disabilities at subminimum wages or continue to employ individuals with disabilities of any age at the subminimum wage level. Section 511 also establishes the roles and responsibilities of the DSUs for the VR program and State and local educational agencies in assisting individuals with disabilities, including youth with disabilities, to maximize opportunities to achieve competitive integrated employment through services provided by VR and local educational agencies.

The addition of section 511 to the Act is consistent with all other amendments to the Act made by WIOA. Throughout the Act, Congress emphasizes that individuals with disabilities, including those with the most significant disabilities, can achieve competitive integrated employment if provided the necessary supports and services. The limitations imposed by section 511 reinforce this belief by requiring individuals with disabilities, including youth with disabilities, to satisfy certain service-related requirements in order to start or maintain, as applicable, subminimum wage employment. To implement the requirements of section 511 that fall under the purview of the Department, we are issuing new regulations in part 397, including:

• Section 397.1, describing the purpose of this part and § 397.2 setting forth the Department's jurisdiction.

• Section 397.10, requiring the DSU, in consultation with the State educational agency, to develop a process that ensures students and youth with disabilities receive documentation demonstrating completion of the various activities required by section 511 of the Act, such as, to name a few, the receipt of transition services under the IDEA

and pre-employment transition services under section 113 of the Act, as appropriate.

• Sections 397.20 and 397.30, establishing the activities that must be completed by youth with disabilities prior to obtaining employment at subminimum wage and the documentation that the DSUs and local educational agencies, as appropriate, must provide to demonstrate completion of those activities, required by section 511(a)(2) of the Act. These include completing pre-employment transition services in final § 361.48(a) and the determination of eligibility or ineligibility for vocational rehabilitation services in final §§ 361.42 and 361.43.

• Section 397.40, establishing the documentation that DSUs must provide to individuals with disabilities of any age who are employed at a subminimum wage upon the completion of certain information and career counseling-related services, as required by section 511(c) of the Act.

• Section 397.31, prohibiting a local educational agency or a State educational agency from entering into a contract with an entity that employs individuals at subminimum wages for the purpose of operating a program under which a youth with a disability is engaged in work compensated at a subminimum wage.

• Section 397.50 authorizing a DSU to review individual documentation, required by this part, for all individuals with disabilities who are employed at the subminimum wage level, that is maintained by employers who hold special wage certificates under the FLSA.

In response to comments received, we made revisions to the final regulations to specify that intervals for providing career counseling and information and referral services to individuals of any age employed by section 14(c) entities will be calculated based upon the date the individual becomes known to the DSU starting July 22, 2016. Additionally, we included a time frame in the final regulations of 45 days but, in the case of extenuating circumstances, no later than 90 days, for the DSU to provide documentation of completed activities to individuals with disabilities. We also added provisions that establish minimal information that must be contained in the documentation required by part 397, as well as other administrative requirements related to the documentation process. Finally, we determined that section 14(c) entities have a potential financial interest in providing some of the services and activities required in the final regulations. Consequently, we inserted language prohibiting the use of these entities in providing these required services or activities, stating that a contractor may not be an entity holding a special wage certificate under section 14(c) of the FLSA and that a DSU's contractor, for the purpose of conducting the review of documentation authorized under the final regulations, may not be an entity holding a special wage certificate under section 14(c) of the FLSA.

We fully explain the regulations described in this *Executive Summary,* along with all other significant changes to parts 361, 363, and 397 following the publication of the NPRM, in the *Analysis of Comments and Changes* section of this preamble.

Costs and Benefits: The potential costs associated with this regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities. Further information related to costs and benefits may be found in the *Regulatory Impact Analysis* section later in this preamble.

Public Comment: In response to our invitation in the NPRM, more than 1,100 parties submitted comments on the proposed regulations amending the VR program (part 361), amending the Supported Employment program (part 363), and adding part 397 implementing the new provisions in section 511 of the Act, as amended by WIOA. We discuss substantive issues within each part, by section or subject. Generally, we do not address technical and other minor changes.

Analysis of Comments and Changes:

Part 361 State Vocational Rehabilitation Services Program

Following a description of the organizational changes to part 361 in these final regulations, we present the *Analysis of Comments and Changes* in three sections. In section A, we discuss provisions in part 361 that apply generally to the administration of the VR program and to the provision of vocational rehabilitation services to individuals with disabilities. In section B, we discuss provisions related to the transition of students and youth with disabilities from school to postsecondary education and employment. Finally, in section C, we discuss the fiscal administration of the VR program.

Due to extensive changes, we published the entire part 361 in the NPRM, which included conforming and technical changes. We did not propose substantive changes to all sections of this part. Thus, we did not intend to make all regulations within this part available for public comment. Consequently, we do not address the comments we received on the following sections: §§ 361.5(c)(18), 361.5(c)(24), 361.5(c)(27), 361.5(c)(28), 361.5(c)(29), 361.5(c)(30), 361.5(c)(34), 361.5(c)(40), 361.5(c)(43), 361.5(c)(57), 361.47, 361.52, 361.56, and 361.57. Finally, we generally do not discuss differences between the NPRM and these final regulations that are technical or conforming in nature.

Organizational Changes

Although the regulations maintain subparts A, B, and C of part 361, we make organizational changes to other subparts within this part. First, we incorporate new subparts D, E, and F, where we place the three subparts discussed in a separate, but related, regulatory action (the joint regulations issued by the Departments of Education and Labor implementing jointly administered requirements governing all six core programs of the workforce development system, including the VR program, contained in title I of WIOA) published elsewhere in this issue of the **Federal Register**. Please see that regulatory action for more information about how these subparts are incorporated into part 361. Second, we remove prior §§ 361.80 through 361.89, since the VR program-specific standards and indicators are no longer applicable. Finally, we eliminate Appendix A to prior part 361—Questions and Responses. The Department intends to issue guidance on various areas covered in the final regulations, including some that had been covered by prior Appendix A, in the near future.

A. Provisions of General Applicability

Section A includes the *Analysis of Comments and Changes* to the regulations in subparts A and B of part 361 that pertain to the administration of the VR program generally and to the provision of vocational rehabilitation services to individuals with disabilities of any age. The analysis is presented by topical headings relevant to sections of the regulations in the order they appear in part 361 as listed. We discuss some of these same regulations in section B of the *Analysis of Comments and Changes* as they relate specifically to the transition of students and youth with disabilities from school to post-school activities, including final §§ 361.24, 361.46, 361.48(b), and 361.49.

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Purpose (§ 361.1)

Comments: A few commenters supported the replacement of the term "gainful employment" with the term "competitive integrated employment" and the inclusion of the term "economic self-sufficiency" in proposed § 361.1. In addition, many commenters sought clarification of the term "economic self-sufficiency" as used in this regulation and requested that we define it in § 361.5(c). Of these commenters, most suggested that the term "economic self-sufficiency" may deter individuals with disabilities who are receiving public benefits from applying for vocational rehabilitation services. Additionally, some commenters suggested that DSUs may use economic self-sufficiency to determine that individuals with disabilities who wish to maintain their public benefits are ineligible for vocational rehabilitation services. Some commenters indicated that individuals with intellectual or developmental disabilities may never achieve earnings, through competitive integrated employment, sufficient to cease receiving public benefits. Two commenters viewed "economic self-sufficiency" as a criterion within both the definitions of "employment outcome" and "competitive integrated employment," and requested that we identify criteria that DSUs may use to determine when individuals achieve this level of employment and are rehabilitated enough to no longer need vocational rehabilitation services.

Discussion: We appreciate comments supporting inclusion of the terms "competitive integrated employment" and "economic self-sufficiency" in final § 361.1. We agree that inclusion of these terms in the regulation reflects the spirit of the Act in general, and is consistent with specific amendments to section 100(a) of the Act made by WIOA. While we understand commenters' requests for a definition of "economic self-sufficiency," the Act, as amended by WIOA, does not define the term. We believe that the use of the term in final § 361.1(b) is consistent with its common understanding and refers to the situation in which an individual can support him- or herself financially with minimal or no reliance on public benefits or assistance from other persons. Therefore, we do not define the term "economic self-sufficiency." In addition, use of the term "economic self-sufficiency" in section 100(a)(2)(B) of the Act, as amended by WIOA, and in final § 361.1(b) does not require the individual to achieve economic self-sufficiency—either as a prerequisite for receipt of services or as an outcome resulting from vocational rehabilitation services provided. Rather, the term as used in the Act, as amended by WIOA, and in these final regulations merely requires that the vocational rehabilitation services provided to an individual be consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, informed choice, and economic self-sufficiency. Vocational rehabilitation services ideally should assist an individual to achieve a competitive integrated employment outcome that will enable the individual to become economically self-sufficient, but there is no requirement in either the Act or these final regulations that an individual achieve economic self-sufficiency or a specific level of financial independence.

Section 102(a) of the Act, as amended by WIOA, does not include economic self-sufficiency among the eligibility criteria. Inclusion of the term in final § 361.1(b) does not alter the eligibility criteria for the program in final § 361.42(a)(1). We encourage DSUs to conduct outreach to individuals with disabilities and service providers to clarify any misperception that the use of this term implies that individuals with disabilities may no longer receive vocational rehabilitation services for the purpose of achieving an employment outcome in competitive integrated employment or supported employment if they wish to maintain their public benefits. We also encourage DSUs to provide vocational counseling and guidance and benefits planning services to these individuals to assist them in better understanding the impact of participation in the VR program and employment on their public benefits.

Economic self-sufficiency is not a component of the definitions of "competitive integrated employment" and "employment outcome" in sections 7(5) and 7(11), respectively, of the Act, as amended by WIOA. We disagree that the implementing regulations for the definitions of these terms in final §§ 361.5(c)(9) and 361.5(c)(15) should be revised to incorporate criteria related to the achievement of economic self-sufficiency as suggested by the commenter. We believe the wages and benefits criteria, especially as contained in the definition for "competitive integrated employment" in final § 361.5(c)(9), are consistent with those set forth in the statutory definition in section 7(5) of the Act.

Changes: None.

Authorized Activities (§ 361.3)

Comments: None.

Discussion: Upon further review of § 361.3, we have determined a change is needed to clarify that the use of VR program funds to pay for the infrastructure costs of the one-stop delivery system established by title I of WIOA is an authorized activity under the VR program. Section 121(h) of title I of WIOA requires one-stop partners, including the VR program, to pay a proportional share of the one-stop system's infrastructure costs. These costs satisfy the definition of "administrative costs" in final § 361.5(c)(2) because such expenditures constitute operating and maintenance costs, which are permissible administrative costs under the VR program. We have revised final § 361.3(b) to specify that one-stop infrastructure costs are considered administrative costs under the VR services portion of the Unified or Combined State Plan and, therefore, are authorized activities under the VR program. In making this change, we ensure consistency with final § 361.5(c)(2)(viii), as well as jointly administered requirements governing the one-stop delivery system contained in joint regulations published elsewhere in this issue of the **Federal Register**.

Changes: We have revised final § 361.3(b) to specify that the use of VR program funds to pay for one-stop system infrastructure costs is an authorized activity of the program as an administrative cost.

Applicable Regulations (§ 361.4)

Training on 2 CFR Part 200 Requirements

Comments: Two commenters requested the Department provide training on 2 CFR part 200 requirements, focusing on definitions and general applicability.

Discussion: The Department has conducted a number of Webinars and developed technical assistance materials to assist grantees in implementing 2 CFR part 200 requirements and will continue to do so as needed. The Department maintains a technical assistance Web page for grantees regarding the requirements set forth in 2 CFR part 200, which may be accessed at *www.ed.gov*. The Department will consider future Webinars, as appropriate.

Changes: None.

Third-Party In-Kind Contributions

Comments: None.

Discussion: As specified under final § 361.60(b)(2), third-party in-kind contributions may not be used to meet the non-Federal share for match

purposes under the VR program. This prohibition against the use of third-party in-kind contributions under the VR program has been in place since 1997. Upon further Departmental review regarding this long-standing prohibition, we have determined it necessary to revise final § 361.4(d). In so doing, the Secretary clarifies that 2 CFR 200.306(b), which allows third party in-kind contributions to be used as part of a non-Federal entity's cost sharing or matching when such contributions meet certain criteria, does not apply to the VR program. The Secretary believes this technical change will eliminate any confusion expressed by commenters in relation to final § 361.60(b)(2).

Changes: We have amended the applicable regulations in final § 361.4(d) to specify that 2 CFR 200.306(b), as it pertains to the acceptance of third-party in-kind contributions, is not applicable to the VR program.

Applicable Definitions (§ 361.5)

Administrative Cost (§ 361.5(c)(2))

Supervisory Personnel

Comments: One commenter recommended that we consider costs for local level supervisors who do not perform counseling duties, but who directly supervise counselors, to be direct service costs rather than administrative costs.

Discussion: We disagree with the recommendation to consider the costs for local level supervisors who do not perform counseling duties, but who directly supervise counselors, to be direct service costs, rather than "administrative costs." Final § 361.5(c)(2)(xi) specifies that administrative salaries constitute "administrative costs." Administrative salaries are those personnel costs paid to individuals who are not providing direct services to VR program applicants and consumers, and may include clerical and managerial salaries. Therefore, we consider costs for supervisors who do not provide direct services to be administrative costs in support of vocational rehabilitation services, rather than costs for the actual provision of such services.

Changes: None.

Travel Costs

Comments: Two commenters indicated that the instructions for completing the Annual Vocational Rehabilitation Program/Cost Report (RSA–2) in Policy Directive (PD) 14–02 requiring DSUs to report staff travel costs as "administrative costs" appear to conflict with proposed § 361.5(c)(2)(xii), which specifically excludes travel costs related to the provision of services from "administrative costs."

One commenter recommended we clarify that grantees may consider travel costs incurred in the provision of vocational rehabilitation services as a service-related cost, rather than an administrative cost. Specifically, the commenter requested that the final regulations clarify that travel costs incurred in the provision of pre-employment transition services may be paid from the funds reserved for that purpose. This commenter also suggested that the Department update reporting instructions accordingly.

Discussion: We appreciate the commenters' observation that the definition of "administrative costs" in proposed § 361.5(c)(2)(xii) appears to conflict with the instructions for completing the RSA–2 with regard to staff travel costs. The Department will review and update previously issued guidance as necessary to ensure consistency with these final regulations.

We agree that travel costs incurred directly as a result of providing vocational rehabilitation services constitute service-related costs, not "administrative costs" for purposes of the VR program. Therefore, DSUs may pay for travel costs incurred as a direct result of providing pre-employment transition services to students with disabilities, including travel to individualized education program meetings, from the funds reserved for the provision of those services. Travel costs incurred as a result of providing other vocational rehabilitation services to students with disabilities may not be paid from the funds reserved for the provision of pre-employment transition services because such travel would be beyond the scope of section 113 of the Act, as amended by WIOA, and final § 361.48(a). While travel costs incurred as a result of providing other vocational rehabilitation services to students with disabilities who have been determined eligible for vocational rehabilitation services may not be paid from the funds reserved for the provision of pre-employment transition services, they still would be service-related, not administrative, costs. Staff travel costs incurred for other purposes, such as attending regional meetings or trainings, satisfy the definition of "administrative costs" and must be reported as such on the RSA–2. DSUs must have an established system of internal controls sufficient to record and track administrative expenditures associated with authorized activities so they can be distinguished from authorized service-related costs. In this way, DSUs are able to satisfy accounting and reporting requirements set forth in final § 361.12 and Uniform Guidance on financial management in 2 CFR 200.302.

Changes: None.

Depreciation

Comments: One commenter requested that we clarify whether DSUs must classify depreciation for administrative facilities as administrative costs.

Discussion: Final § 361.5(c)(2) provides several examples of administrative costs; however, the examples provided are not exhaustive. DSUs must treat depreciation in accordance with the Uniform Guidance requirements, as set forth in 2 CFR 200.436, and report it accordingly. Therefore, DSUs must report depreciation for facilities used for the administration of the VR program as administrative costs.

Changes: None.

Infrastructure Costs for the Workforce Development System and Capital Expenditures

Comments: None.

Discussion: After further analysis of proposed § 361.5(c)(2), we made a technical change in final § 361.5(c)(2)(viii) to specify that costs to support the infrastructure of the one-stop delivery system established under title I of WIOA are "administrative costs" for purposes of the VR program. Section 121(h) of WIOA requires one-stop partners, including the VR program, to pay a proportional share of the one-stop system's infrastructure costs. We believe these costs satisfy the definition of "administrative costs" in final § 361.5(c)(2)(viii) because these expenditures constitute operational and maintenance costs. We have revised final § 361.5(c)(2)(viii) to specify operational and maintenance costs, for purposes of the definition of "administrative costs" under the VR program, include one-stop system infrastructure costs. This technical change ensures consistency with final § 361.3(b) and the jointly administered requirements governing the one-stop system, as set forth in the joint regulations published elsewhere in this issue of the **Federal Register**.

Additionally, we made a change to final § 361.5(c)(2)(viii) to conform to the Uniform Guidance in 2 CFR part 200. In accordance with 2 CFR 200.439(b)(3), capital expenditures for improvements to land, buildings, or equipment which materially increase their value or useful life are unallowable as a direct cost, except with the prior written approval of the Department. Therefore, we have revised final § 361.5(c)(2)(viii) to delete a clause that had excluded capital

expenditures from the definition of "administrative costs" for purposes of the VR program. Pursuant to this change, DSUs must treat capital expenditures as "administrative costs" for purposes of the VR program. This technical change enables grantees to report these costs more accurately as an administrative cost on the RSA–2 VR Program Cost Report.

Changes: We have revised final § 361.5(c)(2)(viii) to specify that the definition of "administrative costs" includes those costs associated with operating and maintaining the infrastructure of the one-stop system.

In addition, we have deleted the reference to "not including capital expenditures as defined in 2 CFR 200.13" from final § 361.5(c)(2)(viii).

Assessment for Determining Eligibility and Vocational Rehabilitation Needs (§ 361.5(c)(5))

Comments: A few commenters supported the definition of "assessment for determining eligibility and vocational rehabilitation needs" in proposed § 361.5(c)(5). Some commenters disagreed with the requirement in the definition that, if additional data are needed to determine the employment outcome and the vocational rehabilitation services to be included in the individualized plan for employment, the DSU can conduct a comprehensive assessment that, in part, relies to the maximum extent possible on information obtained from experiences in integrated employment and other settings in the community. Another commenter requested clarification as to whether the use of information obtained from prior experiences within integrated employment settings or other integrated community settings could include internships or other unpaid work experiences.

Discussion: We appreciate the support for proposed § 361.5(c)(5), as well as the concerns and requests for clarification. Section 7(2)(B)(v) of the Act, as amended by WIOA, and final § 361.5(c)(5)(ii)(E) allow a DSU, when conducting the comprehensive assessment to determine the vocational rehabilitation needs and employment outcome for inclusion in the individualized plan for employment, to rely, in part, on the applicant's participation in integrated employment settings to the maximum extent possible. However, neither the Act nor the final regulations require that the individual be paid during these experiences. Therefore, section 7(2) of the Act and final § 361.5(c)(5)(ii) do not prohibit DSUs from using unpaid internships or work experiences during the assessment process. We received other comments concerning a perceived conflict between this definition and proposed § 361.42(c)(2), which prohibits a DSU from considering an individual's work history when determining an applicant's eligibility for vocational rehabilitation services, and contracting with community rehabilitation programs that hold subminimum wage certificates issued by the Department of Labor under section 14(c) of the FLSA when conducting assessments. We address these comments in the *Analysis of Comments and Changes* of the *Assessment for Determining Eligibility and Priority for Services* section.

Changes: None.

Competitive Integrated Employment (§ 361.5(c)(9))

Competitive Integrated Employment

The overarching principle of the Act, as amended by WIOA, that individuals with disabilities are capable of achieving full integration into all aspects of life, including employment, is most evident in the definition of "competitive integrated employment" in section 7(5) of the Act and the interweaving of the term throughout the many provisions of the statute. Because of its central importance to the purpose of the VR program, we received extensive comments on the definition in proposed § 361.5(c)(9), expressing both strong support for, and opposition to, the proposed definition. The vast majority of public comment on the definition focused on the criteria that an employment location must satisfy if it is to be considered integrated. Some commenters expressed support for the definition in general, and the criteria for an integrated location specifically, for several reasons, including the definition's specificity that the commenters believe will ensure individuals with disabilities are working in integrated employment settings, and the impact the definition can have in curtailing the low expectations for individuals with disabilities who are relegated to segregated employment with little opportunity for advancement. However, many commenters opposed the definition, expressing concern that it would restrict or eliminate subminimum wage and sheltered employment for individuals with disabilities, or limit the ability of these individuals to choose among these options. We appreciate the support for the definition, and discuss the detailed comments in opposition to, and requests for clarification of, the proposed definition under the topical headings that follow.

Subminimum Wage and Sheltered Employment

Comments: Many commenters urged us to protect or not to eliminate the payment of subminimum wages to individuals with disabilities and sheltered employment. One of these commenters stated that not all individuals can be paid minimum wages, and that the employment must be profitable for both parties. Similarly, another commenter stated that if entities holding subminimum wage certificates were forced to pay less productive individuals with disabilities minimum wages, they would lose business to companies overseas. Likewise, some commenters stated that sheltered employment is needed to protect individuals with intellectual disabilities and other significant disabilities from abuse. A few commenters expressed their concern that the integrated location criteria of the definition devalue the employment of individuals with disabilities who cannot work in these settings.

Many commenters opposed the definition because it would limit an individual's choice of subminimum wage and sheltered employment options. Some of these commenters asked that we create an exception from the criteria for individuals who choose to work in a segregated or sheltered setting if all other criteria regarding competitive earnings and opportunities for advancement are satisfied.

Discussion: We acknowledge that many commenters on part 361 in general, and the definition of "competitive integrated employment" specifically, are concerned that these final regulations will eliminate or restrict the ability of individuals with disabilities, particularly those with the most significant disabilities, to be paid subminimum wages by entities holding certificates issued by the Department of Labor under section 14(c) of the FLSA, as well as sheltered employment. Although we recognize the concerns expressed by these commenters, we emphasize that the definition of "competitive integrated employment" and its use throughout final part 361 are intended to ensure that all individuals with disabilities served through the VR program are provided every opportunity to achieve employment with earnings comparable to those paid to individuals without disabilities in a setting that allows them to interact with individuals who do not have disabilities. Nonetheless, nothing in title I of the Act, as amended by WIOA, or the

regulations in final part 361 affects the FLSA in any manner. Later in this *Analysis of Comments and Changes,* we address limitations on the use of subminimum wage in section 511 of the Act and final 34 CFR part 397. In addition, the definition ''competitive integrated employment'' in final § 361.5(c)(9) does not prohibit or eliminate sheltered employment. As explained in final regulations published on January 21, 2001, we agree that extended employment programs have traditionally served as a safety net for individuals with significant disabilities who cannot perform work in an integrated setting in the community or who choose to work only among their disabled peers (66 FR 7250). The Secretary does not devalue the dignity or the worth of extended employment programs or the individuals who work in those settings. Rather, the definition of ''competitive integrated employment'' reflects the heightened emphasis throughout the Act, as amended by WIOA, that individuals with disabilities, including those with the most significant disabilities, can achieve employment in the community and economic self-sufficiency if provided appropriate services and supports. Because DSUs have been unable to assist individuals with disabilities to obtain sheltered employment through the VR program since October 2001, the vast majority of individuals have accessed sheltered employment through other sources or on their own initiative. Therefore, the Secretary believes the definition in final § 361.5(c)(9) will not affect the availability of sheltered employment for individuals who choose this form of employment, or for whom it is a legitimate and necessary option.

Furthermore, while the Act, as amended by WIOA, places a premium on the ability of individuals with disabilities to exercise informed choice throughout the vocational rehabilitation process, we do not agree that the final regulations in part 361 generally and the definition specifically are inconsistent with that emphasis. In fact, an individual with a disability may pursue any form of employment he or she chooses. However, if the individual wishes to receive vocational rehabilitation services, he or she must intend to achieve an ''employment outcome,'' which is defined in final § 361.5(c)(15) for purposes of the VR program as employment in competitive integrated employment or supported employment. If the individual chooses to pursue work that does not satisfy the definition of ''employment outcome'' for purposes of the VR program, such as sheltered employment, the individual must seek services from another agency or provider. In such circumstances, these final regulations require the DSU to refer that individual to local extended employment providers or other Federal, State, or local programs (*e.g.,* community rehabilitation programs, State Use programs, and centers for independent living) that can meet the individual's needs. The referral requirements in final § 361.37 also ensure that individuals receive sufficient information concerning the scope of the VR program and opportunities for individuals with disabilities to pursue competitive integrated employment. This information enables individuals to make a fully informed choice regarding whether to pursue competitive integrated employment through the VR program or subminimum wage and extended employment through other sources.

The Secretary believes these final regulations ensure that the VR program promotes to the maximum extent possible opportunities for individuals with disabilities, particularly those with significant disabilities, to pursue competitive integrated employment options. Moreover, final § 361.52 requires each DSU to preserve individual choice in the manner in which the Act intends for individuals who choose to pursue employment outcomes within the scope of the VR program.

Finally, section 7(5) of the Act, as amended by WIOA, does not permit an exception to the definition's requirements for individuals who choose subminimum wage and or sheltered employment. In fact, such an exception would be inconsistent with the plain meaning of the criteria contained in the statutory definition in section 7(5) of the Act. Therefore, we lack the statutory authority to create such an exception in final § 361.5(c)(9).

Changes: None.

Public Benefits

Comments: One commenter requested that we clarify the effect of the definition of ''competitive integrated employment'' on the eligibility of individuals with disabilities for Social Security benefits. One commenter expressed concern that the criteria would cause individuals to lose needed benefits provided through Medicaid and other sources.

Discussion: We recognize that some individuals are reluctant to pursue employment through the VR program due to their perceptions of the negative impact employment may have on the public benefits, including Medicaid and other sources, on which they rely for financial and medical support. To enable individuals with disabilities to better understand the effects of employment on Social Security and other benefits and make well-informed decisions about the employment goals that best suit their needs, section 102(b)(2) of the Act, as amended by WIOA, and final § 361.45(c)(2) require DSUs to provide benefits planning information, including information about work incentives provided through the Social Security Administration (SSA), to these individuals during the process for developing the individualized plan for employment. For further information, see the *Development of the Individualized Plan for Employment* section later in this *Analysis of Comments and Changes.*

Changes: None.

Full- and Part-Time Employment

Comments: A few commenters requested that we define or clarify the terms ''full-time'' and ''part-time'' employment as they are used in the definition of ''competitive integrated employment.'' These commenters asked whether there is a minimum number of hours that an individual must work for the employment to satisfy the requirements of the definition, as well as the definition of an ''employment outcome.'' A few commenters expressed concern that on-call or temporary employment is not within the scope of the definition because it is not considered full- or part-time scheduled employment. They stated that many entry-level individuals are employed in on-call positions and that permitting this form of employment could enable individuals with intellectual disabilities to maintain employment.

Discussion: The reference to full- and part-time work in the definitions for the terms ''employment outcome'' and ''competitive integrated employment,'' for purposes of the VR program, is not new. The definition for ''employment outcome'' has remained consistent since the 1992 Amendments to the Act and the 1997 VR program regulations (62 FR 6334 (Feb. 11, 1997)). Although ''competitive integrated employment'' is a new term in the Act, as amended by WIOA, and these final regulations, the term and its definition are consistent with that for ''competitive employment'' in prior § 361.5(b)(11), which dates back to the 1997 VR program regulations. Because these definitions have existed for approximately 20 years without substantial change, we do not believe it necessary to define ''full-time'' or ''part-time'' in final part 361. ''Full-time'' and

"part-time" have their common meanings and may vary across sectors of the economy. Generally, individuals are considered to be employed full-time if they work 40 hours per week. However, it is not uncommon for full-time employees to work fewer hours, such as 35 hours per week, depending on the terms of employment established by the employer. "Part-time" employment is employment for any number of hours less than that of full-time employment for the particular work performed. Nowhere in the statutory definitions of "competitive integrated employment" or "employment outcome," or any other provision of the Act, as amended by WIOA, is a minimum number of hours that an individual must work for the employment to be considered full- or part-time specified, and we decline to do so in these final regulations, relying on the terms' common understanding. Finally, we clarify in this discussion that the definitions of "competitive integrated employment" and "employment outcome," as set forth in the Act and these final regulations, do not require that the individual's employment be regularly scheduled, as suggested by the commenter. Thus, DSUs may assist individuals to obtain temporary or on-call employment so long as all the criteria of the definitions are satisfied.

Changes: None.

Minimum Wage Rates

Comments: Some commenters expressed strong support for the competitive earnings criteria in proposed § 361.5(c)(9)(i). We also received comments recommending changes to the criteria or requesting clarification. One commenter stated that the requirement that the individual's wages equal or exceed the higher of the Federal, or applicable State or local minimum wage rates adds unnecessary complexity to the vocational rehabilitation process. This commenter recommended that we apply a single standard of the Federal minimum wage rate to all employment outcomes achieved through the VR program, or that we apply the minimum wage rate in effect in the place of the individual's employment, and not the individual's place of residence.

Discussion: We appreciate the strong support for the competitive earnings criteria and respond here to the requests for clarification. We disagree with the request to avoid complexity by using only the Federal minimum wage as the measure of competitive earnings. Section 7(5)(A)(i)(I)(aa) of the Act, as amended by WIOA, requires that the individual's earnings equal or exceed the Federal, State, or applicable local minimum wage rate, whichever is higher, for the employment to satisfy the definition of "competitive integrated employment." Final § 361.5(c)(9)(i)(A) mirrors the statutory definition in this respect. Given the specific statutory requirement, we lack the statutory authority to restrict this requirement in the final regulation. In addition, the definition focuses on the wages paid by the employer, who is subject to the minimum wage laws applicable to the place of employment. Consequently, we agree with the commenter that the determination of whether the individual's earnings satisfy the definition's criteria should be based on the minimum wage rate applicable to the individual's place of employment, and not his or her place of residence.

Changes: We have revised final § 361.5(c)(9)(i)(A) to clarify that the applicable State and local minimum wage laws are those that apply to the place of employment.

Customary Wages

Comments: One commenter recommended that we revise the definition to emphasize that the intent of the law and the regulations is to ensure that wages and benefits paid to individuals with disabilities are comparable to the prevailing wage and benefits of individuals without disabilities.

Discussion: Section 7(5)(A)(i)(I)(bb) of the Act, as amended by WIOA, and final § 361.5(c)(9)(i)(B) require that the individual with the disability be compensated at a rate comparable to the customary rate paid by the employer for the same or similar work performed by individuals without disabilities for the employment to be considered competitive integrated employment. The Secretary emphasizes that this provision in both the Act and the final regulations mirrors the definition of "competitive employment" in prior § 361.5(b)(11)(ii) (see 66 FR 4379 (Jan. 17, 2001)), which formed the basis for the definition in the Act. We also note that the commenter's recommendation would not limit the criterion to the wages paid by the employer, as do the statutory and final regulatory definition, but would appear to extend the criterion to the prevailing wages paid to individuals without disabilities in similar positions generally. For these reasons the recommendation is not consistent with the criterion in the statutory definition and, thus, we do not have the authority to expand the regulatory definition in final § 361.5(c)(9)(i)(B) as the commenter suggests.

Changes: None.

Comparable Training, Skills, and Experience

Comments: Two commenters requested that we clarify the meaning of "comparable training, skills, and experience" as used in the definition, and how this concept could be quantified.

Discussion: Section 7(5)(A)(i)(I)(bb) of the Act, as amended by WIOA, and final § 361.5(c)(9)(i)(B) require the DSU to take into account the training, experience, and level of skills possessed by employees without disabilities in similar positions when determining whether the earnings of the individual with a disability are comparable. We do not believe that it is possible to quantify this comparison. Instead, the determination is based on the vocational rehabilitation counselor's knowledge of the training, skills, and experience needed to perform the job generally and required by the employer specifically. In this way, the DSU can ensure that the individual with the disability is compensated in a manner comparable to that of employees without disabilities in all critical respects, and is not paid at a lower rate simply on the basis of his or her disability.

Changes: None.

Self-Employment

Comments: One commenter noted the proposed definition recognizes that individuals, with or without disabilities, in self-employment may not receive an income from the business equal to or exceeding applicable minimum wage rates, particularly in the early stages of operation. The commenter requested clarification regarding the reason the definition proscribes an individual with a disability in self-employment from what other successful entrepreneurs have the option to practice. Another commenter asked if individuals who achieve self-employment are included in the calculations of the performance accountability measures assessing employment in the second and fourth quarters after exit from the VR program, since their employment and wages are not captured in Unemployment Insurance wage systems.

Discussion: We want to clarify that section 7(5)(A)(i)(II) of the Act, as amended by WIOA, and final § 361.5(c)(9)(i)(C) do not prevent, as the commenter indicates, an individual with a disability who is self-employed from receiving earnings comparable to those achieved by individuals without disabilities in similar occupations. As explained in the preamble to the NPRM, the statutory and regulatory definitions

recognize that individuals with disabilities, as well as individuals without disabilities, may experience difficulty in generating sufficient income from their self-employment ventures, that will enable them to achieve earnings equal to or exceeding the applicable minimum wage rate, especially in the early stages of the business operations. Thus, final § 361.5(c)(9)(i)(C) provides that a self-employed individual with a disability in the start-up phase of a business venture who is making less than the applicable minimum wage can meet the definition of "competitive integrated employment."

Furthermore, individuals who receive services through the VR program to assist with the achievement of self-employment outcomes are considered "participants" as that term is defined under the joint final regulations implementing the jointly administered performance accountability system requirements of section 116 of title I of WIOA, published elsewhere in this issue of the **Federal Register**, and must be taken into account when calculating a DSU's performance on those measures. Since the employment status and earnings of self-employed individuals are not captured through the unemployment insurance wage system, a DSU may use supplemental wage information to obtain the data necessary for the calculation of its performance. For further information concerning the definition of "participant" for purposes of the performance accountability measures under section 116 of WIOA and the data needed to calculate these measures, particularly data related to supplemental information when quarterly wage records are not available, see the analysis of comments on the joint performance final regulations published elsewhere in this issue of the **Federal Register**.

Changes: None.

Documentation of Competitive Earnings

Comments: One commenter asked what documentation a DSU is required to use when verifying the criteria for competitive earnings, including that the wages are equal to, or exceed, the applicable wage rate for the locality; that the individual's wages and benefits are comparable to those earned by individuals without disabilities in similar positions and who possess the same level of training, skills, and experience; that the individual has the same opportunities for advancement as do persons without disabilities in similar positions; and the income level of an individual who has achieved self-employment.

Discussion: Final § 361.47(a)(9) requires the DSU to maintain a record of services for each individual served through the VR program that includes documentation verifying if the individual has achieved competitive integrated employment, including whether the individual has obtained employment with competitive earnings. Final § 361.47(b) does not prescribe the necessary documentation, but directs the DSU, in consultation with the State Rehabilitation Council, to determine the type of documentation needed to meet the requirements of § 361.47(a). However, examples of documentation that a DSU may use include, as appropriate for the type of employment, unemployment insurance wage records, tax returns, earnings statements from the employer, and self-reported information.

Changes: None.

Subsistence Occupations

Comments: Some commenters responded to the statement in the NPRM's preamble indicating that we interpret subsistence employment as a form of self-employment common to cultures of many American Indian tribes, or to the definition of "subsistence" under 34 CFR part 371 governing the American Indian Vocational Rehabilitation Services (AIVRS) program (see NPRM, Workforce Innovation and Opportunity Act, Miscellaneous Program Changes, 80 FR 20988, 20994–20998 (April 16, 2015)). Several commenters asked whether the interpretation of the self-employment criteria within the definition of "competitive integrated employment" in proposed § 361.5(c)(9) that includes subsistence activities is limited to individuals served through the AIVRS program under 34 CFR part 371 or to American Indians and Alaska Natives. Of these, one commenter noted that subsistence activities are not only culturally relevant for American Indians and Alaska Natives, but that they are also vital to many individuals who live in rural areas with limited competitive employment options. One commenter requested that we clarify the meaning of "culturally appropriate" as used in the definition of "subsistence" and the preamble to the NPRM by providing examples. Another commenter asked what limits would be placed on hobbies as self-employment outcomes if subsistence outcomes were available to all individuals served through the VR program. In addition, several commenters requested that we revise the definition of "employment outcome" for purposes of the VR program to include within its scope subsistence activities.

Discussion: In the NPRM covering amendments made by WIOA to the miscellaneous programs authorized by the Act, the Secretary proposed a definition of "subsistence" in 34 CFR 371.6 for purposes of the AIVRS program (80 FR 20988, 20995). Under that definition, "subsistence" means a form of self-employment in which individuals use culturally relevant or traditional methods to produce goods or services for household consumption or non-commercial barter and trade that constitute an important basis for the individual's livelihood. To ensure consistency in the interpretation of the definition of "competitive integrated employment" for the purposes of the VR program and the AIVRS program, and in light of the definition of "subsistence" in final 34 CFR 371.6, the Secretary stated in the preamble to the NPRM to the VR regulations that the Department interprets subsistence employment as a form of self-employment common to cultures of many American Indian tribes. The Secretary believes that consistency in interpretation and implementation of the regulations governing the VR and AIVRS programs is essential given the large number of American Indians and Alaska Natives with disabilities who are eligible for services from both programs, some of whom may be served by the programs sequentially or even simultaneously.

The Secretary does not intend the statement in the NPRM covering the proposed regulations in part 361, or the inclusion of the definition of "subsistence" only in 34 CFR 371.6, to limit the provision of services designed to assist individuals to achieve subsistence occupations to those served through the AIVRS program. DSUs may assist American Indians and Alaska Natives served through the VR program to achieve subsistence occupations as a form of self-employment under the limited circumstances set forth in the definition in 34 CFR 371.6, which the Department applies in the same manner to the VR program.

While the Secretary believes that, as the statement in the NPRM indicates, subsistence occupations are most culturally relevant to American Indian and Alaska Native tribes, the Secretary recognizes that they may also be culturally relevant to other small groups of individuals who may traditionally engage in these occupations, such as those in the outlying areas. Thus, DSUs may find it appropriate to assist individuals from cultures other than American Indian and Alaska Native tribes to achieve self-employment in

subsistence occupations that meet the definition of 34 CFR 371.6. However, because the definition of "subsistence" in 34 CFR 371.6 requires that the subsistence occupation be culturally relevant to the individual, the Secretary declines to extend the applicability of subsistence occupations to other individuals with disabilities served through the VR and AIVRS programs solely on the basis of their location in rural areas.

Examples of subsistence occupations that are culturally relevant to American Indians or Alaska Natives include the exchange of fish caught, or grain raised, by the individual with the disability for other goods produced by other members of the tribe that are needed by the individual to live and maintain his or her home. Given, however, the large number of American Indian tribes, including Alaska Native villages and regional corporations, and their widely varying cultural practices, any list of further examples of culturally relevant practices would also be incomplete and may exclude cultural practices that are unique to some tribes. Since the definition of "subsistence" in final 34 CFR 371.6 requires that the activity constitute an important basis of the individual's livelihood, DSUs cannot provide vocational rehabilitation services to individuals to enable them to engage in mere hobbies that do not serve this same purpose.

Finally, the definition of "employment outcome" in final § 361.5(c)(15) encompasses all forms of competitive integrated employment, including self-employment. Because we consider subsistence occupations to be a form of self-employment, these occupations are already within the scope of the definition of "employment outcome" and it is not necessary to revise the definition to include a specific reference to subsistence.

Changes: None.

Integrated Location—General

Comments: As stated in the introduction to this section, the majority of commenters who commented on the definition of "competitive integrated employment" focused on the integrated location component of the definition in proposed § 361.5(c)(9)(ii), which requires that the individual perform work in a location that meets two distinct criteria. The location must be a setting: (1) Typically found in the community; and (2) where the employee with a disability interacts for the purpose of performing the duties of the position with other employees within the particular work unit and the entire work site, and, as appropriate to the work performed, other persons (*e.g.*, customers and vendors), who are not individuals with disabilities (not including supervisory personnel or individuals who are providing services to the employee) to the same extent that employees who are not individuals with disabilities and who are in comparable positions interact with these persons.

Of the commenters who strongly supported the criteria, several requested that we make additional changes to this particular component of the definition by: (1) Adding language that the criteria should not be used to exclude individuals from the VR program due to concerns about their ability to meet the standard, and emphasizing that individuals with disabilities, including those with the most significant disabilities, are capable of achieving high quality competitive integrated employment when provided the necessary skills and supports; (2) specifically excluding from the scope of the definition employment in businesses owned by community rehabilitation providers, group or enclave settings, affirmative industries, social enterprises, or any other form of non-traditional work unit; and (3) changing the term "competitive integrated employment" to "competitive integrated individualized employment" to be clear that employment through the VR program is individualized.

Many of the commenters who opposed the integrated location criteria in proposed § 361.5(c)(9)(ii) requested that we replace them with those in the statutory definition because they believe that: (1) Some of the proposed criteria are not mandated by WIOA; (2) some of the proposed criteria are too strict and would result in the loss of employment opportunities that pay good wages and benefits; and (3) the statutory language would maintain work options and choice for consumers.

Some commenters inquired about the impact of the definition on the employment, by community rehabilitation programs, of individuals with disabilities, particularly those who are blind and visually impaired, in managerial and other positions. These commenters stated that employment in these positions was in an integrated location under prior guidance issued by the Department, specifically technical assistance circular 06–01 entitled "Factors State Vocational Rehabilitation Agencies Should Consider When Determining Whether a Job Position Within a Community Rehabilitation Program is Deemed to be in an Integrated Setting for Purposes of the Vocational Rehabilitation Program" and dated November 21, 2005. One commenter requested that we clarify whether the employment of individuals with disabilities in call centers operated by community rehabilitation providers occurs in an integrated location.

Another commenter requested that we clarify the impact of the criteria on employment in the business enterprise (vending) program for individuals who are blind under the Randolph-Sheppard Act, as well as State industries programs for the blind.

Discussion: We appreciate the strong support for § 361.5(c)(9)(ii). We also recognize those comments opposing, and requesting clarification of, the criteria. Before addressing the specific comments, the Secretary believes, as stated in the NPRM, that the definition of "competitive integrated employment" in section 7(5) of the Act, as amended by WIOA, for the most part incorporates the definition of "integrated setting" in prior § 361.5(b)(33)(ii). Therefore, the substance of the definitions of "competitive integrated employment" in final § 361.5(c)(9)(ii) and "integrated setting" in final § 361.5(c)(32)(ii), for purposes of the VR program, with respect to the integrated nature of the employment location is familiar to DSUs and does not diverge from prior regulations, long-standing Department policy, practice, and the heightened emphasis on competitive integrated employment throughout the Act, as amended by WIOA.

The Secretary believes that final § 361.5(c)(9)(ii) and the explanation in the following paragraphs provide sufficient guidance to enable DSUs to determine whether a particular work location satisfies the definition of "competitive integrated employment." The Secretary does not believe it necessary to revise the definition by adding language emphasizing that individuals with disabilities, including those with the most significant disabilities, are capable of achieving high quality competitive integrated employment when provided the necessary services and supports. This principle is clearly expressed in final § 361.1 describing the purpose of the VR program, thereby forming the foundation for all provisions of final part 361, including the definition of "competitive integrated employment." Therefore, there is no need to restate the principle in the definition.

We do not believe that it is possible to identify all types of non-integrated employment settings in the definition, as the specific exclusion of one type of non-integrated employment setting from the definition could result in a misperception that settings not mentioned are within the scope of the

definition. Instead, we explain in the following paragraphs the application of the integrated location criteria to these types of work settings. When the criteria are properly applied by DSUs, group and enclave employment settings operated by businesses formed for the purpose of employing individuals with disabilities will not satisfy the definition of "competitive integrated employment." Therefore, the Secretary disagrees with the recommendation to add language to the definition expressly excluding from the scope of the definition employment in businesses owned by community rehabilitation providers, group and enclave settings, affirmative industries, social enterprises, and other forms of non-traditional work settings.

In addition, we disagree with the recommendation to change the term "competitive integrated employment" to "competitive integrated individualized employment." Section 7(5) of the Act, as amended by WIOA, defines "competitive integrated employment," and that definition forms the basis for the definition in final § 361.5(c)(9). Moreover, the many provisions of the Act and the final regulations in final part 361, including those governing the selection of an employment outcome, the vocational rehabilitation services provided, the exercise of informed choice, and the closure of an individual's service record, underscore the individualized nature of the VR program, thereby making it unnecessary to add the word "individualized" to the term "competitive integrated employment" in these final regulations.

Furthermore, the Secretary disagrees with the commenters' recommendation that we replace the regulatory criteria in proposed § 361.5(c)(9)(ii) with the statutory criteria, verbatim, in section 7(5)(B) of the Act, as amended by WIOA. As stated in the NPRM, the integrated setting criteria in proposed § 361.5(c)(9)(ii), although not verbatim, are nevertheless consistent with the statutory definition in section 7(5)(B) of the Act, as amended by WIOA, with respect to the integrated nature of the employment setting, and, in turn, are consistent with the definition of "integrated setting" in prior § 361.5(b)(33)(ii). Also in light of the consistency of section 7(5)(B) of the Act with the prior regulatory definition of "integrated setting," as well as the Department's long-standing interpretation of that definition, the Secretary does not believe that the criteria in the statutory definition of "competitive integrated employment" would permit within its scope work options that would not have satisfied the criteria in prior § 361.5(b)(32)(ii). There is no indication in the Act, as amended by WIOA, or the limited legislative history, that Congress intended to narrow the scope of the integrated setting criterion of the definition of "competitive integrated employment." Therefore, the Secretary believes the definition of "competitive integrated employment" in final § 361.5(c)(9)(ii), while not verbatim, is nonetheless consistent with the Act, prior regulations, and long-standing Department policy. This means employment that would have satisfied the definition of "integrated settings" in prior regulations and Department guidance would satisfy the definition of "competitive integrated employment" in these final regulations.

We emphasize that it is the DSU's responsibility to apply final § 361.5(c)(9)(ii) in a manner consistent with long-standing Departmental policy. The DSU must apply the criteria equally to any position, whether it involves the management or administration of, or the production and delivery of goods and services by, the organization, and without regard to the type of business operation, such as, but not limited to, a call center within a community rehabilitation program, the manufacture of office supplies by a State industries program for individuals who are blind, or a contract for landscaping services. The criteria contained in final §§ 361.5(c)(9)(ii) and 361.5(c)(32)(ii) provide important clarifications that are necessary to better enable a DSU to determine, on a case-by-case basis, whether a particular position in an organization's specific work unit is in an integrated location.

The Randolph-Sheppard Act provides opportunities for self-employment and entrepreneurship in the community to individuals who are blind. As a form of self-employment and business ownership, the outcomes of individuals in the vending facilities established under the Randolph-Sheppard Act are deemed to be in integrated settings and specifically within the definition of "employment outcome" in final § 361.5(c)(15).

Changes: None.

Typically Found in the Community

Comments: One commenter stated that work opportunities established by community rehabilitation programs specifically for the purpose of employing individuals with disabilities in the community constitute an integrated setting, and that these jobs enable people to become more self-sufficient and live a more rewarding life.

A few commenters asked whether the criteria would prohibit the employment of individuals with disabilities in work settings operated by community rehabilitation providers that exclusively serve other persons with disabilities (*e.g.,* group homes, inclusive child care centers, adult day programs, or peer support programs), because these locations are not typically found in the community or do not afford the level of interaction among individuals with and without disabilities required by the definition.

One commenter specifically addressed the criterion requiring the work location to be a setting typically found in the community, stating that the criterion does not exist in the statutory definition and it would limit opportunities for individuals with disabilities to participate in new and innovative employment models and businesses that are not yet typical. The commenter recommended that we remove this requirement.

Discussion: The Secretary has incorporated language contained in the prior regulatory definition of "integrated setting" requiring that the work location be in "a setting typically found in the community," meaning that an integrated setting must be one that is typically found in the competitive labor market. This long-standing Departmental interpretation is consistent with the Act, as amended by WIOA, as well as with express congressional intent as set forth in prior legislative history. Specifically, integrated setting "is intended to mean a work setting in a typical labor market site where people with disabilities engage in typical daily work patterns with co-workers who do not have disabilities; and where workers with disabilities are not congregated . . ." (Senate Report 105–166, page 10, March 2, 1998). Nothing in the Act suggests that Congress intended a different interpretation of the integrated setting criterion in the amendments made by WIOA. Rather, Congress demonstrated a continuation of this interpretation by incorporating into the statute, almost verbatim, a criterion from prior § 361.5(b)(33)(ii) into the definition of "competitive integrated employment" in section 7(5)(B) of the Act. Therefore, the Secretary maintains the long-standing Departmental policy that settings established by community rehabilitation programs specifically for the purpose of employing individuals with disabilities (*e.g.,* sheltered workshops) do not constitute integrated settings because these settings are not typically found in the competitive labor market—the first of two criteria that must be satisfied if a DSU is to

determine that a work setting is an integrated location under final § 361.5(c)(9).

As we made clear in the discussion of *Integrated Location—General* previously and have stated in long-standing Departmental policy, DSUs must apply the integrated location criteria in a consistent manner and on a case-by-case basis to any work setting, including settings operated by community rehabilitation providers that exclusively serve other persons with disabilities (*e.g.*, group homes, inclusive child care centers, adult day programs, or peer support programs). Nonetheless, we note that the settings described in the comments, though formed for the unique purpose of serving individuals with disabilities, have not been established for the purpose of employing them. Thus, the settings in question in the comments would appear to satisfy the first criterion that the setting is typically found in the community. If this is the case, it would remain for the DSU to determine if the setting is one in which the employee with the disability interacts with employees without disabilities in the work unit and across the work site to the degree that employees without disabilities in similar positions interact with these same persons.

With respect to the comment specifically about proposed § 361.5(c)(9)(ii)(A), which requires that the location be a setting typically found in the community, the Secretary disagrees with the commenter's request to remove the criterion from the definition. The criterion does not exclude from competitive integrated employment any innovative or unique business models that otherwise satisfy the definition's criteria. Instead, the Secretary interprets the criterion to be more narrowly focused on the purpose for which the business is formed. As explained earlier, businesses established by community rehabilitation programs or any other entity for the primary purpose of employing individuals with disabilities do not satisfy this criterion, and, therefore, are not considered integrated settings, because these settings are not within the competitive labor market. The Department has long considered several factors to typically distinguish positions in these types of businesses from those that satisfy the criterion. The factors that generally would result in a business being considered "not typically found in the community," include: (1) The funding of positions through Javits-Wagner-O'Day Act (JWOD) contracts; (2) allowances under the FLSA for compensatory subminimum wages; and (3) compliance with a mandated direct labor-hour ratio of persons with disabilities. It is the responsibility of the DSU to take these factors into account when determining if a position in a particular work location is an integrated setting.

Changes: None.

Level of Interaction Among Individuals With and Without Disabilities

Comments: Of those commenters who commented specifically on the level of interaction among individuals with and without disabilities, one commenter asked that we include language to require individuals with disabilities to interact with other employees and individuals without disabilities to the same extent that employees without disabilities paid directly by the employer interact with these persons. The commenter stated that the additional language would help to emphasize that individuals can exercise informed choice in the selection of service providers under the VR program.

One commenter suggested that we define "integrated location" as a ratio of individuals with disabilities and individuals without disabilities, stating that true integrated employment consists of a mix of workers with and without disabilities.

Another commenter recommended that we adopt the prior Departmental guidance in technical assistance circular 06–01 mentioned in the *Integrated Location—General* discussion. The commenter believed that the guidance required DSUs to give equal weight to the interaction of individuals with disabilities with other individuals without disabilities, including employees in the work unit and across the work site, and customers as well as vendors.

Discussion: In response to those comments addressing proposed § 361.5(c)(9)(ii)(B), the second criterion of integrated location, section 102(d) of the Act and final § 361.52 require that individuals be able to exercise informed choice in the selection of service providers. Therefore, it is not necessary to amend the definition to require that individuals with disabilities interact with employees and other persons without disabilities to the same extent that employees without disabilities paid directly by the employer interact with these persons. We do not believe that including the additional language in final § 361.5(c)(9)(ii)(B) would further protect the ability of individuals to choose among service providers.

The Secretary appreciates the commenter's recommendation that we revise this criterion and define an integrated setting as being comprised of a ratio (not specified by the commenter) of employees with disabilities in comparison to individuals without disabilities. Since "integrated setting" was first defined in VR program regulations, we have considered how best to capture the intent of Congress and long-standing Department policy in its criteria. In doing so, we considered whether to establish a numerical ratio and have rejected this as impractical and unworkable. Given the many and varied types of employment settings in today's economy, we cannot determine a single ratio that could be used to satisfactorily determine the level of interaction required to meet the intent underlying the definition. Rather than using a numerical standard, we believe that an "integrated setting" is best viewed in light of the quality of the interaction among employees with disabilities and persons without disabilities when compared to that of employees without disabilities in similar positions, and have not added a numerical ratio to final § 361.5(c)(9).

The Secretary disagrees with the commenter's interpretation of the prior guidance provided in technical assistance circular 06–01 and the assertion that factors such as the level of interaction of employees with disabilities with other employees in the work unit and across the work site, as well as with customers and vendors, should be weighted equally. As stated in the NPRM, the Secretary believes the focus of whether the setting is integrated should be on the interaction between employees with and without disabilities, and not solely on the interaction of employees with disabilities with people outside of the work unit. For example, the interaction of individuals with disabilities employed in a customer service center with other persons over the telephone, regardless of whether these persons have disabilities, would be insufficient by itself to satisfy the definition. Instead, the interaction of primary consideration should be that between the employee with the disability and his or her colleagues without disabilities in similar positions.

Changes: None.

Work Unit

Comments: Commenters supporting and opposing the integrated location criteria commented specifically on the use of "work unit" in final § 361.5(c)(9)(ii)(B). Some in support requested that we clarify the meaning of the term with respect to the numbers of individuals with disabilities as compared to those without disabilities

to ensure that the standard is consistently applied to work units of different sizes, and the effect of the term on the ability of individuals to choose to work alone. One commenter suggested that we clarify that the employment of individuals with disabilities in non-traditional work units who perform their duties of the position in isolation or separate from other employees in the work unit satisfies the definition of "competitive integrated employment" as long as all other criteria are met.

A few commenters asked whether "work unit" refers to all employees in a certain job category or program, or to groups of employees working together to accomplish tasks. These commenters stated that certain categories of employees (such as temporary office workers and certain kinds of contract workers) regularly interact with others within the work site (including other employees, customers, or vendors), but do not work side by side or in collaboration with others within the same job category. Similarly, a few commenters requested that we clarify the effect of the criteria on employment in scattered work sites.

Of those in opposition, some requested that we remove "work unit" from the definition because they were concerned that its use prohibits mobile work crews and enclaves unless very restrictive criteria are met, and that if Congress had intended to eliminate group work opportunities, it would have done so in the law. Other commenters requested clarification of the effect of the term on group employment under the JWOD Act commonly used in Ability One and long-term commercial contracts, stating that these settings provide well-paying jobs for persons with the most significant disabilities.

Discussion: In response to those comments that address the use of the term "work unit," the Secretary disagrees with the recommendation to remove the term from the definition because it properly focuses the consideration of the interaction of the individual with the disability with employees without disabilities within the environment in which the work is performed. As used in the definition, "work unit" may refer to all employees in a particular job category or to a group of employees working together to accomplish tasks, depending on the employer's organizational structure. In addition, its use is consistent with prior guidance issued by the Department. The Secretary emphasizes that the Department has long maintained that the interaction required between employees with disabilities and employees without disabilities is not dependent on the number of individuals in the work unit and that the criterion must be applied consistently to work units of any size. The Department also has long-held that the interaction between employees with and without disabilities need not be face to face. Nor do we interpret the criterion as necessarily excluding employment settings in which individuals work alone, such as telecommuting, temporary employment, and work in mobile or scattered locations, from the scope of the definition of "competitive integrated employment," so long as the employee with the disability interacts with employees of the employer in similar positions and interacts with other persons without disabilities to the same extent that employees without disabilities interact with others.

As stated earlier in this section, the Department has long considered the funding of positions through JWOD contracts to be a distinguishing characteristic when determining if a business is typically found in the community. Likewise, the use of the term "work unit" in the definition does not change its application with respect to the required interaction among employees with and without disabilities in the work setting. Entities that are set up specifically for the purpose of providing employment to individuals with disabilities will likely not satisfy the definition's criteria. The high percentage of individuals with disabilities employed with these entities most likely would result in little to no opportunities for interaction between individuals with disabilities and non-disabled individuals. These entities, therefore, likely would be considered sheltered or non-integrated employment sites. Nonetheless, DSUs must apply these criteria on a case-by-case basis when determining if an individual's employment is in an integrated location and satisfies the definition of "competitive integrated employment."

Changes: None.

Interaction During Performance of Job Duties

Comments: One commenter stated that to define "integrated location" as only "the interaction between employees with disabilities and those without disabilities that is specific to the performance of the employee's job duties, and not the casual, conversational, and social interaction that takes place in the workplace" is too narrow and may not reflect many workers' interaction patterns in typical work settings.

Discussion: Under the definition of "competitive integrated employment" and consistent with the general principles contained in the prior definition of "integrated setting," the DSU is to consider the interaction between employees with disabilities and those without disabilities that is specific to the performance of the employee's job duties, and not the casual, conversational, and social interaction that takes place in the workplace. As a result, it would not be pertinent to its determination of an integrated setting for a DSU to consider interactions in the lunchrooms and other common areas of the work site in which employees with disabilities and those without disabilities are not engaged in performing work responsibilities.

The Secretary recognizes that the application of the integrated location criteria in the manner explained in the preceding paragraphs will restrict the types of employment options available to individuals with disabilities through the VR program. However, these restrictions have been in effect since the definition of "employment outcome" was last revised in 2001 and, therefore, do not reflect new Departmental policy. Specifically, through application of the criteria, individuals with disabilities hired by community rehabilitation programs to perform work under service contracts, either alone, in mobile work crews, or in other group settings (*e.g.*, landscaping or janitorial crews), whose interaction with persons without disabilities (other than their supervisors and service providers), while performing job responsibilities, is with persons working in or visiting the work locations (and not with employees of the community rehabilitation programs without disabilities in similar positions) would not be performing work in an integrated setting. The Secretary believes that, even if such group employment in a community rehabilitation program provides for competitively paid wages, this fact does not change the non-integrated nature of the employment and may result in a less desirable level of integration (*e.g.*, interaction with non-disabled co-workers) than individual employment, which supports the autonomy and self-sufficiency of individuals with disabilities.

In summary, the DSU must determine, on a case-by-case basis, that a work location is in an integrated setting, meaning it is typically found in the community, and it is one in which the employee with the disability interacts with employees and other persons, as appropriate to the position, who do not

have disabilities to the same extent that employees without disabilities interact with these persons. Finally, the DSU is to consider the interaction between the employee with the disabilities and these other persons that takes place for the purpose of performing his or her job duties, not mere casual and social interaction. We firmly believe that the integrated location criteria within final § 361.5(c)(9)(ii), when properly applied, ensure that participants in the VR program, including individuals with the most significant disabilities, are afforded a full opportunity to integrate in their communities and to achieve employment available to the general public.

Changes: None.

Opportunities for Advancement

Comments: One commenter asked whether employment in which individuals with disabilities truly do not have the opportunity to advance in their jobs satisfies the definition of "competitive integrated employment," if the criteria regarding competitive earnings and integrated locations are met. This commenter gave the example of a small business.

Discussion: To ensure that the employment of persons with disabilities is equivalent in all respects to that of persons without disabilities, section 7(5)(C) of the Act, as amended by WIOA, and final § 361.5(c)(9)(iii) require that the employee with the disability have the same opportunities for advancement as employees without disabilities in similar positions, regardless of the size of the business. This new criterion is consistent with the prior definitions of "competitive employment" and "integrated settings." If employees in positions similar to that of the employee with the disability have the opportunity to advance in their employment, the individual with the disability must be afforded the same opportunity for this criterion of the definition to be satisfied.

Changes: None.

Construction of a Facility for a Public or Nonprofit Community Rehabilitation Program (§ 361.5(c)(10))

Comment: One commenter requested that "construction" and "ongoing maintenance" be clearly defined in the regulations.

Discussion: The term "construction of a facility for a public or nonprofit community rehabilitation program" remains unchanged in section 7(6) of the Act, as amended by WIOA, and final § 361.5(c)(10).

We disagree with the recommendation that we define "ongoing maintenance" in part 361. Final § 361.5(c)(2)(viii) specifies such costs, when incurred for operating and maintaining DSU facilities, may be allowable administrative costs under the VR program. However, ongoing costs of any kind, including ongoing maintenance costs, are not allowable expenditures when establishing, developing, or improving a community rehabilitation program (see final § 361.5(c)(16)(iii)).

Changes: None.

Customized Employment (§ 361.5(c)(11))

Comments: Most commenters supported the new definition of "customized employment" in proposed § 361.5(c)(11). A few commenters requested that the definition include the "discovery phase" of the customized employment model. A few commenters suggested that the definition address when it is appropriate for the DSU to consider customized employment for individuals with disabilities. Further, these commenters stated that DSUs should use customized employment as the last option in assisting an individual with a disability to achieve competitive integrated employment. Another commenter questioned whether customized employment means "job carving." Furthermore, one commenter requested that we clarify how individuals with disabilities, who are working in customized employment, could advance in their careers. One commenter questioned whether an employer would want to support an individual with a significant disability in customized employment. Another commenter stated that customized employment should not be an unfunded mandate. Finally, one commenter asked that we clarify the impact customized employment might have on the performance accountability measure for the core programs, including the VR program, in the workforce development system under section 116 of WIOA that measures the median wage of participants during the second quarter after they exit from these programs. This commenter suggested that earnings from customized employment would deflate this measure.

Discussion: We appreciate the comments supporting the new definition of "customized employment" in final § 361.5(c)(11). However, we disagree with commenters who recommended that the definition be modified to include additional requirements, such as the inclusion of the discovery phase of the model or when a DSU must consider customized employment for an individual. Section 7(7) of the Act, as amended by WIOA, which defines the term "customized employment," does not include this information. Therefore, we believe final § 361.5(c)(11) is consistent with the statute and further regulatory change is not necessary.

We disagree with the commenter that DSUs should use customized employment as a last resort when assisting an individual with a disability to achieve an employment outcome. We believe that customized employment may be an option for some individuals with significant disabilities, while, for other individuals, it may not be a viable path to competitive integrated employment. We strongly encourage DSUs to tailor customized employment services, like all of the services in final § 361.48(b) provided to eligible individuals under an individualized plan for employment, to meet the unique strengths, needs, interests, and informed choice of the individual, so that he or she can achieve an employment outcome in competitive integrated employment. We understand that some may have referred to customized employment in the past as "job carving;" however, the Act, as amended by WIOA, does not use that term. Therefore, we have not incorporated the term "job carving" into these final regulations.

We believe it is possible for individuals with disabilities in customized employment to advance in their careers. Individuals who achieve competitive integrated employment through customized employment could advance in their career with their original employers or by seeking advancement with other employers. The definition of "customized employment" in section 7(7) of the Act, as amended by WIOA, and final § 361.5(c)(11) do not include any criteria requiring an individual with a significant disability to remain in customized employment; rather, these individuals may seek additional vocational rehabilitation services for the purpose of advancing in their careers through other forms of competitive integrated employment. Customized employment is an alternative that enables individuals with disabilities and employers the opportunity to negotiate job tasks and/or reassign basic job duties to improve overall production in the workplace. For employers, customized employment allows an employer to examine its specific workforce needs and fulfill those needs with a well-matched employee. We encourage DSUs to work with employers, particularly those employers that have not been open to employing individuals with significant

disabilities, to enable them to hire these individuals through customized employment when appropriate.

We disagree with the commenter that customized employment is an unfunded mandate. Customized employment services are included in the list of allowable vocational rehabilitation services in final § 361.48(b). DSUs may expend their resources, including program funds, on supporting individuals in customized employment when appropriate.

Customized employment, as we have discussed, must lead to competitive integrated employment. Section 116(b)(2)(A)(i)(III) of title I of WIOA establishes a primary performance accountability indicator for all core programs of the workforce development system, including the VR program, that measures the median earnings of all participants who have exited the program in the second quarter after exit. As such, earnings from customized employment will affect the VR program's performance, in the same manner that other earnings will do so. We cannot assume, as the commenter suggests, that individuals in customized employment will earn low wages.

Changes: None.

Employment Outcome (§ 361.5(c)(15))

Some commenters supported the definition of "employment outcome" in proposed § 361.5(c)(15) because it is consistent with the overall purpose of the Act, as amended by WIOA, to promote the achievement of competitive integrated employment and self-sufficiency by individuals with disabilities. As proposed, an "employment outcome" would mean full- or part-time employment in competitive integrated employment, or supported employment. As such, uncompensated employment outcomes (*e.g.,* homemakers and unpaid family workers) would be removed from the scope of the definition for purposes of the VR program. However, most commenters strongly opposed removing "uncompensated employment outcomes," and recommended revisions or clarifications to the proposed definition.

Statutory Basis

Comments: Most of the commenters on the proposed definition of "employment outcome" in § 361.5(c)(15) stated that the proposed change is contrary to congressional intent and not mandated by the Act, as amended by WIOA. Many of these commenters requested that the Secretary use the discretion permitted under section 7(11)(C) of the Act to not limit the definition to compensated employment, thereby permitting uncompensated outcomes of homemaker and unpaid family worker to continue to count as an employment outcome under the VR program.

In addition, recognizing that WIOA amends section 102(b)(4) of the Act to require that the individualized plan for employment contain a specific employment goal consistent with competitive integrated employment, a few commenters presented two arguments to support the retention of uncompensated outcomes as an employment outcome. First, the commenters argued that the phrase "consistent with the Act," as used in the statutory definition, does not require that all components of the term "competitive integrated employment" be satisfied. In the alternative, these commenters suggested that homemaker and unpaid family worker outcomes satisfy the criteria for competitive integrated employment because they are typically found in the community and the earnings of individuals with disabilities who obtain these outcomes are commensurate with those of non-disabled persons in similar positions.

Discussion: We appreciate the commenters' concerns and recognize that the definition of "employment outcome" in proposed and final § 361.5(c)(15) will end a long-standing Department policy. We gave considerable thought to all aspects of the issue and seriously considered the definition in light of the comments received.

We agree with commenters that the change eliminating uncompensated outcomes was not explicitly required on the basis of an amendment to the statutory definition in section 7(11) of the Act, which remained unchanged, in pertinent part, by WIOA. Nonetheless, we believe that the Act as amended by WIOA, when read in its entirety, provides a strong justification for the change.

We agree with the commenters that section 7(11)(C) of the Act permits the Secretary to use his discretion to include other vocational outcomes within the scope of the definition of "employment outcome." This provision is purely discretionary, and there is no requirement that the Secretary exercise this discretion, either to incorporate new outcomes or to retain previously permitted outcomes. However, if the Secretary chooses to exercise this discretion, the Secretary must do so in a manner that is consistent with the Act.

As noted throughout the preambles to the NPRM and these final regulations, WIOA amended the Act by emphasizing the achievement of competitive integrated employment by individuals with disabilities, including individuals with the most significant disabilities. The Act, as amended by WIOA, refers extensively to competitive integrated employment, including in the statement of the purpose for the VR program, requirements for developing individualized plans for employment and providing services to students and youth with disabilities, and the limitations on the payment of subminimum wages in new section 511. In particular, section 102(b)(4) of the Act, as amended by WIOA, and final § 361.46(a) require that the specific employment goal identified in the individualized plan for employment be consistent with the general goal of competitive integrated employment.

The changes made by WIOA provide a marked contrast to the Act, as amended by the Workforce Investment Act of 1998 (WIA). Under WIA, the emphasis in the Act was on achieving integrated employment. Consequently, in 2001, the Secretary amended the definition of "employment outcome" and required that all employment outcomes in the VR program be in integrated settings, under prior § 361.5(b)(16). In so doing, the Secretary eliminated sheltered employment as an employment outcome. At that time, because we considered homemaker and unpaid family worker outcomes to occur in integrated settings, these outcomes continued to constitute an "employment outcome," for purposes of the VR program.

By contrast, given the pervasive emphasis on achieving competitive integrated employment—not just integrated employment—throughout the Act, as amended by WIOA, the Secretary has determined that uncompensated employment outcomes, including homemaker and unpaid family worker outcomes, are no longer consistent with the Act. For this reason, the Secretary believes it is no longer an appropriate exercise of the Secretary's discretion under section 7(11)(C) of the Act to include uncompensated outcomes within employment outcomes in final § 361.5(c)(15).

We disagree with the commenters' argument that an "employment outcome" need not satisfy all criteria of the definition of "competitive integrated employment," with one narrow exception. Section 7(11)(B) of the Act and final § 361.5(c)(15) include supported employment within the employment outcomes available to individuals with disabilities through the VR program. Under section 7(38) of the Act, as amended by WIOA, and final

§ 361.5(c)(53), supported employment requires that the individual be employed in competitive integrated employment or in an integrated setting in which the individual is working on a short-term basis toward competitive integrated employment. Thus, in limited circumstances, individuals in supported employment may not have achieved employment that satisfies all the criteria of "competitive integrated employment" initially since they will be earning non-competitive wages on a short-term basis. This very narrow exception is the only instance in which the statute permits that all criteria of "competitive integrated employment" need not be satisfied for an individual to achieve an employment outcome. However, even under this narrow exception, the expectation is that, after a short period of time, the individual will achieve competitive integrated employment in supported employment. It is understood, and the commenters do not argue otherwise, that uncompensated employment, such as homemaker and unpaid family worker outcomes, does not satisfy the definition of "supported employment." There is no expectation that the individuals will ever be compensated in such employment.

We disagree with the first of the commenters' arguments that all criteria of "competitive integrated employment" need not be satisfied for employment to be considered competitive integrated employment. To interpret the Act's definition of "employment outcome" this way would ignore one of the three major components of the definition of "competitive integrated employment"—competitive wages.

While we agree with the assertion that individuals with disabilities who achieve homemaker or unpaid family worker outcomes perform their work in settings typically found in the community and receive no wages, as would a non-disabled homemaker or unpaid family worker, these similarities are not sufficient to satisfy the definition of "competitive integrated employment." "Competitive integrated employment" requires the payment of wages at or above the applicable Federal, State, or local minimum wage. Neither homemakers nor unpaid family workers earn a wage. Therefore, individuals achieving uncompensated outcomes, such as homemakers and unpaid family workers cannot have achieved an employment outcome in competitive integrated employment.

Changes: None.

Informed Choice

Comments: Many commenters asserted that the definition of "employment outcome" in proposed § 361.5(c)(15) is contrary to the principle of informed choice and that individuals with disabilities should have the right to choose homemaker and other uncompensated outcomes just as do persons without disabilities.

Discussion: While we agree that section 102(d) and many other provisions of the Act place a premium on the ability of individuals with disabilities to exercise informed choice throughout the vocational rehabilitation process, including the choice of an employment outcome, we do not agree that the definition of "employment outcome" in final § 361.5(c)(15) is inconsistent with the individual's ability to exercise informed choice. We have historically interpreted the statute as allowing individuals who are participating in the VR program to exercise informed choice among those outcomes that satisfy the definition of "employment outcome." Under these final regulations, such outcomes must be in competitive integrated employment or supported employment.

If an individual makes an informed choice to pursue uncompensated employment (*e.g.*, homemaker or unpaid family worker outcomes) or any other outcome that does not meet the definition of "employment outcome" under final § 361.5(c)(15), he or she may still do so, but not with the assistance of the VR program. In final § 361.37, the DSU is required to refer that individual to other Federal, State, or local programs and providers that can meet the individual's needs for related services (*e.g.*, the State Independent Living Services (SILS) program, Independent Living Services for Older Individuals Who Are Blind program (OIB), Centers for Independent Living program (CIL), and programs for the aging). In addition, final § 361.37 requires that individuals receive sufficient information concerning the scope of the VR program and competitive integrated employment opportunities. This information enables individuals to make a fully informed choice regarding whether to pursue an employment outcome through the VR program or homemaker and other uncompensated outcomes through other sources.

We believe the definition of "employment outcome" in final § 361.5(c)(15) ensures that the VR program promotes maximum opportunities for individuals with disabilities, particularly those with significant disabilities, to pursue competitive integrated employment or supported employment options. Individuals with disabilities can achieve competitive integrated employment or supported employment if given appropriate services and supports and, therefore, should be informed that they are not limited to pursuing uncompensated outcomes no matter how significant their disabilities. Nevertheless, we recognize that some individuals will choose to pursue such outcomes. These final regulations require each DSU to preserve individual choice by referring any individual who decides to pursue uncompensated outcomes, or any other outcome that does not meet the definition of an "employment outcome" in final § 361.5(c)(15), to other appropriate resources for assistance.

Changes: None.

Legitimacy of Homemaker Outcomes

Comments: Some commenters stated that the definition of "employment outcome" in proposed § 361.5(c)(15) does not recognize the legitimacy of homemaker occupations and devalues the work performed by homemakers. Some commenters stated that homemaker outcomes provide economic value for the individual or family, though the individual does not receive direct wages. Others suggested that homemaker outcomes allow the individual to care for other family members who are disabled and who would otherwise be institutionalized.

Discussion: We agree with the commenters that homemakers perform work that has an economic value for themselves and others in the home. For example, by caring for themselves and the home, homemakers can enable other members of the household to work outside the home and earn an income. In addition, homemakers may care for persons with disabilities in the household, thus helping them to remain in their homes, rather than to reside in institutional settings. Therefore, we emphasize that nothing in these final regulations is intended to alter the fact that homemaker outcomes serve as a legitimate and valued option for people with disabilities. The Secretary does not devalue the dignity or the worth of the individuals who perform this work through this regulatory action. Rather, the definition of "employment outcome" in final § 361.5(c)(15), focuses the VR program on its statutory purpose, as set forth in section 100(a)(2)(B)—giving persons with disabilities, including those with significant or the most significant disabilities, the opportunity to work in competitive integrated employment and to achieve economic self-sufficiency.

Changes: None.

Availability of Services

Comments: Several commenters who opposed the definition of "employment outcome" in proposed § 361.5(c)(15) stated that the services provided to individuals pursuing homemaker outcomes through the VR program provide a bridge, gateway, or stepping stone to competitive integrated employment. Many of those commenters stated that services such as Braille training, assistive technology, mobility training, and other home management services are essential to the ability of individuals who are blind and visually impaired to prepare for employment. Many commenters expressed the concern that without homemaker services, many individuals, especially those who are blind and visually impaired, will be unable to function, and either be shut in their homes or forced to live in a care facility. Finally, some commenters stated that the loss of homemaker services could result in low self-esteem, the loss of independence, physical disease, and depression among individuals who are blind and visually impaired.

Discussion: We strongly agree that Braille training, assistive technology, and mobility training are critical to the independence of individuals who are blind and visually impaired, and help to build the foundation on which they can successfully pursue gainful employment. In addition, we recognize that these services can enable individuals who are blind and visually impaired to increase their confidence, as well as their physical and psychological well-being. Most importantly, these services always have been, and continue to be, available to individuals with disabilities under an individualized plan for employment pursuant to section 103(a) of the Act and final § 361.48(b), so long as the individuals are pursuing an employment outcome under final § 361.5(c)(15), specifically competitive integrated employment or supported employment. To the extent such individuals do not wish to do so, these same services are, and always have been, available under the independent living programs authorized by title VII of the Act.

We understand, from anecdotal evidence, that it has been the practice of some DSUs to provide individuals who are newly blind or experiencing significant vision loss with services designed to help them attain homemaker outcomes, with the expectation that the individuals will return to the VR program when they are ready to pursue additional training and the achievement of an employment outcome. However, DSUs must provide the vocational counseling and guidance to help individuals pursue an employment outcome consistent with competitive integrated employment, as required by section 102(b)(4) of the Act, as amended by WIOA, and final § 361.46(a)(1) at the outset or refer individuals to the independent living programs under final § 361.37 depending on their individual goals. DSUs are encouraged to deliver services such as Braille and mobility training throughout the vocational rehabilitation process, in combination with the other education, training, and equipment needed to achieve the identified employment goal. In this way, DSUs can more effectively engage individuals in the VR program and better assist them to achieve the ultimate goal of competitive integrated employment or supported employment.

Changes: None.

Disproportionate Impact

Comments: Many commenters stated that the change in the definition of "employment outcome" in proposed § 361.5(c)(15) will have a disproportionate impact on individuals served through the VR program who are blind and visually impaired. A few commenters requested that we create an exception for agencies that serve individuals who are blind if we maintain the definition as proposed.

Discussion: As stated in the preamble to the NPRM, we believe the definition of "employment outcome" in final § 361.5(c)(15) will have minimal impact on most DSUs in their administration of the VR program because, nationally, a steadily decreasing and relatively small number of individuals exit the program as homemakers or unpaid family workers. The data reported by DSUs demonstrate that the majority of DSUs have been placing increased importance and emphasis in their policies and procedures on competitive integrated employment and supported employment outcomes, thereby deemphasizing uncompensated outcomes. This shift in practice has been the product of the DSUs' responding to the changes to the Act since the enactment of WIA in 1998 and reflecting that changing emphasis in their administration of the VR program.

Nonetheless, we recognize that some DSUs, particularly those serving individuals who are blind and visually impaired, report a greater percentage of homemaker outcomes than others. For example, VR agencies serving individuals who are blind and visually impaired reported that 618 individuals obtained homemaker outcomes in FY 2014, representing 9.8 percent of all employment outcomes for these agencies. In comparison, all other VR agencies reported that 2,436 individuals obtained homemaker outcomes in FY 2014, representing 1.4 percent of all employment outcomes for these agencies. Consequently, we proposed in the NPRM a transition period of six months following the effective date of these final regulations to allow DSUs to complete the VR process for individuals already pursuing homemaker outcomes under individualized plans for employment. See the discussion on "Transition Period" later in this section regarding the comments received on the proposed transition period.

Neither section 7(11) nor any other provision of the Act, as amended by WIOA, permits the Secretary to make an exception when implementing the definition of "employment outcome" to allow DSUs serving individuals who are blind and visually impaired to continue assisting individuals to achieve uncompensated outcomes, such as homemaker outcomes, when that employment is not consistent with the Act. Therefore, there is no statutory authority to make the exception recommended by commenters.

Changes: None.

Resources for Service Provision

Comments: Several commenters stated that services such as training in Braille, orientation and mobility training, and the provision of assistive technology and training in its use are not available to individuals who are blind and visually impaired through any other resources, such as medical insurance and one-stop delivery centers. In particular, many commenters stated that the OIB program lacks sufficient resources to serve the individuals who would no longer be eligible to receive vocational rehabilitation services as a result of the change in the definition of "employment outcome" in proposed § 361.5(c)(15), because, to be eligible for the VR program, an individual must intend to achieve an employment outcome. A few commenters asked that we request additional funds for this program. One commenter suggested that we lower the age of eligibility for services from the OIB program to allow younger individuals to receive these services. Additionally, many commenters stated that other independent living programs and providers lack the funds and qualified staff needed to provide individuals who are blind and visually impaired with the complex skills of Braille literacy and orientation and mobility. Several commenters stated that the change in

the definition of "employment outcome" will result in loss of funding needed by community rehabilitation programs to provide these vital services.

One commenter asked if the Department would create a separate homemaker program not directly connected to the VR program. One commenter stated that many DSUs have entered into long-term contractual arrangements for providing services to individuals pursuing homemaker outcomes and requested that we exempt these arrangements from the application of the new rule. Another commenter requested that the Client Assistance Program (CAP) and other advocacy groups conduct outreach to the community of individuals who are blind and visually impaired who otherwise would have chosen homemaker outcomes.

Discussion: We recognize that medical insurance and other one-stop delivery system programs under WIOA typically do not support training in Braille and mobility or the provision of assistive technology for individuals who are blind and visually impaired.

Under final § 361.37(b), the circumstances when the DSU must provide referrals to other programs and service providers for individuals who choose not to pursue an employment outcome under the VR program has been expanded. Similarly, final § 361.43(d) expands the requirement for the referral of individuals found ineligible for vocational rehabilitation services, or determined ineligible subsequent to the receipt of such services, to include appropriate State, Federal, and local programs, and community service providers (*e.g.,* the SILS program, OIB program, CILs, and programs for the aging) better suited to meet their needs.

Those programs designed to meet the needs of individuals who choose to pursue homemaker outcomes include the OIB program, the only program authorized under title VII of the Act, as amended by WIOA, which remains under the administration of the Department. There is no authority, in either title I or VII, to permit DSUs to use VR program funds to provide OIB program services in order to alleviate any deficiencies in OIB funding, which may result from an increase in the number of individuals seeking services from the OIB program following the change in the employment outcome definition for purposes of the VR program. However, the Administration has requested a $2.0 million increase over the 2016 level for the OIB program in the fiscal year 2017 President's Budget to assist States in meeting an anticipated increase in the demand for OIB services. The Department will consider increases in the demand for OIB program services resulting from this rule change in future budget requests.

We recognize that some CIL staff may not possess the skills necessary to provide individuals who are blind and visually impaired the specialized training and services that will enable them to remain in their homes and care for themselves, such as training in Braille and orientation and mobility. Therefore, we strongly encourage DSUs to strengthen their relationships with the CILs in their States by providing training and technical assistance necessary to build the capacity of the staff that will afford them the option to deliver these services in accordance with the State Plan for Independent Living developed in the State. The Department will support these efforts through technical assistance in collaboration with the Department of Health and Human Services, which is now responsible for the administration of the Centers for Independent Living program under title VII of the Act, as amended by WIOA.

We disagree that the change in the definition necessarily will result in a loss of funding for community rehabilitation programs to provide homemaker services. Although DSUs may no longer use VR program funds to purchase these services from community providers, they may use other program funds to do so, such as those for the OIB programs.

In response to the comment requesting an exemption for existing contractual relationships between the DSUs and other entities to assist individuals with disabilities to achieve outcomes in uncompensated employment, once final § 361.5(c)(15) takes effect a DSU cannot contract with another entity to assist an individual with a disability to achieve an uncompensated outcome, such as homemaker or unpaid family worker. There is no statutory authority that would permit an exemption to the prohibition. However, as discussed in more detail in the *Transition Period* section, DSUs are able to use VR program funds to continue to engage in contractual arrangements for providing services to individuals with disabilities who are already in the process of pursuing homemaker and other uncompensated employment outcomes under individualized plans for employment approved prior to the effective date of these final regulations.

While we understand the concern raised by the commenter who requested a lower eligibility age for the OIB program, title VII of the Act, as amended by WIOA, retains the eligible age of 55 for OIB program services in the statute; therefore, the Department is not authorized to change the age of eligibility. Nor does the Act, as amended by WIOA, authorize the creation of a homemaker program separate from the VR program.

While we appreciate the commenter's recommendation that the CAP should provide outreach services to individuals affected by the implementation of the revised definition of "employment outcome," section 112 of the Act requires, as it always has, the CAP to provide information and advocacy services to individuals who are applicants or consumers of the VR program or any other program under the Act. The CAP may provide information and advocacy services for those individuals pursuing uncompensated outcomes who are served by the VR program during the transition period or served by the OIB or independent living programs after the transition period. However, no authority exists in section 112 of the Act to permit the CAP to conduct outreach to, or to serve, individuals pursuing uncompensated outcomes under programs not authorized by the Act. Although the Department is no longer responsible for the administration of the CIL and SILS programs, these programs continue to be authorized under title VII of the Act, and therefore the CAP can provide assistance to individuals receiving independent living services.

Changes: None.

Feasibility Studies

Comments: Some commenters recommended that we conduct a study of homemaker closures to address problems of overuse and that the definition of "employment outcome" include strict criteria to prevent overuse.

One commenter asked whether the Department had conducted a feasibility study to determine if the referral of individuals from VR to other service providers would reasonably result in the provision of services.

Discussion: We have not conducted, nor do we intend to conduct, a study of homemaker closures to address problems of overuse. A study to ensure DSUs do not overuse uncompensated outcomes is not necessary because such outcomes will no longer be permitted under the VR program once these final regulations take effect and the transition period ends. For the same reason, we do not believe it necessary to change § 361.5(c)(15) to prevent the overuse of

homemaker and unpaid family worker outcomes.

However, we intend to monitor State implementation of the final regulations during our annual review and periodic on-site monitoring of State VR agencies to ensure that persons with significant disabilities, including those who are blind and visually impaired, receive vocational rehabilitation services in pursuit of competitive integrated employment or supported employment. Additionally, we will review the steps DSUs are taking to ensure that individuals are appropriately referred under final §§ 361.37(b) and 361.43(d), to other Federal, State, and local programs and providers (*e.g.*, the SILS program, OIB program, CILs, and programs for the aging) that are better able to meet the needs of individuals with disabilities who desire to receive homemaker services. If needed, the Department will consider providing technical assistance to DSUs to enable them to build better relationships with these other entities to increase the potential for successful referrals.

Changes: None.

Transition Period

Comments: A few commenters supported the Department's proposed transition period of six months following the effective date of the final regulations, during which DSUs would finish providing vocational rehabilitation services to, and close the service records of, individuals pursuing uncompensated outcomes, such as homemakers and unpaid family workers, through individualized plans for employment that were approved prior to the effective date.

Some commenters stated that six months would not be long enough to finish providing services and close these service records or to develop relationships with providers of independent living services to which the DSUs could refer these individuals. Of these commenters, some recommended that the Department extend the proposed transition period to 12 months following the effective date of the final regulations, while some others recommended 18 or 24 months.

However, most commenters who commented on the proposed transition period recommended that we adopt a flexible period that DSUs would determine case by case, taking into account the needs of the individual. Finally, one commenter recommended that we permit DSUs to provide vocational rehabilitation services to individuals with the goal of homemaker on their individualized plans for employment without regard to the duration of the services, but that we not allow DSUs to implement new individualized plans for employment with the goal of homemaker following the effective date of the final regulations.

Discussion: To permit DSUs to develop individualized plans for employment that include uncompensated employment goals, such as those of homemakers and unpaid family workers, after the effective date of these final regulations would be inconsistent with the Act, as amended by WIOA. Section 102(b)(4) of the Act, as amended by WIOA, and final § 361.46(a), require all individualized plans for employment developed under the Act to include employment goals consistent with the general goal of competitive integrated employment.

However, we do agree with commenters that DSUs may need longer than six months following the effective date to finish providing services to some individuals who are already pursuing homemaker or other uncompensated outcomes on individualized plans for employment that were developed and executed prior to the effective date. Data obtained through the RSA–911 case service report show that, on average, individuals with disabilities take approximately 24 months to complete the vocational rehabilitation process from the time they apply for services until their service records are closed. These data also demonstrate that individuals who are 55 years and older and blind take approximately 21.5 months to complete the vocational rehabilitation process from the time that they apply for services.

Therefore, the Secretary has concluded that DSUs may continue to provide services to individuals with uncompensated employment goals on their individualized plans for employment that were approved prior to the effective date of the final regulations through June 30, 2017, unless a longer period of time is required based on the needs of the individual, as documented in the individual's service record.

The Secretary believes that DSUs can finish providing services to, and close the service records of, most individuals pursuing homemaker and other uncompensated outcomes during this transition period. However, a DSU can determine on a case-by-case basis, taking into consideration the unique needs of each individual, that the DSU cannot complete the provision of services within that time frame and, therefore, may continue the services until the individual no longer needs them. For example, services may be interrupted and, consequently, the DSU cannot complete the services prior to June 30, 2017. For this and other reasons, the DSU may extend the provision of services beyond June 30, 2017, until they are completed and the individual's service record is closed.

By extending the transition period, DSUs will have sufficient time to develop and strengthen their relationships with other governmental and nonprofit providers of independent living services so that DSUs may make appropriate referrals to these providers and individuals with disabilities can receive the services they need to maintain their homes and independence. The Department plans to provide guidance and technical assistance to: (1) Facilitate the transition to the new definition of employment outcome; and (2) minimize the potential disruption of services to VR program consumers currently receiving services and who do not have a competitive integrated employment or supported employment goal reflected in their individualized plan for employment.

Finally, all participants who exit the VR program after July 1, 2016, including those exiting in uncompensated employment, such as homemakers and unpaid family workers, must be included in the calculations of the performance accountability measures established in section 116(b)(2)(A)(i) of title I of WIOA and explained more fully in the joint performance information collection request. The performance accountability requirements of section 116 of WIOA take effect July 1, 2016.

Changes: We have included a note in final § 361.5(c)(15) allowing for a transition period to permit a DSU to continue services to individuals with uncompensated employment goals on their approved individualized plans for employment prior to the effective date of the final regulations until June 30, 2017, unless a longer period of time is required based on the needs of the individual with the disability.

Extended Services (§ 361.5(c)(19))

Comments: A few commenters were concerned that the provision of extended services to youth with the most significant disabilities will cause an undue hardship for some DSUs. A few other commenters understood the proposed changes to mean that the DSUs were responsible for funding all individuals in extended services even after the individual transitions from the DSU for support.

Discussion: Final § 361.5(c)(19)(iv) specifies that "extended services" are those services provided to individuals with the most significant disabilities, which may include youth with the most

significant disabilities, by a State agency, a private nonprofit organization, employer, or any other appropriate resource once an individual has concluded support services from the DSU. The definition of "extended services" in final § 361.5(c)(19)(v) specifies that the DSU provides extended services only to "youth with the most significant disabilities" for a period not to exceed four years or until such time as a youth reaches the age of 25 and no longer meets the definition of a "youth with a disability" under final § 361.5(c)(58). For further information on the provision of extended services in accordance with final §§ 363.4 and 363.22, see the *Analysis of Comments and Changes* section for the Supported Employment Program in 34 CFR part 363.

Changes: None.

Indian; American Indian; Indian American; Indian Tribe (§ 361.5(c)(25))

Comments: Many commenters disagreed with expanding the definition of "Indian tribe" to make tribal organizations eligible for AIVRS grants. Most of these commenters requested that we establish policies that give tribal governments the authority to designate those tribal organizations or entities acting on their behalf as applicants or recipients of AIVRS funding.

Discussion: We provide a detailed analysis of these comments in a separate regulatory action implementing the amendments made by WIOA to miscellaneous programs under the Act, including the AIVRS program, published elsewhere in this issue of the **Federal Register**.

Changes: None.

Informed Choice

Comments: Some commenters requested that we define "informed choice."

Discussion: We disagree with the recommendation to define "informed choice" in final § 361.5(c). Section 102(d) of the Act and final § 361.52 fully describe the critical aspects of informed choice in the context of the VR program and reflect the statutory emphasis that individuals participating in the VR program must be able to exercise informed choice throughout the entire rehabilitation process.

Changes: None.

Supported Employment Definitions

Comments: We received comments on the definitions of "supported employment" and "supported employment services" in proposed §§ 361.5(c)(53) and 361.5(c)(54), respectively, concerning the short-term basis period, transitional employment, and the duration of supported employment services.

Discussion: We discuss these comments later in the *Analysis of Comments and Changes* section for the Supported Employment Program in final 34 CFR part 363.

Transition-Related Definitions

Comments: We received comments on definitions pertaining to the transition of students and youth with disabilities from school to postsecondary education and employment, including "pre-employment transition services," "student with a disability," "transition services," and "youth with a disability."

Discussion: We discuss these comments in section B later in this *Analysis of Comments and Changes* section of the preamble.

Submission, Approval, and Disapproval of the State Plan (§ 361.10)

Content and Submission of the VR Services Portion of the Unified and Combined State Plan

Comments: Apart from public comments received on the joint regulations proposed by the U.S. Departments of Labor and Education implementing jointly administered requirements for the Unified or Combined State Plan, we received comments on proposed § 361.10 pertaining to the VR services portion of the Unified or Combined State Plan. Many commenters expressed support for the revised State Plan requirements and process as described in the proposed joint regulations, noting the regulations promote an opportunity for collaboration across the workforce development system. Additionally, these commenters requested technical assistance and guidance to clarify the State Plan process.

One commenter requested that we clarify the meaning of "The VR services portion of the State Plan" and asked whether this is in fact a separate program-specific component of the Unified or Combined State Plan. This commenter previously submitted a Unified State Plan in which the vocational rehabilitation components of the plan were interspersed throughout the overall plan. One commenter asked whether the proposed joint regulation in 34 CFR 676.130(f), which requires the RSA Commissioner to approve the VR services portion of the Unified or Combined State Plan before the Secretaries of Labor and Education approve the Unified or Combined State Plans, means that DSUs will have separate timelines for the submission of the VR program-specific components of the plan.

Discussion: We appreciate the commenters' support, as well as the requests for clarifications. Final § 361.10 implements section 101(a)(1) of the Act, as amended by WIOA, which requires a State to submit a Unified or Combined State Plan under section 102 or section 103, respectively, of title I of WIOA, in order to receive funding under the VR program. The Unified or Combined State Plan must contain a VR services portion. Section 101(a)(1) of the Act, as amended by WIOA, and final § 361.10(a) require the VR services portion of the Unified or Combined State Plan to contain all State Plan requirements under section 101(a) of the Act. Prior to the enactment of WIOA, DSUs submitted a stand-alone State Plan directly to the Department. Under WIOA, the VR services portion will be submitted as part of the Unified or Combined State Plans by the State to the Secretary of the U.S. Department of Labor, who will distribute the plans to the other Federal agencies responsible for their review and approval, including the Department of Education with respect to the review and approval of the VR services portion of the plans.

The "Required Elements for Submission of the Unified or Combined State Plan and Plan Modifications Under the Workforce Innovation and Opportunity Act," recently approved by the Office of Management and Budget under control number 1205–0522, presents the VR services portion of the Unified or Combined State Plan as a distinct component of the plan. The timelines for submission of the Unified or Combined State Plan, and, hence, the VR services portion of that plan, are governed by sections 102 and 103 of title I of WIOA, and the joint final regulations published elsewhere in this issue of the **Federal Register**. Thus, there is no statutory authority to establish a separate timeline or date for the submission of the VR services portion of the plan, despite the fact that the Commissioner must approve the VR services portion before the Secretaries of Labor and Education approve the remainder of the plans.

Changes: None.

Alignment of Program and Fiscal Years

Comments: Many commenters were interested in how the new timelines for the submission and modification of the Unified and Combined State Plans will be aligned with the specific requirements of the VR services portion of the Unified or Combined State Plan, including reporting requirements, performance levels, and the difference

between the start of the program year on July 1 for the purposes of requirements under title I of WIOA versus the start of the Federal fiscal year on October 1 when the VR program formula grants are issued in accordance with the Act. A few commenters supported the alignment of the program years under the Unified and Combined State Plans among all core programs in the workforce development system, including the VR program.

Discussion: While we understand the concern expressed by commenters regarding the potential confusion caused by differences between the VR program's fiscal year and the other core programs' program year, section 110(a)(2)(A) of the Act, which specifies the manner in which VR program allotments are to be made, was not amended by WIOA. Moreover, section 111(a)(1) of the Act, which also remained unchanged by WIOA, requires that payments are made to States on a Federal fiscal year basis. This provision is consistent with section 101(a)(1), which requires States to submit a VR services portion of a Unified or Combined State Plan to receive funding "for a fiscal year." Finally, section 101(a)(10) of the Act, as amended by WIOA, requires the DSU to submit certain data to demonstrate the annual performance of the VR program, within the same fiscal year in which the VR program operates. For these reasons, there is no statutory authority to change the period for making allotments to the States from the fiscal year beginning on October 1 to the program year used under title I of WIOA, which is July 1 of each year for most core programs.

In order to align the VR program with the other core programs to the extent practicable, DSUs must submit the VR services portion of the Unified or Combined State Plan and report the data required under final § 361.40 in a manner consistent with the jointly administered requirements set forth in the joint regulations governing Unified or Combined State Plan requirements published elsewhere in this issue of the **Federal Register**. However, States will continue to receive VR program allotments and report fiscal data through the Financial Status Report (SF–425) in accordance with the Federal fiscal year.

Changes: None.

Other Comments

Comments: Several commenters were uncertain about the application of common performance measures and asked whether combined partners under a Combined State Plan would be held to the new performance standards as well. One commenter asked whether, when there is more than one DSU in the State, DSUs serving individuals who are blind will have separate performance levels from DSUs serving individuals with all other disabilities. Another commenter suggested that Unified or Combined State Plans be posted electronically to a Web site that the public could easily access.

We also received comments regarding the determination of eligibility for individuals with autism and on the significance of disability.

Discussion: The Departments of Education and Labor address these comments in the *Analysis of Comments and Changes* section of the joint final regulations implementing the jointly administered requirements for the submission of a Unified or Combined State Plan under sections 102, and 103 of title I of WIOA and the performance accountability system under section 116 of title I of WIOA, published elsewhere in this issue of the **Federal Register**, because they apply to all core programs in the workforce development system, not just the VR program.

We address the comments regarding the determination of eligibility for individuals with autism and the significance of disability in the *Assessment for Determining Eligibility and Priority for Services (§ 361.42)* section of this preamble.

Changes: None.

Requirements for a State Rehabilitation Council (§ 361.17)

Establishment of a State Rehabilitation Council

Comments: One commenter suggested the word "if" be removed from the introductory paragraph in § 361.17. This commenter suggested that all States are required to have a State Rehabilitation Council (SRC or Council).

Discussion: Section 101(a)(21) of the Act, which remained unchanged by WIOA, and final § 361.16 permit States to establish either an independent State commission or an SRC. Therefore, there is no statutory authority to mandate that States establish a Council, rather than an independent commission. For this reason, we have not revised the introductory paragraph in final § 361.17 as the commenter recommended, because it is consistent with the statute. However, the Act does not prohibit a State from establishing both an independent commission and a SRC if it chooses to do so.

Changes: None.

Additional Members

Comments: Some commenters requested that we require in § 361.17(b) that the SRC include additional members, such as a representative of the State's Council on Developmental Disabilities, entities carrying out programs under the Assistive Technology Act of 1998 in the State, and groups of, or representing, individuals with intellectual and developmental disabilities.

Discussion: Section 105(b)(1) of the Act, as amended by WIOA, made only one amendment to the composition requirements of the SRC related to the representation of the AIVRS projects in the State on the SRC. The Act, as amended by WIOA, did not alter the composition requirements in any other way. As a result, there is no statutory basis to require additional representatives from other State entities. However, the Act, as amended by WIOA, does not prohibit a State from electing to add more members to its SRC if it determines this is appropriate.

Changes: None.

Terms of Appointment

Comments: One commenter suggested that we amend the requirements related to terms of appointment in § 361.17(e) to allow SRC members who were appointed to fill a vacancy and serve the remainder of their predecessor's term to be appointed to two additional consecutive full terms.

Discussion: WIOA did not amend section 105(b)(6) of the Act or change the requirements governing terms of appointment; therefore, there is no statutory authority to amend these requirements in final § 361.17(e). The Department has interpreted these requirements to permit an SRC member who completed the term of a vacating member to be appointed for only one additional consecutive full term of three years.

This long-standing Department interpretation is consistent with section 105(b)(6) of the Act, which limits a term to no more than three years; however, there is no requirement that each member be appointed for a three-year term. Under section 105(b)(6)(A)(i) of the Act, an individual who is appointed to complete a predecessor's unfinished term is appointed for the remainder of that term. This appointment constitutes one full term for that individual. Section 105(b)(6)(B) of the Act prohibits an individual from serving more than two consecutive full terms. Therefore, if an individual is appointed to complete one year remaining of a predecessor's term and is then reappointed for a second full three-year term, this individual has served two full terms even though the total number of years served is four.

Changes: None.

Coordination With One-Stop Centers

Comments: None.

Discussion: Section 105(c)(8) of the Act and final § 361.17(h))(8) permit the SRC to perform functions in addition to those specifically authorized in the Act and final regulations so long as they are comparable to the specified functions. To support the alignment of the VR program with the workforce development system as emphasized throughout the Act and these final regulations, we clarify that SRCs may coordinate and establish working relationships with one-stop centers. This coordination is comparable to the coordination with SILCs and CILs required under section 105(c)(7) of the Act and final § 361.17(h)(7).

Changes: None.

Comprehensive System of Personnel Development (§ 361.18)

Data Report for Comprehensive System of Personnel Development (§ 361.18(a))

Comments: One commenter recommended revisions to proposed § 361.18(a) regarding the submission of data on the comprehensive system of personnel development (CSPD) in the vocational rehabilitation services portion of the Unified or Combined State Plan to reduce burden on DSUs. Specifically, the commenter recommended that DSUs be required to submit information about the vocational rehabilitation personnel via pre-print assurances, rather than descriptions, and be required to submit aggregated data, rather than disaggregated data.

Discussion: WIOA made only technical changes to section 101(a)(7)(A) of the Act, none of which increased the reporting that had been required of DSUs for nearly 20 years. While we are sensitive to the burden imposed by reporting requirements, there is no statutory basis for the Department to make the changes suggested by the commenter. Section 101(a)(7)(A) of the Act, as amended by WIOA, explicitly mandates that DSUs provide the requisite information in a descriptive format and the data in a disaggregated format.

Changes: None.

Applicability of Education, and Experiential Requirements to Rehabilitation Counselors (§ 361.18(c)(1))

Comments: We received many comments regarding proposed § 361.18(c)(1)(ii), which requires DSUs to establish, as part of a CSPD, personnel standards for rehabilitation professionals and paraprofessionals that include educational and experiential requirements. Most of these commenters opposed applying this provision to vocational rehabilitation counselors, and many of these commenters stressed the importance of maintaining the education and experience requirement under prior § 361.18(c)(1)(i) for vocational rehabilitation counselors. Specifically, these commenters stated that vocational rehabilitation counselors should be required to meet a national or State-approved or recognized certification, licensing, registration, or other comparable requirements for the area in which such personnel are providing vocational rehabilitation services. These commenters strongly urged the Department to require that vocational rehabilitation counselors meet that higher standard.

Similarly, many commenters urged that the training and education received in a master's degree program in rehabilitation counseling relate in a necessary, direct, and practical way to the work vocational rehabilitation counselors do each day. These commenters asserted that rehabilitation counseling is a professional career that requires extensive knowledge in a very broad arena. In addition, several commenters stressed that the educational requirements applied to vocational rehabilitation counselors must be sufficient to ensure that they have the following knowledge: medical and psychological aspects of disability, counseling and guidance strategies, vocational assessment, person-centered planning, cultural competency, career services, and building relationships with businesses who would like to hire or retain individuals with disabilities. These commenters maintained that all of these skills are available to individuals pursuing a master's degree in a program accredited by the Council on Rehabilitation Education.

Several commenters maintained that section 101(a)(7)(B)(ii) of the Act, as amended by WIOA, and proposed § 361.18(c)(1)(ii), which set education and experience requirements of a baccalaureate degree in an additional field of study such as business administration, human resources, and economics, do not apply to vocational rehabilitation counselors. These commenters strongly believe that since a national certification exists for certified rehabilitation counselors this provision is inapplicable for vocational rehabilitation counselors. Some commenters stated that because there was no legislative report accompanying WIOA, the Department cannot be certain that Congress intended that the lower education and experience requirements in section 101(a)(7)(B)(ii) of the Act, as amended by WIOA, apply to vocational rehabilitation counselors. One commenter stated that including a business degree in the credentials required for vocational rehabilitation personnel, with respect to qualified vocational rehabilitation counselors, was intended to be supplemental to a Master's degree in rehabilitation counseling and does not supplant the highest standard in the State, which in many States is the master's degree in rehabilitation counseling. Another commenter stated that since individuals with less experience could be paid less, they potentially could make up a larger portion of the DSU staff. If done correctly, the commenter stated that this could be a great opportunity to add individuals with business and marketing backgrounds to the DSU staff. This could also potentially help reduce caseloads, since recipients who need assistance only with placement could go straight to the marketing/business staff. Some commenters observed that the new requirements appear to be based on an assumption that a counselor should be able to work with both consumers and employers, as opposed to a team approach where experts in counseling work with consumers and business experts work with employers.

One commenter supported the education and experience requirements in proposed § 361.18(c)(1)(ii) because of the heightened emphasis on employer engagement and competitive integrated employment outcomes. This commenter stated that the proposed changes will provide an opportunity for DSUs to adjust the level of expertise and commitment of its personnel. The commenter also stated that establishing these educational requirements and work experiences will ensure that program participants are receiving quality services.

Discussion: We appreciate the many comments we received regarding CSPD and the changes proposed in § 361.18(c)(1)(ii). We appreciate the fact that CSPD is an important issue for DSUs and their personnel and that it represents a cornerstone of the VR program, ensuring that individuals with disabilities receive services from staff who are qualified to meet their individual needs.

As stated in the NPRM, proposed § 361.18(c)(1)(ii) mirrors section 101(a)(7)(B)(ii) of the Act, as amended by WIOA, with regard to minimum education and experience requirements for vocational rehabilitation personnel. In so doing, § 361.18(c)(1)(i), both proposed and final: (1) Retains language in prior § 361.18(c)(1)(i) regarding national and State-approved

certification and licensure requirements since this requirement remained unchanged by WIOA; (2) incorporates new educational and experiential requirements in proposed § 361.18(c)(1)(ii) that range from a baccalaureate degree with at least one year of relevant experience to a master's or doctoral degree; and (3) deletes the requirement in prior § 361.18(c)(1)(ii) that DSUs must re-train staff who do not meet their established personnel standards.

We agree with commenters that the higher standard in section 101(a)(7)(B)(i) of the Act and final § 361.18(c)(1)(i), which had been the only personnel standard for vocational rehabilitation personnel prior to the enactment of WIOA, has served a critical role in ensuring that well-qualified staff are available to provide vocational rehabilitation services to individuals with disabilities. We understand other lower education or experience requirements may not prepare DSU staff in the same manner as a national or State-approved certification or licensure for vocational rehabilitation counseling could. As commenters indicated, programs leading to such national or State-approved certification or licensure in vocational rehabilitation provide vocational rehabilitation counselors with critical knowledge and understanding of medical and psychological aspects of disability, counseling and guidance strategies, vocational assessment, person-centered planning, cultural competency, career services, and building relationships with businesses who would like to hire or retain individuals with disabilities. However, section 101(a)(7)(B) of the Act, as amended by WIOA, requires that States establish and maintain personnel standards, which apply to all vocational rehabilitation professionals and paraprofessionals employed by the DSU, including both national or State-approved certification and licensure requirements in section 101(a)(7)(B)(i) and the education and experience requirements in section 101(a)(7)(B)(ii). This means that the personnel standards apply to vocational rehabilitation counselors and all other vocational rehabilitation professionals and paraprofessionals. There is nothing in the statute that limits the higher standard to vocational rehabilitation counselors. Nor is there any statutory basis to preclude a DSU from hiring a vocational rehabilitation counselor who meets the education and experience requirements of section 101(a)(7)(B)(ii) but not a national or State-approved certification or licensure requirement. Final § 361.18(c)(1) is consistent with the Act as amended by WIOA.

We also agree with the commenters who supported the proposal, and believe that the new education and experience requirements set forth in section 101(a)(7)(B)(ii) of the Act, as amended by WIOA, and final § 361.18(c)(1)(ii) are beneficial to the VR program and the individuals they serve.

Changes: None.

Applicability of Standards to Other Personnel

Comments: Some commenters stated that the lower educational standards might better be applied to other vocational rehabilitation personnel (*e.g.*, business relations specialists, placement specialists, etc.). One commenter said other positions (such as financial officers, legal counsel, DSU program/division directors, and policy/regulatory compliance officers) should be subject to requirements regarding the development of skills and knowledge and should be required to complete and maintain a certain amount of training regarding the provision of rehabilitation services.

Discussion: Consistent with our interpretation of the CSPD requirements in a NPRM published pursuant to the 1998 Amendments to the Act, we interpret the Act to require the DSU establish and implement appropriate, certification-based standards for all categories of professionals and paraprofessionals needed to conduct the VR program. However, in light of the difficulty States may experience in developing numerous standards at the same time, we would expect DSUs to give priority to those professions that are generally considered most critical to the success of the VR program (65 FR 10619, 10622–10623 (Feb. 28, 2000)). This requirement under the Act, as amended by WIOA, applies to all personnel positions listed under the State's vocational rehabilitation classification as it had under WIA. The specific positions covered under such a classification will vary from State to State. With respect to financial officers and legal counsel, States have the discretion to determine whether they are classified as vocational rehabilitation professionals or paraprofessionals since their classification varies between States. In many States, these positions are not dedicated solely to the DSU and its VR program, but rather are more general State personnel positions. We would agree that program and division administrators and policy and regulatory compliance officers for the DSU's VR program must be covered by the requirement in final § 361.18(c)(1).

Similarly, we would agree that the VR program director or administrator would be covered by the CSPD requirements of section 101(a)(7)(B) because that position would be considered a vocational rehabilitation professional or paraprofessional. The Secretary believes that the individual who oversees vocational rehabilitation professionals and paraprofessionals should satisfy at least the minimum education and experience requirements applicable to all vocational rehabilitation professionals and paraprofessionals.

We appreciate the comment regarding the personnel standards and their applicability to vocational rehabilitation paraprofessionals. Neither the Act nor these final regulations distinguish between vocational rehabilitation professionals and paraprofessionals. By the same token, neither the Act nor these final regulations define what constitutes a vocational rehabilitation professional or paraprofessional as opposed to an administrative staff position providing clerical or other support to rehabilitation personnel.

The distinction among vocational rehabilitation professionals, paraprofessionals, and administrative (*e.g.*, clerical and other support) staff are made at the State level in accordance with State hiring policies and procedures. Neither section 101(a)(7)(B) of the Act, as amended by WIOA, nor final § 361.18(c)(1) require the DSU to develop personnel standards for the hiring of staff who are not classified as vocational rehabilitation professionals or paraprofessionals. However, both the Act and these final regulations require a DSU to develop personnel standards for the hiring of vocational rehabilitation professionals and paraprofessionals that are consistent with the standards set forth in section 101(a)(7)(B) of the Act, as amended by WIOA, and final § 361.18(c)(1).

As such, if a national or State-approved standard—or, in the absence of such standards, other comparable requirements (*e.g.*, State personnel standards)—exists for such paraprofessional this should be the standard for such personnel. However, if no such standard exists or the DSU is unable to hire staff that meet such standard, then the DSU must, under final § 361.18(c)(1)(ii), hire vocational rehabilitation paraprofessionals who meet standards consistent with the education and experience levels established in the Act and these final regulations.

Changes: None.

De-Professionalization and Diminution of Vocational Rehabilitation Personnel

Comments: Several commenters stated that the proposed education and experience requirements seemingly discount the role and impact of the professional rehabilitation counselor working with eligible consumers to obtain competitive integrated employment. Many stated that proposed § 361.18(c)(1)(ii)(A)(*1*), which permits a baccalaureate degree plus one year of relevant experience, serves as a guideline to promote the de-professionalization of the expertise level associated with rehabilitation counseling and the professional provision of qualified services for individuals with disabilities. The commenters asserted that an individual with a baccalaureate degree, some related work experience, or volunteer work, is not equivalent to a master's degree level graduate who is a qualified counselor licensed to practice counseling.

Further, at least one commenter expressed concern that the flexibility offered by the new education and experience requirements could lead to the unintended diminution of a vocational rehabilitation workforce able to meet the needs of a consumer population with significant disabilities, which is its major focus, especially as public resources diminish. The commenter encouraged the Department to work with DSUs and academic institutions to ensure this diminution does not occur. The commenter stated that some of the degrees listed under these personnel standards would be appropriate for specialized titles such as "business relations specialists" but may not be appropriate for vocational rehabilitation counselors.

Discussion: Prior § 361.18(c)(1)(ii) permitted DSUs to hire individuals who did not meet the national or State-approved standard so long as the agency provided training to enable the individual to reach that higher standard. While WIOA deleted the provision that allowed DSUs to hire individuals at a lower standard so long as additional training was provided so that the staff person could eventually satisfy the national or State-approved standard, DSUs under final § 361.18(c)(1)(ii) must ensure that individuals who do not meet the higher standard satisfy certain statutorily-required minimum standards. Looking at the new requirements in this way, the new educational and experiential requirements merely set minimum hiring standards, which previously had been left at the DSU's discretion. In this manner, we disagree with commenters that the new provisions of section 101(a)(7)(B)(ii) of the Act, as amended by WIOA, and final § 361.18(c)(1)(ii) promote the de-professionalization of the vocational rehabilitation counselor or the diminution of the knowledge and skills needed to meet the vocational rehabilitation needs of individuals with disabilities.

We believe the education and experience requirements set forth in section 101(a)(7)(B)(ii) of the Act, as amended by WIOA, and final § 361.18(c)(1)(ii) enable DSUs to hire personnel in such a manner that results in an expansion of qualifications of staff available to provide vocational rehabilitation services. For example, the new education and experience requirements could enable DSUs to expand the number of staff trained to provide certain services critical to meeting the employment needs of individuals with disabilities and employers, such as employment specialists or job placement specialists, thereby increasing opportunities for employer engagement and the achievement of competitive integrated employment outcomes by individuals with disabilities. This broader range of acceptable education and experience could lead to a more diverse workforce in VR agencies.

Looking at the new personnel standard requirements in this way, they could be viewed as a means of enabling DSUs to expand the range of qualified personnel available to provide certain services in-house rather than having to contract for those services. DSUs could employ sufficient qualified personnel to work in teams to meet the holistic needs of the individuals served by the VR program, ranging from specific disability-related services to employment-related services. We believe this interpretation is consistent with the plain meaning of the statutory requirements in section 101(a)(7)(B) of the Act, and the heightened emphasis throughout WIOA on employer engagement and the achievement of competitive integrated employment outcomes.

Changes: None.

State Job Classification Minimum Qualifications

Comments: One commenter noted the various degrees listed (*e.g.*, psychology and business) in section 101(a)(7)(B)(ii) of the Act, as amended by WIOA, and proposed § 361.18(c)(1)(ii) are not typically seen for the same position when State governments are developing classification minimum qualifications because each of the degrees provide individuals with different skill sets. The commenter added that, while a DSU would need personnel with skill sets from many of the degrees listed, it would be unreasonable to expect that a single individual would have expertise in two or more specialized skill sets.

Some commenters stated that the standards in proposed § 361.18(c)(1) should be sufficient for recruitment of vocational rehabilitation counselors, but that the use of "and" between proposed §§ 361.18(c)(1)(i) and 361.18(c)(1)(ii) seems to imply that additional standards must be used. They expressed concern that requiring at least one year's paid or unpaid work in the field would make it challenging for DSUs to recruit qualified counselors directly from long-term training programs.

Discussion: We disagree with commenters that the degrees listed in section 101(a)(7)(B)(ii) of the Act, as amended by WIOA, and proposed § 361.18(c)(1)(ii) necessarily will pose problems for the development of minimum qualifications within State job classification. While we agree that it would be unreasonable for a single job position to list each of those degrees as a minimum qualification, it is reasonable to post various job positions within the classification for vocational rehabilitation counselors. As stated previously, we believe the amendments to WIOA provide DSUs with an opportunity to employ other personnel, such as business specialists or job placement specialists, who could complement the critical work performed by vocational rehabilitation counselors. In so doing, DSUs could minimize the need to contract for these services. While final § 361.18(c)(1)(ii) permits DSUs to hire individuals with a variety of degrees, there is no requirement or expectation that a vocational rehabilitation counselor or any other vocational rehabilitation professional or paraprofessional employed by the DSU be an expert in more than one area.

The education and experience requirements of section 101(a)(7)(B)(ii) of the Act apply only in those circumstances when the DSU is not able to hire vocational rehabilitation professionals and paraprofessionals who satisfy a national- or State-approved certification or licensure standard. Vocational rehabilitation counselors graduating from long-term training programs would meet a national or State-approved standard and could be hired in accordance with personnel standards established under section 101(a)(7)(B)(i) of the Act, which does not require that the individual satisfy minimum experience requirements.

Changes: None.

Additional or Substitute Qualifications

Comments: Two commenters recommended revising proposed § 361.18(c)(1)(ii)(B) by inserting a work experience requirement similar to that required for individuals with a baccalaureate degree as set forth in proposed § 361.18(c)(1)(ii)(A)(*1*).

Many commenters requested the proposed regulations be revised to include a new provision in § 361.18(c)(1)(ii) to allow a complement of work experience, in addition to specialized training or certification through either advanced higher education or through a legitimately recognized association that provides specialized training when working specifically with individuals who possess unique barriers to independence and require unique training, such as individuals who are blind.

Another commenter recommended that proposed § 361.18(c)(1)(ii) be revised to allow years of experience to substitute for the identified degree(s) for paraprofessionals, which could create reasonable flexibility. A requirement of years of experience, coupled with staff development required by the regulations, would assure that paraprofessionals are highly qualified to provide appropriate services to individuals with disabilities.

Discussion: We appreciate the suggestion made by two commenters adding minimum paid or unpaid work experience requirements for DSU personnel hired at the master's or doctoral level. We also appreciate the many comments recommending that, in addition to satisfying a national or State-approved standard, work experience be required for those personnel who work with individuals with significant barriers to employment, such as individuals who are blind or visually-impaired.

While we agree work experience can be valuable, section 101(a)(7)(B) sets forth explicit requirements for a DSU's personnel standards, including requirements related to minimum educational and experiential requirements. Given the explicit nature of these requirements, there is no statutory basis to require different or additional personnel standards in final § 361.18(c)(1).

Changes: None.

Interplay Between National or State-approved Certification or Licensure Standards and Minimal Educational and Experiential Requirements

Comments: Many commenters requested clarification regarding the interplay between the requirement that a State's CSPD be consistent with a national or State-approved certification or licensure standard in proposed § 361.18(c)(1)(i) and the minimal educational and experiential requirements in proposed § 361.18(c)(1)(ii). Most of these commenters did not support the proposed regulatory language, stating that it is confusing to have two sets of standards for vocational rehabilitation personnel. A few commenters questioned whether a DSU may choose between the two standards, *i.e.* choose to maintain the higher standard of § 361.18(c)(1)(i) or the lower standard of § 361.18(c)(1)(ii). Similarly, some commenters requested clarification about whether the DSUs can maintain their current personnel standards consistent with applicable national or State-approved or recognized certification, licensing, or registration requirements. These commenters were concerned that including lower standards in the regulations would force DSUs to lower their standards. Further, some commenters stated that most States have a minimum personnel standard that is greater than what is being proposed and asked whether the DSUs will have to hire vocational rehabilitation personnel at the lower educational standard.

Discussion: Contrary to the suggestions made by several commenters, the personnel standards in section 101(a)(7)(B)(i) and (ii) are separate and distinct requirements. Therefore, DSUs may not choose to implement one and not the other but, rather, must develop both standards. Under section 101(a)(7)(B)(i), States must continue to develop personnel standards that are consistent with applicable national or State-approved certification or licensure requirements, as well as develop personnel standards that satisfy minimum education and experience requirements. As has always been the case, CSPD standards do not dictate whom a State may or may not hire. Hiring is solely a State matter. Instead, the CSPD standards simply set parameters for the standards a State must use in establishing its hiring procedures. There is nothing in the Act or these final regulations to preclude a DSU from continuing to hire vocational rehabilitation professionals and paraprofessionals that satisfy the higher standard. However, in hiring individuals who do not meet a national or State-approved certification or licensure standard, DSUs must hire individuals who meet the educational and experiential requirements set forth in section 101(a)(7)(B)(ii). These individuals must have at least a baccalaureate degree in a specified field of study plus one year of relevant experience, or a master's or doctoral degree in one of the fields specified.

Further, if a vocational rehabilitation counselor is hired under the standard set forth in final § 361.18(c)(1)(i) (*e.g.*, a standard consistent with a national or State-approved standard), that vocational rehabilitation counselor is not required to meet the education or experience requirements set forth in final § 361.18(c)(1)(ii) as well. There is no requirement that an individual meet both personnel standards set forth in final § 361.18(c)(1).

Changes: None.

Succession Planning

Comments: One commenter suggested that the CSPD requirements should address succession planning at the administrative level. The commenter recommended that the final regulations be revised to incorporate CSPD requirements to address the void in administrative skill and knowledge created in DSUs by retirements.

Discussion: We agree with the commenter's concern that DSUs face a significant loss of knowledge and skills as key personnel retire. We note that DSUs are required, under final § 361.18(d)(2)(iii), to include succession planning in their staff development plans when developing personnel standards and providing on-going training.

Changes: None.

Re-Training of Staff Not Meeting Personnel Standards

Comments: Several commenters expressed serious concerns about the elimination of the requirement to re-train staff who are not meeting the DSU's personnel standards for qualified staff, in prior § 361.18(c)(1)(ii).

Discussion: While we appreciate the concern expressed by commenters regarding the deletion of the regulatory requirement for the DSU to provide re-training to personnel who do not meet the DSU's personnel standards, the statutory requirement for re-training, which had been contained in section 101(a)(7)(B)(ii) of the Act, as amended by WIA, has been deleted by the amendments made by WIOA. Despite the deletion of the regulatory requirement, there is nothing in the Act or these final regulations that prohibits a DSU from making the decision to re-train staff as the agency deems appropriate. However, there is no statutory basis for the Department to require such re-training in these final

regulations given the specific deletion of that statutory requirement.

Changes: None.

Standards of Personnel Development—Other Comparable Requirements (§ 361.18(c)(1))

Comments: Several commenters recommended that the Department define "other comparable requirements," which is included in the personnel standard in section 101(a)(7)(B)(i) of the Act and proposed § 361.18(c)(1)(i) and applies if there are no applicable national, State-approved, or recognized certification, licensing, or registration requirements. The commenters recommended that "other comparable requirements" should include competence in counseling and guidance, knowledge and application of the medical and psychological aspects of disability, knowledge and implementation of vocational testing, working knowledge and integration of labor market data and disability employment policy, and providing the services required to develop and implement individualized career plans that assist persons with disabilities in successful employment in a competitive integrated work environment.

Discussion: Section 101(a)(7)(B)(i) of the Act and final § 361.18(c)(1)(i) require a DSU to develop personnel standards that are consistent with any national or State-approved or recognized certification, licensing, or registration requirements, or, in the absence of these requirements, other comparable requirements (including State personnel requirements) that apply to the profession or discipline in which that category of personnel is providing vocational rehabilitation services. While we agree with commenters that "other comparable requirements" could include any of the areas suggested, we disagree that the final regulations should define the phrase. This phrase provides DSUs with maximum flexibility when developing personnel standards by enabling DSUs to modify personnel standards as relevant credentials evolve.

Changes: None.

Meaning of "A 21st Century Understanding of the Evolving Labor Force and the Needs of Individuals With Disabilities"

Comments: Many commenters asked for clarification of what is meant by a 21st century understanding of the evolving labor force and the needs of individuals with disabilities, as used in section 101(a)(7)(B)(ii) of the Act, as amended by WIOA, and in proposed § 361.18(c)(2)(ii). Many commenters stated that the list of examples of relevant personnel skills in proposed § 361.18(c)(2)(ii) either did not help clarify the meaning or was incomplete. Some commenters stated that the list represented skills more oriented to the medical models of the past rather than the employer focus required today. One commenter asserted that the congressional intent behind the requirements for a 21st century understanding included a focus on employment; an understanding of economic and job market trends, business management, and operations; and meeting the needs of local and regional employers.

Many commenters who thought the list of examples was incomplete suggested additions. Some were suggested because the commenters stated that customary, but critical, skills for vocational rehabilitation counselors had been left out of the list. Some brought a more modern focus to the traditional topic, refining knowledge of medical and psychological aspects of disability to include more employment-focused use of such knowledge to determine functional limitations and the vocational implications of these functional limitations on employment planning and workplace accommodations.

Other commenters provided lists of skills that represented areas in which the focus is on greater knowledge of the world of work, including labor market trends and various sources of labor market information and its use in selecting vocational goals and developing individualized plans for employment. Some commenters suggested that using information about job requirements, labor market trends, and other labor market information would help build relationships with employers through greater knowledge of their businesses and their employment requirements and would also help in job development and job placement efforts.

One group of commenters suggested that a recent U.S. Government Accountability Office (GAO) study, which identified gaps in the knowledge of vocational counselors employed by the U.S. Department of Veterans Affairs, could serve as a starting point for developing a list of skills needed for the 21st century vocational rehabilitation counselor employed by the DSU. Some skills included familiarity with Bureau of Labor Statistics data, the Dictionary of Occupational Titles, and the Department of Labor's O*NET occupational system; vocational testing and assessment; job accommodations; training in the Americans with Disabilities Act (ADA) and other employment discrimination laws; vocational implications of various disabilities, including traumatic brain injury, post-traumatic stress syndrome, mental illnesses, and autism; employment plan development; Social Security work incentives, and the Ticket to Work and Self-Sufficiency program; and knowledge of disability programs in the State and local area, including independent living programs.

One commenter suggested that the six areas of knowledge and skills in proposed § 361.18(c)(2)(ii) could be used to ensure vocational rehabilitation personnel have a 21st century understanding. The commenter stated the examples focused on critical knowledge domains and closely mirror the knowledge domains required for accreditation by a vocational rehabilitation counseling program. However, the commenter expressed concern that the process of evaluating whether candidates have the necessary knowledge and skills would be insufficient without the assurance that the candidate graduates from an accredited vocational rehabilitation counseling program. The commenter recommended that the Department recognize graduates from accredited programs as having the knowledge, skill, and experience requirements that are necessary to provide high quality services to individuals with disabilities.

Discussion: We appreciate the many comments and suggestions we received about the skills and knowledge essential to ensuring a 21st century understanding of the evolving labor force and the needs of individuals with disabilities under section 101(a)(7)(B)(ii) of the Act, as amended by WIOA, and in proposed § 361.18(c)(2)(ii). Lacking a widely-accepted definition of the term, we proposed several examples in the regulations to help clarify its meaning. Most commenters, however, stated that the examples in proposed § 361.18(c)(2)(ii) were not sufficient because they did not include a clear focus on employment or emphasize the use of the most up-to-date techniques.

In considering what changes to make in the examples, we first recognized that the requirements for a 21st century understanding apply to knowledge and skills relevant to working with both employers and individuals with disabilities. We also believe that "21st century" refers to maintaining a cutting edge, state-of-the-art approach to whatever topic is included in the list, not merely maintaining activities at traditional, established levels. These underlying principles governed the review, selection, and wording of the examples.

We looked at traditional topic areas that are still necessary for working with individuals with disabilities and employers, with the intent to add language that suggests use of contemporary practices or that adds emphasis on an employment focus. For example, we replaced the previous language about knowledge of medical and psychological aspects of disability with language about knowledge of the functional limitations of various disabilities and the vocational implications of these functional limitations for employment.

We considered new approaches to learn about the world of work, large-scale employer needs (*e.g.,* labor market trends and occupational shortages), small-scale employer needs (*e.g.,* specific job requirements, soft skill requirements), and ways to use information differently to inform traditional vocational rehabilitation practices (such as using labor market information to assist in developing vocational goals and employment plans, while providing informed choice). We also took into consideration the GAO report titled "VA Vocational Rehabilitation and Employment: Further Performance and Workload Management Improvements Are Needed" (GAO–14–61) published January 14, 2014, as well as various lists of suggested examples provided by national organizations and endorsed by other commenters. After considering all of the comments and suggestions received, we have amended the examples in final § 361.18(c)(2)(ii). We clarify that the term "apprenticeships" as used in 361.18(c)(2)(ii)(D) does not include Registered Apprenticeships.

In response to commenters asking whether the "21st century understanding" requirement applies only to vocational rehabilitation counselors, section 101(a)(7)(B) of the Act, as amended by WIOA, and final § 361.18(c) require the DSU to develop personnel standards that apply to all vocational rehabilitation professionals and paraprofessionals, not just vocational rehabilitation counselors. The revised list of examples set forth in final § 361.18(c)(2)(ii) provides a comprehensive, but not exhaustive, list of skills necessary for achieving employment outcomes in the 21st century. Because we realize that States may choose to employ staff in a variety of positions, the skills listed may be applicable to various positions in differing ways.

Finally, as we described earlier in the *Applicability of Education, and Experiential Requirements to Rehabilitation Counselors (§ 361.18(c)(1)) section,* we agree with the comment that accredited programs provide vocational rehabilitation counselors with knowledge and skills critical to providing vocational rehabilitation services to individuals with disabilities. However, section 101(a)(7) of the Act does not specify that individuals pursuing employment as vocational rehabilitation counselors must obtain an undergraduate or a graduate-level degree in rehabilitation counseling from accredited programs and final § 361.18(c) mirrors the Act in this respect. In addition, we recognize that other DSU personnel, such as employment specialists and job placement specialists, serve a critical role in working with employers and individuals with disabilities. The Secretary believes all vocational rehabilitation professionals and paraprofessionals must have the knowledge and skills necessary to satisfy the "21st century understanding" requirement.

Changes: We have substantially revised the examples in final § 361.18(c)(2)(ii) to provide a more robust list of the skills and knowledge needed to meet the needs of employers and individuals with disabilities in the evolving 21st century labor market.

Staff Development (§ 361.18(d))

Comments: Several commenters requested clarification regarding proposed § 361.18(d)(1)(i), which requires, as part of the DSU's system of personnel development, training implemented in coordination with entities carrying out State programs under section 4 of the Assistive Technology Act of 1998 (29 U.S.C. 3003). Some of these commenters asked whether the purpose of this provision is to require those entities to provide the training to the DSUs. If so, the commenters requested that the Department revise proposed § 361.18(d)(1)(i) to make that intent clear. These commenters also sought clarification on how the training is to be coordinated with the State's assistive technology program. Other commenters thought a Federal "training fund" source should be made available for the training, regardless of who provides it. Still other commenters stated that proposed § 361.18(d)(1)(i) should be revised to require that the DSUs fund the entities carrying out the State's assistive technology program to provide this training.

Many commenters expressed concerns about insufficient training funds to meet the training needs of vocational rehabilitation personnel and requested that the Department require DSUs to allocate training funds for any required CSPD training. The commenters were further concerned that the potential hiring of staff at the baccalaureate or higher degree in a discipline other than vocational rehabilitation counseling would increase the need for training in order to ensure these personnel have solid knowledge of the VR program. Despite this expected increased need for training, DSUs will face reduced financial resources because of the elimination of the In-Service Training Grant program by WIOA. Therefore, these commenters were concerned that DSUs would allocate less funding for staff development training, certification fees, and other related expenses. One commenter requested that the Department provide training funds to each DSU to assist in providing staff development and personnel training in the areas mandated by WIOA. Still another commenter recommended that the Department offer regional training rather than onsite training through its monitoring or technical assistance process. The commenter said the regional trainings could benefit a larger group of personnel.

A few commenters recommended that proposed § 361.18(d) be revised to require specific training areas for staff development. For example, one commenter stated that many vocational rehabilitation counselors struggle to identify appropriate service providers for individuals with autism. The commenter requested further guidance from the Department on providing vocational rehabilitation services to this population in order to increase opportunities for competitive integrated employment.

Another commenter asked the Department to require DSUs to include in their agency planning and oversight the substantial involvement of mental health advocates, including individuals who have personally experienced mental illness, treatment, and recovery. Similarly, another commenter recommended that DSUs be required to hire and train peer service providers experienced in working with individuals with mental illness who are seeking vocational rehabilitation services, thereby increasing the DSU's effectiveness in serving this population. Still another commenter recommended that staff development include caseload management training, including implementation standards, measures, techniques, and strategies.

Another commenter stressed the importance of coordinating personnel development activities under the Act and the IDEA. The commenter

recommended that State and local education agencies and DSUs establish memoranda of understanding on coordinating personnel development activities. Yet another commenter recommended that proposed § 361.18(d) require staff development to emphasize the need for evolving skills, including understanding the evolving labor market, nondiscrimination laws, the medical and psychosocial aspects of various disabilities, and how this understanding evolves over time.

Discussion: We appreciate the comments seeking clarification of the requirement that the DSU's CSPD must include assistive technology training for vocational rehabilitation professionals and paraprofessionals. Section 101(a)(7)(A)(v)(I) of the Act was amended slightly by WIOA, but not in a manner that imposed additional requirements for this particular training. Therefore, final § 361.18(d)(1)(i) contains only technical changes from the prior regulation, and there is no statutory basis for the Department to add new requirements regarding how the training should be financed. Section 101(a)(7)(A)(v)(I) of the Act, as amended by WIOA, and final § 361.18(d)(1)(i) simply require DSUs to ensure their vocational rehabilitation professionals and paraprofessionals are adequately trained. This must include a system for the continuing education of personnel in rehabilitation technology, and it must include training implemented in coordination with the entity carrying out the State's assistive technology program. It is within the DSU's discretion to determine how and by whom such training will be provided, so long as the training is adequate.

Further, it is beyond the scope of the Act and these regulations to mandate that an entity, authorized under a separate Federal law, such as the Assistive Technology Act of 1998, perform any action, including providing the training described here. There is also no separate Federal program from which money may be given to DSUs to pay for this training, as in-service training funds were eliminated from the Act by WIOA. However, the Act does not prohibit DSUs from using title I VR program funds to provide the training directly or through a contract with the entity providing assistive technology services in the State.

There are many possible sources of training on assistive technology and several ways in which the DSUs may coordinate with the State assistive technology program entity. For example, the DSU may select a trainer with input from the State's assistive technology program entity, or the DSU and the State assistive technology program entity may jointly train DSU staff. Final § 361.18(d)(1)(i) provides the DSU with maximum flexibility to coordinate with the assistive technology program entity in the manner it deems appropriate.

While we understand the limited financial resources available to DSUs, there is no authority under the Act to provide funding to DSUs for any of the trainings required by section 101(a)(7) of the Act and final § 361.18(d)(1)(i). As the commenters noted, WIOA eliminated the In-Service Training Grant program, which had been used by many DSUs to provide staff development training. Nonetheless, the Act has, and continues to, permit DSUs to use title I VR program funds to provide staff development and training. Given the availability of VR program funds for this purpose, we disagree that DSUs necessarily will allocate fewer resources for this effort.

Finally, the Department will explore options for providing staff development trainings on a broader scale, including regional training.

As section 101(a)(7) of the Act is specific about the training areas that may be included for staff development, there is no statutory basis for imposing additional training requirements. However, final § 361.18(d)(2) is consistent with the Act in that it gives DSUs maximum flexibility to use staff development trainings that are specific to each DSU's needs. Nevertheless, we understand the concerns raised by commenters requesting training on specific topics. We agree that serving individuals with autism may raise many complex issues, some of which are addressed in an Institute on Rehabilitation Issues Monograph on rehabilitation of individuals with autism spectrum disorders, which may be found at: *http://www.iriforum.org//books.aspx*.

While there is statutory authority under section 101(a)(21)(A)(i)(III) to require DSUs to involve mental health advocates in the agency's planning and oversight activities when the DSU has an independent commission or council, there is no specific statutory requirement under section 101(a)(7) that DSUs hire mental health peer service providers. Moreover, there is no statutory basis under section 101(a)(7)(A)(v) of the Act to require caseload management be included in staff development training. However, there is nothing to preclude a DSU from doing these things under § 361.18(d)(2) if a need is identified by the DSU.

Finally, we agree with the commenter regarding the need for coordinating staff development between DSUs and State and local education agencies. The Act, as amended by WIOA, places heightened emphasis on providing vocational rehabilitation services to students and youth with disabilities. Although section 101(a)(7) of the Act does not require DSUs to enter into memoranda of understanding with educational agencies, final § 361.18(f) continues to mandate this coordination as it has for many years in prior regulations. We also agree that staff development should emphasize the evolving skills needed to provide vocational rehabilitation services so that individuals with disabilities may achieve competitive integrated employment in the evolving 21st century labor market. Only with these evolving skills will vocational rehabilitation personnel be able to engage effectively with employers in the evolving labor market of the 21st century. We believe the staff development requirement set forth in final § 361.18(d)(1) and (2) covers these skills needed in the 21st century evolving labor market.

Changes: None.

Training Based on the Needs of the DSU

Comment: None.

Discussion: After further Departmental review, we have determined proposed § 361.18(d)(2) contained a drafting error by inadvertently using the word "should" rather than "must." The regulation has used the term "must" since final regulations were published in 1997, with regard to the specific training areas for staff development. The specific training areas "must" be based on the needs of the DSU. Final § 361.18(d)(2) reflects the correct wording, and this change in these final regulations represents no change in the requirement for DSUs because the provision now reads as it has since 1997.

Changes: Final § 361.18(d)(2) has been changed to require training areas for staff development be based on the needs of the DSU, as is true in prior regulations.

Public Participation Requirements (§ 361.20)

Public Hearings for Changes in an Order of Selection

Comments: Several commenters supported the changes to the prior regulations in proposed § 361.20 that outline the requirements for public notice and participation prior to the adoption of any substantive policies or procedures governing the provision of vocational rehabilitation services under the State plan, including substantive

amendments. Proposed § 361.20 clarifies through descriptive examples the distinction between substantive and administrative changes to VR program rules, policies, and procedures. While "substantive changes" trigger the requirement that the designated State agency provide notice and conduct a public meeting, "administrative changes" typically do not. These commenters stated that the proposed regulation clarifies and supports a more rigorous and open channel of communication between the designated State agency, the SRC, and community stakeholders.

Nonetheless, several commenters requested further clarification. One commenter asked if a DSU must conduct a public meeting every time it opens or closes a priority category under an order of selection.

Discussion: We appreciate the support for, as well as the requests for further clarification of, proposed § 361.20, which distinguishes between those substantive changes requiring public meetings and those administrative changes that do not.

Final § 361.20(a)(2)(v) states that adopting or amending policies implementing an order of selection constitutes a substantive change that requires public input. However, it is the Department's long-standing policy that a DSU need not conduct a public meeting each time it opens or closes a priority category if doing so is consistent with the information describing the implementation of the order of selection in that agency's currently approved State Plan (now the VR services portion of the Unified or Combined State Plan).

By contrast, we believe that closing one or more priority categories would be a substantive change in the administration of the VR program, and would consequently trigger the requirement to conduct a public meeting if such change represents a departure from the manner in which the DSU has implemented the order of selection under the approved State Plan. For example, if a DSU implements an order of selection and closes one or more priority categories after one or more years without closing priority categories, we believe this action would constitute a substantive change in the administration of the VR program and would require a public meeting.

Changes: None.

Public Meetings of the State Rehabilitation Council

Comments: One commenter asserted that meetings of the SRC should fulfill the requirements of proposed § 361.20, since these are public meetings, and the Council is charged with the responsibility to review vocational rehabilitation policies and other substantive changes to the VR program. The commenter stated that holding public meetings in addition to the Council's meetings takes time away from the central work of the DSU.

Discussion: Under section 101(a)(16)(A) of the Act and final § 361.20, it is the responsibility of the designated State agency, not the SRC, to conduct public meetings. Therefore, the Council's meetings cannot satisfy, on their own, the requirement of final § 361.20. Likewise, it is the responsibility of the Council, and not the designated State agency, to conduct its meetings as required by section 105 of the Act and final § 361.17. We recognize that the designated State agency works closely with the Council, as it is required to do, with regard to substantive changes made to policies and procedures affecting the VR program. Therefore, if the designated State agency and the Council determine it would be expedient and effective to do so, they may use the regular or special meetings of the Council as a forum for obtaining input from the Council and the public on substantive changes in VR program rules, policies, and procedures. If the designated State agency chooses to conduct joint meetings in this manner, they must ensure that all requirements concerning the conduct of public meetings in final § 361.20 are satisfied. We emphasize that neither the designated State agency nor the Council are required to conduct joint meetings for the purpose of gathering public input on substantive changes to the administration of the VR program under either final §§ 361.17 or 361.20, though both entities may find it efficient to do so.

Changes: None.

Substantive and Administrative Changes

Comments: A few commenters stated that the distinction between those changes in DSU rules, policies, and procedures that require public comment and those that do not was not clear in the proposed regulation, and requested further clarification.

Discussion: With respect to the comments seeking further clarification and examples of what constitutes a substantive versus administrative change, the commenters did not specify what additional clarification was needed, and so we can provide no further examples. However, the lists of examples in final § 361.20(a)(2) and (a)(3) are not exhaustive; rather, they illustrate some of the most common substantive and administrative changes contemplated by DSUs. We recognize that States may contemplate many more changes to their rules, policies, and procedures implementing the VR program than those identified in these final regulations.

In addition, the Act, as amended by WIOA, and these final regulations provide significant flexibility to the States in the manner in which they administer the VR program and deliver vocational rehabilitation services, and States may adopt rules, policies, and procedures governing the administration of the program that best suit their particular circumstances. As a result, States may adopt rules, policies, and procedures that vary widely from one another, and we do not believe that it is practicable to further clarify, or add to, the examples listed in final § 361.20(a)(2) and (a)(3). While we believe that final § 361.20 provides States with the guidance necessary to determine if a potential change in rules, policies, and procedures constitutes a substantive change requiring a public meeting, we encourage States to seek guidance from the Department about State specific changes.

Changes: None.

Public Comment Through Electronic Means

Comments: One commenter asked if publishing policy changes on a State agency's Web site and receiving public comment and input at the Web site constitutes a public meeting.

Discussion: The publication by the DSU of a proposed change in rules, policies, or procedures governing its administration of the VR program on a Web site does not constitute a public meeting under section 101(a)(16)(A) of the Act or final § 361.20. As used in final § 361.20(a), which requires public meetings to be held throughout the State, "public meeting" means a gathering of people in a physical or virtual (as in the case of videoconferences or teleconferences) location. Nonetheless, designated State agencies can use postings on a Web site and other innovative strategies to gather valuable input from individuals with disabilities, community rehabilitation programs, and other stakeholders affected by proposed changes in rules, policies, or procedures.

Changes: None.

Requirements Related to the Statewide Workforce Development System (§ 361.23)

Comments: Apart from comments on the joint regulations proposed by the Departments of Education and Labor

implementing jointly administered requirements for the one-stop delivery system, one commenter requested that we retitle § 361.23 to improve the reference to the joint regulations governing the one-stop delivery system. A second commenter expressed concern that one-stop centers cannot meet the needs of individuals who are blind or visually impaired. The commenter did not provide an explanation or recommendation on how the regulations could be revised to address this concern.

Discussion: Final § 361.23 provides a cross-reference to the joint regulations governing the one-stop delivery system in subpart F of part 361. Therefore, we believe there is no need to retitle or amend the section further as suggested by the commenter.

We appreciate the concern regarding the availability of services at the one-stop centers for individuals who are blind or visually-impaired. While we understand that there have been some issues with respect to accessibility and availability of services for individuals with significant disabilities in the past, section 121(b)(1)(B)(iv) of WIOA identifies the VR program as a core partner of the workforce development system. As such, DSUs and other core partners of the workforce development system are required to ensure the programmatic and physical accessibility of the services provided through the one-stop centers. For further information, see the joint regulations governing the one-stop delivery system published elsewhere in this issue of the **Federal Register.** Furthermore, we strongly encourage DSUs that serve individuals who are blind or visually impaired to ensure the needs of these individuals are met through the one-stop delivery system, as appropriate, by strengthening their relationships with other core programs through the memoranda of understanding required under section 121 of WIOA and the joint regulations in subpart F. The Secretary believes the strengthened relationships between the VR program and other core programs, as well as the delivery of vocational rehabilitation services directly at the one-stop centers, will ensure the needs of individuals who are blind or visually impaired are met.

Changes: None.

Cooperation and Coordination With Other Entities (§ 361.24)

General

Comments: Some commenters expressed concerns about the difficulty in establishing new collaborative relationships, the lack of or limited fiscal resources necessary to develop and support collaboration, and mechanisms for accountability and transparency. One commenter indicated that collaborative relationships do not currently exist in their State and that establishing them will require additional money and will alter the methodology for developing the State Plan and the statewide needs assessment.

A few commenters expressed concern that proposed § 361.24 contained limited language regarding the contents of agreements and the delineation of issues that should be addressed. For example, a few commenters remarked that there was no requirement for an agreement between the DSU and Medicaid, and mental health agencies, for people with psychiatric disabilities needing long-term employment supports funded by Medicaid. The commenters suggested that cooperative agreements include identification of individuals needing extended supports, referral mechanisms, the use of Medicaid funds in providing extended supports, how funds will be braided between the DSU and agencies with primary responsibilities to serve individuals with specific disabilities, and sources and criteria for providers of extended supports. A similar comment about waivers for home and community based settings stressed that all parties must work cooperatively at both the policy and individual levels; however, the commenter noted that the proposed regulations merely require there to be an agreement, without specifying minimum contents of those agreements.

Discussion: We appreciate and understand the concerns about the difficulty in establishing new collaborative relationships required under the Act, the lack of or limited fiscal resources necessary to do so, and mechanisms for accountability and transparency. However, DSUs have extensive experience in meeting the requirements under prior § 361.24 for cooperating and coordinating with other entities, and we believe that this will enable DSUs to implement the collaboration requirements in the Act as amended by WIOA.

We also appreciate the concerns that proposed § 361.24 contained limited language regarding the contents of agreements and the delineation of issues that should be addressed. While section 101(a)(11) specifies the content requirements for only some of the cooperative agreements, nothing in the Act or final § 361.24 precludes DSUs from including specific content to clarify the responsibility of collaborating entities through these agreements, and we strongly encourage DSUs to do so. For example, DSUs may enter into cooperative agreements with Medicaid and mental health agencies for people with psychiatric disabilities needing long-term employment support funded by Medicaid. Cooperative agreements may include identification of individuals needing extended supports, referral mechanisms, the use of Medicaid funds in providing extended support, how funds will be braided between DSUs and agencies with primary responsibilities to serve individuals with specific disabilities, and sources and criteria for providers of extended services.

Changes: None.

Cooperation and Collaboration With Other Agencies and Entities

Comments: Many commenters supported proposed § 361.24, which expanded the entities with whom the DSU must collaborate and coordinate its activities under the VR program and several offered additional recommendations.

One commenter especially supported the coordination with employers. Other commenters supported the requirement for cooperative agreements with the State Medicaid agency and the State agency primarily serving people with intellectual and developmental disabilities; however, several commenters noted that the State agency responsible for providing mental health services was not included in this requirement and recommended its inclusion.

Many commenters strongly recommended that DSUs be required to enter into formal interagency agreements with AIVRS grant recipients and with Tribal Education Agencies (TEAs) located in the State.

One commenter recommended that the assurance in the VR portion of the Unified or Combined State Plan specify that the DSU coordinate activities with other State agencies functioning as an employer network under the Ticket to Work and Self-Sufficiency Program established under section 1148 of the Social Security Act (42 U.S.C. 1320b–19), and that the network be expanded to include other agencies acting as employer networks. A related comment inquired whether there should be a Federal Partnership Plus agreement instead of individual State agreements.

A few commenters suggested that in the development of the vocational rehabilitation services portion of the Unified or Combined State Plan, the Department require the DSU to collaborate with the lead entity

implementing programs under the Assistive Technology Act of 1998.

Discussion: We appreciate the commenters' review, support, and recommendations. Although some commenters recommended adding the State agencies responsible for providing mental health services to the required cooperative agreement with the State Medicaid agency and the State agency serving individuals with intellectual and developmental disabilities, section 101(a)(11)(G) of the Act does not require such an agreement and, in fact, is very specific about the entities with which the DSU must develop interagency agreements. For this reason, there is no statutory basis for us to require the DSUs to enter into formal cooperative agreements with the State agencies responsible for providing mental health services.

However, we agree with commenters that it could be beneficial to individuals with disabilities to formalize coordination of services between the DSUs and the State agencies providing mental health services. While final § 361.24(f) does not require a formal cooperative agreement, as the commenters suggest, there is nothing in the Act or in this section that prohibits a DSU from entering into a formal cooperative agreement with the State agencies providing mental health services. Furthermore, section 101(a)(11)(K) of the Act, as amended by WIOA, and final § 361.24(g) stress the importance of the relationship between the DSU and the State agencies providing mental health services and requires collaboration between them.

Similarly, while we agree with commenters that coordination and collaboration between DSUs and entities holding section 14(c) certificates under the FLSA and Tribal Education Agencies could be beneficial for different reasons and we encourage such coordination and collaboration, there is no basis under section 101(a)(11) of the Act to require this. However, Section 101(a)(11)(H) of the Act and final § 361.24(d) do require the VR services portion of the Unified or Combined State Plan to include an assurance that the State has entered into a formal cooperative agreement with each AIVRS grant recipient in the State.

Additionally, the Department does not have the authority under section 101(a)(11)(J) of the Act to expand the requirement in final § 361.24(i) to include non-State agencies acting as employer networks. The Act only requires the DSU to coordinate with State agencies serving as employment networks under the Ticket to Work program. While final § 361.24(i) does not impose the requirement on the DSUs for non-State agencies serving this function, there is nothing in the Act or these final regulations that would prohibit a DSU from doing so. Similarly, the statute does not provide the authority to develop a Federal Partnership Plus agreement in lieu of individual State agreements.

Section 101(a)(11)(I) of the Act and final § 361.24(h) require an assurance in the VR portion of the Unified or Combined State Plan that the DSU and the lead agency and the entity, if any, implementing programs under section 4 of the Assistive Technology Act of 1998 have developed working relationships and will enter into agreements for the coordination of their activities, including the referral of individuals with disabilities to programs and activities described in that section. However, the Act does not require that the DSU collaborate with the Assistive Technology Act program in developing the VR portion of the Unified or Combined State Plan. Therefore, to add this requirement in final § 361.24(h), as recommended, is not supported by the Act. Also, nothing in the Act precludes a DSU from seeking input from the Assistive Technology Act program in the development of the VR portion of the Unified or Combined State Plan.

Changes: None.

Non-Educational Agencies

Comments: One commenter asked for clarification of non-educational agencies and requested examples.

Discussion: Section 101(a)(11)(C) of the Act, as amended by WIOA, and final § 361.24(a) require the DSU to describe in the VR services portion of the Unified or Combined State Plan its cooperation with, and use of, a variety of entities, including non-educational agencies serving out-of-school youth. In response to the commenter, the Act does not define non-educational agencies. Therefore, the Act and these final regulations maximize flexibility because the DSU is not limited to a list that may or may not be applicable in any given State. However, we believe that non-educational agencies could include public systems such as welfare services, foster care, and the juvenile or criminal justice systems serving out-of-school youth. Non-educational agencies also could include those State or local agencies that administer the youth formula grant program authorized under title I of WIOA.

Changes: None.

Federal Agreements

Comments: A few commenters asked whether we intend to establish working arrangements or agreements with agencies at the Federal level to assist States in their efforts to implement proposed § 361.24, and one suggestion was made to establish an interagency coordinating workgroup to review any working arrangements or agreements with these agencies.

Discussion: The Department already cooperates and works collaboratively with its Federal partners. The Act does not provide for formal arrangements at the Federal level for the coordination, collaboration, and cooperation required by section 101(a)(11) of the Act; however, we believe that guidance and technical assistance in the development of agreements and cooperative arrangements may be beneficial. Where appropriate, the Department will work collaboratively with Federal partners to assist States.

Changes: None.

Guidance on the Braiding of Funds

Comments: Two commenters suggested that Federal agencies coordinate guidance regarding the ways in which various funding streams may be braided to help States implement agreements to fully support individuals with disabilities. One commenter requested that the Department emphasize transparency of coordination efforts to track resources to ensure accountability and sustainability.

Discussion: Each Federal program has its own requirements for the expenditure of funds, and States must adhere to those requirements when collaborating. Moreover, while the Uniform Guidance, as set forth in 2 CFR part 200, provides for the braiding and blending of funds, it also requires that funds must be spent solely on allowable costs, namely those costs permitted under and allocable to that program. A cost is allocable to the extent that the program receives a benefit relative to the expenditure of those funds (in other words, a proportionate share of those expenditures). While the Department exercises oversight of the expenditure of funds by DSUs under the Act, we do not have the authority to provide guidance related to the expenditure of funds provided by other Federal agencies or programs. However, we support transparency of coordination efforts to track resources to ensure accountability and sustainability.

Changes: None.

Requirements for Training

Comments: One commenter suggested including joint training among the activities in which the DSU must coordinate with other entities.

Discussion: There is no authority under section 101(a)(11) of the Act to require the DSUs to add joint training to the activities that the DSU must coordinate with other entities, with one exception. Joint training is required in section 101(a)(11)(H) with grant recipients under the AIVRS program, but not with the other entities in section 101(a)(11) of the Act.

Changes: None.

Notification of the Client Assistance Program

Comments: One commenter suggested that proposed § 361.24 require that all cooperating agencies notify program participants about the CAP in each State.

Discussion: The suggestion is inconsistent with the Act. Section 20 of the Act requires only programs and projects providing services under the Act, not cooperating agencies, be mandated to notify program participants of the CAP. Moreover, section 112 of the Act authorizes the CAP to serve only individuals who are applicants or consumers of programs funded under the Act. To the extent that a cooperative entity is serving an individual who is also an applicant or consumer of a program funded under the Act, that individual would already receive information about the CAP under section 20 of the Act.

Changes: None.

Requirements for Third-Party Cooperative Arrangements (§ 361.28)

In-Kind Contributions

Comments: Two commenters agreed with the changes to the prior regulation in proposed § 361.28. Many commenters, primarily from one State, noted that excluding costs for administrative time and other indirect costs paid by third parties as an allowable source of match would negatively impact cooperative arrangements between VR agencies and their partners.

One commenter requested that the regulations maintain flexibility for States to use in-kind funding contributions from partners to augment a State's match and leverage State funding. Another commenter expressed concern that as a result of the proposed changes, services for students and clients in one program would cease, and that school district employees would lose their jobs.

Discussion: We appreciate the commenters' concerns, and agree that eliminating the ability of third-party cooperative agencies from using certified personnel time would indeed pose a hardship, but such prohibition is not contained in § 361.28, either proposed or final. Section 361.28(c), both proposed and final, explicitly permits public third-party cooperative agencies to provide match via certified personnel time for staff directly providing the vocational rehabilitation services under the third-party cooperative arrangement, as they have been permitted to do for many years. For example, for a school that is the cooperating agency, the cooperating agency may use the certified time for the teacher responsible for teaching the students under the third-party cooperative arrangement program as a permissible source of match since the teacher is directly providing the service under the third-party cooperative arrangement. Final § 361.28(c) does not change the long-standing arrangements that many DSUs have with third-party cooperative agencies, such as the schools, with regard to certified personnel time. However, not all certified personnel time is permissible as a source of match under a third-party cooperative arrangement. As stated above, the teacher's time is permissible for match purposes under the VR program because he or she is directly providing the service, but certified time for other school staff such as principals, vice principals, secretaries, and supervisors, is not permissible for match purposes under the VR program because these individuals do not directly provide vocational rehabilitation services. The certified time for these individuals is a third-party in-kind contribution as defined in 2 CFR 200.96 and, as such, is not permissible source of match for the VR program. While final § 361.28(c) is a new provision, the content merely clarifies the matching requirements that existed in accordance with § 361.60(b), which remains virtually unchanged by these final regulations. The changes made to this section further clarify the allowable sources of match under third-party cooperative arrangements. Consequently, we believe that final § 361.28(c) should have little or no effect on the services for students and other individuals with disabilities served through third-party cooperative arrangements or the cooperative agencies and their employees.

Contrary to what some commenters appear to believe, third-party in-kind contributions have never been an allowable source of match under the VR program, including for purposes of third-party cooperative arrangements. Final § 361.60(b)(2), which remains unchanged, prohibits the use of third-party in-kind contributions as a source of match for the VR program and this prohibition would apply to third-party cooperative arrangements under the VR program as well. However, during monitoring of the VR program, the Department has found that many DSUs seem to be unaware of this prohibition, especially in the context of third-party cooperative arrangements. For this reason, the Department proposed revisions to § 361.28(c), which are maintained in these final regulations, to remind DSUs of the allowable sources of match for third-party cooperative arrangements. Specifically, these sources include cash transfers from the cooperating agency to the DSU and certified personnel expenditures of cooperating agency staff who directly provide vocational rehabilitation services under the third-party cooperative arrangement, both of which were proposed in the NPRM. In final § 361.28, we have added a new paragraph (c)(3) to specify that other direct expenditures incurred under the contract with the cooperating agency only for the direct provision of services under the third-party cooperative arrangement may be an allowable source of match. These expenditures are distinguished from in-kind contributions because the expenditures were incurred specifically for the purpose of the third-party cooperative arrangement and in accordance with the terms and conditions of the contract and within the contract period, all of which can be verified by supporting documentation from the cooperating agency. For example, if it was necessary for a cooperating agency to purchase instructional materials to provide new or expanded services authorized under the third-party cooperative arrangement contract, and if those materials were not already available to the cooperating agency, the expenditures for those materials may be an allowable source of match. On the other hand, expenditures for costs incurred by the third-party cooperating agency not directly for the provision of vocational rehabilitation services, such as, indirect costs, depreciation, existing utilities, space and supplies are not an allowable source of match because they are third-party in-kind contributions as defined in 2 CFR 200.96.

Changes: We have revised final § 361.28 by adding new paragraph (c)(3) to permit other direct expenditures incurred by the cooperating agency to be used as a source of match so long as those expenditures were incurred specifically for the purpose of the third-party cooperative arrangement.

Students Who Are Eligible or Potentially Eligible for Services

Comments: One commenter requested that proposed § 361.28(a)(2) include services provided by the cooperating agency for students with disabilities who are eligible or potentially eligible for services from the DSU.

Discussion: Under final § 361.28(a)(2), which remains unchanged from prior regulations, vocational rehabilitation services provided under a third-party cooperative arrangement are only available to applicants for, or recipients of, services from the VR program. Given amendments to the Act made by WIOA, particularly new provisions in section 103(b)(7) regarding transition services to groups of students and youth with disabilities and section 113 regarding the provision of pre-employment transition services to students with disabilities, it is possible that some of these services will be provided to youth or students with disabilities who have not yet applied or been determined eligible for vocational rehabilitation services. This means that these students and youth with disabilities would be considered a ''recipient'' of vocational rehabilitation services for purposes of final § 361.28. As such, DSUs could enter into third-party cooperative arrangements for the provision of these group transition services or pre-employment transition services so long as all requirements of final § 361.28 are satisfied.

Changes: None.

Statewide Assessment; Annual Estimates; Annual State Goals and Priorities; Strategies; and Reports of Progress (§ 361.29)

Comprehensive Statewide Needs Assessment

Comments: We received many comments on proposed § 361.29 pertaining to statewide assessment, annual estimates, goals and priorities, strategies, and reports of progress. One commenter requested clarification of the role of SRCs in the conduct of a comprehensive statewide needs assessment under WIOA.

Several commenters suggested that we revise § 361.29(a) to require that the comprehensive statewide needs assessment be conducted independently, thereby helping to ensure that the needs assessment is more objective and comprehensive.

Another commenter requested that we add a requirement to proposed §§ 361.29(a)(1)(i) and 361.29(b) that the statewide assessment include individuals who are working in subminimum wage and sheltered employment for employers using section 14(c) certificates issued by the Department of Labor under the FLSA. The commenter recommended that because States are required to conduct annual reviews of individuals in subminimum wage and sheltered employment, the needs of these individuals should be added to the assessment requirements under § 361.29(a).

Additionally, the commenter stated that States should be required to review the quality of supported employment services provided to individuals with the most significant disabilities and ensure that any employer holding subminimum wage certificates under section 14(c) of the FLSA should be able to provide supported employment services. Lastly, the same commenter asserted that States should include data on individuals working in segregated employment in any reports to RSA.

Discussion: In response to the comment requesting clarification of the role of the SRC, there is no authority under section 101(a)(15) or 105 of the Act or under title I of WIOA for the SRC to participate in the conduct of any needs assessments required by title I of WIOA. The activities of the Council are limited to those listed in section 105(c) of the Act and final § 361.17(h), both of which remain unchanged by WIOA or these final regulations. In general, the SRC's responsibilities encompass only functions associated with the conduct of the VR program under title I of the Act, not those functions of the VR program as a core partner in the workforce development system under title I of WIOA.

Specifically, section 105(c)(3) and final § 361.17(h)(3) authorize the Council to advise the DSU on activities carried out under title I of the Act and part 361 and to assist with the preparation of the VR services portion of the Unified or Combined State Plan, applications, reports, needs assessments, and evaluations required to be carried out under title I and part 361.

We disagree with the recommendation to require that the comprehensive statewide needs assessment be conducted independently. Final § 361.29(a) mirrors section 101(a)(15)(A) of the Act, which does not require that the assessment be carried out independently. On the contrary, that provision requires that the DSU and Council jointly conduct the assessment every three years. Therefore, there is no authority to revise § 361.29(a) as the commenters recommend.

The contents of the comprehensive statewide needs assessment are outlined in section 101(a)(15)(A) of the Act and final § 361.29(a) is consistent with the statute. However, nothing in the Act and these final regulations prohibits a DSU and Council from conducting a needs assessment that includes additional elements, such as the needs of individuals in subminimum wage and sheltered employment.

Changes: None.

Annual Estimates and Reports of Progress

Comments: One commenter supported the change in proposed § 361.29 that requires DSUs that have implemented orders of selection to estimate and report how many individuals with disabilities are not receiving services, asserting this will provide indirect data regarding the appropriateness of not implementing an order of selection. One commenter requested clarification as to what the Department means by the submission of annual estimates ''at such time and in such manner to be determined by the Commissioner'' and expressed concern that this was not consistent with the continued requirements to submit various annual reports and updates. The same commenter suggested that the phrase ''standards and indicators authorized by Section 106 of the Act'' be removed as no longer relevant and that only performance measures authorized under WIOA be included.

Another commenter stated that the requirement under WIOA for the increased collection of data would offer evidence of successes and challenges across the Nation but would also impose some additional costs on the DSUs, which are already struggling under budget constraints.

Additionally, one commenter expressed concerns about the apparent lack of annual reporting of progress toward achieving goals and priorities, and that once the WIOA system is fully implemented, annual reporting should not be such a burden. The commenter requested guidance on how best to use data collected under the newly aligned systems to maximize fiscal and staff resources.

One commenter expressed concern that the lack of annual reporting to the Department regarding flaws in the delivery system for persons with significant disabilities, including those receiving supported employment services, could preclude making timely adjustments to maximize the opportunity for successful, integrated employment in accordance with Section 109 of the Act, as amended by WIOA,

which allows for "expanded types of trainings, technical assistance and other services DSUs may provide under the VR program, to employers who have hired or are interested in hiring individuals with disabilities."

Discussion: We appreciate the support for the requirement to report the numbers of individuals with disabilities who may not be served in the event that an order of selection is implemented, as well as the other comments expressing concerns and suggestions. In response to the comment requesting clarification pertaining to submission of annual estimates, "at such time and in such manner to be determined by the Commissioner" allows the Department to solve a practical problem caused by a statutory inconsistency. Section 101(a)(10) requires that DSUs collect key data to more effectively manage the VR program and ensure that the needs of the program's consumers, including those with the most significant disabilities, are met. Many of these data must be collected annually, and historically have been submitted as part of annual State plan updates. However, under sections 102 and 103 of title I of WIOA, the Unified or Combined State Plan is submitted every four years, with modifications made at least every two years, as appropriate. Therefore, the Secretary may determine it appropriate to require the data, which are collected annually by DSUs, to be reported only when the State submits a Unified or Combined State Plan or a modification to that Plan.

Although collected data are to be submitted at a time and in a manner to be determined by the Secretary, DSUs still must gather and analyze required data annually as required by the Act and these final regulations. This will allow the agency to respond in a timely manner to the needs of all consumers, including those with the most significant disabilities who may need supported employment services in order to achieve their vocational goals.

Section 106 of the Act requires that the standards and indicators for the VR program must be consistent with the performance accountability measures required by section 116 of title I of WIOA for all core programs, including the VR program. Therefore, all references to standards and indicators throughout the Act and these final regulations refer to the performance accountability measures under WIOA and the phrase cannot be removed from final § 361.29.

We address comments associated with any burden resulting from the data reporting requirements under section 101(a)(10) of the Act, as amended by WIOA, in the *Regulatory Impact Analysis* section of these final regulations. The Departments of Education and Labor will jointly issue guidance regarding the alignment of data reporting requirements pursuant to the joint regulations governing the performance accountability system established under WIOA and published in subpart E of part 361.

Changes: None.

Provision of Training and Services for Employers (§ 361.32)

Comments: While commenters generally appreciated the increased emphasis on engagement with employers, some suggested that the regulations clarify the types of services and activities in which the DSU may engage, and differentiate the roles and responsibilities of the DSU and the employer, especially with regard to providing accommodations.

Some commenters acknowledged the importance and need for training employers about their obligations under the ADA and about vocational rehabilitation services provided through the VR program, such as work-based learning experiences, pre-employment transition services, disability awareness and the needs of individuals with disabilities in the workplace.

A few commenters suggested that the Department recommend some actions to engage employers, such as encouraging States to establish employer advisory councils at the State, regional, or local level.

One commenter suggested that proposed § 361.32 was not strong enough to prioritize the activities under this section because it authorizes, but does not require, an allocation of funding for services. The commenter recommended that the Department more heavily emphasize the importance of activities under this section.

Finally, one commenter recommended aligning allowable activities under this section with WIOA performance measures regarding effectiveness in serving employers and requested guidance on tracking data related to services provided to employers and the effectiveness of such services.

Discussion: We appreciate the supportive comments and the additional recommendations for implementing the requirements for activities DSUs may engage in with employers. Section 109 of the Act, as amended by WIOA, describes the activities for which States may pay to educate and provide services to employers who have hired, or are interested in hiring, individuals with disabilities under programs carried out under title I of the Act. However, section 109 of the Act does not address prohibited activities or the differentiation of the roles and responsibilities of the DSU and the employer, particularly in providing accommodations. Section 109(1) only allows the DSU to provide training and technical assistance to employers regarding the employment of individuals with disabilities, including disability awareness, and the requirements of the ADA and other employment-related laws. The recommended inclusion of language to describe accommodations that are incumbent upon employers to provide does not fall under the purview of the Department or within the scope and authority of these regulations. Instead, the responsibility of employers for work place accommodations is within the jurisdiction of the Equal Employment Opportunity Commission, which is charged with the enforcement of title I of the ADA.

Section 109 of the Act, as amended by WIOA, and final § 361.32 clearly recognize the important role that DSUs can play in increasing opportunities for competitive integrated employment for individuals with disabilities through the provision of technical assistance and training to employers and specify a wide variety of these activities. For example, the statute and regulation describe the areas in which DSUs may work with employers to provide opportunities for work-based learning experiences and pre-employment transition services to recruit qualified applicants who are individuals with disabilities, to train employees who are individuals with disabilities, and to promote awareness of disability-related obstacles to continued employment. Furthermore, the Act and final regulation provide that the DSU may assist employers through consultation, technical assistance, and support related to workplace accommodations, assistive technology, facilities and workplace access, and using available financial support for hiring or accommodating individuals with disabilities. Given these and other examples, we do not believe that it is necessary to include additional language in final § 361.32 to further emphasize the importance of this technical assistance and training. However, we clarify here that the use of the term "apprenticeships" in final § 361.32 does not include Registered Apprenticeships.

Although we recognize the value of the DSUs engaging employers through activities such as establishing Statewide or regional/local level employer advisory councils, section 109 of the Act

does not require this activity and therefore, we have no statutory authority to require this activity in these regulations. However, final § 361.24(c) requires States to describe in the VR services portion of the Unified or Combined State Plan how the DSU will work with employers to identify opportunities for competitive integrated employment and career exploration, and to facilitate the provision of vocational rehabilitation services.

We agree that the provision of training and services for employers by DSUs is important in accomplishing the purposes of the Act, as amended by WIOA; however, final § 361.32 mirrors section 109 of the Act, as amended by WIOA, which authorizes, but does not require, the expenditure of funds for activities under this section. Therefore, we have no authority to require DSUs to incur expenditures under this section.

The Departments of Education and Labor appreciate the comment regarding the potential interplay between the activities authorized under section 109 of the Act and final § 361.32, and the performance indicator for the effectiveness of serving employers required by 116(b)(2)(A)(i)(VI) of title I of WIOA. Because the measures apply to all core programs in the workforce development system, not just the VR program, we have addressed this comment in the joint final regulations implementing the performance accountability measures under section 116 of WIOA, and published elsewhere in this issue of the **Federal Register**.

Changes: None.

Innovation and Expansion Activities (§ 361.35)

Resource Plans for Statewide Independent Living Councils

Comments: Many of the commenters opposed the changes in proposed § 361.35(a)(3) which requires the State to assure that it will reserve and use a portion of its VR program funds to support the funding of the Statewide Independent Living Council (SILC), consistent with the plan prepared jointly by the Council and the State under section 705(e)(1). The commenters contend that WIOA did not amend section 101(a)(18)(A)(ii)(I) of the Act and therefore, the Department should not change its regulation and allow the State and the SILC to determine not to use I&E funds. The commenters further stated that any change to § 361.35 would harm CILs by diverting funds from the SILS program under Part B of title VII if I&E funds are not used. Some other commenters opposed proposed § 361.35 allowing innovation and expansion funds to be used at all to support SILC resource plans to the extent needed, arguing that other funding sources are available.

A few commenters requested clarification as to when the DSU uses I&E funds to support the SILC. Of these, one commenter indicated that the DSU, in the commenter's State, has supported the SILC with innovation and expansion funds and would likely continue to do so unless there is a change in the designated State entity (DSE), the State agency responsible for the administration of the independent living programs authorized under title VII of the Act, as amended by WIOA.

Discussion: We appreciate the concerns expressed by commenters. In proposed § 361.35, we attempted to set forth our long-standing interpretation of the statutory language in section 101(a)(18)(A)(ii)(II) that a State's contribution of innovation and expansion funds to the SILC resource plan is governed by the resource plan's description of support for the SILC. We consistently have interpreted the statutory requirement in section 101(a)(18)(A)(ii)(II) that the funding of the SILC be consistent with the SILC resource plan to mean that the State and the SILC may decide to use innovation and expansion funds to support the SILC resource plan, or not to do so as they determine how they will use the sources of funding available under section 705(e) to support the SILC.

Our data shows that States and SILCs have been using innovation and expansion funds to support SILC resource plans in this way for many years. Based upon an analysis of the data from all of the State Plans for Independent Living for the period FY 2014 through FY 2016, we found that innovation and expansion funds account for 38 percent of the roughly $8.7 million contributed by States to SILC resource plans. We found that only 32 States contributed innovation and expansion funds to the SILC resource plan. Of these 32 States, 13 States used only innovation and expansion funds to support the SILC.

However, because the innovation and expansion section of the Act remained unchanged by WIOA and our proposed regulation sparked confusion among many commenters, we have decided to return to the current regulation which mirrors the statutory language requiring that the reservation and use of the innovation and expansion funds to support the funding of the SILC be consistent with the SILC resource plan. We continue to interpret the current regulation, as we always have, that the State and the SILC determine in the SILC resource plan which sources and amounts of available funding, including innovation and expansion funding, will be used in the SILC resource plan, and then the State reserves and uses the innovation and expansion funding to support funding of the SILC, consistent with the SILC resource plan.

Changes: We have revised final § 361.35(a)(3) to substitute the language of the current regulation, with conforming edits, for the language in the proposed regulation.

Innovative Approaches With Components of the Workforce Development System

Comments: None.

Discussion: Section 101(a)(18)(A)(i) of the Act and final 361.35(a)(1) require the designated State unit to develop and implement innovative approaches to improve vocational rehabilitation services to individuals with disabilities that are consistent with the comprehensive statewide needs assessment and the State's goals and priorities. To support the alignment of the VR program with the workforce development system as emphasized throughout the Act and these final regulations, we clarify that these innovative approaches may include activities and partnerships with components of the workforce development system.

Changes: None.

Ability To Serve All Eligible Individuals; Order of Selection for Services (§ 361.36)

Individuals Who Require Specific Services and Equipment To Maintain Employment

Comments: Most commenters supported proposed § 361.36(a)(3)(v), which permits the DSU to elect to serve eligible individuals who require specific services or equipment to maintain that employment, whether or not those individuals are receiving vocational rehabilitation services under the order of selection. The commenters stated that this proposed change from the prior regulations will better serve the needs of individuals with disabilities who are at risk of losing their jobs by allowing the DSU an opportunity to serve them outside an order of selection, as appropriate.

A few commenters expressed concern that proposed § 361.36(a)(3)(v) would allow individuals with less significant disabilities to be served before individuals with significant or the most significant disabilities. A few commenters also questioned whether this new provision applies only to

individuals with the most significant disabilities. In addition, a few commenters stated that providing specific services or equipment to eligible individuals who do not meet the order of selection should be mandatory to ensure that they are able to maintain their employment.

Conversely, a few commenters suggested that the DSU should not be required to use this authority at all. One commenter suggested that a DSU should not be required to state its intent to use the authority in the vocational rehabilitation services portion of the Unified or Combined State Plan. One commenter requested clarification of the term "immediate need," which the Department used in explaining the proposed provision in the preamble of the NPRM.

Discussion: We appreciate the comments supporting the flexibility afforded to DSUs in § 361.36(a)(3)(v). We also recognize the need, as expressed by some commenters, for clarification of this exemption from the order of selection.

Final § 361.36(a)(3)(v), which implements section 101(a)(5)(D) of the Act, applies to those specific services or equipment that an individual needs to maintain current employment. The regulation does not apply to other services an individual may need for other purposes. In other words, if an individual is receiving services and equipment from a DSU under this exemption, the individual is within the order of selection for the purpose of receiving any other vocational rehabilitation services not covered by the exemption. This means that if the individual needs services that are not directly tied to maintaining current employment, the individual's ability to receive those services from the VR program depends on the individual's placement in the State's order of selection.

As to whether and how the DSU may exercise its authority under final § 361.36(a)(3)(v), that section applies to all eligible individuals, not just those with the most significant disabilities. It is possible that individuals with less significant disabilities would receive vocational rehabilitation services before individuals with significant or the most significant disabilities. The Act, as amended by WIOA, gives the DSU the option to provide services and equipment to individuals at immediate risk of losing employment outside the established order, and the DSU should consider doing so if financial and staff resources are sufficient. If the DSU elects to do so—again, the exercise of the authority is not mandatory—section 101(a)(5)(D) of the Act requires that it indicate this in the VR services portion of the Unified or Combined State Plan.

The term "immediate need" in the *Summary of Proposed Changes* section of the NPRM has its common meaning, and it remains the same. The phrase means that the eligible individual would almost certainly lose his or her current job if not provided specific services or equipment in the very near future that would enable him or her to retain that employment.

Changes: None.

Information and Referral

Comments: One commenter sought clarification about referring individuals to other programs under proposed § 361.37 for specific services or equipment necessary to help them retain employment, as well as other services that cannot be provided under proposed § 361.36(a)(3)(v). This commenter further suggested that if an individual is referred elsewhere for specific services or equipment necessary to maintain employment, the DSU should follow up to ensure the necessary services were delivered.

Discussion: If the individual is placed into a closed category of that order, under sections 101(a)(5)(E) and 101(a)(20) of the Act, and final §§ 361.36(a)(3)(iv)(B) and 361.37(a)(2), the DSU must refer the individual to other programs and providers for those services not covered by the exemption. These provisions require a DSU to assure in the VR services portion of the Unified or Combined State Plan that individuals who do not meet the order of selection criteria will have access to an information and referral system through which the DSU will refer them to other appropriate Federal and State programs, including other components of the statewide workforce development system.

However, neither section 101(a)(5)(E) nor 101(a)(20) requires the DSU to follow up with the programs to which the individuals are referred, and we have no authority to do so either. While we agree this is a best practice, we also recognize the administrative burden the requirement would impose on the DSU.

Changes: None.

Monitoring by the State Rehabilitation Council

Comments: A few commenters proposed that § 361.36(f)(4) allow the SRC to monitor the use of this authority by the DSU and ensure that individuals with the most significant disabilities are still prioritized for vocational rehabilitation services. A few other commenters also suggested that the SRC be involved in monitoring the use of the new provision but did not propose any additional regulatory language.

Discussion: Section 105(c) of the Act, which sets forth the functions of the SRC, does not authorize it to monitor the DSU's exercise of the order of selection exemption. Rather, section 107(a)(1) of the Act requires the Department to monitor the DSUs.

However, under section 105(c)(1)(A) of the Act and final § 361.17(h)(1)(i), the SRC is tasked with reviewing, analyzing, and advising the DSU about the order of selection and the discretion to exercise the authority set forth in section 101(a)(5)(D) of the Act and final § 361.36(a)(3)(v). In addition, the SRC has the opportunity to review and comment on the DSU's intent to use the authority under § 361.36(a)(3)(v) when the SRC reviews the DSU's order of selection policies under final § 361.36(f) and when the SRC advises and assists the DSU in the preparation of the VR services portion of the Unified or Combined State Plan under final § 361.17(h)(3).

Changes: None.

Order of Selection Criteria

Comments: A few commenters suggested that the DSU develop a "meaningful" order of selection to ensure that individuals with the most significant disabilities receive vocational rehabilitation services. One commenter suggested that the order of selection be based on something other than the refinement of the three criteria in the definition of "individual with a significant disability" in § 361.5(c)(30).

Discussion: Section 101(a)(5) of the Act remained unchanged by WIOA, except for the addition of section 101(a)(5)(D) permitting the DSU to exercise its discretion to provide specific services and equipment to individuals, who are at risk of immediate job loss, outside the order of selection. Therefore, there is no authority to further amend final § 361.36 to require the DSU to establish a "meaningful" order of selection or to permit the order of selection to be based on criteria other than those included in the definition of an "individual with a significant disability" in final § 361.5(c)(30).

Changes: None.

Prohibited Factors

Comments: Some commenters questioned whether the proposed § 361.36 is consistent with the requirement in § 361.42(c)(2)(ii)(D), which prohibits the DSU from considering an applicant's particular service needs, the anticipated cost of

services required by an applicant, or the income level of an applicant and applicant's family. Other commenters indicated that the proposed § 361.36 aligns with § 361.42(a)(1)(iii), which permits the DSU to provide vocational rehabilitation services to eligible individuals who require services in order to retain their employment.

Discussion: For States operating under an order of selection, the DSU must determine eligibility under final § 361.42 prior to assigning eligible individuals to any priority category. WIOA did not change this requirement. Therefore, under final § 361.42(c)(2)(ii)(D) an applicant's particular service needs (including those services necessary to maintain current employment) are not considered in determining eligibility. The order of selection exemption in final § 361.36(a)(3)(v) applies only after an individual has been determined eligible. Consequently, the eligible individual would be exempt from the order of selection for the purpose of receiving services necessary to maintain employment.

Changes: We have made a technical amendment to § 361.36(d)(2)(vi) to reflect the exemption set forth in § 361.36(a)(3)(v).

Pre-Employment Transition Services

Comments: Some commenters raised various concerns, posed questions, or sought clarification about pre-employment transition services, including serving students with disabilities who may not have applied or been determined eligible for vocational rehabilitation services.

Discussion: We address these comments in the *Pre-Employment Transition Services (§ 361.48(a))* section elsewhere in this *Analysis of Comments and Changes.*

Changes: None.

Information and Referral Programs (§ 361.37)

Benefits Planning

Comments: Most of the comments received on this regulation were in support of the changes to the prior regulation in proposed § 361.37, while some suggested further revisions. A few of these commenters suggested that § 361.37 specify to whom referrals are made for benefits planning for individuals with disabilities receiving Social Security benefits under title II or title XVI of the Social Security Act.

Discussion: We appreciate the comments supporting the changes to § 361.37 and the comments suggesting further revisions. Section 361.37(b)(5), both proposed and final, which requires the DSU to refer individuals who do not choose to seek an employment outcome under the VR program to the SSA for information about receiving benefits while employed, has remained unchanged from the VR program regulations that were published in 2001. While section 102(b)(2) of the Act, as amended by WIOA, requires the DSU to provide information about benefits planning to individuals with disabilities receiving Social Security benefits, it does not mandate the DSUs to make related referrals to any one agency or organization for this service. Some DSUs have the capacity to provide this information in-house, whereas others may need to refer individuals to other programs or entities. As such, and because the needs of the individuals requiring these services also vary, we believe it best serves DSUs and individuals with disabilities not to require a specific referral program in final § 361.37. For the same reason, we have not specified other entities to which DSUs may refer individuals with disabilities for any other type of service.

Changes: None.

Referral Options

Comments: One commenter suggested that a list of all options for referrals be included in proposed § 361.37. Another commenter suggested that referral options may not be available in certain geographical areas of the State. The commenter also noted the dilemma facing DSU personnel if it is known, before a referral is made, that individuals with disabilities are unlikely to receive services from other programs in the State.

Discussion: We do not believe it is possible or practicable to include a list of all referral options in final § 361.37 because the Federal, State, and local agencies, as well as non-profit organizations that serve individuals with disabilities vary widely from State to State. In addition, DSUs are most familiar with the referral option in their State and we would not want them to believe these options were limited by the inclusion of a list in final § 361.37. However, we clarify that these referral options include one-stop centers as components of the workforce development system.

If referral options are not available in a geographic location or if a referral will not result in the individual with a disability receiving services, we encourage DSUs to continue to build partnerships with a broader set of appropriate Federal and State programs, including other components of the statewide workforce development system, to ensure effective referral options are available in the State. DSUs should not make referrals to other programs unless there is an expectation that the individual with a disability will benefit from the referral.

Changes: None.

Follow-Up

Comments: One commenter suggested that DSUs be required to follow-up on referrals made to other programs to verify that individuals with disabilities are receiving the services for which they were referred.

Discussion: The Act, as amended by WIOA, does not require a DSU to follow-up on the referrals it makes to other programs. Therefore, we have not made the suggested revision. While we agree with commenters that this is a best practice, we also recognize the administrative burden the requirement would impose. However, the criteria for appropriate referrals in final § 361.37(c) is designed to ensure effective referrals for individuals with disabilities.

Changes: None.

Independent Living Services

Comments: A few commenters suggested that there may be difficulty in referring individuals with disabilities for independent living services if the DSU is not the same entity administering the independent living programs authorized under title VII of the Act, as amended by WIOA. One commenter stated that the Department would need to partner with the Department of Health and Human Services when referrals are made for independent living services.

Discussion: We acknowledge that some States may establish a designated State entity (DSE) responsible for administering the independent living programs, which is separate from the DSU for the VR program. However, this should not inhibit referrals between the VR and independent living programs as required in final § 361.37(b). In these circumstances, we encourage the DSU to partner with the DSE to develop effective referral policies and procedures to enable individuals with disabilities to access both programs. The Department intends to support these partnerships in the State through technical assistance developed and delivered jointly with the Department of Health and Human Services, which now administers the SILS program and the CIL program.

Changes: None.

Protection, Use, and Release of Personal Information (§ 361.38)

Comments: None.

Discussion: We anticipate that other Federal and State agencies, and researchers will have an increased interest in using the data required to be collected by core programs in the workforce development system, including the VR program, under section 116(b) of title I of WIOA. Section 116(b) of WIOA requires DSUs to collect significantly more personal information than was required previously under section 101(a)(10) of the Act and prior § 361.40. Therefore, after further Departmental review, we have strengthened the protection of the confidentiality of this information by requiring in final § 361.38 that DSUs enter into written agreements with any entity seeking access to personal information collected under the VR program for the purpose of audits, evaluations, research, or for other program purposes. We understand that DSUs already enter into such written agreements and the revisions to final § 361.38 will not represent a change in practices under the VR program.

Changes: We have revised final § 361.38(a), (d), and (e) by requiring that DSUs enter into written agreements with other organizations and entities receiving personal VR program information during the conduct of audits, evaluations, research, and for other program purposes.

Reports; Evaluation Standards and Performance Indicators (§ 361.40)

We received numerous comments on proposed reporting requirements under § 361.40, including the collection and reporting of data on students with disabilities receiving pre-employment transition services, evaluation standards and performance indicators under section 106 of the Act, common performance accountability measures under section 116 of WIOA, and the timeframe for implementation of reporting requirements. We also received comments on burden estimates that were included in the *Regulatory Impact Analysis* of the NPRM. While one commenter supported the collection of new data elements required under section 101(a)(10) of the Act and implemented in § 361.40(a) of these final regulations, in general, commenters expressed concerns or requested additional clarification concerning the collection and reporting of data. We address these comments under the subheadings below.

Pre-Employment Transition Services

Comments: We received several comments on the reporting of data on students with disabilities receiving pre-employment transition services under proposed § 361.40(a)(1)(ii). One commenter noted that States may opt to track funding and services for students receiving pre-employment transition services in different ways, depending on factors such as staffing patterns, order of selection wait list considerations, and counselor caseload sizes. One commenter expressed the opinion that there are more effective ways to track the expenditures from the 15 percent of the VR program allotment reserved for the provision of pre-employment transition services than collecting individual case information for each student receiving these services.

A few commenters requested guidance about the specific data elements that will be required for students who are receiving pre-employment transition services and are applicants, or potentially eligible, for vocational rehabilitation services. Another commenter asked what additional data will be needed for purposes of performance accountability reporting pursuant to section 116 of WIOA once the student becomes a participant under the VR program.

Finally, one commenter requested clarification and guidance about the interplay between the data required to be reported under § 361.40(a), collected through the Case Service Report (RSA–911), and the content of the VR services portion of the Unified or Combined State Plan regarding the number of students who are receiving pre-employment transition services.

Discussion: We appreciate the concerns expressed regarding the new data reporting requirements in final § 361.40(a) related to the provision of pre-employment transition services to students with disabilities. We agree with commenters that it is reasonable to anticipate an increase in the number of individuals that will need to be reported through the RSA–911. Prior to the enactment of WIOA, DSUs could only serve, and thus report, individuals who were applicants or eligible individuals under the VR program. However, section 113 of the Act, as added by WIOA, requires DSUs to provide pre-employment transition services to all students potentially eligible for vocational rehabilitation services who need such services, regardless of whether they have applied and been determined eligible for vocational rehabilitation services. This change is likely to result in a significant increase in the number of individuals reported under the RSA–911.

Students with disabilities who are not yet served under an individualized plan for employment and who receive pre-employment transition services are not considered "participants" as that term is defined under the joint final regulations for performance accountability purposes published elsewhere in this issue of the **Federal Register**. However, students with disabilities receiving pre-employment transition services are considered "reportable individuals" for RSA–911 reporting and WIOA performance purposes, regardless of whether they have applied for vocational rehabilitation services or are receiving these services under an individualized plan for employment. This does not, however, preclude a DSU from serving an eligible student with a disability under an individualized plan for employment. Once the student has begun receiving services under a signed individualized plan for employment, he or she will be counted as a participant and included in the applicable performance indicator calculations. At the point the student with a disability becomes a participant, all the applicable RSA–911 data elements will be collected and reported in the individual's RSA–911 case record.

We have identified and defined the specific data elements needed for all students with disabilities receiving pre-employment transition services in the RSA–911 instructions. We believe this will reduce collection and reporting burden to the maximum extent possible, and prevent a requirement for collecting specific information that would otherwise result in an application for services for students with disabilities who have not intended to apply for these services.

In addition to the tracking necessary to demonstrate compliance with the requirement to reserve at least 15 percent of the State's VR allotment for providing pre-employment transition services, under section 110(d) of the Act, as amended by WIOA, and final § 361.65(a)(3), section 101(a)(10) of the Act requires DSUs to have a mechanism to report the number of students with disabilities receiving these services. We recognize the burden this will place on DSUs and we have included a specific, but limited, set of data elements in the RSA–911 to enable DSUs to report the number of students with disabilities receiving these services, including both those who have been determined eligible for vocational rehabilitation services and those who have not applied for vocational rehabilitation services. For further information regarding the specific data elements DSUs are required to report regarding students receiving pre-employment transition services, see the RSA–911 data collection instrument published elsewhere in this issue of the **Federal**

Register. We believe DSUs should use these data, along with other information (such as that obtained through the comprehensive statewide needs assessment required under section 101(a)(15)(A) of the Act, as amended by WIOA, and final § 361.29(a)), when developing the VR services portion of the Unified or Combined State Plan, including the goals and strategies related to the provision of pre-employment transition services under sections 101(a)(15)(C) and (D) of the Act, as amended by WIOA, and final § 361.29(c) and (d).

Changes: None.

Standards and Indicators

Comments: With respect to proposed § 361.40(b), a few commenters requested that we add indicators to the evaluation standards and performance indicators. Of these, a few requested that separate indicators be added for transition services to students and youth with disabilities and for services to youth with disabilities. One commenter expressed the concern that students with disabilities will not be counted as participants or included in the performance indicators, thereby eliminating a large number of vocational rehabilitation consumers from the performance measures. This commenter recommended that we establish new performance indicators for students with disabilities receiving pre-employment transition services. Another commenter requested we add performance indicators aligned with evidence-based practices that promote individuals with disabilities entering the labor force. One commenter requested that we include additional performance indicators in these final regulations rather than add them later through an information collection request. Another commenter asked if the Department would continue using the evaluation standards and performance indicators in prior §§ 361.80 through 361.89 as Federal reporting requirements under the VR program. Finally, one commenter requested that we limit the data selected to only that required to determine the performance accountability measures under section 116 of WIOA.

Discussion: Section 106 of the Act, as amended by WIOA, makes the VR program subject to the common performance accountability measures, established in section 116 of title I of WIOA, which are applicable to all core programs of the workforce development system. Therefore, we have removed prior § 361.80 through § 361.89, which established the evaluation standards and indicators in use by the VR program prior to the enactment of WIOA. Final § 361.40(b) includes a cross reference to the joint performance accountability regulations developed by the Departments of Labor and Education in subpart E of final part 361.

Section 106 of the Act, as amended by WIOA, does not provide additional VR program-specific performance accountability measures. However, consistent with section 116(b)(1)(A)(ii) of title I of WIOA, section 106(a)(2) permits States, but not the Department, to establish and provide information on additional performance accountability indicators. States must identify any additional performance indicators in the Unified or Combined State Plan. Under this section, States could opt to include additional performance indicators, including any or all of the additional performance measures recommended by commenters or the evaluation standards and performance indicators set forth in prior §§ 361.80 through 361.89.

In addition, section 101(a)(10)(A) of the Act requires that, in the VR services portion of the Unified or Combined State Plan, the State assures that it will submit certain reports in the form and level of detail and at the time required by the Secretary. Regarding applicants for, and eligible individuals receiving, services, these reports must provide the wide variety of data specified in section 101(a)(10)(C), as well as data related to the evaluation standards and indicators in section 106 of the Act, which are the performance accountability indicators in section 116(b) of title I of WIOA. Therefore, there is no statutory authority to limit the data reported by DSUs through the RSA–911 to those data needed for the performance accountability indicators applicable to the core programs under WIOA, as recommended.

Changes: None.

Program Year

Comments: One commenter requested that the Department use the program year under title I of WIOA, instead of the fiscal year, for the operation of the VR program in order to better align the program with the performance data required under section 116 of WIOA.

Discussion: We understand the concern expressed by commenters and the potential confusion that may result because the annual award and financial reporting cycle for the VR program is no longer aligned with the State planning and performance reporting cycle required under title I of WIOA. The VR program is a current-funded program for which Congress appropriates annual funds to be obligated consistent with the Federal fiscal year and section 110(a)(2)(A) of the Act, which specifies the manner in which allotments are to be made. As noted in the *Submission, Approval, and Disapproval of the State Plan (§ 361.10)* section earlier in this preamble, section 110(a)(2)(A) of the Act, which was not amended by WIOA, requires that allotments be made for each fiscal year beginning on or after October 1, 1978. We interpret section 110(a)(2)(A) of the Act to require that VR program allotments coincide with the Federal fiscal year. Thus, we cannot change the year under which the VR program operates in order to align it with the July 1 through June 30 program year for submission of the VR services portion of the Unified or Combined State Plan and the reporting of performance data required under final § 361.40. States will continue to receive VR program allotments and report fiscal data through the Financial Status Report (SF–425) and the VR program Cost Report (RSA–2) in accordance with the Federal fiscal year.

Changes: None.

Performance Accountability Regulations

Comments: One commenter recommended that we include the joint performance regulations in proposed § 361.40.

Discussion: We disagree with the recommendation. The extent and detail of the joint regulations governing the performance accountability system under section 116 of title I of WIOA makes it necessary to include them in a separate subpart of these final regulations. For the convenience of the reader, we grouped this subpart E with subparts D and F, which set forth the joint final regulations implementing requirements for unified and combined planning and the one-stop delivery system, respectively, of WIOA. We believe it is sufficient to include a cross reference to subpart E in final § 361.40(b).

Changes: None.

Cumulative Caseload Report (RSA–113)

Comments: We received two comments regarding the VR program's Cumulative Caseload Report (RSA–113). One commenter asked whether we intend to make changes to this data collection instrument and requested that we provide guidance on these changes. Another commenter suggested that the Department discontinue use of the RSA–113 because it is redundant with data reported through the revised RSA–911.

Discussion: We do not intend to make changes to the currently approved RSA–113 or the instructions for its submission. At this time, we use the

data reported through the RSA–113, the only source of quarterly VR program data, for program management purposes and to support budget requests for the VR program. However, we intend to reduce the reporting burden on the States by discontinuing use of the RSA–113 when DSUs are able to report similar data through the RSA–911 on a quarterly basis. When appropriate, the Department will provide guidance to DSUs regarding reporting changes.

Changes: None.

States With Two VR Agencies

Comments: One commenter asked whether, in States with two VR agencies, those agencies that serve individuals who are blind and visually impaired would establish levels of performance for purposes of the performance accountability indicators under section 116 of title I of WIOA separate from those established by agencies serving individuals with all other disabilities. Another commenter expressed concern that VR agencies serving individuals who are blind and visually impaired would be required to establish separate levels of performance due to the relatively low number of individuals served by these agencies and the high variance in outcomes.

Discussion: Section 116(b)(3)(A)(iii) of title I of WIOA requires States to identify, in their Unified or Combined State Plans, expected levels of performance for the performance indicators for the first two years covered by their plans. Because this section, as well as all other provisions of section 116 of WIOA pertinent to the establishment of levels of performance for the performance accountability indicators, refers to the "State," States must establish the expected levels of performance using State-level, not VR agency-level, data. Therefore, in States with more than one VR agency, the agencies must work together to identify expected levels of performance that take into account their individual performance. We will monitor each agency's performance on the performance accountability indicators and their contributions toward achieving the adjusted levels of performance through a review of the data reported on the RSA–911 and during periodic reviews in accordance with section 107 of the Act. See the *Analysis of Comments and Changes* section of the joint performance regulations published elsewhere in this issue of the **Federal Register** for a more detailed discussion about setting expected levels of performance and adjusted levels of performance.

Changes: None.

Reporting Burden

Comments: We received numerous comments on the Department's burden estimates, all of which stated that we underestimated the costs associated with the reporting of data under proposed § 361.40 described in the *Regulatory Impact Analysis* section of the NPRM. In particular, commenters raised concerns about estimates of the amount of time needed for the collection of new data and the quarterly reporting of individual data on all open service records, as well as the cost of changes to State management information systems. Some of these commenters stated that the proposed new reporting requirements will create a burden on the financial and personnel resources of the agency. One commenter noted that documenting and tracking the number of potentially eligible students with disabilities would be burdensome and costly considering the number of potentially eligible students is staggering when compared to the number of transition-age consumers previously served by the DSUs.

Discussion: We recognize that proposed new data collection and reporting requirements, including data on students with disabilities receiving pre-employment transition services, will have an impact on the financial and personnel resources of the agency. However, the collection and reporting of such data are required by the amendments made by WIOA to section 101(a)(10) of the Act. In addition, the collection and reporting of data regarding the number of students with disabilities receiving pre-employment transition services and the costs of these services will enable the Department and the States to better track the use of VR program funds that must be reserved for the provision of these services.

In response to the comments regarding the burden associated with the reporting of data under final § 361.40 and as a result of further Departmental review, we have adjusted the burden estimates as described in the *Regulatory Impact Analysis* section of the preamble of these final regulations. Comments pertaining to specific estimates of reporting burden included in the *Regulatory Impact Analysis* of the NPRM are addressed in the *Regulatory Impact Analysis* of these final regulations. No changes are needed to the regulatory text of final § 361.40.

Changes: None.

RSA–911 Case Service Report

Comments: We received comments related to the definitions of data elements, the reporting of Social Security numbers, the reliability of data, the data elements used to report services to employers, the reporting of barriers to employment as required by section 116 of title I of WIOA, and the timelines by which States must report data required for the performance accountability indicators.

Discussion: We discuss comments related to the manner in which the data are required to be reported under final § 361.40(a) and (b) through the RSA–911 in the supporting statement for this data collection instrument published elsewhere in this issue of the **Federal Register**, and under the joint performance accountability system final regulations, also published elsewhere in this issue of the **Federal Register**, as appropriate.

Assessment for Determining Eligibility and Priority for Services (§ 361.42)

Advancing in Employment and Other Eligibility Criteria

Comments: Many commenters expressed strong support for proposed § 361.42(a)(1)(iii) permitting an applicant to be eligible if he or she requires vocational rehabilitation services to advance in employment and meets all other eligibility criteria. However, some of these commenters requested clarification regarding the effect of the regulation when an individual is unable to advance in employment due to his or her disability. These commenters also asked whether advancing in employment refers only to the individual's current employment, or if it extends to preparations, including graduate education services, for advancing in future employment. A few commenters requested clarification about whether a DSU would be required to support the pursuit of a graduate degree by an individual already employed successfully in a competitive integrated environment and about how financial need shall be assessed.

Some commenters expressed concern that the term "advance in employment" was too vague and that it would be difficult to know when an individual has achieved his or her goal since one can always advance in employment to some degree. These commenters also expressed concerns that serving more individuals who want to advance in employment could force a DSU to implement an order of selection. Some commenters suggested that the regulations should clarify that advancement in employment should be explicitly linked to the individual's impairment, rather than broader developmental needs.

A few commenters inquired whether the proposed changes in § 361.1, which establishes the purpose of the VR program, affect the determination of eligibility under § 361.42. These commenters expressed concern that the deletion of the term "gainful employment" in proposed § 361.1 could be misconstrued as disallowing entry level employment as a vocational goal. A few commenters asked whether the new emphasis on self-sufficiency and competitive integrated employment means that those who apply for vocational rehabilitation services intending only to work part-time will be a lower priority for the purpose of determining eligibility.

Discussion: We appreciate the strong support for the changes in final § 361.42. We also understand the need for clarification.

Section 102(a)(1)(B) of the Act, as amended by WIOA, allows for an individual with a disability, whose physical or mental impairment constitutes a substantial impediment to employment, to be determined eligible for vocational rehabilitation services if he or she requires services to prepare for, secure, retain, advance in, or regain employment. By adding the phrase "advance in," section 102(a)(1)(B) of the Act, as amended by WIOA, reinforces the Department's long-standing commitment that the VR program must provide comprehensive services to assist individuals with disabilities to achieve their maximum vocational potential. The VR program is not intended solely to place individuals with disabilities in entry-level jobs but rather to assist them to obtain appropriate employment, given their unique strengths, resources, priorities, concerns, abilities, capabilities, and informed choice. The VR program's purpose is the same regardless of whether an individual wants to advance in employment or obtain employment. We disagree with the commenter that the provision of vocational rehabilitation services to assist an individual to advance in employment should be limited to disability needs rather than other needs or desires. The extent to which DSUs should assist eligible individuals to advance in their careers by providing vocational rehabilitation services depends upon whether the individual has achieved employment that is consistent with this standard. The DSU's assistance could include, as appropriate for the individual, graduate-level postsecondary education, if necessary to achieve the advancement in employment specified in the vocational goal on the individual's approved individualized plan for employment. All other eligibility criteria still apply to applicants seeking to advance in employment.

Consistent with long-standing Department policy, we interpret the phrase "advance in employment," as used in section 102(a)(1)(B) of the Act and final § 361.42(a)(1)(iii), broadly to include advancement within an individual's current employment or advancement into new employment. In this way, the VR program ensures that individuals with disabilities obtain the services necessary so they can pursue and engage in high-demand jobs available in today's economy.

The addition of the phrase "advance in" in § 361.42(a)(1)(iii), both proposed and final, underscores long-standing policy. Because DSUs have been assisting individuals to advance in employment prior to this statutory and regulatory revision, we do not anticipate that the change will result in a DSU implementing an order of selection due to an increased number of individuals seeking to advance in employment. As stated, although the phrase "advance in" employment is new in both the statute and these final regulations, its inclusion merely mirrors long-standing Departmental policy as set forth in RSA–PD–97–04, dated August 19, 1997.

As discussed in more detail in the *Purpose (§ 361.1)* section earlier in this preamble, inclusion of the term "economic self-sufficiency," rather than "gainful employment" as contained in prior § 361.1, does not alter the eligibility criteria set forth in final § 361.42(a)(1) or establish a priority of services for individuals seeking any particular form of employment. Therefore, the changes contained in final §§ 361.1 and 361.42(a)(1)(iii) do not require DSUs to treat individuals seeking part-time or self-employment differently (*e.g.*, given lower priority) than individuals seeking full-time employment. Neither the Act, as amended by WIOA, nor these final regulations, supports such an interpretation. Section 361.42(c)(2), for example, prohibits the DSU from considering the nature of an applicant's vocational goal when determining eligibility and priority for services. Therefore, a DSU may not prioritize the determination of eligibility for individuals who choose to pursue full-time employment over those who elect to seek part-time employment or self-employment. In addition, economic self-sufficiency is intended to serve as a goal to maximize employment, which may be achieved through a variety of employment options, including entry-level employment for individuals for whom it is consistent with their skills, interests, and informed choice. However, the achievement of economic self-sufficiency is not among the criteria used to determine eligibility for the VR program under section 102(a) of the Act.

Changes: None.

Substantial Impediment to Employment

Comments: One State VR agency asked whether a substantial impediment to employment for the purpose of determining eligibility meant an impediment to any employment, or just to the employment the individual wished to pursue.

Discussion: Although this particular eligibility criterion was not changed in the Act, as amended by WIOA, or § 361.42, either proposed or final, we clarify in this Discussion that the term "substantial impediment to employment" should be interpreted in its broadest context, not just considered with respect to the applicant's specific vocational goal when determining eligibility. Final § 361.42(c)(2)(ii)(B), as it did in prior regulations, prohibits the DSU from considering the individual's desired employment objective, even if known, during this stage of the vocational rehabilitation process.

Changes: None.

Prohibited Factors

Comments: A number of commenters expressed concerns about the inability to consider an applicant's employment history when determining eligibility, particularly for those who are currently employed and apply for vocational rehabilitation services to advance in employment. One commenter stated that not being able to evaluate disability barriers from previous or current employment experiences, or not being able to assess abilities and capabilities by examining past and current educational credentials, could prevent the qualified rehabilitation counselor from determining whether an individual has a substantial impediment to employment and whether the individual requires services to achieve an employment outcome.

Other commenters expressed concern that proposed § 361.42(c)(2), which precludes the consideration of an applicant's employment history, current employment status, level of education, or educational credentials when determining eligibility for services, contradicts the definition of "assessment" in § 361.5(c)(5)(ii)(E), which states that the vocational rehabilitation counselor must rely on information obtained from the eligible individual's experience in integrated

employment settings in the community and other integrated settings.

Some of these commenters requested that we remove the requirement that a DSU must not consider an applicant's employment history, current employment status, level of education, or educational credentials when determining eligibility for services. A commenter requested that criminal records be added to the list of prohibited factors when determining eligibility for vocational rehabilitation services, except when the criminal background is related to the employment outcome.

Discussion: The additional factors, set forth in both proposed and final § 361.42(c)(2)(ii)(E) and (F), that a DSU must not consider when determining an applicant's eligibility for vocational rehabilitation services are consistent with long-standing policy. A DSU must examine a variety of factors when developing an individualized plan for employment, including the individual's past and current employment and education credentials, to ensure that the appropriate vocational rehabilitation services are identified to assist the individual to achieve his or her chosen vocational goal specified in the approved individualized plan for employment. However, a DSU may not use an applicant's employment or education to determine his or her eligibility for vocational rehabilitation services. The change from the prior regulation in proposed and final § 361.42(c)(2)(ii)(E) and (F) clarifies existing eligibility criteria and the list of prohibited factors in order to ensure consistency with the phrase "advance in employment" in the Act, as amended by WIOA, and these final regulations. Because an individual may be eligible for the VR program if he or she requires vocational rehabilitation services to advance in employment, the Act seems to take into account that the individual could have more than minimal educational or employment history. Regardless of his or her education or employment history, the applicant still must demonstrate that he or she has a disability and that the disability constitutes a substantial impediment to employment as required in § 361.42(a)(1)(ii) and requires vocational rehabilitation services to prepare for, secure, retain, advance in, or regain employment in accordance with final § 361.42(a)(1)(iii). In making these determinations, the qualified vocational rehabilitation counselor would review all known information about the applicant in order to assess the individual's impediments and service needs, but the eligibility determination itself must not be based on the fact that the individual has an extensive employment or educational history.

Although final § 361.42(c)(2) does not specifically prohibit a DSU from considering an applicant's criminal background when determining an individual's eligibility for vocational rehabilitation services, the Act and these final regulations require that a DSU base the determination of eligibility only on those factors identified in section 102(a)(1) of the Act and final § 361.42(a)(1). However, the DSU may develop policy and issue guidance to its vocational rehabilitation counselors about managing an individual's criminal background when developing the individualized plan for employment to ensure that the vocational goal is appropriate and that any necessary vocational rehabilitation services to address this background are provided in a manner that is consistent with limitations that might be imposed by Federal, State, and local law and regulations due to that criminal history. For further information regarding Federal law and guidance in this area, see: *http://wdr.doleta.gov/directives/* and *http://www.eeoc.gov/laws/guidance/*.

Changes: None.

Residency

Comments: A number of commenters requested clarification about the definition of "residency" for the purpose of determining eligibility and providing vocational rehabilitation services. Several commenters noted that individuals may apply for services when living just across the border in a neighboring State, while other individuals receive services from one State but intend to work in another State and continue working with the VR agency with which they began their rehabilitation program.

Discussion: We proposed only one change from the prior regulation in § 361.42(c)(1) to clarify that a DSU is prohibited from establishing de facto duration of residency requirements by requiring the applicant to produce documentation that would, under State or local law, result in a duration of residence requirement. Although the clarification regarding documentation did not exist in prior § 361.42(c)(1), the provision as contained in final § 361.42(c)(1) is consistent with long-standing Department policy. The explicit prohibition against a duration of residency requirement existed in prior § 361.42(c)(1) and remains unchanged in all other respects in these final regulations and is consistent with section 101(a)(12) of the Act.

Nonetheless in response to the requests for clarification, as stated in Technical Assistance Circular 12–04, titled "Provision of Vocational Rehabilitation Services to An Individual by More Than One Agency" and dated June 11, 2012, we clarify here in this Discussion that an individual may receive vocational rehabilitation services from more than one DSU simultaneously, including those in different States, when appropriate, and in accordance with the implementation of an order of selection, as applicable, in each State. In this way, the individual can receive the services that best support his or her vocational needs and the achievement of an employment outcome.

Changes: None.

Compliance Threshold

Comments: A few commenters recommended that we establish a compliance threshold of 90 percent with the requirement to determine eligibility within 60 days of the receipt of the application. These commenters stated this would provide a national benchmark by which DSUs would be held accountable by community stakeholders as well as State and Federal auditors.

Discussion: Section 102(a)(6) of the Act and final § 361.41(b)(1) require DSUs to determine the eligibility of an applicant within 60 days from the receipt of an application for vocational rehabilitation services, unless exceptional circumstances preclude the determination and the individual agrees to a specific extension of time. This requirement remains unchanged in the Act, as amended by WIOA and these final regulations; therefore, it is not a new requirement imposed on DSUs.

We appreciate the recommendations made by commenters for a mechanism to ensure compliance. Section 106(a)(1) of the Act requires States to comply with the common performance accountability system requirements imposed on all core programs of the workforce development system, including the VR program, established by section 116 of title I of WIOA. Section 116(b)(1)(A) requires a State to comply with the six primary performance indicators set forth in section 116(b)(2)(A)(i), as well as any other additional performance indicators developed by the State. While there is no statutory authority for the Department to impose a performance accountability measure, such as that recommended by commenters, there is nothing to preclude a State from developing such a measure for itself. We will continue to assess the compliance

of DSUs with the 60-day eligibility determination requirement in accordance with section 107 of the Act using all available data and information.

Changes: None.

Entities Holding Special Wage Certificates

Comments: Many commenters requested clarification about whether a DSU may contract with a community rehabilitation program to provide assessments used in the determination of eligibility, if the community rehabilitation program holds a subminimum wage certificate under section 14(c) of the FLSA.

Discussion: Neither the Act, as amended by WIOA, nor these final regulations prohibit a DSU from contracting with a community rehabilitation program for assessment services regardless of whether that provider also holds a subminimum wage certificate under section 14(c) of the FLSA. Nevertheless, we strongly encourage DSUs to contract with providers that can conduct assessments in competitive integrated settings. It is through these assessments that DSUs may best determine the individual's eligibility for the VR program and the vocational rehabilitation services needed to achieve competitive integrated employment.

Changes: None.

Extended Evaluation and Trial Work Experiences

Comments: Many commenters supported eliminating extended evaluation as a tool for determining eligibility for some individuals with the most significant disabilities. However, many other commenters also requested clarification of the circumstances under which it might be appropriate to use extended evaluation for the determination of eligibility for vocational rehabilitation services. Some commenters expressed concern that individuals for whom a trial work opportunity may not be available may inappropriately be determined ineligible for services and requested an evidentiary standard in the absence of the term "clear and convincing evidence" in § 361.42. Some commenters explicitly requested that extended evaluation be reinserted into the regulations.

Some commenters asked whether the term "clear and convincing evidence" was removed from proposed § 361.42(e)(2)(iii) by mistake and recommended retaining this standard. The proposed language required that "sufficient evidence" be obtained through trial work experiences to determine if an individual cannot benefit from vocational rehabilitation services to achieve a vocational goal. These commenters believed sufficient evidence is not a strong enough standard and that individuals with significant disabilities may be inappropriately determined ineligible as a result.

One commenter recommended that we revise § 361.42(e)(2)(i) to require that all trial work experiences take place in integrated settings by deleting the phrase "to the maximum extent possible." One commenter requested that we add examples of supports for individuals with serious mental illness to § 361.42(e)(2)(iv), such as individual placement and supported employment services.

Discussion: We appreciate the support by many commenters for the elimination of the use of extended evaluations for the purpose of determining that an individual is unable to benefit from vocational rehabilitation services due to the severity of the individual's disability and, thus, is ineligible for vocational rehabilitation services under section 102(a)(2)(B) of the Act, as amended by WIOA, and § 361.42. The Act's amendment and these final regulations help to ensure that before a DSU makes an ineligibility determination, it must conduct a full assessment of the capacity of the applicant to perform in realistic work settings, without the use of lengthy extended evaluations.

We appreciate the comment recommending that all trial work experiences be conducted in competitive integrated employment settings. While we agree that these experiences should be provided in competitive integrated employment settings, to the maximum extent possible, as stated in both proposed and final § 361.42(e)(2)(i), there is no statutory authority to do as the commenter recommends. Section 102(a)(2)(B) of the Act, as amended by WIOA, requires a DSU to explore an individual with a disability's ability to work through trial work experiences prior to determining that the individual is not eligible for the VR program due to the severity of his or her disability. The trial work experiences must be of "sufficient variety" and must provide the individual with the opportunity to "try different employment experiences" and "become employed in competitive integrated employment." There is no mandate in section 102(a)(2) that all trial work experiences be in competitive integrated employment. In fact, the use of the phrases "sufficient variety" and "different employment opportunities" suggest the congressional understanding that some trial work experiences may need to be provided in a setting other than competitive integrated employment. However, given the Act's heightened emphasis on the achievement of employment outcomes in competitive integrated employment, as well as the fact that section 102(a)(2)(B) of the Act, as amended by WIOA, specifically mandates that trial work experiences provide individuals with the opportunity to become employed in competitive integrated employment, we believe that final § 361.42(e)(2)(i) is consistent with the statute. Proposed and final § 361.42(e)(2)(i), are both consistent with prior § 361.42(e)(2)(i), with only minor wording changes to conform to terms used in the Act, as amended by WIOA. The Department also believes that trial work experiences in integrated settings, rather than simulated or mock experiences in sheltered environments, provide the DSU with the best and most comprehensive evidence of an individual's capacity to achieve competitive integrated employment. Therefore, consistent with the intent of the Act to provide individuals with disabilities the opportunity to achieve competitive integrated employment, we strongly recommend that DSUs exhaust all opportunities to provide trial work experiences through actual work experiences in integrated community environments to obtain the evidence necessary for making the determination of an individual's eligibility for vocational rehabilitation services.

We do not expect that individuals with significant disabilities will be determined ineligible in greater numbers as a result of this change. Rather, we expect that more individuals, including those with the most significant disabilities, and those who may require supported employment services, will achieve competitive integrated employment outcomes.

We appreciate the comments regarding the inadvertent deletion of prior regulatory provisions regarding clear and convincing evidence from proposed § 361.42(e)(2)(iii) and appreciate the strong support that this provision be retained in these final regulations. We agree with commenters that "sufficient evidence" is insufficient for a determination of ineligibility and that some individuals with significant disabilities may be inappropriately determined ineligible as a result. The deletion of the provision related to clear and convincing evidence was indeed an error and we have revised final § 361.42(e)(2)(iii) to read exactly as it had in prior regulations, thus resulting

in no regulatory change from prior regulations to these final regulations.

We believe retaining prior regulatory text in these final regulations is consistent with the statutory requirements of section 102 of the Act, as amended by WIOA. Specifically, section 102(a) of the Act, read in its entirety, establishes the information that is sufficient to make a determination of eligibility for an individual with a disability for purposes of the VR program. There is no, and never has been, a statutory requirement that clear and convincing evidence be used to make an eligibility determination. This long-standing statutory interpretation is consistent with use of the phrase "sufficient evidence" in § 361.42(e)(2)(iii)(A), both prior and final, with respect to eligibility determinations. However, when making a determination of ineligibility due to the severity of an individual's disability, section 102(a)(5)(C)(i) of the Act, which remained unchanged by WIOA, requires the DSU to inform the individual in writing of the reason for the ineligibility determination, including the clear and convincing evidence that formed the basis for that determination. This long-standing statutory requirement is consistent with use of the phrase "clear and convincing evidence" in § 361.42(e)(2)(iii)(B), both prior and final, with respect to determinations of ineligibility. Therefore, given the error noted by commenters, the Department has retained prior § 361.42(e)(2)(iii) in these final regulations.

In addition, prior to WIOA, section 102(a)(2)(B) of the Act required that trial work experiences be of sufficient variety and provided over a sufficient period of time to enable the DSU to determine the eligibility of the individual, or to obtain clear and convincing evidence of the individual's inability to achieve an employment outcome due to the severity of his or her disability.

Section 102(a)(2)(A) and section 102(a)(2)(B) now state only that the trial work experiences must be of sufficient variety and over a sufficient period of time to determine the eligibility of the individual. Section 102 of the Act, as amended by WIOA, no longer makes reference to the need for clear and convincing evidence for the purpose of determining an individual's ineligibility for vocational rehabilitation services. Consistent with these amendments, we proposed to revise §§ 361.42(e)(1) and 361.42(e)(2)(iii) to require that trial work experiences be of sufficient variety and over a sufficient period of time for the DSU to obtain sufficient evidence that the individual cannot benefit from participation in the VR program.

In proposing this change, we believe that the Act, as amended by WIOA, did not intend, to weaken the evidentiary standard required for this determination. It remains our long-standing policy that individuals with disabilities, including those with the most significant disabilities, must be afforded every opportunity to obtain the vocational rehabilitation services needed to achieve high quality employment and that a DSU should only deny an individual this opportunity in limited circumstances, and based on the highest level of proof.

Therefore, we have revised final § 361.42(e)(2)(iii) to clarify that the trial work experiences must yield clear and convincing evidence before a DSU may determine an individual is incapable of benefiting from the provision of vocational rehabilitation services, and, thus, is ineligible for the program.

We agree with the commenter that individuals with serious mental illness should be afforded the necessary supports, such as—but not limited to—individual placement or supported employment services, to ensure trial work experiences are beneficial. The same is true for any individual with significant disabilities participating in trial work experiences. Proposed § 361.42(e)(2)(iv) remained unchanged from prior regulations. While we disagree with the commenter that specific examples pertinent to mental illness should be included in final § 361.42(e)(2)(iv) because to do so could cause more confusion as to why other examples were not added. However, assistive technology services and personal assistance services are not the only support that should be provided during a trial work experience. Although we believe the provision was clear that the two examples given were just two examples of many given the use of the word "including," we have nonetheless made a small change to § 361.42(e)(2)(iv) to add further clarity.

Changes: We have revised final § 361.42(e)(2)(iii) to retain prior § 361.42(e)(2)(iii), thereby specifying that a DSU must base eligibility determinations on sufficient evidence, but that determinations of ineligibility due to the severity of an individual's disability must be based on clear and convincing evidence. We have also revised final § 361.42(e)(2)(iv) to add the phrase "including, but not limited to" when providing examples of the types of support services that may be provided to an individual participating in a trial work experience. This change clarifies that DSUs should ensure an individual with a disability receives the supports he or she needs so that the trial work experience is beneficial.

Development of the Individualized Plan for Employment (§ 361.45)

Time Frame for Developing the Individualized Plan for Employment

Comments: Many commenters supported the change from the prior regulations in proposed § 361.45(e) which required that the DSU develop the individualized plan for employment for each eligible individual as soon as possible, but no later than 90 days following determination of eligibility, unless the DSU and the individual agree to a specific extension of that time frame. Some commenters supported the 90-day standard but were concerned that the quality of plans be maintained and that plans continue to be individualized based on interests, abilities and informed choice and not be made uniform out of expediency. These commenters stated that DSUs may not take the time needed to develop a comprehensive individualized plan for employment within the 90-day time limit, and may settle for a more generalized plan rather than seeking an extension of time. Some commenters, though they supported a specific time limit, stated that the limit should be shorter than 90 days and recommended that we strengthen the regulation to promote the more timely development of the individualized plan for employment. One commenter recommended the adoption of a 90 percent compliance standard for this regulation to strengthen the adherence to the time limit. Another commenter asked how long the extended period should be to ensure that there are no additional delays in the development of the individualized plan for employment. Finally, one commenter requested guidance concerning how to proceed in situations where the individual does not agree to an extension.

Discussion: We appreciate the comments supporting the proposed regulatory changes, as well as the concerns expressed by commenters about those same changes. As explained in the NPRM, the change to § 361.45(e), which mirrors section 102(b)(3)(F) of the Act, as amended by WIOA, is intended to efficiently and effectively serve eligible individuals, move them through the VR process with minimal delay, and achieve employment outcomes in competitive integrated employment. We believe that DSUs can implement the regulation in a manner that does not negatively affect the quality and individualized nature of the plan for

employment for each eligible individual and that this requirement will have a minimal impact on the majority of DSUs that have already adopted the 90-day time frame. Despite the 90-day time frame, these plans must be of sufficient quality to incorporate mandatory components in section 102(b)(4) of the Act, and meet requirements under § 361.46(a)(1), which requires the individualized plan for employment to be consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, career interest, and informed choice consistent with the general goal of competitive integrated employment (except that in the case of an eligible individual who is a student or a youth with a disability, the description may be a description of the individual's projected post-school employment outcome).

In addition, the change to § 361.45(e) is necessary to implement the statutory requirement in section 102(b)(3)(F) of the Act, as amended by WIOA, that specifically mandates DSUs to develop the individualized plan for employment for each individual within 90 days following the determination of eligibility, unless the DSU and the individual agree to an extension of that time frame. Therefore, we do not have the statutory authority to shorten the time frame because to do so would be inconsistent with the statute.

DSUs must comply with the requirements of section 102(b)(3)(F) of the Act and final § 361.45(e) when developing the individualized plans for employment for each eligible individual. We will assess the DSUs' compliance with the requirement during the monitoring and review we conduct under section 107 of the Act. We do not believe that it is necessary, therefore, to include a 90 percent compliance standard in this regulation to strengthen the adherence to the time frame.

Section 102(b)(3)(F) of the Act and final § 361.45(e) permit the DSU and individual to agree to a specific extension of the 90-day time limit without imposing a limitation on the length of that extension. DSUs should ensure that the extension is warranted based on the particular circumstances and needs of the individual and that the extensions are not so long as to cause unnecessary delays in providing services.

The individualized plan for employment is an evolving document and may be amended to effect changes of goal, services, providers, and time frames. If the individual disagrees with the vocational rehabilitation counselor's request to extend the time for developing the plan, the counselor should determine whether the plan, as written at that time, addresses the mandatory components of section 102(b) of the Act and final § 361.46, and whether the information in the plan is sufficient to allow the DSU and individual to proceed with the delivery of services, with the understanding that the plan may be amended. If the counselor determines that the plan does not contain sufficient information on which to base the provision of services and the individual still disagrees with the request to extend the development of the plan beyond 90 days after further vocational guidance and counseling, the counselor should refer the individual to the CAP for help in resolving the disagreement, and must, in accordance with section 102(c)(2)(B)(ii), inform the individual of the due process rights set forth in section 102(c) of the Act and final § 361.57.

Changes: None.

Options for Developing the Individualized Plan for Employment

Comments: All comments received on proposed § 361.45(c)(1) supported the requirement that a DSU provide eligible individuals information about the option of requesting assistance from a disability advocacy organization when developing the individualized plan for employment. Many of the commenters recommended that we include in the regulation examples of disability advocacy organizations, such as agencies funded under the Act, entities providing services under the Ticket to Work and Work Incentive Act of 1998, and agencies assisting individuals with disabilities under the Developmental Disabilities Assistance and Bill of Rights Act of 2000 and the IDEA.

All commenters supported our inclusion of benefits planning in proposed § 361.45(c)(3). A few commenters requested that we define that term. One commenter asked whether we would support the development of additional benefit planning resources and what documentation would be required to verify the individual's completion of benefits planning.

Discussion: We appreciate the comments supporting the proposed regulations. Section 102(b)(1)(A) of the Act, as amended by WIOA, and final § 361.45(c)(1)(ii)(C) are intended to empower eligible individuals by clarifying that they can choose to seek assistance from disability advocacy organizations when developing their individualized plans for employment. Section 102(b)(1)(A) of the Act does not specify examples of these disability advocacy organizations, and we do not believe it necessary to include examples in final § 361.45(c)(1)(ii)(C) because to do so could have an unintended limiting effect. However, we encourage DSUs to provide eligible individuals with a list of the advocacy organizations in the State so that they may identify those organizations with expertise in disability-related needs, responsibilities, and services that are required to achieve the individuals' employment goals.

Consistent with section 102(b)(2) of the Act, as amended by WIOA, final § 361.45(c) requires DSUs to provide certain information in writing to eligible individuals when developing the individualized plan for employment. Specifically, final § 361.45(c)(2) and (3) require DSUs to provide general information on additional supports and assistance for individuals with disabilities desiring to enter the workforce, including assistance with benefits planning, to individuals receiving Supplemental Security Income or Social Security Disability Insurance benefits. We recommend that DSUs retain a copy of this written information and guidance in the individual's service record, as they would be documents pertinent to the development of the individualized plan for employment.

In addition, we understand that benefits planning may take many different forms over a course of time. Furthermore, benefits planning and the individuals certified to provide these types of support services are determined by the SSA's work incentive program. We believe it is important that States retain sufficient flexibility to work with providers appropriately certified or defined by SSA. Therefore, we disagree with the recommendation to define "benefits planning" in these final VR program regulations.

Furthermore, although DSUs must provide information about benefits planning and available resources, they are not required to document the completion of these services. However, if benefits planning is included and the services in the individualized plan for employment, it should be documented upon completion.

Changes: None.

Data for Preparing the Individualized Plan for Employment

Comments: One commenter stated that the determination of eligibility only requires that an individual have impediments to employment but not necessarily impediments to the specific employment outcome the individual desires, and questioned why only this data would be used.

Discussion: While we appreciate the concerns expressed by the commenter, this section of the Act was not changed by WIOA and, therefore, no changes were proposed in the NPRM. We address other comments we received on this section regarding the use of sheltered employment settings for the conduct of assessments in the *Assessment for Determining Eligibility and Vocational Rehabilitation Needs* section under the *Applicable Definitions* section previously in this preamble.

Changes: None.

Content of the Individualized Plan for Employment (§ 361.46)

Comments: The majority of commenters supported proposed § 361.46(a)(1), requiring that the individualized plan for employment specify an employment goal consistent with the general goal of competitive integrated employment under section 102(b)(4) of the Act, as amended by WIOA. However, a few commenters expressed concern that the proposed regulation does not satisfactorily address the needs of all individuals with disabilities because it limits options for employment goals to competitive integrated employment, and stated that the regulation is in conflict with congressional intent regarding the full range of employment options.

A few commenters recommended adding to or clarifying the requirement in proposed § 361.46(a)(7)(iii) that the individualized plan for employment contain a description of how the responsibilities for service delivery will be divided between the employment network and the DSU under section 102(b)(4)(H) of the Act.

Discussion: We appreciate the support for the proposed regulation. WIOA did not amend section 102(b)(4)(H) of the Act, which requires that the individualized plan for employment for an individual receiving assistance from an employment network through the Ticket to Work and Self-Sufficiency program established under the Social Security Act include a description of how the responsibility for providing services will be divided between the employment network and the DSU. Therefore, we do not believe that further clarification of this long-standing requirement is necessary.

We received comments about eliminating uncompensated employment outcomes through the individualized plan for employment, and we address them in the discussion on the definition of "employment outcome" in final § 361.5(c)(15) under the Applicable Definitions section elsewhere in this *Analysis of Comments and Changes* section.

Changes: None.

Scope of Vocational Rehabilitation Services for Individuals With Disabilities

Services for Individuals Who Have Applied or Been Determined Eligible for Vocational Rehabilitation Services (§ 361.48(b))

Advanced Training

Comments: A few commenters supported including advanced training in STEM fields (science, technology, engineering, or mathematics, including computer science), medicine, law, or business as a vocational or other training service in proposed § 361.48(b)(6) so that individuals with disabilities can be prepared for the high-demand careers available in today's economy. One commenter recommended that advanced training be provided, as appropriate, not only for those specific careers mentioned in proposed § 361.48(b)(6), but for all careers. Another commenter suggested that § 361.48(b)(6) explicitly state that advanced training must be provided under an individualized plan for employment. Still another commenter requested that proposed § 361.5(c) include a definition of "advanced training."

By contrast, a few commenters expressed concern about the potential cost burden upon VR agencies that would result from individuals pursuing advanced training under proposed § 361.48(b)(6). These commenters suggested that comparable benefits are typically limited for graduate students; as a result, DSUs would need to cover all or a substantial portion of the cost of advanced degrees.

Additionally, one commenter requested that we clarify in § 361.48(b) that vocational rehabilitation services are not intended to assist individuals to obtain employment in only entry-level careers.

Discussion: We appreciate the support for including advanced training among the individualized services available. The Department has a long history of encouraging DSUs to provide advanced training, when appropriate, to assist eligible individuals in achieving their employment goals. Section 103(a)(18) of the Act, as amended by WIOA, specifically permits DSUs to provide vocational rehabilitation services that encourage qualified eligible individuals to pursue advanced training in the STEM fields, medicine, law, or business. Section 103(a)(5) of the Act and our prior regulation in § 361.48(f) (now final § 361.48(b)(6)) have historically permitted DSUs to provide training at institutions of higher education, including in advanced degree programs, to qualified eligible individuals.

While section 103(a)(18) of the Act specifically mentions advanced education in certain fields, that does not exclude advanced training in other fields under section 103(a)(5) of the Act. In reviewing proposed § 361.48(b)(6), the Department recognizes that it could be interpreted as allowing advanced training in only certain fields. This was not our intent, and that restriction would not be consistent with section 103(a) of the Act or long-standing Department policy. Therefore, we have revised final § 361.48(b)(6) to clarify that DSUs may provide advanced training in any field, not just the specific fields listed in section 103(a)(18) of the Act.

We do not believe that a definition of "advanced training" is necessary. Neither section 7, nor section 103(a), of the Act, as amended by WIOA, defines "advanced training." We understand that "advanced training" may have multiple meanings, such as degrees conferred by institutions of higher education and advanced certifications in certain fields, all of which may be permissible under the VR program. Therefore, we will not define this term in final § 361.48(b)(6) or elsewhere in final part 361 to avoid limiting the meaning of "advanced training."

As stated earlier, final § 361.48(b)(6) continues the long-standing availability of financial support for advanced training through the VR program. Therefore, though comparable benefits for graduate-level education may be limited, we anticipate that DSUs will experience little, if any, increase in the costs of providing this existing service.

The Secretary agrees that providing vocational rehabilitation services is not limited only to helping an individual with a disability obtain entry-level employment. Under section 102(a)(1) of the Act, as amended by WIOA, and final § 361.48(b), DSUs are to provide vocational rehabilitation services to help eligible individuals advance in employment, consistent with each individual's approved individualized plan for employment and his or her unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

Changes: We have revised § 361.48(b)(6) to clarify that DSUs may provide advanced training in any field.

Other Services

Comments: Some commenters recommended that proposed § 361.48(b)

include other services not already specifically mentioned. Of these commenters, a few suggested that § 361.48(b)(6) allow DSUs to provide tuition and other services for students with intellectual or developmental disabilities in a Comprehensive Transition and Postsecondary Program for Students with Intellectual Disabilities, as defined by the Higher Education Act of 2008. One commenter asked that assistive technology be included among the individualized services listed in this section. Another commenter suggested that § 361.48(b) require that DSUs recruit, train, and hire peer service providers and mental health advocates to offer individualized support services to individuals experiencing mental illness.

Finally, one commenter requested that we clarify the difference between job retention services and follow-along services in § 361.48(b)(12).

Discussion: We disagree with the commenters' recommendations to identify in final § 361.48(b) other services not specifically listed. The list of services in section 103(a) of the Act and final § 361.48(b) is not exhaustive. Therefore, DSUs may provide other services, not specifically listed, if necessary for the individual to achieve an employment outcome. Similarly, we clarify here that the vocational and other training services specified in final § 361.48(b)(6) encompass tuition and other services for students with intellectual or developmental disabilities in a Comprehensive Transition and Postsecondary Program for Students with Intellectual Disabilities, as defined by the Higher Education Act of 2008. In addition, assistive technology is encompassed in the definition of "rehabilitation technology" in final § 361.5(c)(45), which is included among the individualized services in final § 361.48(b)(17). Also, section 103(a) of the Act, as amended by WIOA, does not specifically require a DSU to provide mental health advocacy services or peer-counseling services for individuals with mental health diagnoses. However, a DSU may provide peer-counseling services, on an individualized basis, under final § 361.48(b)(3), (12), and (21).

Finally, job-retention services and follow-along services are both types of job-related services. Job-retention services may include any vocational rehabilitation service (*i.e.,* vocational rehabilitation counseling and guidance, maintenance, or tools) necessary to help an individual maintain employment. Follow-along services typically mean direct contact with an employed individual to provide support with issues arising from employment, such as on-the-job performance, or with addressing employment barriers, such as absenteeism or tardiness, that could jeopardize employment.

Changes: None.

Scope of Vocational Rehabilitation Services for Groups of Individuals With Disabilities (§ 361.49(a))

Establishment, Development, or Improvement of Community Rehabilitation Programs

Comments: One commenter suggested that vocational rehabilitation services provided under § 361.49(a)(1) for establishing, developing, or improving a public or other nonprofit community rehabilitation program should be allowable only if these services result in competitive integrated employment for the individuals receiving services from the program.

Discussion: We agree with the comment that services for groups provided under § 361.49(a)(1) must be provided for the purpose of achieving competitive integrated employment. Section 103(b)(2) of the Act remained unchanged by the amendments in WIOA, except for a technical amendment. As such, services provided under this authority have always been for the purpose of promoting integration in the community through employment, and final § 361.49(a)(1), like the Act, as amended by WIOA, emphasizes employment outcomes in competitive integrated employment, including supported employment and customized employment.

Changes: None.

Technical Assistance to Businesses

Comments: Another commenter sought clarification about the difference between technical assistance to businesses seeking to employ individuals with disabilities in proposed § 361.49(a)(4) and training and services for employers in proposed § 361.32. This commenter inquired whether both authorities may be used to fund these similar services.

Discussion: In answer to the request for clarification, DSUs are permitted to partner with employers and businesses under both final §§ 361.49(a)(4) and 361.32, as authorized by sections 103(b) and 109, respectively, of the Act, as amended by WIOA. Under final § 361.49(a)(4), DSUs may use VR program funds to provide technical assistance to businesses seeking to hire individuals with disabilities, and this authority must be exercised in a manner consistent with the ultimate purpose of the program—achieving competitive integrated employment. Final § 361.32 is similar, and it identifies specific activities DSUs may engage in when providing training and technical assistance to businesses. These activities may include, but are not limited to, general training and technical assistance for employers about employing individuals with disabilities, disability awareness, and employment law; recruitment, training, retention of, and workplace accommodations for, employees with disabilities; and improving opportunities for work-based learning experiences for individuals with disabilities. The specific activities in final § 361.32 are encompassed within the more general authority of final § 361.49(a)(4). Thus, there is little distinction between the two authorities, and DSUs may rely on both when providing training and technical assistance to businesses seeking to employ individuals with disabilities in competitive integrated employment.

Changes: None.

Establishment, Development, or Improvement of Assistive Technology Programs

Comments: A few commenters opposed proposed § 361.49(a)(8), because it requires that individuals with disabilities be applicants of or be determined eligible for vocational rehabilitation services to access assistive technology services through the establishment, development, or improvement of assistive technology demonstration, loan, reutilization, or financing programs established under the Assistive Technology Act of 1998.

Discussion: We agree with commenters that section 103(b)(8) of the Act, as amended by WIOA, is not explicitly limited to individuals with disabilities who have applied or been determined eligible for the VR program. We also agree that individuals with disabilities who are not applicants or eligible individuals of the VR program may benefit from the coordination of programming with activities authorized under the Assistive Technology Act of 1998.

After further review, we recognize that limiting these generalized assistive technology services to applicants and eligible individuals of the VR program, as we did in proposed § 361.49(a)(8), may have created an unintended barrier for these individuals in accessing generalized assistive technology services. Our intention of limiting this service to applicants and eligible individuals of the VR program in proposed § 361.49(a)(8) was to be consistent with the establishment authority in section 103(b)(2) of the Act

and proposed § 361.49(a)(1), which remained substantially unchanged by WIOA.

However, we acknowledge that the nature of the services provided under the new establishment authority of section 103(b)(8) of the Act and proposed § 361.49(a)(8) is quite different. We also acknowledge that neither section 103(b) of the Act, as amended by WIOA, nor proposed § 361.49 mandates the DSU to provide any one of these services, including the assistive technology related services in section 103(b)(8) of the Act and proposed § 361.49(a)(8). Furthermore, consistent with section 103(b) of the Act, under final § 361.49(a), some of the services to groups are available to individuals who may not have applied or been determined eligible for vocational rehabilitation services.

We acknowledge that some individuals with disabilities may require generalized assistive technology services before they are able to apply for vocational rehabilitation services, or that, through the receipt of generalized assistive technology services, individuals with disabilities may realize their potential to achieve competitive integrated employment and subsequently apply for vocational rehabilitation services. Therefore, the final regulations do not limit assistive technology services to applicants and eligible individuals of the VR program.

Finally, the assistive technology services provided under this authority are more generalized in nature and for the benefit of a group of individuals; they are not tied to the individualized plan for employment of any one individual. Individualized assistive technology services and devices may only be provided, under section 103(a)(14) of the Act and final § 361.48(b)(17) and in accordance with an agreed upon individualized plan for employment.

Changes: We have revised final § 361.49(a)(8) so that DSUs are permitted to provide any individual with a disability generalized assistive technology services provided under programs established, developed, or improved by the DSU in coordination with activities authorized under the Assistive Technology Act of 1998.

Advanced Training

Comments: One commenter sought clarification of the authority of the DSU to provide support to eligible individuals (including, as appropriate, tuition) for advanced training in specific fields under proposed § 361.49(a)(9).

Discussion: As stated in the NPRM, because § 361.49(a)(9) addresses services to groups, we believe there are only limited circumstances in which it would be appropriate for the DSU to provide support for advanced training under that section. Examples include supporting an advanced degree program for multiple eligible individuals at the same institution of higher education or developing and implementing specific programming to benefit a group of eligible individuals working toward advanced degrees at institutions of higher education.

Final § 361.49(a)(9), which mirrors section 103(b)(9) of the Act, as amended by WIOA, is not intended, and must not be used, to replace the authority of the DSU to provide advanced training to eligible individuals on their individualized plans for employment under section 103(a)(5) and (18) of the Act and final § 361.48(b).

Changes: None.

Comparable Services and Benefits (§ 361.53)

Accommodations and Auxiliary Aids and Services

Comments: Although a few commenters supported the proposed regulation, many commenters recommended that accommodations and auxiliary aids and services be exempt from a search for comparable services and benefits when they are needed to help an individual participate in services that are exempt from such a search. Two commenters recommended removing the requirement to search for comparable benefits for auxiliary aids and devices altogether. Some commenters indicated that, prior to WIOA, providing accommodations or auxiliary aids and services was typically done in support of another service and rarely a stand-alone service.

A few commenters noted a technical error in proposed § 361.53(b), which cross-referenced the vocational rehabilitation services exempt from a determination of the availability of comparable services and benefits in proposed § 361.48(a) instead of proposed § 361.48(b), the correct citation. These commenters also recommended revising the regulation to specify that a comparable service review is not required prior to providing an accommodation or auxiliary aid or service if it is necessary for an individual to receive one of the exempt services listed in proposed § 361.48(b).

Discussion: We appreciate the comments and recommendations about comparable services and benefits. Although many commenters suggested that we exempt accommodations and auxiliary aids and services from a search for comparable services and benefits, especially when they are needed to enable an individual to participate in services that are exempt from such a search, doing so would be contrary to the statute. Whereas some commenters noted that prior to WIOA, providing accommodations for auxiliary aids and services was typically done in support of another service and rarely as a stand-alone service, section 101(a)(8)(A)(i) of the Act, as amended by WIOA, specifically added accommodations or auxiliary aids and services to those services that require a determination of available comparable services and benefits before the DSU may provide them. Moreover, section 101(a)(8)(A)(i) specifically exempts certain services from this search, but accommodations or auxiliary aids and services are not among those that are exempt.

We agree that there was an error in the cross-reference to proposed § 361.48(a), as noted by several commenters. We have made the correction.

Changes: We have revised final § 361.53(b), which cross-references § 361.48, to correct a typographical error that appeared in the NPRM. The correct cross-reference is § 361.48(b).

Pre-Employment Transition Services and Personally Prescribed Devices

Comments: A few commenters suggested that pre-employment transition services be added to the list of services exempt from a search for comparable services and benefits because the vocational rehabilitation agency must ensure that these services are provided or provide them directly.

One commenter suggested that personally-prescribed devices, such as eyeglasses, hearing aids, and wheelchairs, be added as an exempt service under proposed § 361.53(b). The commenter based this recommendation on a statement in the preamble of the NPRM about identifying agency financial responsibilities in interagency agreements under proposed § 361.53(d) that personally prescribed devices are not included in accommodations or auxiliary aids and services for the purposes of these regulations.

Discussion: While we agree with commenters that DSUs must provide, or arrange for the provision of, pre-employment transition services, section 101(a)(8)(A)(i) of the Act, as amended by WIOA, does not exempt these services from the search for comparable services and benefits as it does for other specific services. A DSU may satisfy its mandate under section 113 of the Act by arranging for pre-employment transition services provided by another public

entity after conducting a search for comparable services and benefits. Similarly, section 101(a)(8)(A)(i) of the Act does not exempt personally-prescribed devices, such as eyeglasses, hearing aids, and wheelchairs. Given that the Act specifically exempts some services, there is no statutory basis to exempt other services or devices from the search for comparable services and benefits; therefore, personally prescribed devices may not be added as an exempt service under final § 361.53(b) as referenced in final § 361.53(d).

Changes: None.

Interagency Agreements

Comments: Several commenters addressed interagency agreements between DSUs and public institutions of higher education for providing accommodations and auxiliary aids and services. A few commenters shared their concern that students may not receive services they need because the DSU and an institution of higher education cannot agree on financial responsibilities. One commenter suggested that DSUs be required to provide the services and then pursue reimbursement from the universities if no interagency agreement exists. Other commenters supported interagency agreements so long as they did not result in denial or delays in providing needed aids or accommodations. Some commenters stated that interagency agreements should not require negotiation of the financial responsibilities for providing accommodations or auxiliary aids and services, which should be the responsibility of the agency that is providing the service, aid, or accommodation. Other commenters stated that these financial responsibilities should be defined at a national level. One commenter suggested that interagency agreements should be explicit in specifying who is responsible for accommodations, services, and auxiliary aids, and that the regulations should include a required time frame of six months from the publication of the final regulations for completing interagency agreements.

A few commenters objected to one example in the NPRM describing agency financial responsibilities in interagency agreements with public institutions of higher education. Specifically, the commenters thought the example of a DSU providing interpreters or readers both in and out of a classroom in a State where tuition is free for deaf or blind students could be misinterpreted as guidance or direction from the Department about how to assign financial responsibilities rather than as an example of negotiating financial responsibilities.

Discussion: We appreciate the concerns expressed by commenters regarding negotiation of financial responsibilities in interagency agreements and the potential delay in students receiving services. Pursuant to section 101(a)(8)(A)(i) of the Act and final § 361.53(c)(2), DSUs must provide a service if that service is not available as a comparable service at the time it is needed. This provision should not be interpreted as precluding the required negotiation of financial responsibilities under an interagency agreement required by section 101(a)(8)(B) of the Act and final § 361.53(d).

Although some commenters suggested that accommodations and auxiliary aids and services should be the responsibility of the agency providing the service requiring the accommodations, section 101(a)(8)(B) of the Act, as amended by WIOA, mandates that State-level interagency agreements identify who is financially responsible for providing vocational rehabilitation services, including accommodations or auxiliary aids and services.

There is no statutory authority for the Department to define these financial responsibilities at the national level. While the statute and these final regulations establish some parameters, both permit States to develop interagency agreements appropriate to their unique needs, thereby ensuring maximum flexibility. For example, States may choose to explicitly identify the financial responsibilities of each party to the interagency agreement as suggested by the commenter.

Additionally, there is no statutory authority for the Department to impose a deadline of six months from the publication of the final regulations to complete interagency agreements. Moreover, we do not believe such a deadline is necessary because the requirement to enter into interagency agreements, set forth in section 101(a)(8)(B) of the Act and final § 361.53, existed prior to the enactment of WIOA. The requirement to enter into an interagency agreement is long-standing, with the only change being the explicit inclusion of accommodations or auxiliary aids and services. However, as noted in the preamble to the NPRM, we believe that these services were always included in the search for comparable services and benefits, as is any vocational rehabilitation service that is not explicitly exempt. For this reason, the changes made to the interagency agreements pursuant to the amendments made by WIOA are technical—not substantive—in nature, and additional time to implement the requirement is not necessary.

Finally, in response to comments expressing concern about one of the examples provided in the preamble to the NPRM, that example is one of several in a non-exhaustive list. Determination of agency financial responsibilities in interagency agreements is a State matter and should be developed appropriately to meet each State's unique circumstances. We provided the examples only to demonstrate how some States have resolved financial responsibilities in interagency agreements. However, these examples do not necessarily represent best practices or the complete universe of how such issues may be resolved.

Changes: None.

Semi-Annual and Annual Review of Individuals in Extended Employment and Other Employment Under Special Certificate Provisions of the Fair Labor Standards Act (§ 361.55)

Effective Date

Comments: Many commenters strongly supported or endorsed proposed § 361.55, which was viewed as helpful in increasing the potential of as many people with disabilities as possible moving into competitive integrated employment. A few commenters requested clarification about the effective date.

Discussion: We appreciate the many comments supporting this regulation, which is consistent with section 101(a)(14) of the Act, as amended by WIOA. The additional review requirement in § 361.55 is one of many new requirements by which WIOA places heightened emphasis on ensuring that individuals with disabilities, including those with the most significant disabilities, can achieve competitive integrated employment if given the necessary services and supports.

In response to the comments seeking clarification of the effective date of the requirements in final § 361.55, most provisions of the Act, as amended by WIOA (with only a few exceptions not applicable here), took effect on July 22, 2014, the date WIOA was signed into law. This includes section 101(a)(14), which requires the semi-annual review and reevaluation for the first two years following the beginning of employment, and annually thereafter, for individuals with a disability who have received services under the VR program and who are employed in an extended employment setting in a community

rehabilitation program or any other employment under section 14(c) of the FLSA. The purpose of these reviews is to determine each individual's interest, priorities, and needs with respect to competitive integrated employment or training for such employment.

Changes: None.

Who is subject to the requirements?

Comments: A few commenters requested that we clarify who is subject to these requirements (*e.g.*, all individuals, only youth, or individuals in day habilitation programs).

Discussion: Final § 361.55 applies to all individuals with disabilities, regardless of age, who have been served by the VR program and are employed in extended employment or in any employment setting at subminimum wage. This includes any individual who has received services under an individualized plan for employment but has been determined by the DSU to be no longer eligible for services under final § 361.43.

Changes: None.

Documentation

Comments: A few commenters asked that we clarify the documentation required for the semi-annual and annual reviews.

Discussion: The documentation required in final § 361.55(b)(2) for the semi-annual or annual reviews must be consistent with final § 361.47(a)(10). We believe that the DSU could satisfy the requirement by: (1) Documenting the results of the semi-annual or annual review; (2) obtaining a signed acknowledgment that the individual with a disability, or if appropriate, the individual's representative, has provided input to the review; and (3) obtaining a signed acknowledgment by the individual, or the individual's representative as appropriate, that the review was done.

Final § 361.47(b) requires the DSU, in consultation with the SRC, if the State has a Council, to determine the type of documentation that the DSU will maintain in order to meet service record requirements, including those in final § 361.55(b)(2). We encourage the DSU to document the interests, priorities, and needs discussed in final § 361.55(b)(1) and the maximum efforts made under final § 361.55(b)(3) to assist the individual in achieving competitive, integrated employment.

Changes: None.

Costs of Conducting the Reviews

Comments: One commenter noted the unknown costs to the DSU associated with conducting semi-annual and annual reviews.

Discussion: We agree with the commenter that the costs associated with conducting semi-annual and annual reviews may not be readily known; however, prior to the amendments made by WIOA, DSUs were required to conduct annual reviews for up to two years and annually thereafter at the request of the individual with a disability or his or her representative. Therefore, the DSU should have a historical cost basis for estimating the current costs of conducting these reviews.

Changes: None.

Informed Choice

Comments: Other commenters suggested allowing an individual, directly or indirectly through his or her representative, to exercise informed choice to opt out of future reviews after any review has taken place.

Discussion: While we appreciate the commenter's suggestion to allow an individual to opt out of future reviews after any given review has taken place, section 101(a)(14) of the Act, as amended by WIOA, does not permit this. WIOA removed the previous statutory provision that required the reviews to be conducted annually only for the first two years of employment. Under the prior requirement, the reviews would continue past the mandatory two years only if requested by the individual or, if appropriate, the individual's representative. By removing this language, WIOA requires the reviews and provides no ability for an individual to opt out.

Changes: None.

Retroactive Reviews

Comments: One commenter was concerned that the semi-annual and annual reviews would not be conducted by the DSU in that State. The commenter observed that the DSU had not been tracking individuals or conducting reviews, despite beginning tracking efforts in 2014. The commenter suggested that we require DSUs to conduct, within a specified time, retroactive semi-annual and annual reviews for all individuals with disabilities in subminimum wage or extended employment that have been found ineligible to benefit from vocational rehabilitation services.

Discussion: We appreciate both the concern about the DSU not tracking and conducting reviews, as well as the recommendation to require DSUs to conduct retroactive semi-annual and annual reviews within a specified time. Since the enactment of WIOA, DSUs have been required to conduct semi-annual reviews on individuals with disabilities in extended employment, or any other employment under section 14(c) of the FLSA, for two years following the beginning of such employment and annually thereafter. To require a set period of time for retroactive reviews is inconsistent with the Act; however, the conduct of reviews, albeit with differing time frames, has been a requirement prior to the passage of WIOA and a responsibility of the DSU. Therefore, a DSU that historically has not, and is not conducting reviews currently, would be out of compliance with the requirement under the Act.

Changes: None.

Cross-Reference With 34 CFR 397.40

Comments: A few commenters suggested that the language in proposed § 361.55 and proposed 34 CFR 397.40, regarding semi-annual and annual reviews, be cross-referenced and reconciled to ensure consistency and avoid confusion about which requirements apply and the respective responsibilities of the DSU under each provision. One commenter suggested we add a new § 361.55(c) to indicate that: (1) The requirements in part 361 supersede any requirements that may apply in 34 CFR 397.40 regarding the responsibilities of a DSU for individuals with disabilities, regardless of age, who are employed at a subminimum wage; and (2) reviews conducted under § 361.55 are subject to the requirements under 34 CFR 397.40, regarding informing the individual of self-advocacy, self-determination, and peer mentoring training opportunities available in the community.

Discussion: Although a few commenters suggested that the language in proposed § 361.55 and proposed § 397.40 regarding semi-annual and annual reviews be cross-referenced and reconciled to ensure consistency and avoid confusion about applicable requirements and responsibilities of the DSU, the sections are under separate titles in the Act and have differing effective implementation dates. Section 101(a)(14) took effect upon enactment (July 22, 2014); section 511 of the Act, as amended by WIOA, will take effect on July 22, 2016. Moreover, final part 361 and 34 CFR part 397 apply to different, although sometimes intersecting, groups of individuals with disabilities. Final § 361.55 applies only to individuals who have received or are receiving vocational rehabilitation services, whereas final 34 CFR 397.40 covers a much broader population of individuals with disabilities because

many of those individuals may not have ever received vocational rehabilitation services. Neither section supersedes the other; therefore, the specific responsibilities of the DSU and the requirements for reviews must be met under both. While it is conceivable that the required reviews under final § 361.55 and final 34 CFR 397.40 may be fulfilled concurrently for some individuals with disabilities to whom both apply, it cannot be assumed that a review required under final § 361.55 sufficiently replaces the review required under final 34 CFR 397.40 or vice versa.

Changes: None.

Individuals With a Record of Service

Comments: None.

Discussion: Upon further Departmental review of proposed § 361.55 in light of the practical implementation of these requirements with regard to students with disabilities receiving pre-employment transition services under section 113 of the Act, as amended by WIOA and final § 361.48(a), we have determined that clarifying technical amendments are necessary. Thus, we clarify in final § 361.55(a)(1) and (a)(2) that the requirements of final § 361.55 apply to those individuals who have a record of service—in other words, individuals who have applied for or been determined eligible for, vocational rehabilitation services—and achieved employment either at subminimum wage or in extended employment. This clarifying change retains the long-standing applicability of these requirements to such individuals. Without this clarifying change, it may be construed that the requirements may also apply to students with disabilities receiving pre-employment transition services. As noted in a separate discussion related to "Transition Services," there is no requirement that these students apply for or be determined eligible for vocational rehabilitation services in order to receive pre-employment transition services. As such, it is possible that a DSU will have no information about the student to form the basis for these semi-annual or annual reviews.

Changes: Final §§ 361.55(a)(2)(i) and (ii) now explicitly applies these requirements to individuals who have a record of service.

B. Transition of Students and Youth With Disabilities From School to Postsecondary Education and Employment

This section presents the analysis of comments we received on proposed regulations regarding the provision of transition and other vocational rehabilitation services to students and youth with disabilities to ensure that they have meaningful opportunities to move from school to post-school activities, including competitive integrated employment. The analysis is presented by topical headings relevant to sections of the regulations in the order they appear in part 361 as listed. We discussed some of these regulatory sections, such as §§ 361.24, 361.46, 361.48(b), and 361.49, under section A as they also pertain to the general administration of the VR program and the provision of vocational rehabilitation services to individuals with disabilities of any age.

Topical Headings

Transition-Related Definitions (§ 361.5(c))
Pre-Employment Transition Services (§ 361.5(c)(42))
- The Term "Pre-Employment Transition Services"
- Scope of Definition
- Definitions for Required Activities
- Acronym for Pre-Employment Transition Services

Student With a Disability (§ 361.5(c)(51))
- Scope of Definition
- Educational Programming
- Students Who Have Applied or Been Determined Eligible for Vocational Rehabilitation Services

Transition Services (§ 361.5(c)(55))
- Scope of "Pre-Employment Transition Services" and "Transition Services"
- Outreach and Engagement of Parents or Representatives

Youth With a Disability (§ 361.5(c)(58))
- Distinction Between "Student With a Disability" and "Youth With a Disability"
- Scope of Definition

Coordination With Education Officials (§ 361.22)
- Coordination of Pre-Employment Transition Services
- Financial and Programmatic Responsibilities
- Contracting With Subminimum Wage Programs
- Coordination and Outreach to Parents and Representatives
- Dispute Resolution

Cooperation and Coordination With Other Entities (§ 361.24)
Content of the Individualized Plan for Employment (§ 361.46)
Scope of Vocational Rehabilitation Services for Individuals With Disabilities (§ 361.48)
Pre-Employment Transition Services (§ 361.48(a))
- Scope of Pre-Employment Transition Services and Use of Reserve
- Potentially Eligible
- Discretion to Provide Pre-Employment Transition Services to All Students With Disabilities
- Provision of Required Activities Based on Need
- Continuation of Pre-Employment Transition Services
- Required Activities
- Continuum of Services
- Other Vocational Rehabilitation Services as Pre-Employment Transition Services
- Pre-Employment Transition Coordination Activities
- Documentation and Reporting
- Performance Measures

Services for Individuals Who Have Applied for or Been Determined Eligible for Vocational Rehabilitation Services (§ 361.48(b))
Scope of Vocational Rehabilitation Services for Groups of Individuals With Disabilities (§ 361.49)

Transition-Related Definitions (§ 361.5(c))

Pre-Employment Transition Services (§ 361.5(c)(42))

The Term "Pre-Employment Transition Services"

Comments: Some commenters suggested revising the term "pre-employment transition services" to "student career services."

Discussion: We appreciate the suggestions raised by the commenters. However, we will not change the term "pre-employment transition services" in final § 361.5(c)(42) to "student career services" because this term is not used in the Act. Rather, section 7(30) of the Act, as amended by WIOA, defines "pre-employment transition services," and it is the term used throughout title I of the Act, including in sections 101(a)(25), 103(a)(15), 110(d), 112(a), and 113.

Changes: None.

Scope of Definition

Comments: A few commenters recommended alternate definitions for the term "pre-employment transition services" that would include: (1) The pre-employment transition coordination responsibilities in proposed § 361.48(a)(4); (2) each of the five required activities in proposed § 361.48(a)(2); and (3) use of the term "potentially eligible" and its definition.

Discussion: While we appreciate the suggestions, we disagree that the definition of "pre-employment transition services" should be expanded to include more specific information regarding the types of services that constitute "pre-employment transition services" and the population to be served. The definition of "pre-employment transition services" in final § 361.5(c)(42) is consistent with the statutory definition in section 7(30) of the Act because it refers to the required and authorized activities specified in detail in final § 361.48(a), which are the only services permitted.

We also disagree with the recommendation to include pre-

employment coordination services in the definition of "pre-employment transition services." We agree that coordination activities are necessary for arranging and providing pre-employment transition services. However, coordination activities are more akin to the related activities performed by vocational rehabilitation counselors and other vocational rehabilitation personnel during the course of providing pre-employment transition services rather than the services themselves. As such, we included pre-employment transition coordination activities under the implementation of pre-employment transition services in final § 361.48(a), but have not included them as part of the definition of "pre-employment transition services."

We also do not believe it is necessary to define the term "potentially eligible," either within the definition of "pre-employment transition services" or separately in final § 361.5(c). Because this term is unique to implementing pre-employment transition services and is not applicable to any other vocational rehabilitation service, we interpret the phrase "potentially eligible" in § 361.48(a)(1) as meaning all students with disabilities, regardless of whether they have applied or been determined eligible for vocational rehabilitation services. In so doing, the term is applicable only when implementing the requirements governing pre-employment transition services in final § 361.48(a).

Changes: None.

Definitions for Required Activities

Comments: A few commenters recommended that we define the required activities listed in proposed § 361.48(a)(2), including work-based learning experiences, and career (or job exploration) counseling. In this same vein, many suggested that we define work-based learning experiences in a manner consistent with section 103(a) of the School to Work Opportunities Act of 1994, and include job training, work experiences, workplace mentoring, and instruction in general workplace competencies. One commenter requested that we define career counseling, expressing concern that many States may provide this service in ways that are less effective than one-on-one counseling, such as presentations to groups of students. One commenter requested that we broadly define the five required pre-employment transition services to facilitate maximum use of the VR funds reserved for those services. However, a few commenters requested that the required activities not be defined so as to maintain the flexibility permitted in the Act, as amended by WIOA, to allow States to be innovative in the types of activities provided to students with disabilities and to maximize use of the VR funds reserved for providing pre-employment transition services.

Discussion: We considered the requests to define the required activities listed in § 361.48(a)(2). We reviewed section 103 of the School-to-Work Opportunities Act of 1994, which expired on October 1, 2001, and found that it included mandatory activities under the work-based learning component that are similar to the five required activities identified in section 113(b) of the Act, as amended by WIOA. Given the similarities, we do not believe further clarifications are needed.

We agree with the comment that, by not defining the required activities, we maintain flexibility for States and enable the use of creative and innovative strategies that are State specific and tailored to meet the needs of students with disabilities. We also considered the comment about defining career counseling. DSUs must provide career counseling, or job exploration counseling as the term is used in section 113 of the Act, in a manner that most effectively meets the needs of the student with a disability in an individual or group setting, as they would any other vocational rehabilitation service. By providing job exploration counseling in group settings, DSUs can prepare students with disabilities for one-on-one counseling.

Changes: None.

Acronym for Pre-Employment Transition Services

Comments: A few commenters expressed concerns about the use of an acronym for "pre-employment transition services."

Discussion: We agree with the commenters that an acronym should not be used as shorthand for "pre-employment transition services." We did not use the most obvious acronym for "pre-employment transition services" in the NPRM or in these final regulations, and we do not intend to use it in administering the VR program because of its negative connotations.

Changes: None.

Student With a Disability (§ 361.5(c)(51))

Scope of Definition

Comments: A few commenters supported the proposed definition. However, most commenters did not agree, for differing reasons, with the Department's proposed definition or its interpretation set forth in the preamble of the NPRM. Most of those disagreeing stated the Department narrowed the scope of the definition of a "student with a disability."

Some commenters disagreed with the regulatory definition because it did not mirror the statutory definition. Specifically, they believed the addition of the phrase "a student who is" to the phrase "an individual with a disability for the purposes of section 504" in proposed § 361.5(c)(51)(i)(C)(*2*) narrows the scope of the statutory definition. In fact, one commenter believed that the interpretation effectively eliminated individuals qualifying on the basis of section 504 of the Act.

A few commenters recommended that the Department adjust the age range of a "student with a disability," while other commenters recommended that the definition require a consistent age range across the Nation.

Discussion: We appreciate the comments supporting the definition, as well as those expressing concern or disagreement. We anticipated many of the same concerns when developing the proposed regulations. However, we firmly believe that § 361.5(c)(51), both as proposed and final, is consistent with both the plain meaning and intent of the definition in section 7(37) of the Act, as amended by WIOA. We agree with commenters that § 361.5(c)(51)(i)(C)(*2*), both as proposed and final, limits the definition to students. We adopted almost verbatim section 7(37) of the Act, as amended by WIOA, and, in so doing, we attempted to eliminate confusion that the term "student with a disability" could be construed to apply to someone not in an educational program. We recognize that the applicability of section 504 of the Act, in any other context, is much broader. Therefore, in an effort to reduce confusion and potential non-compliance, we clarified in § 361.5(c)(51)(i)(C)(*2*), both proposed and final, that this particular criterion, as all others, applies only to students with disabilities. We believe this clarification is consistent with the statute because the term itself—"student with a disability"—describes a population that encompasses only individuals with disabilities who are participating in educational programs. For this reason, we also disagree with the recommendations to remove any explicit requirement in the definition of a "student with a disability" that the individual be a participant in an educational program because to do so would contradict the plain meaning of

the term itself and section 7(37) of the Act.

The definitions of "student with a disability" in section 7(37) of the Act and final § 361.5(c)(51) allow for a certain degree of flexibility in the age range of students with disabilities. States may elect to use a lower minimum age for receipt of pre-employment transition services than the earliest age for the provision of transition services under section 614(d)(1)(A)(i)(VIII) of the IDEA. The section applies beginning with the first individualized education program (IEP) to be in effect when a child with a disability turns 16, or younger if determined appropriate by the IEP Team, and updated annually thereafter. Pursuant to 34 CFR 300.320(b) of the the IDEA regulations, transition services may be provided for students with disabilities younger than age 16, if determined appropriate by the IEP Team. Furthermore, a "student with a disability" may not be older than 21, unless a State law provides for a higher maximum age for the receipt of special education and related services under the IDEA. Therefore, there is no statutory authority to revise the definition of a "student with a disability," for purposes of the VR program, by adjusting the specified age range or creating a standard age range to be applied across the Nation because to do so would be inconsistent with the age criteria contained in the statutory definition.

Changes: None.

Educational Programming

Comments: Some commenters stated that the Department's interpretation that the definition applies only to students in secondary school directly contradicts congressional intent, as expressed in section 2(b)(5) of the Act, as amended by WIOA, because the narrower interpretation does not ensure, to the greatest extent possible, that students and youth with disabilities have opportunities for postsecondary success. Most of these commenters stated that students in postsecondary education should be included within the definition, as should students in GED, ESL, home school, vocational/technical programs, and juvenile justice or mental health treatment facilities, so long as they meet the age requirements in the definition. These commenters stated that students in these educational programs and settings also need pre-employment transition services, which are available only to individuals who meet the definition of a "student with a disability." One commenter requested that the Department share documentation of congressional intent in support of the interpretation that the definition does not include individuals in postsecondary education. A few commenters were concerned that the emphasis on serving only secondary students might decrease emphasis by DSUs on services for individuals enrolled in postsecondary education.

Some commenters expressed concern about the impact of the Department's interpretation of the definition of "student with a disability" on the use of funds reserved for the provision of pre-employment transition services. These commenters believed the definition of a "student with a disability" should be broader in order for States to maximize use of the funds reserved for pre-employment transition services.

Discussion: We appreciate the concerns expressed by the commenters and have reconsidered our interpretation, as described in the preamble to the NPRM, that the definition of a "student with a disability" should be limited to students in a secondary education program. Our intention in the NPRM was to be consistent with congressional intent for the definition, given the requirements governing the availability of a free appropriate public education under the IDEA, which is limited to services included in the individualized education programs of children with disabilities who are enrolled in secondary education under State law (20 U.S.C. 1412(a)(1) and 1401(9)). Services provided under the IDEA are not affected by our interpretation here, which applies only to the VR program.

Nonetheless, we agree that section 7(37) of the Act, as amended by WIOA, is silent on the educational setting for a student with a disability. After much consideration of the potential effects for such change in interpretation, the Secretary agrees that the definition of a "student with a disability" in final § 361.5(c)(51), for purposes of the VR program, should be interpreted as applying to students also enrolled in educational programs outside secondary school, including postsecondary education programs, so long as the students satisfy the age requirements set forth in final § 361.5(c)(51). We believe this change will eliminate the concern expressed by commenters regarding the potential negative effect a different interpretation would have on a DSU providing and maximizing postsecondary education opportunities to eligible individuals with disabilities needing such services under an approved individualized plan for employment. Furthermore, as was set forth in the NPRM, the Secretary believes that the definition applies to secondary students who are homeschooled, as well as students in other non-traditional secondary educational programs. This interpretation is not affected by this discussion, and these individuals remain covered by the definition of a "student with a disability" in final § 361.5(c)(51).

We also agree with commenters that postsecondary education students may benefit from certain pre-employment transition services set forth in section 113 of the Act, as amended, and final § 361.48(a), all of which are limited to "students with disabilities." We believe this broader interpretation of the definition will increase the potential for DSUs to maximize the use of funds reserved for the provision of pre-employment transition services by increasing the number of students who can receive these services. Therefore, we have revised the definition of "student with a disability" in final § 361.5(c)(51) to include students in secondary, postsecondary, and other recognized education programs.

However, this broader interpretation does not expand the list of required or authorized activities in section 113 of the Act, as amended by WIOA, and final § 361.48(a). A DSU can use the reserved funds to provide pre-employment transition services, as set forth in final § 361.48(a), to students with disabilities in postsecondary education or other educational programs who meet the age requirements of the definition. For example, a DSU may provide work-based learning activities such as internships to an individual with a disability in a postsecondary education program who otherwise satisfies the definition of a "student with a disability," but may not use the reserved funds (dedicated to the provision of pre-employment transition services under final § 361.48(a)) to provide services and activities not specifically included in section 113 of the Act and final § 361.48(a). In other words, a DSU may not use the funds reserved for pre-employment transition services to pay for tuition and other costs of attending postsecondary education, since this is not among those activities that are required or authorized under section 113 of the Act and final § 361.48(a). These and other necessary services, however, may be provided with VR funds not reserved for the provision of pre-employment transition services so long as they are provided pursuant to an approved individualized plan for employment under section 103(a) of the Act and final § 361.48(b) of these final regulations.

Section 113 of the Act, as amended by WIOA, requires DSUs to coordinate pre-employment transition services with local educational agencies. This applies to students with disabilities in educational programs administered by local educational agencies. DSUs should coordinate the pre-employment transition services provided to students who are not participating in programs administered by local educational agencies with the public entities administering those educational programs, as described in section 101(a)(11)(C) of the Act, as amended by WIOA, and final § 361.24.

Changes: We have revised the definition of "student with a disability" in final § 361.5(c)(51) to includes students in secondary, postsecondary, and other recognized education programs.

Students Who Have Applied or Been Determined Eligible for Vocational Rehabilitation Services

Comments: A few commenters recommended that the definition apply only to individuals with disabilities who have applied for and been determined eligible for vocational rehabilitation services.

Discussion: We disagree with the comments recommending that a "student with a disability" should be limited to individuals who have applied or been determined eligible for vocational rehabilitation services. The definition in final § 361.5(c)(51) is consistent with section 7(37) of the Act, which does not limit the definition to applicants and eligible individuals of the VR program. Furthermore, to impose such a limitation would be contrary to the Department's interpretation of "potentially eligible," students with disabilities, as used in section 113 of the Act, as amended by WIOA, and final § 361.48(a). We have repeatedly stated in both the NPRM and these final regulations that all "students with disabilities," regardless of whether they have submitted an application or been determined eligible for vocational rehabilitation services, may receive pre-employment transition services under final § 361.48(a). See a more detailed discussion of "Potentially Eligible" later in this section in connection with comments received under final § 361.48(a).

Upon further Departmental review of this issue, the Secretary has determined that other conforming changes are needed throughout final part 361 to ensure these students, who may not have applied or been determined eligible for the VR program, would still be protected by fundamental rights under the VR program, namely the protection of their personal information under final § 361.38 and the right to exercise informed choice under final § 361.52. We have revised these provisions to refer to "recipients of services" rather than "eligible individuals."

Changes: We have revised final § 361.38 and final § 361.52 to refer to "recipients of services" rather than "eligible individuals," thereby ensuring that students and youth with disabilities who may receive pre-employment transition services or transition services to groups, as applicable, are still protected by requirements governing confidentiality and informed choice even if they have not applied or been determined eligible for the VR program.

Transition Services (§ 361.5(c)(55))

Scope of "Pre-Employment Transition Services" and "Transition Services"

Comments: A few commenters supported the definition of "transition services" in proposed § 361.5(c)(55), while a few commenters requested clarification regarding the difference between "transition services" and "pre-employment transition services," and the responsibility of DSUs to provide job placement assistance within the context of these services.

Discussion: We appreciate the support from commenters to maintain the proposed definition of "transition services" in final § 361.5(c)(55). As to the difference between "pre-employment transition services" and "transition services," we believe the distinction between the two is critical. As stated in the preamble to the NPRM, vocational rehabilitation services are provided on a continuum, with pre-employment transition services being the earliest set of services available to students with disabilities.

Pre-employment transition services, authorized by section 113 of the Act, as amended by WIOA, and implemented by final § 361.48(a), are designed to help students with disabilities to begin to identify career interests that will be further explored through additional vocational rehabilitation services, such as transition services. Furthermore, pre-employment transition services are only those services and activities listed in section 113 of the Act, as amended by WIOA, and final § 361.48(a). Job placement assistance is not included among the listed pre-employment transition services, but it could constitute a transition service under section 103(a)(15) of the Act and final § 361.48(b). Finally, pre-employment transition services are available only to students with disabilities, whereas transition services may be provided to a broader population—both students and youth with disabilities.

Following the continuum, transition services represent the next set of vocational rehabilitation services available to students and youth with disabilities. They are outcome-oriented and promote movement from school to post-school activities, including postsecondary education, vocational training, and competitive integrated employment. As such, transition services may include job-related services, such as job search and placement assistance, job retention services, follow-up services, and follow-along services, based on the needs of the individual.

Individualized transition services under section 103(a)(15) of the Act and final § 361.48(b) must be provided to students who have been determined eligible for the VR program and in accordance with an approved individualized plan for employment. Transition services also may be provided in group settings to students and youth with disabilities under section 103(b)(7) of the Act, as amended by WIOA, and final § 361.49(a)(7). Although these group services are not individualized, they can still be beneficial for job exploration, including presentations from employers in the community and group mentoring activities.

Changes: None.

Outreach and Engagement of Parents or Representatives

Comments: A few commenters requested that we revise the definition to incorporate parental outreach and engagement.

Discussion: We agree that engaging and coordinating with parents or representatives of students and youth with disabilities is consistent with the network of services and activities included in the definition, and we have revised the definition accordingly.

Changes: We have revised final § 361.5(c)(55) by adding paragraph (v) to include outreach to and engagement of parents or, as appropriate, the representatives of students or youth with disabilities in the definition of "transition services."

Youth With a Disability (§ 361.5(c)(58))

Distinction Between "Student With a Disability" and "Youth With a Disability"

Comments: While a few commenters praised the clarity of the proposed definition, most stated that making a

distinction between a student with a disability and a youth with a disability creates unnecessary complexity and burden. These commenters recommended that services available to students with disabilities, such as pre-employment transition services, also be available to youth with disabilities. One commenter recommended that "youth with a disability" be defined more broadly than "student with a disability" so that individuals who are homeschooled and others could be covered by the definition.

Discussion: We appreciate all of the comments and concerns about the definition of "youth with a disability" in § 361.5(c)(58). While we understand the commenters' concerns, the Act, as amended by WIOA, defines the terms "student with a disability" and "youth with a disability" differently. Moreover, the Act and these final regulations use the terms differently, depending on the context. For example, only students with disabilities can receive pre-employment transition services under section 113 of the Act and final § 361.48(a), but both students with disabilities and youth with disabilities can receive transition services under section 103 of the Act and final §§ 361.48(b) and 361.49(a). The definitions set forth in these final regulations are consistent with the statute, and we have no statutory authority to consolidate the two definitions or to delete one of them because to do so would be inconsistent with the statute.

The age range in the definition of "youth with a disability" in final § 361.5(c)(58) is broader than that for "student with a disability" in final § 361.5(c)(51). Therefore, a student with a disability always meets the definition of a "youth with a disability" because a student with a disability has an age range that fits within the age range prescribed by the definition of a "youth with a disability."

However, a youth with a disability may not necessarily meet the definition of a "student with a disability." A youth with a disability could also be a student with a disability if the individual meets the age range in the definition of "student with a disability" and participates in an educational program (see the earlier discussion of educational programming under *Student with a Disability section § 361.5(c)(51)*). On the other hand, a youth with a disability who is outside the age range for a student with a disability or is not participating in an educational program does not meet the definition of a "student with a disability."

Changes: None.

Scope of Definition

Comments: One commenter questioned whether the definition of "youth with a disability" includes criteria related to the IDEA or section 504, as is the case with the definition of a "student with a disability."

Discussion: As previously discussed, the definition of "youth with a disability" in final § 361.5(c)(58) not only is broader in age range but also is not tied to participation in an educational program under the IDEA or section 504 of the Act, as is the definition of "student with a disability."

Changes: None.

Coordination With Education Officials (§ 361.22)

Coordination of Pre-Employment Transition Services

Comments: A few commenters expressed support for proposed § 361.22, suggesting minimal to no changes. A few, however, stated that DSUs are required to provide pre-employment transition services in collaboration with educational agencies, and recommended that we include in proposed § 361.22(b) reference to these services wherever the interagency coordination of transition services is mentioned. One commenter stated that a major challenge in transition is determining which entity is responsible for job placement assistance and support, and recommended proposed § 361.22(b) be revised to incorporate specific mention of these services in the coordination of pre-employment transition services.

A few commenters recommended that we consider including in proposed § 361.22 a reference to technical assistance circular 14–03 (RSA–TAC–14–03), which discusses transition-related principles.

Discussion: We appreciate the comments supporting proposed § 361.22, as well as those seeking further clarification or expressing concerns. We agree that pre-employment transition services should be added to final § 361.22(b) as it is referenced in final § 361.22(a)(1). However, there is no statutory basis to require job placement services in connection with pre-employment transition services, as job placement services are not among the required or authorized activities under section 113 of the Act, as amended by WIOA. Yet, while we cannot require it, nothing in the Act prohibits States from including job placement activities as a transition service in the formal interagency agreement.

We disagree with the request to add a reference in final § 361.22(b) to technical assistance circular 14–03 because the content of technical assistance circular 14–03 has been significantly affected by the amendments to the Act made by WIOA. As a result, we will be revising this particular technical assistance circular accordingly.

Changes: We have revised § 361.22(b)(1) to state that the formal interagency agreement must include collaboration between the DSU and the State educational agency for providing pre-employment transition services to students with disabilities. We have also revised §§ 361.22(b)(3) and (b)(4) to similarly cover pre-employment transition services when identifying personnel responsible for providing services and when developing procedures for outreach to and identification of students with disabilities.

Financial and Programmatic Responsibilities

Comments: One commenter suggested that we revise proposed § 361.22 by requiring that the formal interagency agreement between the DSU and the State educational agency contain more robust minimum content provisions, since the agreement is critical to providing services to students with disabilities and a successful transition from school to post-school activities.

Many commenters stated that additional guidance is needed to determine which entity, the school or the DSU, is financially responsible for providing transition services to students with disabilities. Many requested that we revise proposed § 361.22 to explicitly identify the financial roles and responsibilities of each entity, stating that the interagency agreement cannot be effective if it is broad, general or abstract. Other commenters recommended that the formal interagency agreement provide clear direction about agencies' responsibilities for services under particular circumstances, stating that specificity is essential to coordinating shared responsibilities and funding.

A few commenters expressed concern that major problems and delays in implementing transition planning services occur because neither WIOA nor the IDEA state explicitly which entity is responsible for providing transition services. These commenters stated that the financial responsibilities must be made clear so that neither the local educational agency nor the DSU may shift the burden for providing a

service, for which it otherwise would be responsible, to the other entity.

A few commenters also noted that while many of these decisions can be resolved at the State and local level, there are still instances where it is difficult to determine the responsible entity, such as in the determination of which entity is responsible for job placement assistance and related work supports. Conversely, one commenter, representing school officials, stated that decisions about providing and assuming financial responsibility for transition services must be made at the State and local level through interagency collaboration and coordination, cannot be wholly dictated by regulation, and must be made based on the circumstances of the situation and the eligibility of the student.

One commenter expressed the concern that the budget for the VR program is not as significant as the budget for special education, and vocational rehabilitation funds may be quickly exhausted if the VR program were to provide pre-employment transition services to every student with a disability. Another commenter noted that the schools and DSUs need to collaborate with other entities that have shared responsibilities and funding. Similarly, one commenter stated that the IDEA, WIOA, and the Americans with Disabilities Act seem to be in a competitive relationship, since the entities covered by these statutes are responsible for providing and funding some of the same services.

Discussion: As discussed in the preamble of the NPRM, over the years many individuals have sought clarification and posed questions about the financial responsibilities of schools and DSUs when services fall under the purview of both entities. For example, pre-employment transition services and transition services can be both vocational rehabilitation services under the VR program and special education or related services under the IDEA. While neither the Act, as amended by WIOA, nor the IDEA is explicit as to which entity—the DSU or the State educational agency and, as appropriate, the local educational agency—is financially responsible for providing pre-employment transition services and transition services, both final § 361.22(c) and 34 CFR 300.324(c)(2) provide that neither the DSU nor the local educational agency may shift the burden for providing services, for which it otherwise should be responsible, to the other entity. It is essential that section 101(c) of the Act, as amended by WIOA, and section 612(a)(12) of the IDEA, along with their implementing regulations in § 361.22(c) and 34 CFR 300.154, are read in concert to avoid any inconsistency or conflict between the two requirements.

Section 113(a) of the Act, as amended by WIOA, requires the DSU to provide, or arrange for the provision of, pre-employment transition services in collaboration with local educational agencies. Therefore, decisions as to which entity will be responsible for providing services that are both special education services and vocational rehabilitation services must be made at the State and, as appropriate, local level as part of the collaboration between the DSU, State educational agencies, and, as appropriate, the local educational agencies.

We agree that the formal interagency agreement should facilitate the transition of students with disabilities receiving special education services to receiving vocational rehabilitation services without delay or disruption. Since the decisions about financial responsibility for providing pre-employment transition services and transition services must be made at the State and local level during collaboration and coordination of services, a formal interagency agreement or other mechanism for interagency coordination can explicitly address all aspects of these issues. As suggested in the NPRM, the agreement criteria could address criteria such as:

1. The purpose of the service. Is it related more to an employment outcome or education? That is, is the service usually considered a special education or related service, such as transition planning necessary for the provision of a free appropriate public education?

2. Customary Services. Is the service one that the school customarily provides under part B of the IDEA? For example, if the school ordinarily provides job exploration counseling or work experiences to its eligible students with disabilities, the mere fact that those services are now authorized under the Act as pre-employment transition services does not mean the school should cease providing them and refer those students to the VR program. However, if summer work experiences are not customarily provided by a local educational agency, the DSU and local educational agency may collaborate to coordinate and provide summer work-based learning experiences.

3. Eligibility. Is the student with a disability eligible for transition services under the IDEA? The definition of a "student with a disability" under the Act and these final regulations is broader than under the IDEA because the definition in the Act includes those students who are individuals with disabilities under section 504 of the Act. It is possible that students receiving services under section 504 do not have individualized education programs under the IDEA because they are not eligible to receive special education and related services under the IDEA. As a result, DSUs are authorized to provide transition services under the VR program to a broader population under WIOA than local educational agencies are authorized to provide under the IDEA.

The Secretary believes that these criteria may assist DSUs, State educational agencies, and local educational agencies as they collaborate and coordinate the provision of transition services, including pre-employment transition services, to students with disabilities. We strongly encourage that formal interagency agreements have clearly defined parameters for collaborating and coordinating the delivery of pre-employment transition services and transition services and clearly defined responsibilities for each entity. However, there is no statutory basis for the Department to establish service delivery or financial responsibilities. Those decisions must be made at the State level while developing an interagency agreement and considering the population, available resources, and needs of the students and youth. Consequently, States have maximum flexibility to develop these interagency agreements in a manner that best meets the unique needs and capacities of both the DSUs and educational agencies.

Changes: None.

Contracting With Subminimum Wage Programs

Comments: Some commenters recommended that proposed § 361.22(b)(6) be revised to prohibit contracts or arrangements with, or referrals to, programs in which youth with disabilities are employed at subminimum wage. They stated that the agreements should go beyond documentation requirements and make proactive efforts to identify individuals being considered for employment at subminimum wage. One commenter expressed support for using the existing formal interagency agreement as the mechanism to develop and document the process required in section 511 of the Act as proposed in § 361.22.

Discussion: We agree with commenters that the Act emphasizes the need to ensure that individuals with disabilities, especially students and youth with disabilities, are given the opportunity to receive training for and

obtain work in competitive integrated employment. The commenters misunderstood our proposal because § 361.22(b)(6), both proposed and final, requires the interagency agreement between the DSU and the State educational agency to include an assurance that, in accordance with 34 CFR 397.31, neither the State educational agency nor the local educational agency will enter into a contract or other arrangement with an entity, as defined in 34 CFR 397.5(d), for the purpose of operating a program for a youth with a disability under which work is compensated at a subminimum wage. Moreover, new requirements in section 511 of the Act, as amended by WIOA, and in final 34 CFR part 397 place additional limitations on the use of subminimum wages for individuals with disabilities, especially youth with disabilities. For example, final 34 CFR 397.10 requires the DSU, in coordination with the State educational agency, to develop a process that ensures youth with disabilities receive documentation demonstrating their completion of the various required activities.

Changes: None.

Coordination and Outreach to Parents and Representatives

Comments: A few commenters urged the Department to ensure that coordination efforts include outreach to parents of students who are in need of transition services. One such commenter recommended proposed § 361.22(b)(4) be revised to include systematic outreach to, and engagement of, parents, including through the IEP process for the IDEA eligible students. The commenter stated that without this outreach and engagement, parents will not have a meaningful understanding of the benefits of vocational rehabilitation services for their children.

Discussion: While there is no statutory basis in section 101(a)(11)(D) of the Act to require outreach to parents, we agree that family members, caregivers, and representatives play a critical role in the transition process. We believe that for pre-employment transition services and transition services to be meaningful and to lead to successful outcomes for students and youth with disabilities, their family members, caregivers, and representatives must be aware of the services and benefits offered by DSUs and be involved in the transition process. Although DSUs may conduct outreach to parents and representatives, this activity may be affected by State laws governing the age of majority.

Under section 615(m) of the IDEA and 34 CFR 300.520, a State may transfer all rights accorded to parents under Part B of the IDEA to the student when he or she reaches the age of majority under State law that applies to all children. If rights under the IDEA transfer to the student, a student may have the right to make his or her own education, employment, and independent living decisions under the IDEA. DSUs may conduct outreach directly to these students. Parental consent to participate in pre-employment transition services and transition services should be obtained pursuant to State law, as well as policies of the educational programs and the DSU. We further emphasize here that the Department funds programs and projects that advise and assist parents and representatives of students and youth with disabilities as their children prepare for adult life. The Department awarded grants to more than 65 Parent Training and Information Centers funded by the Office of Special Education Programs and seven Parent Information and Training Programs funded by RSA during FY 2015. Individuals will find additional resources regarding age of majority at *www.parentcenterhub.org/repository/age-of-majority-parentguide/*.

Changes: None.

Dispute Resolution

Comments: Some commenters expressed the concern that proposed § 361.22(c) is limited and provides no safeguards for students if an agreement is not reached about financial responsibility for a particular service, which can lead to delays in services or no services at all. Some commenters stated that the formal interagency agreement should include a mechanism to resolve disputes between the State educational agency and the DSU about providing pre-employment transition services and transition services. One commenter also suggested that we require language in the formal interagency agreement to inform individuals of the availability of the CAP.

Discussion: We disagree with the recommendations to require that the formal interagency agreement include: (1) A mechanism for resolving disputes between the DSU and the State educational agency or local educational agency; (2) a method for resolving disputes between an individual with a disability and these entities; and (3) information about the CAP. Section 101(a)(11)(D) of the Act, as amended by WIOA, which provides the statutory authority for final § 361.22(b), does not require that States create a grievance procedure for disputes under the agreements, in general, or, more specifically, about the provision of pre-employment transition services or transition services. Likewise, section 101(a)(11)(D) of the Act does not require the interagency agreement to identify a process for resolving disputes between an individual with a disability and the DSU, State educational agency, or local educational agency about pre-employment transition services and transition services, or to include information about the CAP. We believe final § 361.22 is consistent with the Act, and it provides States maximum flexibility to develop the interagency agreements in a manner that best meets their unique needs and circumstances. However, there is nothing in the Act or these final regulations that prohibits States from including in the formal interagency agreement a grievance procedure (*e.g.*, similar to the one in section 101(a)(8) of the Act) to resolve disputes between the DSU and the State educational agency, or the local educational agency, as appropriate, as well as procedures to resolve disputes between an individual with a disability and the DSU, State educational agency or local educational agency, and information about the CAP. We encourage States to include these procedures and information in their interagency agreements.

Section 20 of the Act requires all programs providing services under the Act, including the VR program, to inform applicants and recipients of services of the availability and purpose of the CAP. Therefore, regardless of whether the formal interagency agreement between the DSU and the State educational agency addresses the CAP, all students and youth with disabilities receiving vocational rehabilitation services, including pre-employment transition services and transition services, will be informed about it. In addition, an applicant for, or eligible individual under, the VR program who is dissatisfied with a decision made by vocational rehabilitation personnel, including those about pre-employment transition services and transition services, may request a review of that decision under section 102(c) of the Act. Upon further Departmental review, the Secretary has realized that the statute has created an unintended inconsistency among sections 20, 102(c), 103(b)(7), 12(a), and 113. Specifically, section 20 requires programs funded under the Act to inform applicants for and recipients of those services about the CAP. There is no requirement that the recipients be

determined eligible for those services in order to receive information about the CAP. Section 103(b)(7) of the Act permits the DSU to provide transition services to youth and students with disabilities in a group setting, regardless of whether those students or youth have applied for or been determined eligible for vocational rehabilitation services. Section 112(a) specifically authorizes the CAP to assist students with disabilities receiving pre-employment transition services. Section 113 makes clear that students with disabilities are eligible to receive pre-employment transition services regardless of whether they have applied or been determined eligible for the VR program. All of these provisions, read in concert, make clear that due process rights under the Act would be available to students and youth with disabilities receiving pre-employment transition services and transition services even if they have not yet applied for or been determined eligible for the VR program. However, section 102(c) refers only to "applicants and eligible individuals," thus creating an internal inconsistency within the Act. Because it is clear that students and youth with disabilities are able to receive certain services without having applied or been determined eligible for vocational rehabilitation services and they are eligible for advocacy assistance from the CAP, the Secretary has determined it is necessary to amend final § 361.57 throughout to make clear that "recipients" of vocational rehabilitation services may exercise due process rights when disagreements arise during the receipt of pre-employment transition services and transition services. We have also made conforming changes throughout final part 361, such as with the definition of "impartial hearing officer" in § 361.5(c)(24) and "qualified and impartial mediator" in 361.5(c)(43).

The student or youth with a disability, or the individual's parent, as appropriate, will be informed of the CAP. Disputes or disagreements between parents and educational personnel are beyond the scope of the Act and these final regulations.

Changes: We have revised final § 361.57 throughout to replace "eligible individuals" with "recipients." We also made conforming changes to the definitions of "impartial hearing officer" and "qualified and impartial mediator" in final § 361.5(c).

Cooperation and Coordination With Other Entities (§ 361.24)

Comments: A few commenters disagreed with proposed § 361.24(d), stating that the regulations do not ensure that American Indian students and youth with disabilities enrolled in, but disconnected from, the education system are adequately served. These same commenters specifically requested that reference to the American Indian Vocational Rehabilitation Services (AIVRS) program funded under § 121 of the Act be made throughout the final regulations whenever "new transition services" are mentioned. A few other commenters addressed transition services for American Indian students with disabilities without referring to proposed § 361.24.

Some commenters recommended that we require DSUs to include in their formal interagency agreements with AIVRS projects and to address in their agreements with Tribal Education Agencies in the State how the State VR agency plans to provide equitable pre-employment transition services to American Indian students with disabilities, particularly those that attend schools on Indian reservations. The commenters also recommended that we require State VR agencies to address how services to American Indian students with disabilities will be incorporated into the budgeting and spending plans for the funds reserved for providing pre-employment transition services for students with disabilities.

One commenter encouraged the Department to consider using Impact Aid funds for youth in transition.

Discussion: While the Department understands the commenters' concerns regarding the need to ensure that coordination among the DSU, AIVRS program, and educational agencies is taking place and that transition services, including pre-employment transition services, are provided to American Indian students with disabilities, the Department does not believe a revision to the final regulations is necessary to do this.

Final § 361.24, as it did when proposed, addresses the need for coordination among these entities and for providing transition services to American Indians living on or near a reservation. Section 361.24(d)(1) requires the VR services portion of the Unified or Combined State Plan to assure that DSUs have entered into formal cooperative agreements with AIVRS programs in their States. Section 361.24(d)(2) sets out requirements for cooperative agreements with AIVRS programs, and those include strategies for providing transition planning under § 361.24(d)(2)(iii). Furthermore, the Federal funds reserved in accordance with § 361.65, and any funds made available from State, local, or private funding sources, are to be used to provide pre-employment transition services to all students with disabilities, including American Indian students with disabilities, in need of such services, regardless of whether an application for services has been submitted. Finally, § 361.30 requires that the DSU assure in the VR services portion of the Unified or Combined State Plan that it will provide services to American Indians with disabilities to the same extent that it provides services to other populations with disabilities in the State.

Final § 361.22 provides for a formal interagency agreement with the State Educational Agency that would include educational services, including transition services and pre-employment transition services, provided by local educational agencies for Indian students with disabilities living on reservations. DSUs coordinate with schools on reservations that provide services through the Bureau of Indian Education or TEAs under the requirement in § 361.24(a) that the DSU cooperate with Federal and local agencies and programs. Because the final regulations provide appropriate mechanisms for coordination with the Federal, State and Tribal agencies that provide educational services to Indian students with disabilities on reservations, we do not believe a change in the regulations is necessary.

As for using funds for transition services provided under the Impact Aid law (formerly Title VIII of the Elementary and Secondary Education Act of 1965 (ESEA) and now in Title VII as a result of the Every Student Succeeds Act reauthorization), the comment is beyond the scope of these regulations. That said, however, the Impact Aid provides assistance to local school districts with concentrations of children residing on Indian lands, military bases, low-rent housing properties, or other Federal properties and, to a lesser extent, concentrations of children who have parents in the uniformed services or employed on eligible Federal properties who do not live on Federal property. The majority of Impact Aid funds is general aid to the school district recipients and may be used in whatever manner the districts choose, as long as it is consistent with State and local requirements. The Department does not have the statutory authority to direct Impact Aid general aid money, including for the use suggested by the commenter.

Changes: None.

Content of the Individualized Plan for Employment (§ 361.46)

Comments: A few commenters requested additional guidance regarding the use of a "projected post-school employment outcome" in an individualized plan for employment for a student or youth with a disability and asked whether the use of the broad category "Standard Occupational Codes" would meet this description.

Discussion: In response to the request for additional guidance, the individualized plan for employment with a projected post-school employment outcome should outline the services and activities that will guide the individual's career exploration. The projected post-school employment outcome facilitates the individual's exploration and identification of a vocational goal based upon his or her informed choice. It may be a specific goal, such as a Web designer, or a broader goal, such as medical practitioner. The projected goal may be amended during the career development process, and eventually it must be revised to a specific vocational goal once this process is completed.

Changes: None.

Scope of Vocational Rehabilitation Services for Individuals With Disabilities (§ 361.48)

Pre-Employment Transition Services (§ 361.48(a))

Scope of Pre-Employment Transition Services and Use of Reserve

Comments: Some commenters expressed support for the proposed regulation. However, most commenters recommended revisions or sought clarification about the scope and provision of pre-employment transition services. One commenter suggested that we revise proposed § 361.48(a) to include only direct services to individuals, while another commenter requested clarification as to whether pre-employment transition coordination activities in proposed § 361.48(a)(4) could be paid for with funds reserved for providing pre-employment transition services.

Discussion: Section 113(a) of the Act, as amended by WIOA, states that the funds reserved under section 110(d) and any funds made available from State, local, or private (other) sources shall be used to provide, or arrange for the provision of, pre-employment transition services. The coordination activities required by section 113(d) of the Act, as amended by WIOA, and final § 361.48(a)(4) are essential for arranging and providing the "required" and "authorized" activities set forth in section 113(b) and (c) of the Act and final § 361.48(a)(2) and (3). Therefore, there is no statutory authority to limit the scope of final 361.48(a) to only the direct services required by section 113(b) of the Act. See a more detailed discussion of the definition of "Pre-Employment Transition Services," and the services included in that definition, earlier in this section.

We agree with the commenter that proposed § 361.48(a) should be revised to clarify that pre-employment transition coordination services provided under § 361.48(a)(4) may be paid with funds reserved for providing pre-employment transition services, because coordination activities are essential for arranging and providing those services, as required by section 113(a) of the Act and § 361.48(a).

Changes: We have revised final § 361.48(a) to clarify that the funds reserved for the provision of pre-employment transition services may be used to pay for pre-employment transition coordination activities.

Potentially Eligible

Comments: Through the NPRM, we sought public comments and alternate suggestions related to our interpretation of "potentially eligible" to mean all students with disabilities, regardless of whether they have applied for and been determined eligible for the VR program. Of the comments received, most agreed with this interpretation. However, some commenters provided alternate interpretations.

Of those commenters, a few suggested that the term should be interpreted as meaning students with disabilities who have at least applied for vocational rehabilitation services, with one commenter suggesting this would both allow for providing individualized services and ensure parental consent for students with disabilities to work with a vocational rehabilitation counselor. Other commenters stated that serving applicants for vocational rehabilitation services would allow the counselor not only to gather sufficient information to meet the specific needs of the student with a disability but also to track and report the provision of services and expenditure of funds. One commenter recommended revising proposed § 361.48(a)(1) to limit the "potentially eligible" population to those individuals who have both applied for and been determined eligible for vocational rehabilitation services.

Furthermore, some commenters provided alternate interpretations for limiting or expanding the population to students or youth based upon age-range, or enrollment in secondary, postsecondary, or dual enrollment educational programs. One commenter recommended that "potentially eligible" be defined to ensure consistent implementation across States. A few commenters expressed concerns that the regulations significantly limit the resources for students who have applied for and been determined eligible for the full scope of vocational rehabilitation services, as well as individuals with most significant disabilities. A few commenters expressed concerns that spending funds required to be reserved for providing pre-employment transition services on students who are potentially eligible for vocational rehabilitation services may force DSUs to implement an order of selection or close priority categories under an existing order of selection. One commenter raised concerns that DSUs may have limited fiscal and human resources required to address the needs of potentially eligible students. One commenter requested clarification as to how students would be identified.

Another commenter suggested that proposed § 361.48(a) does not conform to section 112 of the Act, as amended by WIOA, because the CAP is unable to provide assistance or advocacy services to individuals who are not vocational rehabilitation clients or client-applicants. A few commenters also expressed concerns about students being able to make informed choices, as well as obtaining parental consent for potentially eligible students who are minors and participating in pre-employment transition services, prior to submitting an application for vocational rehabilitation services.

Discussion: We appreciate the comments supporting the proposed regulation, as well as comments expressing concerns and suggestions for changes. After much consideration of all available options, we have decided to maintain our interpretation of "potentially eligible" for purposes of pre-employment transition services. In so doing, all students with disabilities, regardless of whether they have applied for or been determined eligible for the VR program, may receive pre-employment transition services. The Secretary believes this is the broadest legally supportable interpretation and the one that is most consistent with the apparent congressional intent.

Most notably, section 113 of the Act is the only statutory section that references "potentially eligible" students with disabilities. All other sections of title I of the Act refer to "applicants" or individuals determined eligible for services. Given the stark

contrast in the use of "potentially eligible" in section 113 of the Act, the Secretary believes it imperative that meaning is given to that phrase by not limiting it to individuals who have applied for or been determined eligible for the VR program.

The broader interpretation means all students with disabilities will be able to obtain much-needed pre-employment transition services and begin the early phase of job exploration without the potential delays, and the administrative burden on DSU personnel and resources, caused by application processing, eligibility determinations, assignment to an order of selection category, and development of an individualized plan for employment. However, there is nothing that precludes a DSU from taking an application as soon as a student expresses an interest in pre-employment transition services or other vocational rehabilitation services and making a timely determination of eligibility.

We want to emphasize that the phrase "potentially eligible" applies only in the context of pre-employment transition services. This means that students with disabilities who need individualized services beyond the scope of pre-employment transition services (*e.g.*, transition and other vocational rehabilitation services) must first apply for, and be determined eligible for, the VR program, be assigned to the appropriate category if the State is on an order of selection, and develop an approved individualized plan for employment. We recommend that DSUs request students with disabilities who are "potentially eligible" for vocational rehabilitation services and receiving pre-employment transition services submit an application for services as soon as possible in the event further vocational rehabilitation services are needed.

This recommendation is especially pertinent for those States that have implemented an order of selection. A student's position on the wait list for services other than pre-employment transition services, in the event the student is placed in a closed category, is based on the date of application, not the date of referral or the receipt of pre-employment transition services. To provide students with disabilities an opportunity to apply for services as early as possible in the transition process and ensure a smooth transition into the VR program, it is imperative that DSUs collaborate with educational programs to identify students who may be eligible or potentially eligible for vocational rehabilitation services and engage parents and representatives. The earlier a student is placed on a wait list, the sooner his or her turn will open in the State's order in the event a State is on an order of selection.

We want to make clear that neither the Act nor these final regulations exempt these students with disabilities from the State's order of selection, if one has been implemented, or VR program requirements once they apply and are determined eligible for services. While under the order of selection regulations at § 361.36, the student could continue to receive pre-employment transition services if such services have begun, a student could not begin to receive pre-employment transition services if such services had not begun prior to applying and being determined eligible. To permit such would create an exemption from the order of selection requirements and the statute does not provide such authority. However, we recognize the benefit early services can have for students. Therefore, we want to make clear that these students could receive transition services offered to groups of students and youth with disabilities under § 361.49. While not identical to pre-employment transition services, many similar services could be provided under the services to groups authority.

A detailed discussion regarding comments related to the continuation of pre-employment transition services under an order of selection is provided in the *Continuation of Pre-Employment Transition Services* section later in this *Analysis of Comments and Changes*.

In response to the concern related to the availability of services from the CAP, section 112(a) of the Act, as amended by WIOA, specifically authorizes CAP grantees to assist individuals receiving services under sections 113 and 511 of the Act. Therefore, these individuals are clients and client-applicants for purposes of the CAP.

Finally, as discussed previously under "Coordination with Education Officials," parental consent to participate in pre-employment transition services is governed by State law, as well as policies of the educational programs and the DSU. Furthermore, informed choice, as outlined in final § 361.52, applies throughout the vocational rehabilitation process; therefore, students with disabilities receiving pre-employment transition services under final § 361.48(a) must be given the opportunity to exercise their informed choice.

Changes: None.

Discretion To Provide Pre-Employment Transition Services to All Students With Disabilities

Comments: One commenter requested that we clarify whether States have the option, under proposed § 361.48(a), to provide pre-employment transition services to all students with disabilities, including those who have not applied for vocational rehabilitation services. Another commenter requested that we revise the "may" in proposed § 361.48(a)(1) to "shall" in order to ensure that pre-employment transition services are provided to all students with disabilities, regardless of whether they have applied for services.

Discussion: We agree that clarification is necessary. Section 110(d)(1) of the Act, as amended by WIOA, requires States to reserve at least 15 percent of their Federal vocational rehabilitation allotment for providing pre-employment transition services. Moreover, section 113 of the Act, as amended by WIOA, requires States to use the reserved funds to provide, or arrange for the provision of, pre-employment transition services to all students with disabilities in need of such services who are eligible or potentially eligible for services. Therefore, the requirement to reserve and use funds for providing pre-employment transition services is mandatory, not discretionary. A State must provide pre-employment transition services to all students with disabilities needing those services and may not limit or expand those services. We used the term "may" in proposed § 361.48(a)(1) to recognize that, for the first time, the Act permitted the delivery of pre-employment transition services to students with disabilities who have not applied for or been determined eligible for the VR program. However, we acknowledge the confusion caused by the use of the term. We therefore clarify that States must provide pre-employment transition services not only to students with disabilities who have applied for vocational rehabilitation services but also to those students with disabilities who have not applied for services.

Changes: We have revised final § 361.48(a)(1) to clarify that DSUs must make pre-employment transition services available statewide to all students with disabilities, not just those who have applied for or been determined eligible for vocational rehabilitation services.

Provision of Required Activities Based on Need

Comments: Some commenters requested that we clarify whether a

student must be provided all five required services or only those required services based upon a student's need. Of these comments, many recommended the latter, as students with disabilities may not need all five activities set forth in section 113(b) of the Act, as amended by WIOA.

A few commenters requested clarification about, or criteria for, making a determination of need. One commenter also recommended that the regulations promote client choice about participating in pre-employment transition services to ensure that students are not coerced into participating in these services. Finally, one commenter expressed concern that DSUs may require students with disabilities to participate in pre-employment transition services as readiness or preparatory activities before applying for vocational rehabilitation services, thereby delaying the transition from school to post-school activities.

Discussion: Section 113(a) and (b) of the Act, as amended by WIOA, when read in concert with each other, as well as final § 361.48(a)(2), require the DSU to make certain "required" pre-employment transition services available to all students with disabilities who need them. However, none of these provisions mandate that all five "required" activities be provided to each student with a disability if all the activities are not necessary. Pre-employment transition services, as is true for any vocational rehabilitation service, must be provided solely on the basis of the individual's need for that service.

Under final § 361.50, DSUs are responsible for developing policies, in consultation with the SRC, for determining the need for pre-employment transition services. These policies must include clear and consistent criteria based on the needs of students identified in the comprehensive statewide needs assessment. The policies will guide the DSU, in consultation with school personnel, family members, and students with a disability, in determining which pre-employment transition services each student needs, consistent with his or her interests and informed choice.

Finally, pre-employment transition services are designed to be an early start at job exploration for students with disabilities and should enrich, not delay, transition planning, application to the VR program, and the continuum of vocational rehabilitation services necessary for movement from school to post-school activities. Neither section 113 of the Act, as amended by WIOA, nor final § 361.48(a) requires students with disabilities receiving pre-employment transition services to apply for, or be determined eligible for, the VR program or to receive other vocational rehabilitation services. The Act and these final regulations maximize opportunities for achieving competitive integrated employment by imposing no requirement that would delay or hinder the student's ability to access these crucial early services or that would permit a DSU to coerce an individual to participate in any of them. However, should the student with a disability need additional vocational rehabilitation services, he or she must apply for and be determined eligible for those services. See the more detailed discussion of comments related to "Potentially Eligible" earlier in this section.

Changes: None.

Continuation of Pre-Employment Transition Services

Comments: Some commenters expressed concerns about the continuation of pre-employment transition services and availability of reserved funds for those services once a student with a disability applies for and is determined eligible for the VR program. Of those commenters, many expressed the need for a continuation of services for those students who received pre-employment transition services prior to applying for the VR program and aging out of or exiting an educational program. Some commenters requested that States be permitted to use funds reserved under section 110(d) of the Act to continue to provide services for any student with a disability who has received pre-employment transition services and who cannot receive vocational rehabilitation services due to a State's implementation of an order of selection. One commenter suggested that those students found eligible for the VR program while, or after, receiving pre-employment transition services should be given an automatic service priority under a State's order of selection, while another commenter requested clarification as to why students with disabilities have not received a service priority under proposed § 361.36. Some commenters expressed concerns that serving students who have not applied for services, regardless of the severity of their disability, will result in a delay of services to other students who have applied and been determined eligible for vocational rehabilitation services, including individuals with the most significant disabilities. A few commenters expressed the concern that the emphasis on serving students would limit the funds available to serve adult consumers.

Discussion: We understand the commenters' concerns about the continuation of services for students with disabilities after receiving pre-employment transition services, as some students may apply but not be determined eligible for the VR program. Others may no longer satisfy the definition of a "student with a disability" because they are no longer within the required age range or are no longer participating in an education program. These issues arise only when a student with a disability who is receiving, or has received, pre-employment transition services also needs other vocational rehabilitation services. All students with disabilities who apply for vocational rehabilitation services, even if they are still receiving pre-employment transition services, will be subject to all relevant requirements for eligibility, order of selection, and development of the individualized plan for employment (including its development prior to leaving school under final § 361.22(a)(2)). Neither the Act nor these final regulations exempt students with disabilities from any of these requirements, which apply to all VR program applicants.

Section 101(a)(5) of the Act, as amended by WIOA, does not exempt students with disabilities receiving pre-employment transition services prior to the determination of eligibility from a State's order of selection; therefore, we do not have the statutory authority to include such an exemption in final § 361.36. Nonetheless, consistent with the policy underlying prior § 361.36(e)(3), which requires a DSU to continue providing vocational rehabilitation services to individuals who had begun receiving these services under an individualized plan for employment prior to the implementation of an order of selection, it is imperative that students with disabilities not experience a disruption in the pre-employment transition services that they are receiving and that are so critical to their transition to postsecondary education and employment. Thus, we have revised final § 361.36(e)(3) by requiring DSUs implementing an order of selection to continue the provision of pre-employment transition services to students with disabilities who were receiving these services prior to the determination of eligibility and assignment to a priority category. DSUs may use the funds reserved under section 110(d) and final § 361.65(a)(3)

for the continuation of these services. This change does not permit the DSU to provide any other transition or vocational rehabilitation services for students with disabilities assigned to closed priority categories.

As for ceasing to satisfy the definition of "student with a disability," pre-employment transition services under section 113 of the Act and final § 361.48(a) are available only to students with disabilities. Therefore, if an individual no longer meets the definition of a "student with a disability," despite the fact that he or she has received or is receiving pre-employment transition services, he or she is no longer able to receive these services under section 113 of the Act and final § 361.48(a). However, if the individual has been determined eligible for vocational rehabilitation services and has been assigned to an open category in the State's order of selection, if the State has implemented one, he or she may continue to receive the same types of pre-employment transition services under section 103(a) of the Act and final § 361.48(b), in accordance with an approved individualized plan for employment. The DSU would pay for these services with VR funds, other than those reserved for the provision of pre-employment transition services under section 113 of the Act because the reserved funds must be used solely for the provision of pre-employment transition services to individuals who satisfy the definition of a "student with a disability."

Changes: We have revised final § 361.36(e)(3) by requiring a designated State unit implementing an order of selection to continue to provide pre-employment transition services to students with disabilities who have begun receiving these services prior to the determination of eligibility and assignment to a closed priority category.

Required Activities

Comments: Several commenters provided alternate suggestions for the required activities specified in proposed § 361.48(a)(2). One commenter recommended that States be permitted to develop their own menu of pre-employment transition services, while many other commenters recommended a variety of revisions to proposed § 361.48(a)(2). Specifically, one commenter requested that job exploration counseling include actual work experience in competitive integrated employment settings. A few commenters requested that work-based learning experiences include paid or unpaid work experiences in school or community settings, as well as experiential learning opportunities. Some commenters who recommended paid work experiences suggested that placement be aligned with the definition of competitive integrated employment. Many commenters on work-based learning experiences requested that the Department delete "to the maximum extent possible" from the regulation, prohibit sheltered work in segregated settings, and require that the experiences only be provided in integrated settings. However, a few commenters requested clarification as to whether entities with certificates issued by the Department of Labor under section 14(c) of the FLSA could provide pre-employment transition services.

A few commenters suggested that we revise proposed 361.48(a)(2) to conform to similar language in the Higher Education Opportunity Act of 2008 by replacing "or" with "and" in the language that governs counseling on opportunities for enrollment in comprehensive transition or postsecondary educational programs at institutions of higher education. In addition, these commenters recommended language specific to counseling on opportunities for enrollment of students with intellectual disabilities in postsecondary educational programs at institutions of higher education. A few other commenters proposed revising the focus of workplace readiness training to replace the development of social skills and independent living with a focus on soft skills, financial literacy, mobility skills, and other skills necessary for employment. Another few commenters recommended that the regulations require instruction in self-advocacy to be provided by a recognized self-advocacy group of the individual's choosing and that peer mentoring occur during work experiences. A few commenters recommended that the required activities include outreach to and engagement of parents of students with disabilities in conjunction with parent centers and parent training information centers.

Discussion: We appreciate the commenters' suggestions, concerns, and requests for clarification. However, section 113(b) of the Act, as amended by WIOA, specifically itemizes the pre-employment transition services that must be provided—the "required" activities. Furthermore, section 113(c) of the Act itemizes the pre-employment transition services that may be provided—the "authorized" activities—in the event funds remain after providing the required activities. Given the Act's specificity about the pre-employment transition services that must be provided, as well as those that may be provided, there is no statutory basis to require additional activities or impose additional requirements, such as requiring that instruction in self-advocacy be provided by a recognized self-advocacy group of the individual's choosing or that peer mentoring occur during work experiences.

We disagree with the commenters' request to revise § 361.48(a)(2)(iii) to conform to similar language in the Higher Education Opportunity Act of 2008 and specifically includes programs and services for students with intellectual disabilities. Final § 361.48(a)(2)(iii) mirrors section 113(b)(3) of the Act, as amended by WIOA, and we do not believe the replacement of "or" with "and" helps to better describe the manner in which DSUs are to provide this service. In addition, Section 113(b)(3)of the Act and final § 361.48(a)(2)(iii) encompass counseling on the broad range of comprehensive transition or postsecondary education programs available to all students with disabilities, including students with intellectual disabilities. Therefore, we do not believe it is necessary to revise final § 361.48(a)(2)(iii).

Moreover, there is no statutory basis for States to develop their own menu of pre-employment transition services. Rather, under section 113(b) of the Act and final § 361.48(a)(2), each State must make all "required" pre-employment transition services available to students with disabilities who need such services.

Similarly, contrary to recommendations made by commenters, we do not have the authority to remove, by regulation, statutory requirements. Accordingly, § 361.48(a)(2)(ii) must be consistent with section 113(b)(2) of the Act, as amended by WIOA, which requires that work-based learning experiences occur in integrated settings to the maximum extent possible. While we agree with commenters that work-based learning experiences in integrated settings are optimal, the Act's use of the phrase "to the maximum extent possible" leaves open the possibility for work-based learning experiences in non-integrated settings. Consequently, we cannot require that all work-based learning experiences occur in integrated settings. However, DSUs should exhaust all opportunities for work-based learning experiences in competitive integrated employment settings before considering provision of these services in non-integrated work settings, as appropriate for the needs, and consistent with the informed choice, of the individual student with a disability,

and his or her family or guardian, as applicable.

Having said this, the Department agrees that actual work experiences in integrated settings, rather than simulated or mock experiences in sheltered environments, provide students with disabilities with the most beneficial opportunities for job exploration, work-based learning, work readiness, and peer mentoring. The Secretary believes that DSUs, to the maximum extent possible, should provide work-based learning experiences, which may be paid or unpaid, through actual work experiences in integrated community environments to prepare students with disabilities for community-based competitive integrated employment, instead of using classrooms and educational facilities as settings for work-based learning experiences that segregate, replicate the tasks performed in adult sheltered employment, and often result in referrals to segregated employment settings following exit from school.

If these are paid work-based learning experiences, students with disabilities must be paid competitive wages to the extent competitive wages are paid to students without disabilities. Training stipends are also permissible for students with disabilities to the same extent that they are provided to students without disabilities participating in these experiences. Similarly, nothing in the Act prohibits States from coordinating the provision of pre-employment transition services with entities that hold certificates issued by the Department of Labor under section 14(c) of the FLSA. However, the Department strongly encourages training in competitive integrated settings to prepare students for competitive integrated employment. In addition, there is no statutory basis here to require that self-advocacy instruction be provided by a specific entity.

We agree that engaging students' parents or representatives is essential to their participation in pre-employment transition services and vital to their success. Since DSUs will be delivering pre-employment transition services to students with disabilities at a much younger age, parents must be involved, as required by State law and the policies of educational agencies and the DSU. We encourage DSUs to provide information regarding the application process and availability of services to all students with disabilities, and their parents or representatives, early in the transition process. As such, parent centers funded through the Rehabilitation Act and the IDEA may serve as mechanisms for outreach to, and engagement of, parents.

Changes: None.

Continuum of Services

Comments: A few commenters requested clarification about "required activities" under pre-employment transition services in § 361.48(a)(2). One commenter stated that pre-employment transition services appear to be a continuum of services and requested clarification as to whether a student might initially receive a general level of pre-employment transition services and then later receive a customized level of pre-employment transition services. Another commenter requested clarification as to how individualized pre-employment transition services would be funded for a student or youth with a disability who is not a vocational rehabilitation client. One commenter suggested that general pre-employment transition services be reserved for students who are potentially eligible for the VR program, while reserving individualized level pre-employment transition services for those students with disabilities determined eligible for vocational rehabilitation services. The same commenter suggested that pre-employment transition services be directed toward determining whether further vocational rehabilitation services are required for the individual to be successful in securing and maintaining employment. A few commenters requested clarification of the difference between employment assistance under pre-employment transition services and transition services, including the role of the vocational rehabilitation counselor.

Discussion: In response to requests for clarification, DSUs may provide, or arrange for the provision of, "required" pre-employment transition services to students with disabilities in classroom, employment, or community (group) settings. These services may be general in nature for students with disabilities who have not applied and been determined eligible for vocational rehabilitation services. As a student progresses through the vocational rehabilitation process by applying and being determined eligible for services, the DSU will have the information necessary to conduct assessments and provide more individualized and customized services to address the student's particular needs. But in some instances DSUs may nonetheless have sufficient information to provide individualized pre-employment transition services to students with disabilities who have not applied and been determined eligible for vocational rehabilitation services. Thus, we decline to require in final § 361.48(a)(2) that providing more individualized pre-employment transition services be limited to students with disabilities who have applied and been determined eligible for vocational rehabilitation services.

Finally, section 113 requires that DSUs use the funds reserved under section 110(d) of the Act, as amended by WIOA, to provide pre-employment transition services not only to students with disabilities who are eligible for vocational rehabilitation services but also to students with disabilities who are potentially eligible for vocational rehabilitation services, which includes all students with disabilities regardless of whether they have submitted an application for these services.

Examples of the five "required" activities and how they may be provided in either a group or individualized setting include, but are not limited to, the following:

One, general job exploration counseling may be provided in a classroom or community setting and include information regarding in-demand industry sectors and occupations, as well as non-traditional employment, labor market composition, administration of vocational interest inventories, and identification of career pathways of interest to the students. Job exploration counseling provided on an individual basis might be provided in school or the community and include discussion of the student's vocational interest inventory results, in-demand occupations, career pathways, and local labor market information that applies to those particular interests.

Two, work-based learning experiences in a group setting may include coordinating a school-based program of job training and informational interviews to research employers, work-site tours to learn about necessary job skills, job shadowing, or mentoring opportunities in the community. Work-based learning experiences on an individual basis could include work experiences to explore the student's area of interest through paid and unpaid internships, apprenticeships (not including pre-apprenticeships and Registered Apprenticeships), short-term employment, fellowships, or on-the-job trainings located in the community. These services are those that would be most beneficial to an individual in the early stages of employment exploration during the transition process from school to post-school activities, including employment. Should a student need more individualized services (*e.g.*, job coaching, orientation and mobility training, travel expenses,

uniforms or assistive technology), he or she would need to apply and be determined eligible for vocational rehabilitation services and develop and have an approved individualized plan for employment.

Three, counseling on opportunities for enrollment in comprehensive transition or postsecondary educational programs at institutions of higher education in a group setting may include information on course offerings, career options, the types of academic and occupational training needed to succeed in the workplace, and postsecondary opportunities associated with career fields or pathways. This information may also be provided on an individual basis and may include advising students and parents or representatives on academic curricula, college application and admissions processes, completing the Free Application for Federal Student Aid (FAFSA), and resources that may be used to support individual student success in education and training, which could include disability support services.

Four, workplace readiness training may include programming to develop social skills and independent living, such as communication and interpersonal skills, financial literacy, orientation and mobility skills, job-seeking skills, understanding employer expectations for punctuality and performance, as well as other "soft" skills necessary for employment. These services may include instruction, as well as opportunities to acquire and apply knowledge. These services may be provided in a generalized manner in a classroom setting or be tailored to an individual's needs in a training program provided in an educational or community setting.

Five, instruction in self-advocacy in a group setting may include generalized classroom lessons in which students learn about their rights, responsibilities, and how to request accommodations or services and supports needed during the transition from secondary to postsecondary education and employment. During these lessons, students may share their thoughts, concerns, and needs, in order to prepare them for peer mentoring opportunities with individuals working in their area(s) of interest. Further individual opportunities may be arranged for students to conduct informational interviews or mentor with educational staff such as principals, nurses, teachers, or office staff; or they may mentor with individuals employed by or volunteering for employers, boards, associations, or organizations in integrated community settings. Students may also participate in youth leadership activities offered in educational or community settings.

The wide variety of pre-employment transition services described in these examples is designed to be an early start at job exploration for students with disabilities. DSUs are not to use these activities as assessment services for the purpose of determining whether additional vocational rehabilitation services are needed, or if the individual will be successful in employment. In response to commenters' requests for clarification of the difference between employment assistance under pre-employment transition services and transition services, see more detailed descriptions of the distinctions between the two types of services in the *Transition Services (section 361.5(c)(55))* and *Scope of Pre-Employment Transition Services and Use of the Reserve* sections earlier in this section B.

Changes: None.

Other Vocational Rehabilitation Services as Pre-Employment Transition Services

Comments: A few commenters recommended that we interpret the scope of required activities under section 113 of the Act, as amended by WIOA, to include both support services and individualized vocational rehabilitation services necessary to participate in pre-employment transition services. The commenters requested that the funds reserved for providing pre-employment transition services also be permitted to pay for services provided under section 103(a) of the Act, as amended by WIOA, and proposed § 361.48(b), including, but not limited to job coaching services, maintenance, transportation to and from work-based learning experiences, travel, uniforms, tools, sign language interpreters, reasonable accommodations, assistive technology, independent living, and orientation and mobility services for students who are blind. One commenter requested that pre-employment transition services be expanded to include all transition services for students determined eligible for vocational rehabilitation services. Another commenter requested that we include all services listed on an individualized plan for employment within the scope of pre-employment transition services, including postsecondary education and training costs.

Discussion: Section 113 of the Act, as amended by WIOA, and final § 361.48(a) set out a list of pre-employment transition services that must be made available to all students with disabilities who are eligible or potentially eligible for vocational rehabilitation services ("required" activities), as well as those that may be provided ("authorized" activities). Under section 113(a) of the Act, the funds required to be reserved for pre-employment transition services must be used solely for providing pre-employment transition services. Therefore, the Department has no statutory authority to expand or limit the pre-employment transition services listed in section 113 of the Act, as amended by WIOA. Furthermore, if a student with a disability needs any additional individualized vocational rehabilitation services, including those necessary for participating in pre-employment transition services, such as those provided under final § 361.48(b), the student must apply and be determined eligible for vocational rehabilitation services and develop an individualized plan for employment that includes the additional necessary services. These additional services must be charged as a vocational rehabilitation expenditure separate from the funds reserved for providing pre-employment transition services.

Changes: None.

Pre-Employment Transition Coordination Activities

Comments: A few commenters expressed concerns that proposed § 361.48(a)(4) did not permit alternate means of participation in the meetings required by section 113 of the Act, as amended by WIOA, and permitted in section 103(b)(6) of the Act. Many commenters recommended we include language to allow for alternate means of participation in meetings as vocational rehabilitation counselors may not be available to participate in all individualized education program or person-centered planning meetings across a State.

A few commenters stated that pre-employment transition coordination activities must occur between DSUs and parent training and information centers funded by the Office of Special Education Programs and RSA to ensure that parental outreach concerning the benefits of pre-employment transition services is coordinated among these federally funded centers.

Discussion: We agree that alternate means for participating in pre-employment transition coordination activities (*e.g.,* video conferences and teleconferences) could minimize travel time and costs and maximize both the number of individualized education program and person-centered planning

meetings in which a vocational rehabilitation counselor could participate, as well as the number of direct services a vocational rehabilitation counselor could provide to students with disabilities. Although § 361.48(a)(4), both as proposed and final, does not explicitly permit DSUs to use alternate means to participate in individualized education program or person-centered planning meetings, it does not prohibit them. DSUs may therefore use these alternate means.

Decisions on how to conduct meetings is a matter of agency administration. Conducting these meetings via alternate means would be consistent with the explicit authority to conduct alternate format meetings under section 101(a)(11)(D)(i) of the Act and final § 361.22(b)(1). Additionally, section 614(f) of the IDEA and its implementing regulations in 34 CFR 300.328 allow the parent of a child with a disability and a public agency to agree to use alternative means of meeting participation requirements, such as video conferences and conference calls, when conducting individualized education program team meetings and placement meetings under the IDEA, as well as carrying out administrative matters under section 615 of the IDEA (such as scheduling, exchange of witness lists, and status conferences). Since the Act and the IDEA provide for alternate means for conducting meetings very similar to those required by section 113 of the Act and final § 361.48(a), DSUs may use alternate means to conduct these meetings as well. We do not believe a regulatory change is necessary to accomplish this.

We agree that coordinating with federally funded parent centers is a mechanism that would help parents of students with disabilities understand the benefits of pre-employment transition services. Section 113(d) of the Act, as amended by WIOA, however, does not require this. The statute is clear that the funds reserved for providing pre-employment transition services must only be spent on the activities specified in section 113 of the Act, as amended by WIOA, and final § 361.48(a). Given the Act's specificity of the activities that constitute pre-employment transition services, there is no statutory authority for final § 361.48(a)(4) to include any additional required coordination responsibilities.

Changes: None.

Documentation and Reporting

Comments: Some commenters requested clarification as to how States should document the provision and costs of pre-employment transition services for students with disabilities who have not yet applied and been determined eligible for vocational rehabilitation services and for whom limited personal information is available. Additionally, one commenter requested additional guidance about the tracking of funds expended on groups of students who have not applied or been determined eligible for the VR program.

A few commenters requested flexibility in the reporting of pre-employment transition services because it is burdensome for DSUs to develop and implement tracking systems for a large potentially eligible population. These commenters also stated this tracking could be difficult because DSUs may not have access to the personal identifying information, including Social Security numbers, typically used to document and report vocational rehabilitation services provided. A few commenters suggested that the Department establish reporting requirements for pre-employment transition services that are similar to the child count reporting requirements under the IDEA. One commenter requested clarification regarding reporting requirements for the funds reserved for providing pre-employment transition services and whether expenditures are only to be reported during the time period for which an individual meets the definition of a student with a disability or during the entire fiscal year in which the individual was served.

Discussion: Because sections 110(d) and 113 of the Act require a State to reserve and use at least 15 percent of its total vocational rehabilitation allotment for providing, or arranging for the provision of, pre-employment transition services to students with disabilities, it will be critical that the DSU implement administrative methods and procedures that ensure proper data collection and financial accountability of these reserved funds, as required by final § 361.12 and 2 CFR 200.302 of the Uniform Guidance. In addition, section 101(a)(10)(C) of the Act, as amended by WIOA, expands the VR program-specific data that DSUs must report, including data elements related to students with disabilities who are receiving pre-employment transition services. These reporting requirements are included in final § 361.40(a) to ensure that the Secretary has the information needed to assess the performance of the VR program, especially with regard to providing pre-employment transition services to students with disabilities.

Although the Department recognizes the burden placed on DSUs to develop procedures for tracking pre-employment transition services and related expenditures for students who have not yet applied or been determined eligible for vocational rehabilitation services, DSUs are required by section 101(a)(10)(C) of the Act to do so in order to properly account for, and report, the provision of pre-employment transition services and the reserved funds spent on those services. Moreover, the State's accounting procedures must be such that the DSU will be able to complete accurately all required forms, including financial reports, that show the reservation and use of these funds for this purpose, as required by final § 361.12 and 2 CFR 200.302.

The Department does not have the authority to grant exceptions from, or waivers of, these reporting requirements. Regardless of whether students with disabilities are receiving pre-employment transition services without having applied or been determined eligible for vocational rehabilitation services, *i.e.* by virtue of the fact they are "potentially eligible" for the program, if Federal funds are being spent, expenditures must be tracked and monitored in accordance with final § 361.12 and the Uniform Guidance in 2 CFR 200.302 (Financial Management) and 200.328 (Monitoring), as well as the Federal cost principles in 2 CFR 200.403 (Allowability), 200.404 (Reasonable) and 200.405 (Allocable). Furthermore, the Department issued Policy Directive (PD) 15–05 on February 5, 2015, which provided technical assistance on reporting the total Federal expenditures for providing pre-employment transition services. We appreciate the commenters' proposed alternate suggestions for reporting. However, the Department uses the SF–425 to collect financial data from DSUs so that it can monitor the financial status of the VR program and assess grantee compliance with Federal fiscal requirements under the VR program, including requirements for the reservation and use of funds for providing pre-employment transition services.

As they have been required to do for many years, DSUs must submit completed SF–425 reports semi-annually. The end dates for each reporting period in a fiscal year are March 31 and September 30. Semi-annual reports must be submitted no later than 45 days after the end of the reporting period. Final reports must be submitted no later than 90 days after the period of performance. "Period of performance" means the time during which the non-Federal entity may incur new obligations to carry out the work authorized under the Federal award.

These final regulations do not affect any of these reporting requirements. To ensure the proper accounting and reporting of services provided and funds expended, especially with regard to pre-employment transition services, DSUs must track and report data on students with disabilities until they no longer meet the definition of a student with a disability. At that point, DSUs must track and report services provided to, and funds expended on, these individuals as they would any other individual receiving vocational rehabilitation services.

Changes: None.

Performance Measures

Comments: A few commenters expressed concern that pre-employment transition services and expenditure of funds are not included in the proposed common performance accountability measures. These commenters recommended that we revise the common performance accountability measures to include and evaluate these services. One commenter requested clarification regarding how group service expenditures would inform statistical adjustment model calculations, as it was unclear how the ratio of reportable individuals to participants may reflect on the performance of a DSU.

Discussion: The VR program is no longer subject to its own set of performance standards and indicators established by the Department, as it had been prior to the enactment of WIOA. Because the common performance accountability indicators are mandated by section 116(b) of title I of WIOA and apply to all six core programs of the workforce development system, including the VR program, the Departments of Education and Labor do not have the authority to establish additional performance accountability indicators beyond those identified in the statute. However, section 106(a)(2) of the Act and section 116(b)(1)(A)(ii) of title I of WIOA permit States to develop additional accountability measures to evaluate the performance of the core partners in the workforce development system. We intend to monitor State implementation of pre-employment transition services and expenditure of funds during our annual review and periodic on-site monitoring of State VR agencies to identify areas of concern and the need for technical assistance. The Departments of Education and Labor address the remaining comments in the joint final regulations implementing the performance accountability system under title I of WIOA, and published elsewhere in this issue of the **Federal Register**.

Changes: None.

Services for Individuals Who Have Applied for or Been Determined Eligible for Vocational Rehabilitation Services (§ 361.48(b))

Comments: A few commenters supported proposed § 361.48(b)(18) and agreed that youth may be provided transition services that are similar to pre-employment transition services under an individualized plan for employment. Another commenter requested that proposed § 361.48(b)(18) require DSUs to provide students and youth with disabilities an application for vocational rehabilitation services at the beginning of the transition process. A few commenters expressed concerns regarding the expansion of services for students and youth with disabilities at the expense of other individuals with disabilities served by DSUs. One commenter expressed such concerns in terms of potential harm to the Randolph-Sheppard program.

Some commenters requested that we identify the services, including transition services, that would be allowable if provided by community rehabilitation programs that hold section 14(c) certificates under the FLSA. A few commenters recommended that the regulations prohibit DSUs from contracting with section 14(c) certificate holders to provide transition services. One commenter requested that we clarify if entities holding section 14(c) certificates may provide transition services and proposed alternatives for providing these services if they may not.

One commenter requested that incentives be added for providing transition services or supported employment services.

Discussion: We appreciate the support for, and consideration given by commenters to, proposed § 361.48(b)(18). We agree that students and youth with disabilities should receive adequate information and applications for vocational rehabilitation services at the beginning of the transition from secondary programs to post-secondary activities. A DSU may provide the information and application under final §§ 361.41 and 361.52, which require the DSU to establish and implement standards for promptly processing referrals, informing individuals of application requirements, and facilitating individuals' informed choice as they transition. Therefore, we do not believe it is necessary to add further requirements to final § 361.48(b)(18).

We acknowledge that the heightened emphasis on providing services to students and youth with disabilities may cause some DSUs concern about their ability to serve all individuals. We believe that the process for implementing an order of selection established within section 101(a)(5) of the Act, as amended by WIOA, is adequate to address these concerns in the event that vocational rehabilitation services cannot be provided to all eligible individuals.

We acknowledge the commenters' support and concerns about section 14(c) certificate holders providing transition and other vocational rehabilitation services. While the Act does not prohibit community rehabilitation programs that are section 14(c) certificate holders from providing transition or other vocational rehabilitation services or training in sheltered settings, section 511 of the Act prohibits local and State educational agencies from entering into a contract or other arrangement with section 14(c) entities for the purpose of operating a program for youth with disabilities under which work is compensated at a subminimum wage. The Department strongly encourages training in competitive integrated settings to prepare students for competitive integrated employment, as stated in the discussion of "required" activities in final § 361.48(a) and discussed in more detail in *Required Activities* earlier in this section B. There is no statutory basis for requiring or permitting incentive payments for providing vocational rehabilitation services, including transition and supported employment services.

Changes: None.

Scope of Vocational Rehabilitation Services for Groups of Individuals With Disabilities (§ 361.49)

Comments: A few commenters sought clarification of, or suggested revisions to, proposed § 361.49(a)(7) governing the provision of transition services for groups of youth and students with disabilities. Of these, one commenter questioned whether transition services may be provided under this authority to students and youth with disabilities who have not applied or been determined eligible for vocational rehabilitation services. Similarly, another commenter suggested that DSUs be required to provide an application to all students and youth with disabilities receiving transition services under proposed § 361.49(a)(7). One commenter communicated concerns that allowing transition services under this authority will lead to students and youth with

disabilities receiving services in segregated environments. Another commenter suggested that pre-employment transition services under proposed § 361.49 be limited to group orientations. Yet another commenter supported providing transition services for groups of students and youth with disabilities and then providing transition services to this population under final § 361.48(b) if more individualized services are necessary.

One other commenter suggested that we add the term "competitive integrated employment" to proposed § 361.49(a)(7) to emphasize that transition services for groups of students and youth with disabilities are to support the achievement of competitive integrated employment. The same commenter recommended that we add outreach to and engagement of parents to § 361.49(a)(7) as an allowable service to groups. Finally, one commenter requested clarification of how informed choice of both the individual and the individual's representative would be provided and documented if transition services are provided to groups of youth and students with disabilities.

Discussion: We appreciate all of these comments. A student with a disability or a youth with a disability is not required to have applied or been determined eligible for vocational rehabilitation services to receive general transition services provided to groups under section 103(b)(7) of the Act, as amended by WIOA, and final § 361.49(a)(7). Therefore, a DSU may, but is not required to, provide or collect applications from students and youth with disabilities receiving transition services under final § 361.49(a)(7). Students with disabilities may receive these services in a variety of settings, including classroom, employment, and community-based settings. However, the Department strongly encourages DSUs to provide these services in integrated settings to the maximum extent possible to best prepare students and youth with disabilities for competitive integrated employment. Furthermore, students and youth with disabilities may continue to receive generalized transition services under this authority while also receiving individualized vocational rehabilitation services under an individualized plan for employment pursuant to section 103(a) of the Act and final § 361.48(b).

Pre-employment transition services may be provided in a group setting to students with disabilities who have not applied or been determined eligible for vocational rehabilitation services, as discussed in the examples in final § 361.48(a). Contrary to the assumption in some comments, pre-employment transition services cannot be provided to students with disabilities as a service for groups under section 103(b)(7) of the Act, as amended by WIOA, or final § 361.49(a)(7). Pre-employment transition services must only be provided under section 113 of the Act and final § 361.48(a).

The intent of these generalized transition services when provided under final § 361.49(a)(7) is to benefit groups of students and youth with disabilities. We understand the concern that these services are limited to only students and youth with disabilities. Transition services provided under final § 361.48(b) under an individualized plan for employment are more individualized in nature, and the settings in which they are delivered are typically more diverse.

We agree that the purpose of transition services to groups should ultimately be achieving competitive integrated employment for students and youth with disabilities consistent with the purpose of the VR program set forth in final § 361.1. Nonetheless, the transition services provided under final § 361.49(a)(7) are not limited to those individuals who have been determined eligible for the VR program and who are pursuing an employment outcome in competitive integrated employment or supported employment. Therefore, we cannot require that the transition services authorized in final section 361.49(a)(7) be provided only for the purpose of assisting students and youth with disabilities to obtain competitive integrated employment.

We also agree that the families of students and youth with disabilities should be involved in all transition services, even though section 103(b) of the Act, as amended by WIOA, does not specifically include outreach to and engagement of parents within its requirements. Neither the Act nor these final regulations prohibit a DSU from providing outreach to, and engaging parents in, the provision of transition services under final § 361.49(a)(7).

Finally, informed choice, as outlined in final § 361.52, applies throughout the vocational rehabilitation process; therefore, students and youth with disabilities receiving transition services under final § 361.49(a)(7) must be given the opportunity to exercise their informed choice.

Changes: None.

C. Fiscal Administration of the VR Program

Section C includes the *Analysis of Comment and Changes* to the regulations in subpart C of part 361 that pertain to the fiscal administration of the VR program and covers requirements for matching funds, maintenance of effort, program income, and the allotment and payment of funds. The analysis is presented by topical headings relevant to sections of the regulations in the order they appear in part 361 as listed.

Topical Headings

Matching Requirements (§ 361.60)
Third-Party In-Kind Contributions
Additional Sources of Match
Differences Between Prior and Proposed Regulations
Maintenance of Effort Requirements (§ 361.62)
Program Income (§ 361.63)
Waiver
Legal Basis
Pre-Employment Transition Services
Amount of Program Income Earned
Addition Alternative
Allotment and Payment of Federal Funds for Vocational Rehabilitation Services (§ 361.65)
Exemption from the Reservation of Funds Requirement for Pre-Employment Transition Services
Use of Reserved Funds for Other Vocational Rehabilitation Services
Amount of Funds to Be Reserved
Application of the Reservation of Funds to the State and to the State Allotment
Effect of Reallotment and Carryover on the Reservation of Funds
Administrative Costs
Tracking of the Reserved Funds
Use of Reserved Funds for Authorized Activities

Matching Requirements (§ 361.60)

Third-Party In-Kind Contributions

Comments: Several commenters requested that the Department either include third-party in-kind contributions as an allowable source of match under the VR program or clarify whether these contributions are an allowable source of match. One commenter questioned whether the Department has the authority to exclude third-party in-kind contributions as a source of match under the VR program, given that these contributions are a permissible source of match in the Uniform Guidance contained in 2 CFR part 200.

Discussion: We have addressed the comments regarding the allowability and use of third-party in-kind contributions as match under the VR program in the discussion of third-party cooperative arrangements in final § 361.28 earlier in section A of this *Analysis of Comments and Changes* section. We received similar comments about that regulation, and issues of third-party in-kind contributions most

often arise in the third-party cooperative arrangement context.

For more than two decades, the Department has excluded third-party in-kind contributions from the allowable sources of match for the VR program. Neither the NPRM nor these final regulations reflect any substantive changes to this prohibition.

In addition, we do not agree that § 361.60 is inconsistent with 2 CFR part 200 with regard to third-party in-kind contributions. Specifically, 2 CFR 200.306 states that for all Federal awards, any shared costs or matching funds and all contributions, including cash and third-party in-kind contributions, must be accepted as part of the non-Federal entity's cost sharing or matching when specific criteria are met. However, 2 CFR 200.102(c) states that "the Federal awarding agency may apply more restrictive requirements to a class of Federal awards or non-Federal entities when approved by OMB, or when required by Federal statutes or regulations. . . ."

Section 361.60(b)(2) has prohibited, and continues to prohibit, DSUs from considering third-party in-kind contributions as a permissible source of match under the VR program. The Department is within its authority to continue to exclude third-party in-kind contributions as an allowable source of match under the VR program, as it has done for more than two decades, and thus the VR program regulations are consistent with 2 CFR part 200. Nevertheless, given the comments questioning the relationship between the prohibition against using third-party in-kind contributions for match purposes under the VR program in § 361.60(b)(2) and the permissibility of these contributions under 2 CFR 200.306(b), we have revised final § 361.4(d) to reduce confusion. These revisions are purely technical and do not affect the long-standing prohibition against using third-party in-kind contributions as a source of match under the VR program.

Changes: We have revised final § 361.4(d) to exempt 2 CFR 200.306(b), as it relates to third-party in-kind contributions, from the VR program, thereby ensuring consistency with final § 361.60(b)(2) and the long-standing prohibition against third-party in-kind contributions as a source of match under the VR program.

Additional Sources of Match

Comments: Another commenter requested that the Department include additional sources of non-Federal share as examples of potential matching sources.

Discussion: We appreciate the commenter's request for additional examples of permissible sources of match under the VR program. The 1988 regulations (53 FR 16978 (May 12, 1988)), which remained in effect until 1997, contained a short list of examples of permissible match sources, none of which included third-party in-kind contributions.

Similarly, the 1997 final regulations (62 FR 6307 (Feb. 11, 1997)) simplified the requirements by removing the list of permissible sources of expenditures to meet the non-Federal share. Instead, it referred to former 34 CFR 80.24 for a list of allowable match sources, to the extent that provision was not inconsistent with § 361.60(b), which prohibited third-party in-kind contributions from being used for match purposes under the VR program. We emphasized in the preamble to the 1995 NPRM (60 FR 64475 (Dec. 15, 1995)) that the proposed regulation would not prohibit the use of any funding sources that had been allowable for match purposes under the VR program, but third-party in-kind contributions were not among them. Although we do not believe the list of permissible match sources should be re-inserted into final § 361.60, we provide here the still-effective permissible match sources that had been contained in prior § 361.76, which existed until the 1997 regulations took effect and subsequently was replaced by prior § 361.60.

The old regulations in 34 CFR 361.76, which formed the basis for both prior and final § 361.60, indicated that the allowable sources of match were:

1. Direct State appropriation to the VR agency,
2. Transfers or allotments from other public agencies,
3. Expenditures incurred by other public agencies pursuant to a cooperative agreement in accordance with 34 CFR 361.13 (which formed the basis for both prior and final § 361.28),
4. Funds set aside from Business Enterprise Programs, established under the Randolph-Sheppard Act, for which the DSU provides supervision and management services, and
5. Private contributions deposited into the VR agency's account.

Section 361.60 has remained substantively unchanged from 1997 through these final regulations.

Changes: None.

Differences Between Prior and Proposed Regulation

Comments: One commenter requested we clarify the differences between the prior and proposed § 361.60(b)(3).

Discussion: We made only technical changes to proposed § 361.60(b)(3)(iii) in the NPRM. Specifically, we replaced the phrase "grant, subgrant, or contract" with the word "subaward" in order to be consistent with the use of this term in the Uniform Guidance, as set forth in 2 CFR part 200. We made no further changes to final § 361.60(b)(3)(iii).

Changes: None.

Maintenance of Effort Requirements (§ 361.62)

Comments: A few commenters supported proposed § 361.62. One commenter stated that section 241(b) of WIOA did not support the proposed VR regulations and recommended allowing flexibility for States to choose the fiscal year in which maintenance of effort penalties would be paid.

Discussion: We appreciate the comments supporting proposed § 361.62. Section 241(b) of WIOA, referenced by the commenter, does not apply to the VR program but rather to programs authorized under the Adult Education and Family Literacy Act in title II of WIOA. Instead, section 420 of WIOA amended section 111(a)(2)(B) of the Act, which governs the maintenance of effort requirements for the VR program. Final § 361.62(a) is consistent with section 111(a)(2)(B) of the Act, as amended by WIOA.

Changes: None.

Program Income (§ 361.63)

Waiver

Comments: Several commenters requested that we waive the requirement for States to expend program income prior to drawing down Federal grant funds. One commenter stated that the role of the Department in placing restrictions on the use of program income should be limited since VR program grantees are not required to generate program income.

Discussion: We appreciate the comments submitted regarding proposed § 361.63. The Act gives the Secretary the authority to grant waivers of only two VR program requirements, specifically those related to statewideness (section 101(a)(4)) and maintenance of effort (section 111(a)(2)(C)). The Act, as amended by WIOA, does not provide a general waiver authority or a specific authority to waive program income requirements. Therefore, we may not include in final § 361.63 a waiver of the requirement to expend program funds prior to drawing down Federal VR program funds.

Changes: None.

Legal Basis

Comments: Another commenter noted that following the 1992 amendments to the Rehabilitation Act, the Department interpreted the Act as allowing program income, including transferred program income, to be obligated and/or expended on or before September 30th of the carryover year of the grant period. According to the commenter, WIOA did not amend the Act to require the expenditure of program income under the VR program as soon as it was received. The commenter also recommended that we review both the 1992 amendments to the Rehabilitation Act and WIOA to determine whether there is a sufficient legal basis to exempt DSUs from the requirement to expend program income before requesting additional Federal grant funds and that we include this exemption in the VR program final regulations. One commenter noted that the NPRM incorrectly cited 2 CFR 200.305(b)(5) as the legal authority requiring that program income be disbursed prior to drawing down Federal funds.

Discussion: While we agree that DSUs are not required to earn program income under the VR program, we disagree that the Secretary's authority over program income is, therefore, limited. As a recipient of Federal VR program funds, DSUs must comply with all applicable Federal requirements, including those in the Act, the VR program regulations in final part 361, Education Department General Administrative Regulations (EDGAR), and government-wide regulations in 2 CFR part 200 (see final § 361.4). Requirements governing program income affecting the VR program are found in final § 361.63 and 2 CFR 200.305, both of which are under the Secretary's purview. Moreover, final § 361.4(b) and (d) make final part 361 and 2 CFR part 200, respectively, applicable to the VR program. For this reason, DSUs must comply with all Federal requirements governing program income to the extent that they earn such income under the VR program.

We agree that section 19(a)(2) of the Act allows program income to remain available for obligation and expenditure in the year following the year in which the program income was earned. However, we also believe that final § 361.63(c)(3) is consistent with both section 19(a)(2) of the Act and 2 CFR 200.305. In the event that a DSU receives program income at the end of a fiscal year and is unable to disburse it prior to the end of that year, the DSU may carry over that program income for use in the following Federal fiscal year; however, that DSU must spend that program income prior to drawing down Federal funds.

The Department reminded DSUs of this requirement—program income must be disbursed prior to drawing down Federal funds—in PD–11–03 (dated October 26, 2010), as well as in PD–12–06 and PD–15–05 (dated February 13, 2012 and February 5, 2015, respectively). The Department also reminded DSUs of this requirement in a PowerPoint presentation at the FY 2011 Fiscal Conference, held in Washington, DC, in August 2011.

Prior to developing proposed § 361.63, the Department reviewed the legislative and regulatory history about program income. Our review found that, while the Act has not addressed this issue specifically, EDGAR has long done so. The Federal government has had a long-standing requirement under the common rule implementing former OMB Circular A–102, codified by the Department of Education in former 34 CFR 80.21(f)(2), that States must expend program income prior to drawing down Federal grant funds. The Uniform Guidance, codified in 2 CFR part 200, was adopted by the Department in 2 CFR 3474 on December 19, 2014, in 79 FR 76091. The Uniform Guidance in 2 CFR 200.305(a) specifies the payment procedures that States must use to draw down Federal funds; however, these procedures appear, on the surface, to apply only to funds included in a Treasury-State Agreement (TSA), and not all Federal program funds made available to States are subject to TSAs.

For this reason, the Uniform Guidance in 2 CFR 200.305(a) has created an ambiguity about how States should draw Federal funds under non-TSA programs. Moreover, TSAs do not cover program income earned by State grantees. Thus, in addition to the ambiguity regarding non-TSA programs, 2 CFR 200.305(a) does not address whether States must expend available program income funds before requesting additional Federal cash, as had been the long-standing government-wide requirement in OMB Circular A–102 and codified for Department grantees in former 34 CFR 80.21(f)(2). This silence creates concern because, for all other non-Federal entities, § 200.305(b)(5) clearly requires those entities to expend available program income funds before requesting payments of Federal funds.

While the § 200.305(a) silence creates an ambiguity, we do not believe that this ambiguity should be construed to no longer require States to expend program income funds before requesting additional Federal cash because no such policy change was discussed in the preambles to either the final guidance in 2 CFR part 200, which was published on December 26, 2013 (78 FR 78589), or in the Interim Final Guidance published on December 19, 2014 (79 FR 75867). This issue is critical to the Department because DSUs earn more than $100 million in program income annually under the VR program—an amount that far exceeds amounts earned under any other program administered by the Department. For this reason, the Secretary believes it is essential that we resolve this ambiguity in these regulations. Therefore, we proposed in the NPRM to incorporate the requirement to expend program income before requesting payment of funds by referencing 2 CFR 200.305(a).

Upon further review of that proposed change, and in consideration of one comment, we have determined that the proposed amendment, as presented in the NPRM, would not achieve the needed objective because it referenced the wrong citation from 2 CFR part 200. We resolved the ambiguity by revising final § 361.63(c)(3) to explicitly require States to expend available program income funds before requesting additional cash payments, maintaining the long-standing requirement that applied to VR program grantees under 34 CFR 80.21(f)(2). The Secretary believes this change is essential to protect the Federal interest by using program income to increase the funds devoted to the VR program and keep to a minimum the interest costs to the Federal government of making grant funds available to the States. There is no legal basis to exempt DSUs from this long-standing government-wide requirement.

Changes: We have revised final § 361.63(c)(3) to explicitly require States to disburse available program income funds before requesting additional cash payments.

Pre-Employment Transition Services

Comments: Some commenters expressed concerns that the requirement to spend program income first creates an undue barrier to the ability of DSUs to reserve 15 percent of their VR program allotments for providing pre-employment transition services. According to these commenters, grantees cannot predict the arrival of program income to the same extent that they can anticipate the arrival of allotted funds. As a result, DSUs may have to expend program income for pre-employment transition services instead of their State allotments, thereby failing to expend the 15 percent reserve required for the provision of pre-employment transition services.

Discussion: We recognize the challenge for States to meet both the requirements to disburse program income prior to drawing down Federal funds as well as to reserve VR program funds for providing pre-employment transition services. While final § 361.63(c)(1)(ii) requires States to expend available program income funds before requesting additional cash payments, it does not preclude States from executing allowable accounting adjustments between program income disbursed on pre-employment transition services and other Federal funds expended on non-pre-employment transition services for the same time period. These accounting adjustments must be in accordance with Generally Accepted Accounting Principles (GAAP) and the State's accounting procedures and must be reflected in the State accounting system that is required by final § 361.12 and 2 CFR 200.302.

Changes: None.

Amount of Program Income Earned

Comments: One commenter noted that it is unable to determine the actual amount of program income earned until after the end of the Federal award because the program income must be "netted out."

Discussion: Program income, as defined in 2 CFR 200.80 and used in final § 361.63, means the "gross" program income earned by the grantee. Furthermore, as stated earlier, program income is considered earned when received. In other words, if a DSU receives $100,000 in program income in November, it should report this amount as received—or earned—on the SF–425 covering the first quarter of the Federal fiscal year. Therefore, DSUs should not wait until the end of a fiscal year to determine the amount of program income received, and all reports should reflect gross—not net—amounts.

Changes: None.

Addition Alternative

Comments: None.

Discussion: Upon further Department review, we determined it necessary to clarify in § 361.63(c)(3) that the deduction method is no longer available to DSUs for expending program income. In examining the grant formula set forth in the statute more closely, we have concluded that the use of the deduction method would, in effect, result in a reduction of a VR grant allotment. Absent specific statutory authority, these reductions would be inconsistent with the statute and general appropriations law principles. In reviewing the grantees' financial reports, we have found that very few, if any, DSUs elect to use the deduction method. Instead, most, if not all, grantees elect to use the addition method, which is still permissible and, in fact, will be the only permissible use of program income under the VR program final regulations. We do not believe this change will negatively impact many, if any, grantees. Therefore, we have revised final § 361.63(c)(3) to require VR program grantees to use program income only to supplement the VR grant through the addition alternative.

Changes: We have revised final § 361.63(c)(3) to require DSUs to use the addition alternative when expending program income.

Allotment and Payment of Federal Funds for Vocational Rehabilitation Services (§ 361.65)

Exemption From the Reservation of Funds Requirement for Pre-Employment Transition Services

Comments: Some commenters agreed with the changes to proposed § 361.65. Many commenters recommended that we exempt DSUs from the requirement to reserve at least 15 percent of their State allotments for providing pre-employment transition services in cases where the DSUs lack resources to do so.

Discussion: We appreciate the commenters who supported proposed § 361.65 and those who expressed concern or sought clarification. Section 110(d)(1) of the Act, as amended by WIOA, requires States—not the Department—to reserve at least 15 percent of their VR program allotment for providing pre-employment transition services. Given this explicit requirement, the Secretary lacks statutory authority to exempt States from the reservation requirement or to modify this requirement because to do so would be inconsistent with the statute. While we understand the concerns expressed by commenters regarding an inability to expend the full amount of reserved funds on pre-employment transition services, we encourage DSUs to work closely with the school systems and other entities to identify students with disabilities who might benefit from pre-employment transition services. Through these outreach activities, DSUs may be able to identify students with disabilities who could benefit from pre-employment transition services and who were not previously known to the agencies.

Changes: None.

Use of Reserved Funds for Other Vocational Rehabilitation Services

Comments: A few commenters requested that agencies who may not meet the reservation requirement, due to a lack of individuals who qualify to receive pre-employment transition services, be allowed to use the remaining reserved funds to provide vocational rehabilitation services listed under proposed § 361.48(b) to other eligible individuals.

Discussion: Funds reserved, pursuant to section 110(d)(1) of the Act, for providing pre-employment transition services must be used solely for the activities set forth in section 113 of the Act, as amended by WIOA, and final § 361.48(a). If a student with a disability requires other vocational rehabilitation services, the DSU must pay for those services with the remainder of the VR program allotment.

Changes: None.

Amount of Funds To Be Reserved

Comments: A few commenters recommended creating a benchmark for pre-employment transition services provided, rather than tying those services to actual Federal funds spent. Two commenters recommended basing the reservation of funds on the number of individuals in the State who would be eligible to receive pre-employment transition services. These commenters added that the remaining funds would be used for the provision of all other allowable vocational rehabilitation services.

Two commenters stated that the requirement to reserve at least 15 percent is too high. One commenter recommended that we consider DSUs to have satisfied the requirement if they demonstrate progress toward the minimum 15 percent requirement in the first 2 years of implementation, based upon the amount of funds spent in the previous fiscal year for pre-employment transition services. One commenter recommended that we allow States to negotiate the reservation requirement based upon populations of students with disabilities in the States. One commenter expressed concern that requiring at least 15 percent of the VR award to be used for pre-employment transition services will reduce the Federal VR funds available to support the Randolph-Sheppard program.

Discussion: Section 110(d)(1) of the Act, as amended by WIOA, requires States to reserve "at least" 15 percent of their VR program allotment for providing pre-employment transition services. Final § 361.65(c)(3) mirrors the statutory requirement. Although several

commenters referred to the 15 percent reservation requirement as a "limit," the Act as amended by WIOA, and final § 361.65(c)(3) do not restrict States from spending more than 15 percent of their allotments for the provision of these services.

We appreciate the many recommendations for alternative ways for DSUs to meet the pre-employment transition services reservation requirement under proposed § 361.65(a)(3)(i). We also appreciate the concerns that the reservation of funds for the sole purpose of providing pre-employment transition services will reduce the amount of funds available for other VR program purposes, including services for individuals who are blind or visually impaired who wish to start a vending facility under the Randolph-Sheppard program. Nevertheless, the Act requires States to reserve at least 15 percent of their VR program allotment for providing pre-employment transition services. The Act provides no exceptions to this requirement and, therefore, we do not have the authority to make the changes suggested by the commenters because to do so would be inconsistent with the statute.

Changes: None.

Application of the Reservation of Funds to the State and to the State Allotment

Comments: Many commenters requested that RSA apply the pre-employment transition reservation requirement to the State as a whole and not to the DSU in States with separate agencies serving individuals who are blind and individuals with all other disabilities. One commenter requested clarification regarding how pre-employment transition services are to be funded. A few commenters requested that we clarify whether the reservation requirement applies to the State funds, or just the Federal funds.

Discussion: Section 113(a) of the Act requires pre-employment transition services to be paid for with funds reserved from the VR program allotment pursuant to section 110(d)(1) of the Act, as amended by WIOA. We agree with commenters that the reservation of funds for providing pre-employment transition services is a State requirement, not a DSU-specific requirement. Section 110(d) of the Act, as amended by WIOA, and final § 361.65(a)(3)(i) require the State—not the DSU—to reserve the funds, thereby making this a matter that must be resolved at the State level when there are two agencies in the State. For this reason, the Department encourages DSUs to coordinate to ensure State compliance. While the Department recommends that each DSU, when a State has two DSUs, reserve at least 15 percent of its allotment to facilitate the tracking of State compliance with the reservation requirement, the Act does not require that this be done. If one DSU (when a State has two DSUs) uses more of its funds than the other, the State would be in compliance so long as the State's total of funds reserved for providing pre-employment transition services is at least 15 percent of the State's total allotment, including any additional funds received during reallotment by one or both DSUs.

The State allotment, from which funds must be reserved, refers to the Federal funds awarded pursuant to section 110(a) of the Act, not State funds appropriated to the DSUs by State legislatures.

Changes: None.

Effect of Reallotment and Carryover on the Reservation of Funds

Comments: One commenter requested clarification regarding whether funds received during reallotment would count toward the State's allotment for purposes of the pre-employment transition services reservation requirement. One commenter requested clarification regarding whether the reservation requirement applies to the carryover period.

Discussion: Under section 110(b)(3) of the Act, funds received during reallotment are an increase to the State's allotment. Similarly, funds relinquished during reallotment are a reduction to the State's allotment. Therefore, funds received or relinquished by a State during reallotment affect the amount of funds that must be reserved for providing pre-employment transition services.

Section 19 of the Act, which governs the carryover of grant funds, applies to all VR program funds, including funds reserved for providing pre-employment transition services. Section 19(b) of the Act permits grantees to carry over Federal funds for obligation and expenditure in the subsequent Federal fiscal year only to the extent that the DSU has provided sufficient non-Federal expenditures to match those funds. This means that grantees may carry over Federal funds reserved for providing pre-employment transition services into the subsequent Federal fiscal year only to the extent that they have provided the requisite 21.3 percent non-Federal share by the end of the Federal fiscal year in which the funds were awarded. In addition, because they have been matched in the fiscal year for which they were appropriated, the funds reserved for providing pre-employment transition services that are eligible for carryover into the succeeding Federal fiscal year may only be obligated in that succeeding Federal fiscal year and expended for providing pre-employment transition services.

Changes: None.

Administrative Costs

Comments: Some commenters requested clarification regarding fiscal reporting requirements, including staff time, counted toward the reservation requirement given that DSUs may not expend funds reserved for providing pre-employment transition services on administrative costs. One commenter requested clarification regarding the apparent contradiction of some of the authorized activities listed in proposed § 361.48(a)(3), which might appear to be administrative in nature, and the prohibition in proposed § 361.65(a)(3)(ii) against using reserved funds for administrative costs.

Discussion: We appreciate the comments requesting clarification regarding whether DSUs may pay for staff-related costs from funds reserved for the provision of pre-employment transition services. Section 110(d)(2) of the Act, as amended by WIOA, prohibits DSUs from using the reserved funds for administrative costs. Section 7(1) of the Act and final § 361.5(c)(2) define "administrative costs" as including, among other things, "administrative salaries, including clerical and other support staff salaries, in support of these administrative functions." It has been the long-standing Department policy that staff-related costs, including salaries, fringe benefits, and travel, incurred while providing vocational rehabilitation services, constitute service costs, not administrative costs. As such, costs associated with staff time spent providing pre-employment transition services may be paid with the funds reserved for providing those services.

By contrast, supervisory costs, rent, utilities, indirect costs, and other similar associated costs are administrative costs—not service costs—and, as such, cannot be paid with the reserved funds. In considering the various pre-employment transition services specified in section 113 of the Act and final § 361.48(a) in this way, we do not believe there are actual conflicts between final § 361.48(a) and § 361.65.

However, we have revised final § 361.65(a)(3)(ii)(B) to add a cross-reference to the definition of "administrative costs" in final § 361.5(c)(2), to clarify that these costs are still allowable under the VR program and may be paid for with VR program

funds not reserved for the provision of pre-employment transition services under final § 361.65(a)(3).

Changes: We have revised final § 361.65(a)(3)(ii)(B) to clarify that the administrative costs referred to in this provision are those that meet the definition of "administrative costs" in final § 361.5(c)(2). This change is technical, not substantive.

Tracking of the Reserved Funds

Comments: Some commenters requested that we provide flexibility regarding the tracking of pre-employment transition service expenditures to minimize time-consuming administrative requirements. One commenter requested that the Department issue guidance to States regarding tracking expenditures, for example, creating a separate accounting code to track the reservation requirement. One commenter requested that the Department allow agencies with counselors who work with schools or support the provision of pre-employment transition services to count all of the counselor's time toward the reservation requirement, thereby easing the burden on DSUs associated with tracking these costs.

Discussion: When tracking expenditures incurred for the provision of pre-employment transition services, DSUs may need to develop a cost objective (*i.e.*, a separate accounting code) that is different from the one used for other VR program cost allocation purposes, thereby enabling DSUs to track pre-employment transition services expenditures properly with the reserved funds. Similarly, DSUs should account for personnel time to ensure the proper allocation of staff time between the provision of pre-employment transition services and other vocational rehabilitation services, just as the DSU does when its personnel work on multiple programs. DSUs must track pre-employment transition services in a manner that ensures the reserved funds are used only for the provision of services set forth in section 113 of the Act and final § 361.48(a). Although this could increase administrative burden slightly, it is only in this manner that a DSU can be certain it is expending reserved funds appropriately. The Department will issue guidance separately about tracking expenditures from the reserved funds and other fiscal matters relevant to the reservation of funds for providing pre-employment transition services.

Changes: None.

Use of Reserved Funds for Authorized Activities

Comments: Some commenters requested that we clarify when the authorized activities (as opposed to the required activities) in proposed § 361.48(a)(3) are allowable pre-employment transition expenditures in meeting the reservation requirement. Specifically, the commenters wanted to know the threshold for determining when funds are remaining after providing the required activities under § 361.48(a)(3).

Discussion: As stated in final § 361.48(a)(3), a DSU may provide "authorized" pre-employment transition services only to the extent that reserved funds remain after providing the "required" activities. As part of the Comprehensive Statewide Needs Assessment, States should determine the number of potential individuals eligible for pre-employment transition services. This data will enable the States to target the amount of the reserved funds necessary for ensuring the "required" pre-employment transition services are provided to students with disabilities. To the extent the States demonstrate that they have made the required pre-employment transition services available to the population identified in the Comprehensive Statewide Needs Assessment, the States have met the requirement to provide the "required" pre-employment transition services prior to the "authorized" activities. Any reserved funds remaining beyond the targeted amount necessary for the "required" activities may then be used for "authorized" activities in final § 361.48(a)(3).

Changes: We have revised proposed § 361.65(a)(3)(ii)(A) to clarify that funds reserved for providing pre-employment transition services may be used to pay for the costs of providing all of the services "specified" in final § 361.48(a). Proposed § 361.65(a)(3)(ii)(A) referred to services "authorized" in final § 361.48(a). We believe this technical change is necessary to avoid any confusion about the general use of the term "authorized" and the distinction between "required" and "authorized" services in the context of pre-employment transition services.

Part 363—The State Supported Employment Services Program

The discussion of comments on part 363 is presented by topic in the order that the relevant sections appear in this part.

Competitive Integrated Employment and Short-Term Basis (§ 363.1)

Comments: Overall, commenters strongly supported the focus and emphasis in part 363 on individuals with the most significant disabilities, including youth with the most significant disabilities, achieving competitive integrated employment. One commenter suggested, however, that supported employment should not be assumed automatically as the first option for people with significant, or the most significant, disabilities. Another commenter urged that "States" (presumably designated State agencies) track all individuals working in segregated settings and at subminimum wage to help identify the need for supported employment.

Other commenters pointed out discrepancies in the definition of "supported employment" between proposed 34 CFR 361.5(c)(53) and proposed §§ 363.1(b) and (c) and urged that these be made consistent.

One commenter suggested adding other approaches or evidence-based models such as Individual Placement and Support (IPS) to supported employment and customized employment. This commenter also asked whether funds could be used to train new or existing providers in various models of supported employment.

Many commenters responded to the short-term basis provisions in proposed § 363.1(c) and proposed 34 CFR 361.5(c)(53) under which individuals with the most significant disabilities working in an integrated setting are working toward competitive integrated employment and can reasonably anticipate achieving competitive integrated employment within six months of entering supported employment. A few commenters endorsed the six-month period, indicating that the six-month period would not allow individuals to linger for long periods in subminimum wage employment.

A few commenters considered six months to be too long and even recommended eliminating the short-term basis period altogether, indicating that under no circumstance should any individual with a disability be employed at a subminimum wage. However, most commenters considered six months to be arbitrary, too restrictive, or not sufficient, especially for individuals with the most significant disabilities, such as individuals who are blind who, as indicated by multiple commenters, might require additional training or specialized services in order

to achieve competitive integrated employment. Others recommended extensions of up to 12, 18, or 24 months, or even an unspecified time based upon an individual's needs, in order to achieve competitive integrated employment consistent with the individual's unique strengths, priorities, concerns, abilities, capabilities, interests, and informed choice.

Some commenters suggested adding unpaid internships, apprenticeships, and transitional employment as examples of "working on a short term basis." These commenters also recommended emphasizing that employment in sheltered workshops and enclaves and group employment settings does not constitute supported employment. A few commenters stated that individuals working on a short-term basis should be only in integrated settings as they work toward competitive integrated employment. Other commenters, however, referenced competitive, but non-integrated, settings when commenting on the short-term basis provision. One commenter asked for clarification to ensure that AbilityOne contracts with non-profit agencies that employ individuals with disabilities remain a viable option for individuals with the most significant disabilities to achieve employment outcomes in supported employment.

Discussion: We appreciate the many supportive comments regarding the goal of competitive integrated employment for all individuals with significant disabilities, including youth with significant disabilities, and particularly for those with the most significant disabilities.

We also agree with the commenter who suggested that supported employment should not be considered automatically as the first choice for individuals with significant disabilities or the most significant disabilities. The State Supported Employment Services program (Supported Employment program) and supported employment services exist to support individuals with the most significant disabilities who need intensive services and supports to achieve an employment outcome. Supported employment should be considered when determining an individual's employment goal, consistent with his or her unique strengths, priorities, concerns, abilities, capabilities, interests, and informed choice.

The Act, as amended by WIOA, specifically mentions customized employment and supported employment. We do not believe that including examples of additional approaches or models of supported employment, such as Individual Placement and Supports, is necessary. However, we support developing and implementing evidence-based models of supported employment, so long as they are consistent with the Act, as amended by WIOA, and the implementing regulations. Furthermore, administrative funds under this part, subject to the 2.5 percent administrative cost limitation, and funds under 34 CFR part 361, as appropriate, may be used to support training of providers and others on various models of supported employment.

Although the tracking of all individuals working in segregated settings and at subminimum wage would be useful to designated State units (DSUs) in identifying and assessing the need for supported employment, we do not have the authority under the Act to require this unless the individuals have been served through the VR program (see 34 CFR 361.55, which requires the DSU to conduct semi-annual or annual reviews, as applicable, of individuals in extended employment and other employment under special wage certificate provisions of the Fair Labor Standards Act), or the individuals have become known to the DSU through the activities required in section 511 of the Act.

We agree with commenters who noted discrepancies in the definition of "supported employment" in proposed 34 CFR 361.5(c)(53) and proposed § 363.1(b) and (c), and we have made the definitions consistent in these final regulations.

We also appreciate the many comments about "short-term basis." As proposed, § 363.1(c) is consistent with the requirement in the Act, as amended by WIOA, that supported employment be in competitive integrated employment or in an integrated work setting in which the individual is working on a short-term basis toward competitive integrated employment. Therefore, despite the payment of competitive wages, employment in a non-integrated work setting does not meet the requirement under the Act, as amended by WIOA, for an employment outcome in supported employment.

The Secretary acknowledges the diverse views, concerns, and recommendations of the commenters about the variables that should be considered in determining the short-term basis period but believes six months is consistent with the intent of the Act. The Secretary agrees with the commenters, however, that, in limited circumstances, an extended period of time may be appropriate based upon the needs of the individual and upon demonstrated progress toward competitive earnings documented in his or her service record. Therefore, an individual with a most significant disability, including a youth with a most significant disability, may, in limited circumstances, have up to 12 months from achieving a supported employment outcome, as appropriate, to address fully his or her individualized needs to secure competitive earnings in supported employment.

In response to the concerns about the availability of sufficient time to help individuals achieve an employment outcome, particularly in relation to the short-term basis, we want to clarify when the six-month short-term basis period, and the additional six months that may be available in limited circumstances, begins. This period begins only after an individual with a most significant disability, including a youth with a most significant disability, has completed up to 24 months of supported employment services (unless a longer period of time is necessary based upon the individual's needs) and the individual is stable in the supported employment placement for a minimum period of 90 days following the transition to extended services. At this point, the individual has achieved a supported employment outcome in accordance with the criteria set forth in final § 363.54. We believe that this provides sufficient time, considering both the time allowed for providing supported employment services and the short-term basis period, if needed, to address fully the needs of an individual in supported employment and to enable that individual to achieve competitive integrated employment. Our data support this belief and show that most supported employment outcomes are achieved in less than 24 months.

In response to multiple commenters' concerns about individuals with the most significant disabilities, such as individuals who are blind who may require additional training or specialized services to achieve competitive integrated employment, we want to clarify that vocational rehabilitation services, as well as supported employment services, are available to them. The vocational rehabilitation services generally occur prior to placement in supported employment as part of the individual's approved individualized plan for employment.

Again, because the definition of "employment outcome," which includes supported employment, requires achieving competitive integrated employment as defined in

final § 361.5(c)(9), all supported employment outcomes must be in integrated settings with the expectation that individuals with the most significant disabilities can and will achieve competitive wages.

We appreciate the recommendations regarding activities that commenters stated should constitute employment during the short-term basis period, including unpaid internships, apprenticeships, and transitional employment; however, we want to emphasize that the short-term basis period begins following the achievement of the supported employment outcome. Unpaid internships, pre-apprenticeships, apprenticeships (including Registered Apprenticeships), and transitional employment are vocational rehabilitation services that lead to employment outcomes, but they do not constitute supported employment outcomes within the meaning of the definition of "supported employment" in final 34 CFR 361.5(c)(53) and § 363.1(b) and (c). Therefore, they would not be appropriate placements for employment on a short-term basis.

Finally, we agree with commenters that employment in sheltered workshops and enclaves and group employment settings does not constitute supported employment under this part because an individual achieves a supported employment outcome only if, at a minimum, the supported employment is in an integrated setting. There is a full discussion about why non-integrated employment does not meet the definition of "competitive integrated employment" in the responses to comments on the definition of competitive integrated employment in 34 CFR 361.5(c)(9). That discussion also addresses whether entities that are set up specifically for providing employment to individuals with disabilities, such as AbilityOne non-profit agencies, will be able to place individuals with the most significant disabilities in competitive integrated employment and achieve employment outcomes in supported employment.

Changes: We have revised the definition of "supported employment" to be consistent in both final § 363.1(b) and (c) and final 34 CFR 361.5(c)(53). In the NPRM, the definition in proposed 34 CFR 361.5(c)(53) did not include the phrase "and customized" when referring to competitive integrated employment, and proposed § 363.1(b) did not include the phrase "including a youth with a most significant disability" when referring to individuals with the most significant disabilities. Additionally, proposed 34 CFR 361.5(c)(53) included "transitional employment," which has been removed in final 34 CFR 361.5(c)(53). We have corrected other, minor inconsistencies in singular and plural references to individuals with the most significant disabilities.

We have also revised final § 363.1(c) by adding a limited circumstance in which an individual can extend the short term basis up to a 12-month period from the achievement of the supported employment outcome to demonstrate progress toward competitive earnings based on information contained in the service record.

Definitions (§ 363.6(a))

Comments: We received several comments regarding changes in proposed 34 CFR 361.5(c) to definitions relevant to the Supported Employment program. A few commenters requested the removal of the definition of "transitional employment" in proposed 34 CFR 361.5(c)(56). These commenters also suggested removing the reference to transitional employment from the definitions of "supported employment" in proposed 34 CFR 361.5(c)(53) and "ongoing support services" in proposed 34 CFR 361.5(c)(37). They noted that WIOA eliminated "transitional employment" and that the definition of "supported employment" in WIOA supersedes the definition in the Workforce Investment Act of 1998, which included "transitional employment" for individuals with mental illness. The commenters suggested that Congress deliberately removed "transitional employment" to ensure people with the most significant disabilities have access to competitive integrated employment.

Some commenters sought clarification about the definition of "extended services" in proposed 34 CFR 361.5(c)(19)(v) related to youth with the most significant disabilities.

Discussion: We agree with the commenters' assessment of the congressional intent behind removing the definition of "transitional employment" and the reference to transitional employment in both the definition of supported employment and the definition of ongoing support services. The term is no longer supported by the Act.

We discuss the commenters' request for clarification about the definition of "extended services" in proposed 34 CFR 361.5(c)(19)(v) for youth with the most significant disabilities in this *Analysis of Comments and Changes* under "Services to Youth with the Most Significant Disabilities" in § 363.4(a)(2).

Changes: We have removed the definition of "transitional employment" in final 34 CFR 361.5(c), as well as the references to it in the definition of "supported employment" in 34 CFR 361.5(c)(53) and "ongoing support services" in 34 CFR 361.5(c)(37).

The definition of "extended services" in 34 CFR 361.5(c)(19)(v) has been revised as discussed in § 363.4(a)(2) of this *Analysis of Comments and Changes* section under "Services to Youth with the Most Significant Disabilities."

Extension of Time for the Provision of Supported Employment Services (34 CFR 361.5(c)(54)(iii))

Comment: A few commenters recommended either basing the time frame for providing supported employment services on an individual's need rather than a prescribed period of time or revising the regulatory language to make it easier to extend the 24-month time frame, as needed. A few other commenters disagreed with extending the time frame beyond 18 months.

Discussion: We appreciate the concerns regarding the time frame for providing supported employment services. WIOA extended the availability of supported employment services from 18 months to 24 months, and this mandate cannot be changed by the Department. The extension provides additional time for individuals with the most significant disabilities to receive the services and supports necessary to achieve an employment outcome in supported employment, either in competitive integrated employment or working on a short-term basis to achieve competitive integrated employment. In accordance with section 7(39)(C) of the Act, under special circumstances, the eligible individual and the rehabilitation counselor or coordinator can jointly agree to extend the time to achieve the employment outcome identified in the individualized plan for employment.

Changes: None.

Services to Youth With the Most Significant Disabilities (§§ 363.4(a)(2) and 363.22)

Extended Services (§ 363.4(a)(2))

Comments: Many commenters suggested changing the statutorily defined time frame of up to four years during which the DSU may expend supported employment program funds for extended services for youth with the most significant disabilities, either by establishing a longer or shorter period for providing extended services or by basing this period upon individual circumstances.

Additionally, commenters requested clarification regarding the point at which the DSU would be required to terminate its provision of extended services for a youth who turns 25 years of age and no longer meets the definition of a "youth with a disability" in 34 CFR 361.5(c)(58).

With respect to the use of funds allotted under the Supported Employment program for extended services, a few commenters recommended changing the word "may" in proposed § 363.4(a) to "shall" or "will" to establish that it is mandatory for DSUs to provide extended services to youth with the most significant disabilities.

A few commenters asked for clarification whether providing extended services is mandatory or optional, citing discrepancy between the language in proposed § 363.22, which appears to indicate that the reserve must be used for extended services, and proposed § 363.4(a)(2), which uses the word "may" when referring to the use of funds allotted under this part.

Other commenters also proposed making the DSU either the initial payer or the payer of last resort for extended services for youth with the most significant disabilities. Still other commenters raised questions about providing extended services to youth with the most significant disabilities who have not been served by the DSU as an applicant or eligible individual.

Discussion: We appreciate the suggested revisions to proposed § 363.4(a)(2). While many commenters sought to limit the DSU's responsibility for extended services, given limited available resources, we cannot do so. Section 604(b)(2) of the Act mandates that the DSU make available extended services for youth with the most significant disabilities for up to four years. Nothing in the Act authorizes the Department to grant a waiver of this requirement or to change the time period from four years to any other time period for youth with the most significant disabilities.

While the DSU cannot "opt out" of any of the activities authorized under § 363.4 by refusing to fund them, DSUs determine the need for and fund services on a case-by-case basis dependent upon each individual's need for services. Therefore, it is not appropriate to change the "may" in 34 CFR 363.4(a) to "shall" or "will," and doing so would not be consistent with the authorizing language in section 604 of the Act. In light of the responsibility to make available funds for extended services for youth with the most significant disabilities, DSUs should continue to explore the availability of funding from other sources, as is done for other individuals with the most significant disabilities transitioning from supported employment services to extended services.

Regarding the point at which the DSU may no longer provide extended services to a youth with the most significant disabilities, in no case may a DSU provide more than four years of extended services. Also, once a youth with the most significant disabilities reaches 25 years of age, he or she no longer meets the definition of "youth with a disability" in 34 CFR 361.5(c)(58), and the DSU must discontinue funding extended services. We appreciate the commenters bringing this last scenario to our attention. Final § 363.4(a)(2) now states that at the age of 25, a youth with a most significant disability is no longer eligible to receive extended services, even if he or she has not yet received services for four years. Nevertheless, under final § 363.53(b)(2)(ii), the DSU must identify another source of extended services to ensure that there will be no interruption of services.

As indicated by a few commenters, section 606(b)(7)(D) of the Act provides that the State shall use supported employment funds only to supplement, and not to supplant, title I VR program funds in providing supported employment services. A few commenters suggested that this provision means that the Supported Employment program or VR program funds should be the payer of last resort (others suggested the payer of first resort) for extended services to youth with the most significant disabilities. The "supplement, not supplant clause," as it is known, addresses only the relationship between the Supported Employment program and the VR program when providing supported employment services, which now includes extended services. It does not affect at all the relationship of the Supported Employment program or VR program to sources of funds that have historically been the providers of extended services to individuals after they have transitioned from supported employment services provided by the DSU. We expect those State and other sources of funding to coordinate with the Supported Employment and VR programs to provide the extended services needed by youth with the most significant disabilities. One of the purposes of the Supported Employment program is to assist States in developing collaborative programs with appropriate public and private nonprofit organizations to provide supported employment services for individuals with the most significant disabilities.

As to whether the DSU can provide extended services to youth with the most significant disabilities who have not been served by the DSU as an applicant or eligible individual, we emphasize that in order to be eligible for supported employment services, including extended services, provided by the DSU, youth with the most significant disabilities must meet the requirements of § 363.3, which include being determined eligible for vocational rehabilitation services. The DSU therefore may not provide extended services to a youth with the most significant disabilities who has not received services from the DSU through an individualized plan for employment simply because he or she meets the definition of a youth with a disability and is in need of extended services.

Changes: We have revised § 363.4(a)(2) to clarify that extended services to youth with the most significant disabilities provided by the DSU may be for a period not to exceed four years, or until such time as the youth reaches age 25 and no longer meets the definition of "youth with a disability" under final 34 CFR 361.5(c)(58), whichever occurs first.

Reserve of Supported Employment Funds for Services for Youth With the Most Significant Disabilities (§ 363.22)

Comments: One commenter agreed with the reserve requirement, indicating that the reserve funds should also be targeted to "school-to-work" transition services to place youth in competitive integrated employment.

Of the commenters that expressed concern regarding the requirement for reserving 50 percent of supported employment funds for supported employment services to youth with the most significant disabilities, most requested an exemption to ensure that adults with the most significant disabilities, particularly those with adult onset visual impairment or blindness, are able to be served.

Discussion: We appreciate these concerns. However, WIOA mandates the 50 percent reservation of funds for supported employment services, including extended services, for youth with the most significant disabilities. The reserved funds may not be used for "school-to-work" transition services because the funds must be used for supported employment services for youth with the most significant disabilities, including extended services, which occur after placing such youth in competitive integrated employment. WIOA does not provide

any exceptions or authorize the Department to grant an exemption or waiver.

Changes: None.

Match Requirements for Funds Reserved for Serving Youth With the Most Significant Disabilities (§ 363.23)

Comments: Some commenters preferred that the 50 percent reserve not have a match requirement, and others indicated the match tracking and monitoring requirements are burdensome. A few commenters sought clarification regarding whether the match required new funding by the State or whether the State could realign current funding. The commenters indicated that it was difficult to comprehend the intent of the match without a defined plan for allocating the funds.

Other commenters requested that in-kind match, such as those used and tracked in the Independent Living Services for Older Individuals Who Are Blind program, be allowed to meet the match requirements under this section. A few commenters requested examples of match and asked whether certified personnel expenditures are permitted as a third-party contribution.

Discussion: We appreciate the concerns expressed by the commenters regarding the required match for funds reserved for providing supported employment services, including extended services, to youth with the most significant disabilities. This is a new requirement that will require all States to provide a non-Federal share; however, States that have historically expended non-Federal funds to supplement the Federal supported employment award now may count those expenditures for the provision of services to youth with the most significant disabilities as match for the reserve requirement.

WIOA mandates the match requirement for supported employment and does not provide any exceptions to it or authorize the Secretary to grant a waiver. The activities and internal processes necessary for States to track and expend the non-Federal share for the reserve should not be burdensome because they may be modeled after those used for the part 361 match requirements.

In addressing what may be used as match, allowable sources of match for the supported employment program follow the same guidelines for those sources allowable under the VR program. Under final 34 CFR 361.28(b)(2), which addresses third-party cooperative arrangements for providing vocational rehabilitation services, which in turn include supported employment services under final 34 CFR 361.48(b)(13), certified personnel expenditures for time cooperating agency staff spent providing direct vocational rehabilitation services pursuant to a third-party cooperative arrangement are allowable. Certified personnel expenditures include staff salary and fringe benefits allocable to the third-party cooperative arrangement. To ensure consistency with part 361, third-party in-kind contributions are not permitted as match.

In reviewing proposed § 363.23 further, we determined that it did not effectively describe the calculation of the 10 percent match, which must be based upon the total expenditures, made up of the Federal funds reserved and the non-Federal share, incurred for providing supported employment services to youth with the most significant disabilities.

Changes: We have revised final § 363.23(a)(2)(i) to demonstrate that the match calculation is based upon the total expenditures, including the Federal funds reserved and the non-Federal share, associated with the 50 percent reserve of Federal funds for providing supported employment services to youth with the most significant disabilities.

Program Income (§ 363.24)

Comments: A commenter disagreed with limiting the use of program income and supported eliminating the requirement to disburse program income prior to requesting additional cash draws from its Federal award.

Discussion: There has been a long-standing government-wide requirement under the common rule implementing former OMB Circular A–102, as codified by the Department in former 34 CFR 80.21(f)(2), that States must expend program income prior to drawing down Federal grant funds. The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance), codified in 2 CFR part 200, were adopted by the Department in 2 CFR 3474 on December 19, 2014 (79 FR 76091). The new 2 CFR 200.305(a) specifies the payment procedures that States must use to draw down Federal funds; however, these procedures appear, on the surface, to apply only to funds included in a Treasury-State Agreement (TSA), but not all Federal program funds made available to States are subject to TSAs. For this reason, there is an ambiguity in 2 CFR 200.305(a) about how States should draw Federal funds under non-TSA programs. Moreover, TSAs do not cover program income earned by State grantees, and 2 CFR 200.305(a) does not address whether States should expend available program income funds before requesting additional Federal cash, as had been the long-standing government-wide requirement in OMB Circular A–102 and codified for Department grantees in 34 CFR 80.21(f)(2).

This silence creates concern because, for all other non-Federal entities, 2 CFR 200.305(b)(5) requires those entities to expend available program income funds before requesting payments of Federal funds. We do not believe, however, that this ambiguity should be construed to lift the requirement that States expend program income funds before requesting additional Federal cash because no such policy change was discussed in the preambles to either the final guidance in 2 CFR part 200, which was published on December 26, 2013 (78 FR 78589), or in the Interim Final Guidance published on December 19, 2014 (79 FR 75867).

Here, 34 CFR 361.63(c)(2) permits the transfer of VR Social Security reimbursement program income to carryout programs under title VI of the Rehabilitation Act (Supported Employment). Historically, some State VR agencies have transferred a portion of VR Social Security reimbursement program income to the Supported Employment programs for use by those programs. For this reason, we believe it is essential that we resolve this ambiguity via these regulations.

Thus, we proposed in the NPRM to incorporate the requirement to expend program income before requesting payment of funds by referencing 2 CFR 200.305(a), but that provision is ambiguous. These final regulations now resolve the ambiguity by revising § 363.24(b)(1) to require States to expend available program income funds before requesting additional cash payments from their Federal Supported Employment grant. We believe this change is essential to protect the Federal interest by using program income to increase the funds devoted to this program to which VR Social Security reimbursement program income may be transferred, keeping to a minimum potential interest costs to the Federal government of making grant funds available to the States. These final regulations should not negatively impact States because this change merely maintains the status quo that existed under former 34 CFR 80.21(f)(2).

In addition, upon further review of the proposed program income regulation, we determined that it was necessary to address the relationship between program income and match. Just as with program income in the VR

program, program income earned in the Supported Employment program may not be used to meet the required non-Federal share under § 363.23.

Changes: We have revised § 363.24 by removing the inapplicable reference to the Uniform Guidance in § 363.24(b)(1), leaving only the requirement that program income earned in the Supported Employment program must be disbursed prior to requesting additional cash draws from its Federal award. We have also added a new § 363.24(b)(3), which provides that program income cannot be used to meet the non-Federal share requirement under § 363.23.

Period of Availability of Funds (§ 363.25)

Comment: None.

Discussion: In reviewing proposed § 363.25(b), we determined that it would be beneficial to clarify the use of Federal funds reserved for the provision of supported employment services to youth with the most significant disabilities that have been matched in the fiscal year for which the funds were appropriated and thus are available for obligation in the succeeding fiscal year. The Federal supported employment reserve funds eligible for carryover into the succeeding Federal fiscal year, because they have been matched in the fiscal year for which the funds were appropriated, may only be obligated and expended in that succeeding Federal fiscal year for supported employment services to youth with the most significant disabilities.

Changes: Final § 363.25(b) states that any reserved funds carried over may only be obligated and expended in that succeeding Federal fiscal year for providing supported employment services to youth with the most significant disabilities.

Limitations on Administrative Costs (§ 363.51)

Comment: One commenter stated that the reduction of the administrative cost limit from 5 percent to 2.5 percent would severely limit the agency's ability to hire and retain staff.

Discussion: Despite this mandated reduction in section 603(c) of the Act, funds from the VR program remain available for costs related to the Supported Employment program, including administrative costs under § 363.4(c)(1) and section 608(a) of the Act. The limitation of administrative costs under the Supported Employment program expands the availability of funds for supported employment services to individuals with the most significant disabilities, and the availability of VR program funds for administrative costs related to the Supported Employment program helps to mitigate the impact of the reduction in administrative costs upon the DSU's ability to hire and retain staff.

Changes: None.

Requirements for Transition To Extended Services, the Achievement of an Employment Outcome, and Closure of a Service Record (§ 363.53, § 363.54, and § 363.55)

Comments: Many commenters requested clarification of requirements related to the transition to extended services, especially for youth with the most significant disabilities; the interplay of the short-term basis with the achievement of an employment outcome; and the requirements related to case closure, particularly when youth with the most significant disabilities are receiving extended services from the DSU.

Discussion: We acknowledge the questions and confusion that many commenters expressed about the transition to extended services, employment outcome, and closure of the service record as they pertain to individuals receiving supported employment services. The transition to extended services continues to take place after an individual has completed supported employment services. WIOA makes two changes to the transition to extended services.

First, an individual receiving supported employment services can now receive those services for up to 24 months, instead of the previous 18, and, under special circumstances, may receive an extension based upon the individual's need as described in 34 CFR 361.5(c)(54)(iii). The transition to extended services begins after all supported employment services are complete. Second, the DSU may now provide extended services to youth with the most significant disabilities in accordance with § 363.4(a) and 34 CFR 361.5(c)(19)(v). The DSU's responsibilities necessitated by both of those changes have been outlined more comprehensively in a revised section 363.53.

By including the requirement to achieve competitive integrated employment into the definition of "supported employment" in Section 7(38) of WIOA, Congress stated its expectation that all individuals with disabilities, even those with the most significant disabilities, could achieve competitive integrated employment. Recognizing, however, that those individuals with the most significant disabilities may need more time and supports to reach that goal, Congress permitted those individuals to be employed in an integrated setting with non-competitive wages on a short-term basis, as long as they were working toward competitive integrated employment. The definition of "employment outcome" in 34 CFR 361.5(c)(15) addresses the achievement of competitive integrated employment in supported employment. Therefore, final § 363.54 explains when an individual with a most significant disability is considered to have achieved an employment outcome in supported employment, either in competitive integrated employment or when he or she is working on a short-term basis toward competitive employment in an integrated work setting.

When the DSU closes the service record of an individual with a most significant disability now depends on whether the DSU is providing services during the short-term basis period or providing extended services for youth. A new final § 361.55 describes how the new statutory requirements for employment on a short-term basis working toward competitive integrated employment, extended services for youth, and achieving an employment outcome relate to closing the service record.

Changes: We have reformatted and revised § 363.53 to better identify the steps that the DSU must take prior to transitioning an individual with a most significant disability, including a youth with a most significant disability, to extended services. Those steps include both a joint decision made by the counselor and the individual that the individual needs no further supported employment services, as defined in § 361.5(c)(54), and identifying providers of extended services, including the DSU in the case of a youth with a most significant disability, under 34 CFR part 361.5(c)(19).

We have reformatted and revised final § 363.54 to better identify the considerations that the DSU must take into account when determining when an individual with a most significant disability, including a youth with a most significant disability, who is employed in competitive integrated employment or in an integrated setting and is working on a short-term basis toward competitive integrated employment, will be considered to have achieved an employment outcome in supported employment.

We have removed the cross-reference from proposed § 363.54(b) to the closure of the service record requirement in 34

CFR 361.56 as a criterion for achieving an employment outcome.

Final § 363.54 sets forth four requirements that must be satisfied for an employment outcome. First, the individual must have completed supported employment services under this part and 34 CFR part 361, meaning the individual has received services for up to 24 months, or longer if the counselor and the individual have determined that such services are needed to support and maintain the individual in supported employment. Any other vocational rehabilitation services listed on the individualized plan for employment provided to individuals who are working on a short-term basis toward the achievement of competitive integrated employment in supported employment need not be completed prior to satisfying the achievement of an employment outcome.

Second, the individual has transitioned to extended services provided either by the DSU for youth with the most significant disabilities, or another provider, consistent with the provisions of §§ 363.4(a)(2) and 363.22.

Third, the individual has maintained employment and achieved stability in the work setting for a minimum of 90 days after transitioning to extended services, and, finally, the employment must be individualized and customized consistent with the strengths, abilities, interests, and informed choice of the individual.

New final § 363.55 addresses when the service record of an individual who has achieved an employment outcome in supported employment may be closed. Separate requirements are specified for different scenarios, depending on whether individuals with a most significant disability, including youth with a most significant disability, achieve competitive integrated employment or work toward competitive integrated employment on a short-term basis and whether they are receiving extended services and any other vocational rehabilitation services from the DSU or from other service providers.

Limitation on Use of Subminimum Wage (34 CFR Part 397)

The Analysis of Comments and Changes of part 397 is presented in the order in which relevant subjects and sections appear in this part.

General Comments (Part 397)

Comments: More than 550 commenters responded to proposed part 397. Some commenters expressed strong support for all or various sections. A few commenters suggested that section 511 of the Act, as added by WIOA, does not go far enough, and stated that the payment of subminimum wages to individuals with disabilities perpetuates the perception that these individuals are less valued. The commenters recommended that the payment of subminimum wages to individuals with disabilities should be entirely eliminated. Others supported Congress' steps to reinforce the belief that, with the proper supports and services, individuals with all types of disabilities can attain competitive integrated employment. A few commended the Department for its efforts in issuing important regulations designed to curb subminimum wage employment, especially for youth with disabilities, who too often transition from school directly into sheltered employment at subminimum wages without ever having the opportunity to try competitive integrated work or explore their interests and abilities.

Some commenters remarked that section 511 of the Act and the implementing regulations in part 397 will help to eliminate practices that have not worked to benefit individuals with disabilities, such as the overuse of employment at subminimum wages, years of extended evaluation, and cycles of performance evaluations that result in low wages based upon an individual's productivity without necessary supports and services. In addition, a few commenters suggested that supporting subminimum wage employment appeared to be inconsistent with the purpose of the VR program and that resources should not be used to provide services or activities that result in individuals being employed in segregated settings at subminimum wages.

Generally, however, supporters of proposed part 397 regarded the regulations as helping individuals who are considering subminimum wage employment, or those already employed at subminimum wage, access opportunities for competitive integrated employment.

Multiple commenters voiced opposition to, or concerns about, proposed part 397. These commenters expressed concern that proposed part 397 would eliminate or phase out section 14(c) certificates and subminimum wages, close sheltered workshops, and cause individuals employed at subminimum wages to lose their jobs. Some of these commenters stated that individuals employed in sheltered employment were mostly incapable of working in competitive integrated employment, enjoyed a supportive and safe environment and social network in sheltered employment, and would lose income-based financial and medical benefits if they were paid minimum wages. Additionally, many of these commenters expressed concern that employers in the community would not hire individuals with low productivity who are unable to perform at expected levels and that it was unrealistic to believe that there are enough jobs for them in competitive employment. As a result, these individuals with disabilities would remain at home or need increased support from day programs.

Many commenters suggested that there should be a continuum of employment opportunities for individuals with disabilities, including sheltered workshops, and that the proposed regulations do not consider the choices that individuals and families make among these options.

Discussion: We appreciate the many thoughtful recommendations to change, clarify, and improve the regulations. Section 511 of the Act, as added by WIOA, and final part 397 set forth the requirements that must be satisfied: (1) Before an entity holding a special wage certificate issued by the Department of Labor under section 14(c) of the Fair Labor Standards Act (FLSA) may hire a youth with a disability or continue to employ an individual with a disability of any age at subminimum wages; and (2) by DSUs and local educational agencies with regard to services and documentation that must be provided to these individuals. Neither section 511 of the Act nor final part 397 eliminates the payment of subminimum wages or section 14(c) certificates. Both of these actions are outside the scope of the Department's authority and these final regulations. We also understand the concerns about the potential loss of needed disability-related and income-based benefits and the availability of sufficient jobs in the community; however, WIOA embodies the belief that with appropriate skills and supports, all individuals with disabilities can participate in the competitive workforce and achieve self-sufficiency. The Act, as amended by WIOA, and WIOA itself, could result in more job opportunities becoming available to individuals with disabilities, including those with the most significant disabilities. Two of the core purposes of WIOA are to ensure that: (1) Individuals who face barriers to employment, such as individuals with disabilities, receive the services and supports they need to acquire the skills necessary to obtain competitive integrated employment; and (2)

employers receive the training, technical assistance, and other services they need to understand and tap into the full potential of individuals with disabilities in the workforce, for example through supported employment or customized employment. In addition, the Act, as amended by WIOA, and final part 361 require DSUs to work with other public agencies to ensure that individuals with disabilities receive the benefits planning they need to better understand the interplay of income-based benefits and work and to make informed decisions about the type of employment to pursue. Through all of these efforts, the Secretary hopes that individuals with disabilities, including those with the most significant disabilities, have more employment opportunities.

In addition, neither section 511 of the Act nor final part 397 restricts or eliminates sheltered employment. Individuals with disabilities continue to have a continuum of choices and options for employment ranging from competitive integrated employment to employment in sheltered workshops. Therefore, individuals with disabilities choosing to pursue or continue in sheltered employment may do so; however, certain requirements must be satisfied before the employer hires or continues to employ them at subminimum wages. While we recognize that many subminimum wage jobs for individuals with disabilities are in sheltered settings, section 511 of the Act and final part 397 focus exclusively on the requirements that must be satisfied before an entity holding a section 14(c) certificate may hire or continue to employ an individual with a disability at subminimum wages, not on the setting in which those wages are paid.

Changes: None.

Purpose (§ 397.1)

Comments: One commenter recommended that § 397.1(b)(1) require the DSU to ensure that youth with disabilities actually have completed certain services, not just provide documentation about the completion of those services to the youth. The commenter further suggested we revise this section to maximally limit the use of subminimum wage employment by requiring the DSU to: (1) Track youth with disabilities receiving pre-employment transition services and transition services from the DSU who are considering subminimum wage employment; (2) identify all individuals currently receiving services from the DSU considering subminimum wage employment; (3) identify all individuals over the past three years who applied for and were found ineligible for the VR program and may be currently working in, or considering, subminimum wage employment; (4) track referral agreements with, and conduct outreach to, State and local educational agencies to identify youth with disabilities considering subminimum wage employment; and (5) track referral agreements with, and conduct outreach to, the State agency with primary responsibility for providing services and supports for individuals with intellectual and developmental disabilities, and any other State agency providing services to a significant number of individuals in subminimum wage employment. The commenter also recommended that we revise § 397.1 by clarifying that nothing in this part supersedes the requirements of 34 CFR 361.55 regarding semi-annual and annual review of individuals in extended employment or other employment under special certificates issued under section 14(c) of the FLSA.

Discussion: We appreciate the commenter's time and consideration in reviewing this section and making substantive suggestions that would assist DSUs in carrying out the intent of section 511. In particular, the Secretary believes the proactive steps recommended by the commenter offer potential ways in which DSUs could increase the number of youth and other individuals with disabilities considering subminimum wage employment who become known to the DSUs, thereby significantly impacting the DSU's ability to assist in limiting the use of subminimum wages. That said, the Act does not require DSUs to seek out or solicit youth and others with disabilities considering, or already employed at, subminimum wages. Similarly, the Act does not require DSUs to track youth with disabilities or others with disabilities, except for those individuals who have become known to the DSU through the vocational rehabilitation process or through activities required in §§ 397.20, 397.30, 397.40 and 397.50. However, there is nothing in the Act or these final regulations that would prohibit a DSU from working with local educational agencies or other public agencies that may be able to identify individuals seeking or working in subminimum wage employment, for example, when implementing the requirements in section 101(a)(11) of the Act, as amended by WIOA, and the final regulations in 34 CFR 361.22 related to coordination with education officials, 34 CFR 361.24 regarding cooperation and coordination with other entities, and the documentation process requirements in final part 397. This could increase the number of individuals known to the DSU and allow the DSU to provide services, especially employment-related counselling and guidance, earlier than it otherwise would.

While we encourage the DSUs and State and local educational agencies to work together to identify these students and youth with disabilities as early as possible, any referrals by educational agencies that are subject to the confidentiality requirements of the Family Education Rights and Privacy Act (FERPA) (20 U.S.C. 1232g(b) and 34 CFR 99.30 and 99.31) and/or the IDEA (20 U.S.C. 1417(c) and 34 CFR 300.622) would need to comply with the applicable confidentiality standards. Although we are not revising the final regulations as recommended, the Department will consider ways to incorporate some of the suggestions into technical assistance to the DSUs.

The Secretary understands the recommendation to require the DSU to ensure that youth with disabilities actually complete certain services, in addition to providing documentation. However, the Secretary disagrees that this is necessary. Under section 511(c)(1)(A) of the Act and final § 397.40(a), DSUs must provide certain information and career counselling services to all individuals with disabilities, known by the DSUs, who want to continue employment at subminimum wage. Upon the completion of those services, the DSU must provide the individual with documentation that the services were provided. As such, the documentation "ensures," as the commenter desired, that the services were actually completed. Similarly, a youth with a disability must complete certain services, such as transition and, as appropriate, pre-employment transition services, prior to beginning work in subminimum wage employment. Again, the DSUs and local educational agencies must provide documentation that the youth has completed these services, thus ensuring that the services were completed.

Finally, the Secretary agrees that nothing in this part supersedes the requirements of final 34 CFR 361.55 regarding semi-annual and annual review of individuals in extended employment or other employment under special wage certificate provisions in section 14(c) of the FLSA. We received similar suggestions to cross-reference and reconcile the requirements under final 34 CFR 361.55 and final § 397.40 to ensure consistency

and avoid confusion about which requirements apply and the respective responsibilities of the DSU under each provision. While the Secretary understands the concerns, such revisions are not necessary or appropriate. The DSUs must satisfy their responsibilities under both final 34 CFR 361.55 and final § 397.40. These sections implement requirements under separate titles in the Act and apply to different—although sometimes intersecting—populations. We discuss these requirements of final 34 CFR 361.55 more fully in the *Analysis of Comments and Changes* section earlier in this preamble and those in final § 397.40 in a following section.

Changes: None.

Jurisdiction (§ 397.2)

Jurisdiction of the Departments of Education and Labor

Comments: One commenter agreed that proposed § 397.2 is consistent with the statutory authority granted to the Department. The commenter noted that the Department has the authority to regulate the actions of State educational agencies and collect data, citing Executive Order 11761 (To Facilitate Coordination of Federal Education Programs), and, therefore, has the authority to impose documentation requirements; to impose requirements for educational agencies, as detailed in proposed §§ 397.2(a)(1) and (2); and to regulate the actions of State and local educational agencies with regard to subminimum wage placements as detailed in proposed § 397.2(a)(3).

The same commenter agreed with proposed § 397.2(b), which states that nothing in this part will be construed to grant the Department or its grantees jurisdiction over requirements set forth in the FLSA. The commenter added that, although the Department of Labor has the authority to grant entities section 14(c) certificates allowing subminimum wage employment to individuals with disabilities, the Department has the authority to regulate, and thus restrict, the placement of individuals with disabilities in subminimum wage employment as it relates to public schools.

Another commenter stated that the Department has express legal authority to administer funding for the VR program under the Act and to oversee services by local school districts under the Individuals with Disabilities Education Act (IDEA). The commenter urged the Department to assume a central enforcement role over programs that facilitate employment outcomes for youth with disabilities, something which, according to the commenter, was lacking in the proposed regulations.

Other commenters stated that the Department should take a more proactive and vigorous role in enforcement, working collaboratively with the Department of Labor's Wage and Hour Division to enforce fully and meaningfully the requirements of section 511 of the Act, including provisions under which both Departments have overlapping jurisdiction. Similarly, several commenters viewed the enforcement of section 511 of the Act as a shared responsibility between the Departments of Education and Labor.

Several commenters expressed concerns about the enforcement of section 511, including the concern that entities holding section 14(c) certificates would continue their current practices and not comply with requirements under the Act. Some commenters suggested the Department require entities holding special wage certificates to refer youth and other individuals with disabilities to the DSU or educational agency. Many commenters recognized that these entities are subject to enforcement action from the Department of Labor and may have their certificates revoked under 29 CFR 525.17.

Similarly, since section 511 of the Act is entitled "limitations on the use of subminimum wage," one commenter suggested that there is a legal basis under WIOA for the Department of Labor to revoke section 14(c) certificates for violations of section 511 of the Act, which these final regulations should require. The same commenter stated that after the effective date of section 511 on July 22, 2016, when an entity holding a section 14(c) certificate hires a person with a disability who is age 24 or younger without completing the required steps in section 511(a)(2)(B) of the Act, the entity should face enforcement action from the Departments of Labor and Education under both the FLSA and the Act, as amended by WIOA. Without vigorous enforcement by both Departments, particularly the Department of Education, the commenter suggested that entities holding section 14(c) certificates would view the responsibility for meeting the requirements under section 511 of the Act as resting with the DSUs.

Discussion: The Secretary appreciates the many comments and recommendations about jurisdiction and enforcement. In response to the many comments received, the Department consulted further on the matter with the Department of Labor's Wage and Hour Division. Although the Secretary understands the various concerns expressed, both the Departments of Education and Labor agree that under FLSA and WIOA, the authority to administer and enforce Federal requirements governing the payment of subminimum wages by entities holding special wage certificates under section 14(c) of the FLSA resides with the Secretary of Labor. The Secretary of Labor administers and enforces the minimum wage and overtime requirements of the FLSA, issues and revokes subminimum wage certificates, and remedies unauthorized payment of subminimum wages. See 29 U.S.C. 206, 207, and 214(c); 29 CFR part 525. Section 511 states that its provisions "shall be construed in a manner consistent with the provisions of the Fair Labor Standards Act of 1938 (29 U.S.C. 201 *et seq.*), as amended before or after the effective date of this Act." Accordingly, if an employer fails to comply with the section 511 criteria for payment of a subminimum wage, the Secretary of Labor would take enforcement action pursuant to the FLSA in the same manner as he would against any other employer who failed to satisfy the requirements of the FLSA. The Secretary of Labor has delegated his authority to administer the FLSA to the Department of Labor's Wage and Hour Division.

The Secretary agrees with commenters who called for greater collaboration between the Department and the Department of Labor's Wage and Hour Division to ensure that the requirements of section 511 of the Act are enforced fully and meaningfully. Additionally, the Secretary agrees that the provisions of section 511 are dependent on the DSUs and educational agencies knowing the identities of individuals seeking employment or who are already employed at subminimum wage. However, despite the recommendations made by commenters, there is no statutory authority for the Department to require entities holding special wage certificates to refer youth and other individuals with disabilities to the DSU or educational agency. Section 511 of the Act does not grant the Department the authority to impose this or any other requirement on entities holding special wage certificates under the FLSA. Recognizing the importance of these requirements, the Secretary proposed part 397, taking the initiative to regulate on those provisions for which the Department is solely responsible. Under section 511 of the Act, the Department has the authority to

regulate the activities and services that must be provided to an individual before the individual is eligible for, or may continue work compensated at a subminimum wage. Additionally, the Department has the authority to regulate how documentation of these actions is provided by the DSU to the individual with a disability, including the documentation process developed by the DSU in consultation with the State educational agency. We have revised final § 397.2(a)(1) to specify the Department's jurisdiction over the documentation process. Lastly, while States, not the Department, have oversight of services by local school districts under the IDEA, the Department has the authority under section 511 of the Act to prohibit State and local educational agencies from entering into a contract or other arrangement with certain entities for the purpose of operating a program under which a youth with a disability is engaged in work compensated at a subminimum wage. The Department has enforcement authority over State and local educational agencies that violate this prohibition.

Contrary to the opinion of some commenters, the Department of Labor rather than the Department has enforcement authority and jurisdiction over entities holding special wage certificates, including the suspension or revocation of these certificates. Despite recommendations that we require the Department of Labor to revoke violators' section 14(c) certificates if entities are found to be in violation of section 511, the statute does not authorize the Department of Education to do so; any suspension or revocation and any related regulations must be undertaken and promulgated by the Department of Labor.

Changes: We have revised final § 397.2(a)(1) to state that the Department has jurisdiction over the documentation process developed by the DSU in consultation with the State educational agency.

Interplay of the Other WIOA Rulemakings

Comments: One commenter noted that the Department of Labor's NPRM covering programs authorized under titles I and III of WIOA, as well as the joint NPRM issued by the Departments of Education and Labor for the workforce development system, did not address section 511 or the Department of Labor's enforcement of the documentation requirements for hiring or retaining individuals with disabilities in subminimum wage employment.

Discussion: In response to the comment regarding the lack of mention of section 511's requirements or the Department of Labor's enforcement responsibilities either in its program-specific NPRM (80 FR 20690 (April 16, 2015)) or in the joint NPRM issued by the Departments of Education and Labor (80 FR 20574 (April 16, 2015)), the Secretary believes it would not have been appropriate to do so for two reasons. First, the joint NPRM focuses solely on jointly administered requirements imposed by title I of WIOA on the Department of Education and the Department of Labor's Employment and Training Administration. The explicit requirements set forth in title I make both the Department and the Department of Labor's Employment and Training Administration equally responsible for administering and monitoring all jointly administered requirements governing the workforce development system.

Section 511, on the other hand, imposes requirements on State and local educational agencies and DSUs administered by the Department, that are separate and distinct from the restrictions imposed on entities holding section 14(c) certificates that fall under the exclusive purview of the Department of Labor's Wage and Hour Division. There is nothing in section 511 of the Act that shifts the responsibility for enforcement under the FLSA either to the Department exclusively or to the Department jointly with the Department of Labor. In fact, section 511(b)(3) of the Act requires that section 511 be construed in a manner that is consistent with the FLSA. Therefore, the Department of Labor retains the authority to enforce all minimum wage and subminimum wage requirements for entities holding special wage certificates.

Second, the Department of Labor's program-specific NPRM focuses solely on program-specific requirements imposed by titles I and III of WIOA. Section 511, on the other hand, is contained in title V of the Act, which is contained in title IV of WIOA. As such, the provisions of section 511 would not have been appropriate for the Department of Labor's program-specific NPRM. Moreover, the enforcement authority in section 511 that belongs to the Department of Labor resides with a different division, specifically the Wage and Hour Division, than that covered by the Department of Labor's program-specific NPRM. Rules required under the FLSA related to the provisions of section 511 are the responsibility of the Department of Labor.

Changes: None.

Reviewing Documentation

Comments: Many commenters suggested that the final regulations specify timelines for reviewing documentation. One commenter stated that proposed § 397.2 does not address enforcement, either by DSUs or the Department of Labor, for the failure of section 14(c) certificate holders to maintain required documentation. The commenter also stated that it is unclear whether the Department of Labor has the ability to revoke a license for a workshop that fails to keep the required documentation under final §§ 397.20, 397.30, and 397.40.

Several commenters emphasized the importance of enforcing the document review process. They suggested that the DSU or its contractor authorized to review individual documentation maintained by entities holding section 14(c) certificates have an enforcement mechanism to address deficiencies and violations. These commenters urged the Department to take a stronger stand to ensure that corrective actions can be taken by the DSU or its contractor. Another commenter requested that the final regulations define the consequences for non-compliance. One commenter suggested that the DSU should be required to report deficiencies to the Department of Labor or the Client Assistance Program (CAP).

Some commenters stated that DSUs are not enforcement or compliance agencies and requested clarification regarding enforcement authority in the documentation review process. One commenter agreed that while it was clear in the proposed regulations that the Department of Labor oversees entities holding section 14(c) certificates and the payment of subminimum wages to individuals with disabilities, further clarification of the DSU's role and scope was required. Without it, the DSU might become the "de facto" organization responsible for policing subminimum wage certificates rather than providing guidance and technical assistance.

One commenter urged that the final regulations task the Department of Labor with enforcing provisions related to the review of documentation since it already monitors entities holding special wage certificates and reviews employee documentation, unlike DSUs. If the final regulations also include the remedy of revoking an entity's 14(c) certificate for failure to maintain the required documentation for individuals employed at subminimum wage, the Department of Labor has the capacity to implement that remedy. In the view of the commenter, imposing an

enforcement obligation on the DSUs would be burdensome and likely result in no enforcement at all.

Discussion: Many commenters suggested final part 397 include timelines for the review of documentation. Section 511(e)(2)(B) of the Act imposes no specific requirements on when, how often, or how reviews must be done. Rather, the statute states that the reviews will be conducted at a time and in a manner as necessary, consistent with regulations established by the DSU or the Secretary of Labor. Therefore, under section 511(e)(2)(B) of the Act, requirements governing the reviews, including whether or when they must be done, are beyond the scope of these final regulations.

Although some commenters requested that we provide the DSU or its contractor an enforcement mechanism for addressing documentation deficiencies and violations by entities holding section 14(c) certificates, the Secretary lacks the statutory authority to do as the commenters suggest. Likewise, the Secretary lacks the statutory authority to define the consequences for non-compliance by entities holding special wage certificates under the FLSA, which rests with the Department of Labor, or to require the DSU to report non-compliance by these entities to the Department of Labor or to the CAP. Having said this, nothing in section 511 prohibits a DSU from informing the Department of Labor's Wage and Hour Division of non-compliance it finds during any documentation review and doing so may assist in supporting the Department of Labor's efforts in monitoring compliance. A more detailed discussion of this issue is presented in the *Review of Documentation (§ 397.50)* section later in this preamble. As discussed under the *CAP and PAIR* (Protection and Advocacy of Individual Rights) section, the reporting of non-compliance to the CAP is not authorized.

We acknowledge that reviewing individual documentation held by the entities holding special wage certificates, as authorized by section 511(e)(2)(B) of the Act, may be regarded as burdensome to DSUs. Section 511 does not require that DSUs conduct these reviews. Rather section 511(e)(2)(B) merely subjects entities holding section 14(c) certificates to these reviews in an effort to ensure that the intent of section 511 is being fulfilled. These reviews may be conducted in a manner and at such time as is deemed necessary, consistent with a DSU's or the Department of Labor's regulations. While the Secretary agrees with the comment that the Department of Labor is experienced with conducting these reviews, the Secretary does not have the statutory authority to require that the Department of Labor be solely responsible for the documentation reviews. Section 511(e)(2)(B) of the Act clearly grants authority to the DSUs to conduct these reviews as well.

Changes: None.

CAP and PAIR

Comments: Many commenters suggested that CAPs and PAIR programs have jurisdiction for reviewing compliance with section 511. To ensure that required activities are completed and are meaningful (*i.e.,* not just checklist actions), some commenters recommended that the CAP or the PAIR agency be empowered to represent students and others with disabilities employed at subminimum wages under section 511. Commenters emphasized that, given the role of CAPs in the new requirements in sections 113 and 511 of the Act, the regulations should define this role and provide the CAPs the authority and ability to monitor and effectively advocate for individuals with disabilities. The commenters noted that the CAPs have access to workers in sheltered workshops and their records, regardless of whether they are VR program consumers. The commenters endorsed the need for independent advocates to ensure that DSUs and entities adhere to the requirements of section 511 to make the most of the opportunity presented in the Act to improve the employment of individuals with disabilities.

One commenter requested that we require that the protection and advocacy systems have access to any entity covered under sections 113 and 511 of the Act to monitor for rights and safety compliance, which includes the ability to speak with individuals with disabilities privately and to access records with the consent of an individual service recipient, parent, or guardian. Additionally, the commenter suggested that we require CAP staff with similar access to advise individuals employed by an entity holding a section 14(c) certificate of their rights and, with consent, to access their records.

Discussion: With respect to the comments regarding the CAPs, section 112(a) of the Act, as amended by WIOA, specifically requires CAPs to inform and advise clients and client-applicants of all available benefits under the Act, including under section 511. Clients or client-applicants, as defined in final 34 CFR 370.6(b) for purposes of the CAP, are individuals seeking or receiving services under the Act, including individuals seeking or receiving services under section 511. Upon the request of clients or client-applicants, CAPs may assist and advocate for them, including by pursuing legal, administrative, or other appropriate remedies to protect their rights and ensure access to the services under the Act.

Although several commenters expressed concerns that the proposed regulations did not provide CAP and PAIR programs with the authority to access records and conduct monitoring, the Secretary does not agree that CAP or PAIR programs have the authority to access records in the manner the commenter suggests. The advocacy provided by CAPs, whether individual or systemic, must be at the request of clients or client-applicants and must be solely for the purpose of protecting their rights or to facilitate their access to services under the Act. In representing the client or client-applicant upon that individual's request, CAPs could access relevant records of individuals with disabilities under section 511 of the Act, so long as they follow the requirements of the holder of those records, which typically require the informed written consent of the client or client-applicant.

PAIR programs have limited monitoring authority. PAIR programs provide advocacy and legal services to protect the rights of individuals with disabilities who are not eligible for services from other components of the protection and advocacy system and whose concerns are beyond the scope of the CAP. Since section 112 of the Act specifically authorizes the CAP to assist individuals with disabilities receiving services under section 511, such activities would fall outside the scope of the PAIR programs.

Despite the suggestion that independent advocates ensure that DSUs and entities adhere to the requirements of section 511 to make the most of the opportunity presented in the Act to improve the employment of individuals with disabilities, there is no statutory basis to require independent advocates to take on this role. There is no mention of independent advocates in section 511 of the Act, and these entities are not within the purview of the Department. Having said this, there is nothing in section 511 to preclude a DSU or the Department of Labor from contracting with an independent advocate to conduct reviews of documentation.

On the other hand, section 112 of the Act, as amended by WIOA, does not authorize CAPs to engage in advocacy for the sole purpose of gaining general access to records or conducting monitoring. Since section 112 of the

Act, as amended by WIOA, references the applicability of the requirements of the CAP to section 511 already, we do not believe that additional language is needed in final part 397. The Department has, however, made minor revisions to final 34 CFR part 370 to clarify that CAPs may advocate on behalf of clients or client-applicants requesting assistance with issues arising under section 511. Final 34 CFR part 370 is published elsewhere in this issue of the **Federal Register**.

Changes: None.

Rules of Construction (§ 397.3)

Comments: A few commenters requested that we revise § 397.3 to emphasize that nothing in section 511 or final part 397 changes or affects a State's obligations under the U.S. Supreme Court's 1999 *Olmstead* decision, subsequent U.S. Department of Justice enforcement actions, or the rules established for home- and community-based services by the U.S. Department of Health and Human Services' Center for Medicare and Medicaid Services (CMS).

Discussion: Section 511 and final part 397 are consistent with the *Olmstead* decision and other requirements for community- and home-based services. Under each of the requirements mentioned by the commenters, services must be provided in the community to the extent possible.

Section 511 gives individuals every opportunity possible to obtain competitive integrated employment by requiring that youth with disabilities receive certain services before beginning employment at subminimum wages and that individuals with disabilities of any age receive certain services every six months for the first year of subminimum wage employment and annually thereafter as long as subminimum wage employment continues.

Moreover, under section 511(b)(1) of the Act, nothing in section 511 is to be construed as changing the purpose of the Act, which is to empower individuals with disabilities to maximize their opportunities to achieve competitive integrated employment, nor is section 511 to be construed as promoting subminimum wage. Final § 397.3 sets forth the "rules of construction" consistent with those set forth in section 511(b) of the Act. Paragraphs (a) and (b) of final § 397.3 promote opportunities for competitive integrated employment for individuals with disabilities. Therefore, the Secretary declines to make the suggested revision.

Changes: None.

What regulations apply? (§ 397.4)

Comments: None.

Discussion: Although we received no comments specific to proposed § 397.4, we received several comments about various provisions in part 397 regarding informed choice and confidentiality. Specifically, we received comments asking whether an individual with a disability has the right to refuse to participate in activities required by section 511 of the Act and part 397. As the Secretary has stated throughout this preamble, an individual has the right to exercise informed choice regarding participation in the activities required by this part. The Secretary has revised final § 397.4(b) to highlight 34 CFR 361.52 as being applicable to final part 397.

In addition, we received comments asking whether the DSU could provide documentation to a family member of an individual with a disability. A DSU must protect all personal information regarding an individual in its possession, pursuant to final 34 CFR 361.38. To highlight this requirement, we have revised final § 397.4(b) to specifically mention the confidentiality requirements of final 34 CFR 361.38.

In addition to these specific changes in final part 397, we also made conforming changes in final 34 CFR part 361 to make clear that final 34 CFR 361.38 and 361.52 apply to applicants and recipients of services. In so doing, we ensure that individuals receiving services required by part 397, regardless of whether they have applied for or been determined eligible for vocational rehabilitation services, are still protected by the confidentiality and informed choice requirements. These changes were discussed in the preamble to final part 361 in Part B of the *Analysis of Comments.*

Changes: We have revised final § 397.4(b) to highlight final 34 CFR 361.38 and 34 CFR 361.52 as being applicable to final part 397.

What definitions apply? (§ 397.5)

Comments: A few commenters suggested that the Department provide specific definitions for the terms "self-advocacy," "self-determination," and "peer mentoring training opportunities" to ensure integrity and reflect the intent of section 511. One commenter requested a definition for "certain information." Another commenter asked whether the term "special wage certificate" in proposed § 397.5(c)(2) included all types of section 14(c) certificates issued by the Department of Labor (*e.g.,* business certificate holders and patient workers) among those certificate-holding entities that must comply with section 511 of the Act. The commenter also asked that we clarify in § 397.5(d) whether "entity" includes associated businesses affiliated with a section 14(c) certificate holder, such as a non-profit community rehabilitation program that has a for-profit business in the same location.

Discussion: We appreciate the commenters' recommendations for additional definitions; however, we use these terms in part 397 as they are commonly understood, just as they are used in section 511 of the Act. Attempting to define these terms could cause us to inadvertently define the terms too broadly or too narrowly. This is of particular concern both because we would be defining these terms after the comment period has ended, without the benefit of public input, and because this is a new statutory provision, and we do not yet have institutional experience with how DSUs may implement them in this context.

As commonly understood, "peer mentoring" generally involves individuals with disabilities providing guidance, counseling, and advice to other individuals with disabilities based upon their own experiences and training and the experiences of others they know. "Self-advocacy" generally involves developing the skills, knowledge, and confidence to stand up for oneself and using appropriate means to obtain one's goals. Finally, "self-determination" generally means having the abilities, attitudes, skills, and opportunities to play an active and prominent role in living and planning one's life and future. Neither final part 397 nor section 511 of the Act includes the phrase "certain information."

Next, "special wage certificate" applies to all entities holding section 14(c) certificates, including work centers (also known as community rehabilitation programs), hospital/residential care centers (facilities that employ patient workers), business establishments that are not a work center or an employer of patient workers, and School Work Experience Programs (SWEP). All must comply with section 511 of the Act, which provides for no exceptions and refers simply to entities holding special wage certificates issued under section 14(c) of the FLSA.

Whether "entity," as defined in final § 397.5(d), includes associated businesses affiliated with a section 14(c) certificate holder depends upon individual circumstances. As defined, "entity" refers to any employer who holds a special wage certificate issued under section 14(c) of the FLSA.

Therefore, the factors to consider include, but are not limited to, whether the associated business is separately incorporated, operates under the same or a separate special wage certificate described in section 14(c) of the FLSA, employs or jointly employs as defined in the FLSA, individuals with disabilities at subminimum wages, shares subminimum wage employees with the section 14(c) certificate holder, or operates as a contractor or subcontractor for the section 14(c) certificate holder. The for-profit nature of an associated business of a non-profit is not a determining factor since both may hold a special wage certificate under the FLSA.

Changes: None.

Coordinated Documentation Process (§ 397.10)

Comments: Most commenters on proposed § 397.10 supported the requirement that the DSU, in consultation with the State educational agency, develop a process, or utilize an existing process to document the completion of required activities under section 511 of the Act by youth with disabilities prior to seeking or entering subminimum wage employment. A few commenters strongly supported using the DSU's formal interagency agreement with the State educational agency required by 34 CFR 361.22(b) as the mechanism to develop a robust documentation process, and a few commenters requested that final § 397.10 reflect the role of the State Rehabilitation Council in this process. One commenter suggested that we require the interagency agreement to include a requirement that students and parents or guardians be provided training on subminimum wage employment. One commenter recommended that we require the interagency agreements to be developed with local educational agencies, in addition to State educational agencies. In addition, the commenter recommended that interagency agreements that specify data sharing requirements be developed with State agencies serving individuals with intellectual and developmental disabilities as well. The commenter suggested that the interagency agreements indicate how each agency will ensure compliance with the requirements in this section.

Several commenters recommended that the Department provide guidance detailing the documentation and collaboration requirements of DSUs, educational agencies, and other entities under section 511. Similarly, one commenter requested that we include more specific language in the regulations regarding the types of documentation that would be acceptable, emphasizing that guidance should be sufficient to ensure that documentation is complete and meets the intent of section 511 of the Act. Some stated that proposed § 397.10 focused heavily on compliance with the documentation requirements, and not the congressional intent of limiting the use of subminimum wages.

Many commenters expressed concerns about the 90-day time frame for providing documentation to youth with disabilities in proposed § 397.10(c)(2) and recommended shorter time frames, such as 30 or 45 days. They noted that allowing the DSU up to 90 days to provide documentation to youth with disabilities after completing each of the required activities, which may or may not take place concurrently, could result in prolonged delays for such youth seeking to enter subminimum wage employment since there are several steps and multiple activities in the process that the youth must complete.

One commenter asked the Department to define "completed" in proposed § 397.10(b)(2)(i), stating that transition services are typically ongoing and may continue until a student graduates from high school. The same commenter posed a series of additional questions about proposed § 397.10(b)(2)(ii). The commenter asked about what constitutes documentation; the level of detail required; requirements for the rigor and quality of the activities; the need for signatures, dates, descriptions and settings of activities; information about the location or setting of activities; and the DSU's obligations if the educational agency fails to provide documentation of transition activities or such activities are deemed substandard.

One commenter urged the Department to include a new paragraph in § 397.10 or, alternatively, in § 397.50, to require the DSU to retain copies of documentation required by this part and to provide this documentation for review by the CAP or a protection and advocacy agency.

One commenter remarked that documentation of required activities denotes completion of these activities without regard to consumer choice to participate, whereas other commenters requested clarification of what documentation would be required if an individual, exercising informed choice, refuses vocational rehabilitation services.

Finally, one commenter asked for clarification regarding whether a documentation process between the DSU and the State educational agency must be developed and what documentation is required in those States that prohibit subminimum wages for individuals with disabilities. Alternatively, the commenter suggested that emphasis should be placed upon tracking services in the regulations regardless of whether a subminimum wage prohibition exists.

Discussion: We appreciate the many comments we received regarding the documentation process. Compliance with the documentation process requirements is intended to result in limiting the use of subminimum wages. The Secretary agrees that the formal interagency agreement between the DSU and the State educational agency provides an optimal mechanism to develop and describe the documentation process required in final § 397.10, and the Department appreciates the strong support we received from commenters on this point. As noted by the commenters, final 34 CFR 361.22(b)(5) requires the DSU and State educational agency to develop a formal interagency agreement that, at a minimum, provides for coordination necessary to satisfy documentation requirements set forth in final § 397.10. Under final 34 CFR 361.20(c) and (d), the State Rehabilitation Council (SRC) must provide input into the VR services portion of the Unified or Combined State Plan, and the DSU must actively consult with the SRC, if it has a Council, on its policies and procedures governing the provision of vocational rehabilitation services. The functions of the SRC in final 34 CFR 361.17(h) support Council involvement in developing the coordinated documentation process. Therefore, the Secretary does not believe it necessary to specifically state the role of the SRC in the documentation process in final § 397.10.

While the Secretary agrees that students and parents or guardians can benefit from training about subminimum wage employment, the Act does not require the formal interagency agreement to include such a requirement. To add it would be inconsistent with the statutorily required actions that must be taken by either the DSU or the State educational agency with regard to the documentation process. Nonetheless, nothing in the Act precludes the DSU and State educational agency from including a training requirement in the formal interagency agreement.

Similarly, we do not believe it necessary to require, in final part 397, the DSU to enter into interagency agreements with local educational

agencies and State agencies serving individuals with intellectual and developmental disabilities, because final 34 CFR 361.24(f) and (g) provide for the DSU to enter into cooperative agreements and engage in interagency collaboration with these State agencies. These cooperative agreements could provide a mechanism for addressing, as appropriate, the requirements in final § 397.10 and promote data sharing. The Secretary encourages the DSUs, local educational agencies, and State agencies serving individuals with developmental and intellectual disabilities to work collaboratively to identify individuals with disabilities, particularly youth with disabilities, who are considering or who are already engaged in subminimum wage employment.

The Secretary agrees that further operational guidance regarding the requirements for collaboration, development, and implementation of the documentation process is warranted. Therefore, the Department's Office of Special Education and Rehabilitative Services intends to collaborate with the Department of Labor's Wage and Hour Division in issuing guidance about implementing the requirements in final part 397, particularly the documentation process. This guidance will help to ensure that the documentation process works smoothly within already-established procedures for the DSUs and State and local educational agencies, especially with regard to the protection of personally identifiable information, while also enabling efficient and effective reviews of any such documentation by the Department of Labor.

Final §§ 397.10 and 397.30 specify the documentation requirements. Final § 397.20 describes the activities for which documentation must be provided, all of which are familiar to DSUs and local educational agencies and should pose no additional administrative burden. Each DSU has case management practices for documenting various steps in the vocational rehabilitation process, such as eligibility and ineligibility determinations, the individualized plan for employment, the provision of vocational rehabilitation services (including pre-employment transition services), and case closure. State educational agencies also have methods for documenting transition services provided to students under the IDEA. In developing the documentation process, each DSU, in coordination with the State educational agency, has flexibility to determine the most appropriate procedures for documenting required activities and for timely provision of the documentation to youth with disabilities upon their completion of the required activities.

As proposed, § 397.10(c)(2) required the DSU to provide the documentation of the completion of each of the required actions in §§ 397.20 and 397.30 to a youth as soon as possible, but no later than 90 days, following the completion of each of the actions. We understand the concerns raised by commenters, and we want to emphasize that we anticipate DSUs and State educational agencies will develop a process whereby the documentation in most instances will be provided either concurrently with the completion of the activity or very shortly thereafter, and we encourage them to do so.

For example, DSUs typically provide documentation of eligibility or ineligibility determinations to the individual within a very short time after the decision is made. Similarly, DSUs typically provide a copy of the individualized plan for employment to the individual at the time both parties sign the document. With regard to providing services, such as pre-employment transition services or transition services, we anticipate that the DSUs and schools will develop a streamlined approach for transmittal of the documentation by the DSU to the youth.

We proposed a period of up to 90 days to be consistent with other time frames in the vocational rehabilitation process and to enable DSUs to obtain documentation from local educational agency personnel who may not be available due to extenuating circumstances. It was never the Department's intent to delay the provision of the required documentation to any individual seeking subminimum wage employment. After considerable deliberation and balancing competing interests while not imposing undue burden on the DSUs or schools, the Secretary has modified the time frame in these final regulations. Final § 397.10(c)(2) requires the DSU to provide the requisite documentation, including documentation received from the local educational agency, to the youth within 45 calendar days of completion of the activity.

For example, if a student completes a required activity provided by the local educational agency, the documentation must be transmitted to the DSU and provided to the youth all within 45 calendar days. However, if, due to extenuating circumstances additional time is needed, documentation must be provided to the youth within 90 calendar days after completion of the activity. As provided in final § 397.10(c)(2)(i)(B), this exception for extenuating circumstances is a limited exception that would cover circumstances such as, the unexpected absence of the individual necessary to provide the documentation, or a natural disaster. That said, DSUs and State educational agencies could establish a shorter time frame in their documentation processes.

We recognize that providing transition services, as well as pre-employment transition services, may be ongoing for students with disabilities. For example, under the IDEA, a student with a disability may receive transition services until the student graduates from high school with a regular diploma or exceeds the age of eligibility for a free appropriate public education. Similarly, students with disabilities may receive pre-employment transition services under the Act for as long as the student remains in an educational program and meets the definition of a "student with a disability" under final 34 CFR 361.5(c)(51). For purposes of final § 397.10(b)(2)(i), the local educational agency must, consistent with confidentiality requirements of FERPA and/or the IDEA, provide the DSU documentation of transition services when a student has completed all transition services in the individualized education program. The final regulations do not contain a definition of "completion," as suggested by commenters, because the definition would vary widely depending on the activity. The Secretary will provide more guidance in the general operational guidance for the documentation process required by section 511 and final part 397.

Section 511 of the Act does not address what constitutes documentation, the level of detail required, requirements related to the rigor and quality of the activities, the need for signatures, dates, descriptions and settings of activities, information about the location or setting of activities, and the DSU's obligations if the education agency fails to provide documentation of transition activities or such activities are deemed substandard. Some of these issues are best left to the DSU and State educational agency to negotiate when developing the interagency agreement or the documentation process to maximize State flexibility and accommodate the unique needs within a State. However, the Secretary agrees that some guidance would be helpful. Therefore, the Secretary has revised final § 397.10(a) to state that the documentation process must address both the actual production and transmittal of documentation.

Again, the transmittal of all documentation by the educational agency to the DSU must comply with the confidentiality requirements of FERPA and the IDEA.

In addition, the Secretary has revised final § 397.10(a) by adding three new paragraphs. Final § 397.10(a)(1) establishes minimum requirements for information to be contained in the documentation of determinations made or the completion of an activity. Final § 397.10(a)(2) establishes minimum requirements for information that must be contained in documentation in the event that a youth, or his or her parent or guardian, exercises informed choice and refuses to participate in an activity required by section 511 of the Act or final part 397. Final § 397.10(a)(3) requires the DSU to retain a copy of all required documentation provided to the youth. The DSU must retain this documentation just as it would any other documentation in its case management system, and the documentation must be retained in accordance with the requirements of 2 CFR 200.333, which governs record retention for all Federal grantees.

In using an existing process or developing a new documentation process, the DSU and the State educational agency may wish to consider questions such as those posed by the commenter but not addressed in these final regulations. In addition, the Secretary has revised final § 397.10(b)(2)(i) to require the educational agency to provide the documentation to the DSU. The Secretary has also added a new requirement in final § 397.10(c)(3) that the DSU provide, when transmitting documentation of the last determination made or activity completed, a cover sheet that itemizes all documentation provided to the youth. The Secretary hopes that these additions will assist DSUs and State educational agencies in developing a streamlined documentation process that will enable the expedient completion and transmittal of the documentation to the youth, and allow for the expedient review of the documentation, if a review is conducted by the DSU or the Wage and Hour Division of the Department of Labor.

Additionally, for the reasons discussed in the section titled *Jurisdiction (§ 397.2)*, any access to these records by CAPs or protection and advocacy systems is subject to the requirements of sections 112 and 509 of the Act, respectively, and implementing final regulations in 34 CFR part 370 and 34 CFR part 381.

Although section 511 of the Act and final part 397 establish prerequisites for a youth with a disability to work in subminimum wage employment, as with any vocational rehabilitation service, the youth with a disability, or his or her parent or guardian, as applicable, may exercise informed choice and refuse to participate. If a youth chooses not to participate in the activities required by section 511 of the Act and final part 397, or chooses to opt out of the vocational rehabilitation process entirely, such a choice will impact the permissibility of the youth to work at subminimum wage and preclude him or her from obtaining subminimum wage employment given the limitations imposed by section 511 of the Act and final part 397. Accordingly, DSUs should inform youth with disabilities and/or their guardians of the youth's ineligibility for subminimum wage employment if he or she refuses to participate in the required activities. As discussed previously, final § 397.10(a)(2) establishes documentation requirements for when a youth refuses to participate in the required activities. Meeting these requirements demonstrates the DSU's compliance under section 511 and final part 397. The Secretary believes it is appropriate to establish an even shorter time frame for the transmittal of documentation demonstrating the youth's refusal to participate in required activities under final part 397 because there should be few administrative reasons for delay. Thus, in this circumstance, final § 397.10(b)(2)(ii) requires that the documentation be provided to the youth, within 10 calendar days of the youth's refusal.

In a State that prohibits the payment of subminimum wages to individuals with disabilities, the DSU and the State educational agency still must develop a documentation process in accordance with final § 397.10, although it may be used infrequently. This documentation would be necessary if a youth with a disability seeks subminimum wage employment in another State that does not prohibit subminimum wages.

Finally, the Department, upon further review, notes that the documentation of pre-employment transition services in final § 397.10(b)(1) refers to a "student with a disability" rather than a "youth with a disability" because only a student with a disability may receive pre-employment transition services. Further, the section states more directly that the appropriate school official responsible for providing transition services will provide the DSU documentation of completion of appropriate transition services under the IDEA.

Changes: We made several changes to final § 397.10. First, we revised final § 397.10(a) to state that the documentation process must cover both the production and transmittal of the documentation. The process must ensure all confidentiality requirements of FERPA and the IDEA are satisfied.

Second, we revised final § 397.10(a) by adding three paragraphs. Final § 397.10(a)(1) establishes minimum information that must be contained in documentation of a youth's completion of required activities. Final § 397.10(a)(2) establishes the minimum information that must be contained in documentation when a youth refuses to participate in the required activities. Final § 397.10(a)(3) requires the DSU to retain copies of all documentation required by final part 397.

We revised final § 397.10(b)(1) to clarify that we are referring to a "student with a disability" with regard to the documentation of the completion of appropriate pre-employment transition services. We also revised § 397.10(b)(2)(i) to clarify that the appropriate school official responsible for the provision of transition services must provide the DSU documentation of completion of appropriate transition services under the IDEA. We revised final § 397.10(c)(2) by adding two new paragraphs. Final § 397.10(c)(2)(i) requires the DSU to provide all requisite documentation to the youth within 45 calendar days of the determination or the completion of the required activities, unless extenuating circumstances make additional time necessary. In that case, the documentation must be provided to the youth within 90 calendar days of the determination or completion of the activity or service. The final regulations also provide examples of what could constitute extenuating circumstances necessitating the additional time. Final § 397.10(c)(2)(ii) requires the DSU to provide documentation of the youth's refusal to participate in required activities within 10 calendar days of the refusal. Lastly, final § 397.10(c)(3) was added to require the DSU to provide a coversheet that itemizes all documentation provided to the youth when transmitting documentation of the last determination made or activity completed.

Responsibilities of a DSU to Youth With Disabilities Who Are Known To Be Seeking Subminimum Wage Employment (§ 397.20)

Reasonable Period of Time

Comments: Most commenters on this section recommended changes in proposed § 397.20(a)(2)(ii)(B) and proposed § 397.20(b)(3)(i) related to the determination that a youth with a disability is not able to achieve the employment goal specified in his or her individualized plan for employment, other than supported employment, after working toward the goal for a reasonable period of time with appropriate supports and vocational rehabilitation services. The commenters recommended that, for these youth, the reasonable period of time be consistent with, or no less than, the time period provided in proposed § 397.20(b)(3)(ii) for individuals with disabilities whose specified employment goal is in supported employment. A few commenters recommended defining the time frame for "reasonable period of time" for all youth, regardless of whether they were seeking supported employment outcomes or other outcomes, as 36 months or up to four years since the DSU is being allowed to provide up to four years of extended services for youth in supported employment. The commenters stated that limiting the length of time the DSU can devote to helping youth with disabilities achieve competitive integrated employment creates barriers to the policy of maximizing steps to facilitate attaining competitive integrated employment and requested that the Department amend the proposed rule to designate a minimum, not maximum, period of time during which DSUs must assist youth with disabilities to attain integrated employment outcomes, including supported employment. Citing the low participation rate of individuals with disabilities in the labor force, coupled with the significant barriers to employment faced by these individuals, one commenter recommended a minimum of three years as the appropriate amount of time for youth with disabilities to work toward competitive integrated employment before considering segregated work and subminimum wage employment. This commenter stated that, without a minimum time frame, the proposed regulations offer little to prevent youth from continuing to settle for subminimum wage employment. Some premised their suggestion of extending the time frame to four years based upon the DSU being allowed to provide up to four years of extended services for youth in supported employment. On the other hand, one commenter suggested that, consistent with the provision of supported employment services, in no case should the reasonable period of time exceed two years.

Suggesting that the distinctions in "reasonable period of time" between those youth with supported employment goals and those with other employment goals prove more confusing than helpful, a few commenters supported language that reflects an individualized approach for defining "reasonable period of time" for all youth, including those individuals in supported employment. One commenter stated that, without uniform time frames for both youth with disabilities seeking supported employment outcomes and youth seeking other competitive integrated employment outcomes, DSUs may circumvent the necessary level of effort needed in working with individuals by simply writing an individualized plan for employment that does not include the goal of supported employment.

Discussion: We appreciate the many comments we received about defining "reasonable period of time" before closing a service record as unsuccessful when a youth has been pursuing, through an individualized plan for employment, an employment outcome (as defined under final 34 CFR 361.5(c)(15)), other than in supported employment.

Although many commenters requested a specified time frame—of anywhere from 24 months, to coincide with that for the provision of supported employment services, to up to four years to coincide with the amount of time allowed for the provision of extended services for a youth with a disability—we believe that a "reasonable period of time" must take into account the disability-related and vocational needs of the individual, as well as the anticipated length of time required to complete the services identified in the individualized plan for employment to achieve an employment outcome. The time frame for providing supported employment services is prescribed in section 7(39) of the Act, as amended by WIOA, and final 34 CFR 361.5(c)(54), but the Act does not limit the amount of time for providing any other vocational rehabilitation service. Therefore, we believe that it is not in the best interest of individuals with disabilities to limit the time for providing vocational rehabilitation services other than supported employment services. To do so might unnecessarily restrict the amount of time an individual may need to complete the services necessary to achieve an employment outcome in competitive integrated employment.

We understand the concerns expressed by many of the commenters about limitations on the amount of time the DSU may devote to assisting youth with disabilities to achieve competitive integrated employment, especially if someone is not seeking supported employment. We also understand the desire to provide a minimum time, rather than a maximum time, during which the DSU may help youth with disabilities attain employment outcomes, including supported employment. However, we believe that with allowable extensions, and based upon the needs of the individual and the individual's disability, DSUs have the flexibility to provide all services and supports necessary for an individual to achieve competitive integrated employment in a reasonable time prior to closing the individual's service record as unsuccessful.

Changes: None.

Requirements for Closure

Comments: A few commenters recommended that we revise proposed § 397.20(a)(2)(ii)(C) to reference 34 CFR 361.47(10) rather than the more general 34 CFR 361.47 when addressing the requirements for closure of the service record of a youth with a disability. The commenters stated that under 34 CFR 361.47(10), the vocational rehabilitation counselor will not accidentally classify the youth with a disability as having achieved competitive integrated employment, when, in fact, the youth has obtained subminimum wage employment. One commenter also suggested that this change would serve as a reminder to vocational rehabilitation counselors that a placement of a youth with a disability in a subminimum wage environment is less desirable than a placement into competitive integrated employment.

Discussion: We do not agree with the recommendation that we revise proposed § 397.20(a)(2)(ii)(C) to reference final 34 CFR 361.47(10), rather than the more general final 34 CFR 361.47, when addressing the requirements for closure of a service record for a youth with a disability. Final 34 CFR 361.47 contains other requirements, and limiting the reference to final 34 CFR 361.47(10) could provide the impression that other requirements do not apply. We anticipate that the discussion in part 361 of these regulations found elsewhere in this issue of the **Federal Register** regarding "competitive

integrated employment'' and ''employment outcome'' will serve to clarify that employment at subminimum wages is not a successful outcome for purposes of the VR program.

Changes: None.

Pre-employment Transition Services

Comments: Several commenters provided comments about the DSU's responsibility to document completed pre-employment transition services. One commenter asked that the final regulations specifically prohibit the use of segregated settings such as sheltered workshops for providing pre-employment transition services, regardless of whether these settings pay subminimum wages. Given that this section applies to youth with disabilities, a commenter requested clarification regarding how youth with disabilities who are age 24 or younger, who are not students with disabilities, may be provided pre-employment transition services that are, by definition, provided to students with disabilities. The commenter stated that although a youth with a disability who is no longer a student may have received pre-employment transition services, or transition services under the IDEA, a DSU would find it challenging to document the services after the youth has left the education system. As an alternative, the commenter suggested that we make an exception to the definition of ''pre-employment transition services'' for the purpose of proposed § 397.20 to include all youth in the provision and documentation of pre-employment transition services. Another commenter stated that it would be overly burdensome to track all individuals receiving pre-employment transition services and their activities in order to provide documentation to those few considering subminimum wage employment. The commenter recommended removing the requirement for documentation of pre-employment transition services from proposed § 397.20(a)(1).

One commenter was concerned that proposed § 397.20 served as a loophole for the education system to continue to view subminimum wage employment as a viable alternative and suggested that the final regulations be strengthened by specifying that youth must be provided exposure to, and opportunities for, experiences such as integrated work-based learning programs, summer jobs, summer volunteering, and summer internships to enable them to make an informed choice to pursue subminimum wage employment.

Discussion: As discussed in the *Analysis of Comments and Changes* section for part 361 earlier in this preamble, we do not have the authority to prohibit the use of segregated settings, such as sheltered workshops, for providing pre-employment transition services. That being said, assessment services and pre-employment transition services are to be carried out in an integrated setting to the maximum extent possible in accordance with final 34 CFR 361.5(c)(5) and final 34 CFR 361.48(a)(2), respectively.

We understand the confusion created by proposed § 397.20(a)(1), which covered the documentation of completed pre-employment transition services that must be provided to youth by the DSU, when, in fact, pre-employment transition services are provided to students with disabilities, not to all youth with disabilities. We have revised this paragraph to clarify that documentation for the completion of pre-employment transition services applies to students with disabilities. We have made further revisions for the documentation of the completion of transition services under the IDEA, which the DSU is also responsible for providing to youth once the local educational agency has provided such documentation to the DSU.

We disagree with the commenter's alternative suggestion of making an exception to the definition of ''pre-employment transition services'' in final 34 CFR 361.5(c)(42) to include all youth for purposes of this part, as that would be inconsistent with section 113 of the Act.

We understand that a DSU would find it challenging to obtain documentation of services after a youth has left the education system; however, educational systems must maintain records of the provision of transition services to students provided through an individualized education program.

We appreciate the commenter's concern about the burden of tracking individuals receiving pre-employment transition services and their activities in order to provide documentation to a few individuals that might seek subminimum wage employment. The commenter recommended removing the requirement from final § 397.20(a)(1). However, this would be inconsistent with section 511(d)(2)(a) of the Act.

We agree that youth with disabilities may find integrated work based learning programs, summer jobs, summer volunteering, and summer internships valuable and these experiences could better enable them to make an informed choice of whether to pursue subminimum wage employment. However, we do not believe that embedding this language in the regulations in part 397 would strengthen the final regulations, as they already incorporate the requirements to document the completion of pre-employment transition services and/or transition services for youth with disabilities, which include these activities.

Finally, we made a technical change in the title of this section, replacing ''considering'' with ''seeking'' to be consistent with § 397.30. ''Seeking'' more appropriately describes those youth who have determined that they would like to pursue subminimum wage employment.

Changes: We added § 397.20(a)(1)(i) and (ii) to require DSUs to document completion of transition services under the IDEA in addition to completion of pre-employment transition services under the VR program. Additionally, we inserted ''a student with a disability'' in final § 397.20(a)(1)(i) because pre-employment transition services are available only to students with disabilities. Finally, we replaced the word ''considering'' with ''seeking'' in the title of this section to be consistent with the title in § 397.30.

Other Comments

Comments: A commenter posed a series of questions and concerns about how to serve eligible VR consumers who might be contemplating subminimum wage employment if there is a lag time or lack of supported employment providers or customized employment and the consequences to consumers and families, as well as DSUs, if an individual chooses to opt out of the vocational rehabilitation process.

Other commenters asked whether the employment goal specified in the individualized plan for employment needs to be consistent with competitive integrated employment when considering the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests and informed choice. Also, they asked what the expectations are around the determination of ineligibility, including how many work experiences must be provided and how long to pursue supported employment after the 24-month period or customized employment when resources for long-term supports are not available. Finally, commenters asked how to consider an individual's geographic area when providing referrals to Federal and State programs and other resources that offer employment-related services and supports designed to enable the individual to explore, discover, experience, and attain competitive integrated employment.

Discussion: We understand that commenters have concerns and questions about the responsibilities of DSUs in this section. Limited resources and available providers of services, including providers of long-term supports, provide a challenge for DSUs as they work to locate services that will assist individuals with disabilities in achieving competitive integrated employment or supported employment. Without sufficient service providers or resources, a youth may choose to opt out of the VR process entirely, precluding him or her from achieving even subminimum wage employment given the limitations imposed by section 511 of the Act and final part 397. In the event a youth opts out of the vocational rehabilitation process because of a lack of resources in the community, there would be no consequences for the DSU under this part.

The specified employment goal must be consistent with the general goal of competitive integrated employment when considering the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice in accordance with section 102(b)(4) of the Act, as amended by WIOA, and final 34 CFR 361.46(a). The answers to the other questions posed by the commenter are dependent upon circumstances and require the judgment of the DSU and the vocational rehabilitation counselor in consideration of the consumer's choice and needs.

Changes: None.

Responsibilities of a Local Educational Agency to Youth With Disabilities Who Are Known To Be Seeking Subminimum Wage Employment (§ 397.30)

Comments: Commenters recommended several changes to proposed § 397.30 regarding the responsibilities of a local educational agency to youth with disabilities seeking subminimum wage employment. Several commenters recommended that we require the local educational agency to retain copies of documentation that a youth has completed transition services and to make this documentation available for review by the CAP or a protection and advocacy system. A few commenters also recommended that the phrase "who are known to be seeking subminimum wage employment" or, alternatively, "who are known to be" be deleted from the title of proposed § 397.30, presumably to include all youth with disabilities under the responsibilities of the local educational agency in this part, not just those seeking subminimum wage employment. Commenters also recommended that the language indicating that a local educational agency may provide a youth with a disability documentation of transitions services received under the IDEA be changed to indicate that this is not optional, but a requirement. Finally, one commenter offered additional language that a local educational agency is responsible for referring youth with disabilities considering subminimum wage employment as a transition outcome to the designated State unit in order to complete the requirements under proposed § 397.20.

Discussion: We appreciate all of the comments and suggestions on this section. While the suggestion to require local educational agencies to retain copies of documentation that a youth has completed transition services is unnecessary given the requirements of 2 CFR 200.333, we understand the concerns expressed. After much consideration, the Secretary has revised final § 397.30 to require the educational agency to retain a copy of all documentation provided to the DSU in accordance with 2 CFR 200.333. This requirement in final § 397.30(d) should pose no additional burden to the local educational agencies because the agencies are already subject to Federal record retention requirements. Final § 397.30(d) is consistent with a similar provision in final § 397.10(c), thereby ensuring consistency between the DSU and local educational agencies for purposes of the documentation process. Similarly, the Secretary has revised final § 397.30(a) to state that the documentation transmitted to the DSU must comply with the confidentiality requirements of FERPA and the IDEA. Additionally, final § 397.30 is revised to establish minimum information content requirements for the documentation to be provided to the DSU upon completion of the transition services under the IDEA or the youth's refusal to participate in those activities. In addition, the Secretary has also added a new paragraph in final § 397.30 to require a time frame for the transmittal of the documentation to the DSU—of no more than 30 calendar days after completion of the transition service, or no more than 60 calendar days after completion of the transition service if additional time is needed due to extenuating circumstances, or within 5 calendar days of the youth refusal to participate. This gives the DSU the time necessary to transmit the documentation to the youth within the time required by final § 397.10(c).

In addition, final § 397.30(c)(2) requires educational personnel, when transmitting documentation of the last service or activity completed by the youth to the DSU, to provide a coversheet that itemizes all documentation transmitted to the DSU regarding that youth. In so doing, the DSU will have a checklist to ensure receipt of each documentation, thereby ensuring the youth obtains all necessary documentation. These additional provisions are necessary to ensure consistency between the DSU and the local educational agencies in the documentation process. All of these changes are consistent with those made in final § 397.10.

As previously discussed in other sections of this part, the CAP and protection and advocacy systems already have access to records in accordance with their governing statutes and regulations and section 511 of the Act does not expand this access.

We disagree with the recommendation to remove the phrase "who are known to be seeking subminimum wage employment" or, alternatively, "who are known to be" from the title in final § 397.30. The provisions relate directly to youth who are contemplating or seeking subminimum wage employment, and local educational agencies have knowledge of these individuals in meeting the IDEA requirements for transition services in the individualized education program in 20 U.S.C. 1414(d)(1)(A)(i)(VIII)(aa)–(bb).

In considering the commenter who recommended making it mandatory for the local educational agency to provide documentation of the completion of required activities to the student, upon further review, the Department has determined that providing documentation of completed activities by the local educational agency directly to a youth with a disability seeking subminimum wage employment is not mandatory, and we are removing this language in the final regulation to be more consistent with the statute and final § 397.10. The documentation must be provided by the local education agency to the DSU in accordance with section 511(d)(2)(ii) and (iii).

The local educational agency, in accordance with the requirements in section 511(d)(2) and the documentation process developed by the DSU in consultation with the State educational agency, must provide documentation to the DSU. The DSU is then responsible under section 511(d)(2)(A)(iii) to provide this documentation to the student with a disability. Final §§ 397.10 and 397.30 make this requirement clear and ensure

consistency with specific statutory requirements.

While we agree that it is in the best interest of a student with a disability considering subminimum wage employment to be referred by a local educational agency to the DSU in order to complete the requirements under final § 397.20, we believe that this is best left to the DSU and the State educational agency to negotiate when developing the interagency agreement required by 34 CFR 361.22. Nevertheless, we believe that this practice represents the type of coordination and cooperation that should exist between DSUs and local educational agencies and enables collaboration with the student with a disability to provide a complete program of services that may result in an employment outcome in competitive integrated employment. See a more detailed discussion of this issue earlier in this preamble. Regardless, once the DSU receives documentation of completed transition activities from the local educational agency, then the individual will become known to the DSU, and thus "referred."

Changes: We have revised final § 397.30 in several ways. We have revised final § 397.30(a) by deleting the language stating that a local educational agency may provide documentation to a youth of the completion of actions described in § 397.20(a) and inserting in its place language that the local educational agency must provide the DSU with such documentation in accordance with section 511(d)(2). We also stated that the documentation must be transmitted in a manner that complies with the confidentiality requirements of FERPA and the IDEA. We added final § 397.30(b), which establishes minimum content requirements for the documentation that must be transmitted by the local educational agency to the DSU. We added final § 397.30(c), which establishes the time frame under which a local educational agency must provide the DSU with required documentation and requires the local educational agency to retain a copy of all documentation provided to the DSU under this part. Final § 397.30(c)(2) requires educational personnel to transmit a coversheet to the DSU that itemizes all documentation provided to the DSU regarding the youth. This coversheet is to be provided when the educational personnel transmits documentation of the last activity completed by the youth. Lastly, we added final § 397.30(d), which establishes the timeline in which documentation must be transmitted by the educational agency to the DSU.

Contracting Prohibition on Educational Agencies (§ 397.31)

Comments: A few commenters supported proposed § 397.31. A few commenters also suggested that the Department of Labor has the responsibility to oversee the DSUs and State educational agencies to ensure that subminimum wage employment is not being used inappropriately.

Most commenters expressed concern that the proposed regulation was being interpreted by educational agencies and DSUs to mean that an entity that holds a section 14(c) certificate is automatically prohibited from providing any service paid for by local and State educational agencies and that this was not the intent of section 511(b)(2) of the Act. The commenters requested that we clarify that State and local educational agencies may contract with entities holding section 14(c) certificates such as community rehabilitation programs for other purposes, including transition and pre-employment transition services that are beneficial to students with disabilities and supported by parents of these individuals. One commenter asked whether proposed § 397.31 eliminates the ability of local educational agencies to contract with holders of section 14(c) certificates for the provision of internships and work-based tryouts, among other services.

One commenter mentioned that in rural States or areas, the availability of services may be limited to providers who hold special wage certificates, thus provisions in part 397 should not preclude students from accessing the expertise section 14(c) certificate holders have in assisting people into competitive integrated employment.

Additionally, a commenter strongly emphasized the desire to sustain a wide range of quality rehabilitation services for youth with disabilities and believed that restricting the legitimate engagement of State educational agencies with section 14(c) certificate holders would result in a reduction of service availability, and curtail learning opportunities and services available to youth with disabilities.

A commenter asked whether schools may contract with providers that offer subminimum wage and minimum wage services when the only service being contracted for would be opportunities paid at minimum wage.

A few commenters suggested that the regulatory language as proposed should not be modified to suggest that some types of contracts between an educational agency and an entity using section 14(c) certificates are permissible. A few others expressed support for the regulation but suggested that the language should clearly indicate that States cannot engage at all in any contracts for any vocational rehabilitation services with agencies that pay subminimum wages.

One commenter emphasized that the types of jobs students with disabilities are introduced to during high school correlate to the types of jobs they will obtain following graduation. They therefore supported proposed § 397.31, which reduces students' exposure to subminimum wage employment and increases students' opportunities for obtaining competitive integrated employment. Similarly, another commenter stated that limiting the opportunity for inadvertent slotting into subminimum wage employment is a step in the right direction for students with disabilities toward achieving competitive integrated employment. One commenter, citing research predicting post-school employment, suggested that all work-related activities to prepare individuals with disabilities for jobs and careers should happen in realistic integrated environments, not in segregated workplaces or where an individual is paid a subminimum wage.

A few commenters suggested that the formal interagency agreement between the DSU and the State educational agency in proposed 34 CFR 361.22 prohibit contracts or arrangements with, or referrals to, programs in which youth with disabilities are employed at subminimum wages. Commenters also recommended inserting the requirement for referrals in proposed § 397.31.

Other commenters suggested inserting the word "sub-contract" between "contract" and "other arrangements" to align proposed § 397.31 with the language in section 511(a) of the Act regarding entities, including contractors and subcontractors of entities. Additionally, many of these commenters also requested that the prohibition be extended to local and State educational agencies that operate a program where a youth with a disability is engaged in subminimum wage employment. A few commenters were unclear about the term "other arrangement" and interpreted this as not specifically prohibiting referrals to programs employing youth with disabilities at subminimum wages.

A number of commenters requested either that the Department issue guidance to local and State educational agencies clarifying that the contracting prohibitions only apply to contracts for the purposes of operating a program under which a youth with disabilities is

employed at subminimum wage. In the alternative, the commenters suggested that the Department require State educational agencies to issue clear policy directives to local educational agencies regarding the prohibition on State and local educational agencies contracting with section 14(c) certificate holders in order to pay individuals subminimum wages. In addition, commenters asked that the Department add additional language regarding the responsibilities of State educational agencies to enforce this provision.

Discussion: We appreciate the support for proposed § 397.31. We disagree with the recommendation that the Department of Labor should have oversight responsibility for the DSUs and the State educational agencies to ensure that subminimum wage employment is not being used inappropriately. Rather, both the Departments of Education and Labor have responsibilities for oversight under section 511. Specifically, the Department has sole responsibility for overseeing all requirements under section 511 and final part 397 that relate to requirements that fall under its purview, such as the documentation process and the prohibition against a State or local educational agency entering into a contract with an entity holding a special wage certificate for the purpose of operating a program in which a youth is compensated for work at subminimum wage. The Department of Labor, on the other hand, has sole responsibility for overseeing requirements that fall under its purview, such as those related to entities holding special wage certificates paying individuals with disabilities subminimum wages without the requirements of section 511 of the Act and final part 397 being met. There is no statutory authority for the Department to compel the Department of Labor to oversee entities, such as the DSUs and educational agencies, that are under the Department's purview.

We appreciate the significance of the contracting prohibition in section 511(b)(2) of the Act and the comments received in response to proposed § 397.31 seeking clarification and making recommendations. We agree with the substantial number of commenters that this section does not preclude State and local educational agencies from contracting with entities holding section 14(c) certificates, such as community rehabilitation programs, for purposes other than operating a program for youth under which work is compensated at a subminimum wage. In other words, nothing in section 511(b)(2) of the Act or final § 397.31 precludes a State or local educational agency from contracting with an entity, even if that entity holds a special wage certificate under section 14(c) of the FLSA, for another purpose, including the provision of transition and pre-employment transition services that are beneficial to students with disabilities, so long as they are not paid subminimum wage if compensation is provided. Pre-employment transition services under final 34 CFR 361.48(a) and assessment services provided to vocational rehabilitation consumers must be provided in integrated settings to the maximum extent possible. Further, nothing in section 511(b)(2) of the Act or final § 397.31 prohibits a State or local educational agency from contracting with an entity holding a special wage certificate for the purpose of operating a program in which the youth is paid at or above minimum wage. A State or local educational agency, prior to entering into such a contract, must ensure that the youth will be paid at least minimum wage. Only in doing this can the local or State educational agency ensure its compliance with section 511(b)(2) and final § 397.31. It is not necessary to revise final § 397.31 because the regulation mirrors the statute and states that the prohibition is against contracting for "the purpose" of operating a program for youth under which work is compensated at a subminimum wage.

The Department also agrees with commenters who regard the contracting prohibition as a step toward limiting the progression of students and transition-age youth into subminimum wage employment, since it seeks to limit the exposure of these individuals to settings that pay subminimum wages. Final § 397.31 raises expectations for both youth with disabilities and their families, and redirects them toward experiences leading to competitive integrated employment in the community.

While we understand the commenters' desire to align the language in final § 397.31 with section 511(a) of the Act, which references entities holding special wage certificates as well as their contractors and subcontractors, we disagree that it is necessary to specifically mention "subcontractors" in these final regulations. Final § 397.31 prohibits the State or local educational agency from entering into a contract or other arrangement with an "entity, as defined in § 397.5(d)" for the purpose of operating a program in which the youth is engaged in work compensated at a subminimum wage. Final § 397.5(d) defines "entity" as an employer, or a contractor or subcontractor of that employer, that holds a special wage certificate described in section 14(c) of the FLSA. Therefore, contractors and subcontractors of the employer holding the special wage certificate are already included in that definition, making specific reference to contractors and subcontractors unnecessary. The reference to "other arrangements" in both section 511(b)(2) and final § 397.31 refers to any other type of agreement (other than a contract), such as a memorandum of understanding or subcontract, through which the State or local educational agency makes arrangements with entities operating programs in which youth with disabilities are paid subminimum wages under section 14(c) of the FLSA. The term allows for a broad interpretation of the relationships that might exist between a local or State educational agency and an entity, as well as the types of agreements they may enter into to establish those relationships, including sub-contracts. For purposes of the requirements and limitations in final part 397 (including the contracting prohibition in final § 397.31), a local or State educational agency that holds a section 14(c) certificate to operate a program in which a youth with a disability is engaged in work compensated at a subminimum wage is treated in the same manner as any other entity holding a special wage certificate under section 14(c) of the FLSA.

We agree that the interagency agreement between the DSU and State educational agency, as described in 34 CFR 361.22, should include reference to the prohibition in final § 397.31. Therefore, 34 CFR 361.22(b)(6), both proposed and final, requires the interagency agreement to include an assurance that neither the State or local educational agency will enter into a contract or other arrangement for the purpose of operating a program in which youth with disabilities are engaged in work compensated at a subminimum wage. Thus, final 34 CFR 361.22(b)(6) ensures consistency between the interagency agreement required under that part and the requirements of final § 397.31.

The Secretary disagrees with the recommendation to revise final § 397.31 to prohibit local or State educational agencies from making referrals to entities holding special wage certificates. As discussed previously, as well as in detail in the preamble to final 34 CFR part 361, the Act does not prohibit services such as assessments, pre-employment transition services, and other services from being provided by

entities holding special wage certificates under section 14(c) of the FLSA. However, the Act requires that each of these services be provided, to the maximum extent possible, in integrated settings. We wish to point out that entities holding special wage certificates under section 14(c) of the FLSA, also include businesses, in addition to community rehabilitation programs, that operate in integrated settings in the community. The focus of the prohibition in final § 397.31 is the payment of subminimum wages to youth with disabilities–not the setting in which the work is performed. Therefore, there is nothing in the Act to prohibit a State or local educational agency from making a referral to such entity, so long as the purpose of the referral is not for the payment of subminimum wages to the youth with a disability.

With regard to the request that final § 397.31 be revised to specify that the State educational agency is responsible for enforcing final § 397.31, the Secretary disagrees that such change is necessary. First, the Department will be enforcing this provision through its regular monitoring activities. Second, the prohibition applies to both the State and local educational agencies; therefore, it would not be appropriate for the State educational agency to enforce a requirement against itself. As stated above, the Department intends to issue operating guidance to the States regarding the implementation of the requirements of final part 397, including the prohibition contained in final § 397.31.

Changes: None.

Responsibilities of a DSU for Individuals Regardless of Age in Subminimum Wage Employment (§ 397.40)

Counseling, Information and Referral Services

Comments: Many commenters expressed support for the provision of services by DSUs described in proposed § 397.40 for individuals employed at a subminimum wage, regardless of age. Many were encouraged by the requirement for ongoing information and referral, as well as, career counseling and the potential benefit that it could bring to consumers in the future. Others suggested that proposed § 397.40 require information be provided to family members and/or caregivers as appropriate, in addition to the individual. Still others asked that this section require the provision of benefits counseling so that individuals would understand the impact and benefits, rather than the perceived barriers, of moving out of subminimum wage employment into competitive integrated employment. A few indicated that it is imperative that any career counseling provide participants with information on Federal and State programs that continue healthcare and income supports to individuals with disabilities who engage in the workforce.

A few commenters expressed concerns related to the requirement to provide information and career counseling-related services to adults working in subminimum wage jobs, suggesting that the requirement places pressure on DSU staff and fiscal resources due to the sheer numbers of these individuals, and could impact the ability to serve all eligible individuals in the State through the VR program without implementing an order of selection.

Another commenter asked whether the services described in proposed § 397.40 were for all individuals or just those individuals that have been served by the DSU.

Regarding required intervals for providing information and referral and career counseling, many commenters provided requests for clarification and recommendations related to the semi-annual and annual intervals for providing these services to individuals in subminimum wage employment. Several recommended referencing and reconciling the requirements under proposed § 397.40 with those under proposed 34 CFR 361.55 related to semi-annual and annual reviews for individuals in extended employment or subminimum wage employment.

A few commenters sought clarification regarding the individuals to be served and whether there were differences in the requirements for youth and other individuals with disabilities. One commenter asked whether entities were to refer every subminimum wage employee for career counseling by January of 2017 or whether this section only applies to individuals who become employed in subminimum wage after the effective date of section 511, July 22, 2016, citing that, either way, the workload would be significant.

Another commenter questioned why these services were available every six months for the first year of employment only, suggesting that the more often individuals received career counseling and information and referral services, the more likely that the individual would become comfortable with the idea of future competitive integrated employment.

Discussion: We appreciate the support for, and extensive comments and recommendations received in response to, proposed § 397.40. Section 511 of the Act does not require that the DSU provide the information to the family or caregivers, as well as to the individual with a disability. As a recipient of services from a DSU, the individual with a disability would be protected by the provisions in final 34 CFR 361.38, governing the protection, use, and release of personal information, and other Federal and State privacy laws and regulations. For this reason, we lack the statutory authority to make the recommended change in final § 397.40. However, if an individual chooses to include family members and caregivers in such activities, nothing would prohibit DSUs or their contractors from doing so with the informed consent of the individual. On the other hand, if a parent, other family member, or another individual has power of attorney for or guardianship over, or has any other legal authority to act as the individual's representative, the DSU could provide the information to that representative in accordance with the laws governing that representation.

We agree with commenters that income-based benefits counseling would be beneficial to individuals with disabilities who are employed at subminimum wage. There is no prohibition in section 511 against providing benefits counseling as a part of information and referral or career counseling. The Secretary believes that information provided as part of benefits counseling could enable individuals with disabilities to have the information they need to understand the full opportunities provided by competitive integrated employment. For this reason, the Secretary has revised final § 397.40(a) by adding paragraph (4) to specify that career counseling and information and referral services may include benefits counseling, particularly with regard to the interplay between earned income and income-based financial, medical, and other benefits.

We understand the concerns and challenges with meeting the requirements under this section due to the potentially large numbers of individuals to be served on an annual or semi-annual basis. DSUs may contract these services to help mitigate the demands upon the DSU staff and resources. We also recognize these additional activities could impact a State's needs and decisions regarding order of selection. However, section 511 is explicit about the activities that must be performed by the DSU with regard to individuals with disabilities employed

at subminimum wage. Therefore, there is no statutory basis to limit the DSU's responsibilities under final § 397.40, which is consistent with section 511(c) of the Act.

To clarify, the services under this section are for any individual in subminimum wage employment, not just individuals who have been applicants or recipients of services under the VR program or who have been served by the DSU under another program administered by that agency.

With respect to career counseling, and whether requirements for information and referral and career counseling differ between youth and other individuals with disabilities, all are required. The timing for the semi-annual provision of career counseling and information and referral services applies only for an individual with a disability who begins employment at subminimum wage on or after the effective date of section 511 (July 22, 2016). This means, for example, that an individual who begins employment at subminimum wage on July 30, 2016, must receive the first provision of the semi-annual career counselling and information and referral services no later than January 30, 2017, and the second provision of the semi-annual services no later than July 30, 2017, and the annual set of services no later than July 30, of each year thereafter for as long as the individual maintains subminimum wage employment. For individuals who were already employed at subminimum wage when section 511 takes effect (July 22, 2016), the individual must receive career counseling and information and referral services at least once a year. Neither the statute nor these final regulations dictate when those annual reviews must be done. This is a matter for the entity holding the special wage certificate and/or the DSU to determine in terms of what works best within their operations. However, the Secretary clarifies here that all individuals employed at subminimum wage must have received the requisite first annual career counseling and information and referral services no later than July 22, 2017, and annually thereafter by that date. Consistent with the Act, all individuals employed at subminimum wage, regardless of date of employment, must receive career counseling by at least one year after the effective date of section 511.

We agree that frequent career counseling and guidance activities may assist individuals in subminimum wage employment to consider competitive integrated employment. Although the Act requires DSUs to provide these career counseling and information and referral services on a semi-annual basis for the first year of employment and annually thereafter, nothing in the Act prohibits a DSU from providing these services on a more frequent basis. The specific requirements for youth, and the semi-annual and annual counseling and information and referral requirements, along with the documentation requirements, as required by the statute become effective on July 22, 2016. The Secretary has revised final § 397.40(c) to make these requirements related to the required intervals more clear.

Changes: In final § 397.40(a), we added paragraph (4) to specify that the career counseling and information and referral services a DSU must provide may include benefits counseling, particularly with regard to the interplay between earned income and income-based financial, medical, and other benefits. We made revisions to final § 397.40(c) to provide that the required intervals for providing services under final §§ 397.40(a) and (b) will be calculated based upon the date the individual becomes known to the DSU. We revised final § 397.40(c) to clarify when the required services are due for both individuals hired at subminimum wage on or after the effective date of the statute and also for individuals hired at subminimum wage prior to that date. As part of the revisions to final § 397.40(c), we specified in paragraphs (c)(3)(i) and (ii) that DSUs are responsible for providing the required services only when that individual becomes "known" to the DSU, and we specified what it means to become "known."

Identification and Referral of Individuals

Comments: Several commenters requested that the phrase "who are known" be clarified, defined, or replaced with more specific language. A few thought that the language in proposed § 397.40(a)(2) was vague, limiting, or misleading and could be interpreted to mean it applies only to individuals who have been through the vocational rehabilitation process or who have been referred by the CAP.

A few commenters suggested that language be added mandating interagency agreements with the State educational agency, the State intellectual and developmental disabilities agency, and any other appropriate agency serving individuals who may be in subminimum wage employment to identify and refer individuals considering, or currently in, subminimum wage employment to the DSU. This suggestion aligned with other commenters who advocated a more expansive and proactive strategy by the DSU to identify all individuals who are contemplating or are currently in subminimum wage, which one commenter described as similar to "child find" under the IDEA. One commenter urged that a subsection be added to final 34 CFR 361.29(a)(1)(i) and (b) requiring the comprehensive statewide assessment under the VR program include information about individuals who are working in segregated and subminimum wage jobs for employers using section 14(c) certificates.

One commenter asked whether the DSU was required to track an individual working in a sheltered workshop setting who contacted the agency for independent living services.

Another commenter asked whether proposed § 397.40 establishes an affirmative requirement or expectation that DSUs or their contractors seek out individuals in subminimum wage employment, noting the potential issue of confidentiality between the individual and the employer.

A commenter suggested adding language that would require that any entity holding a section 14(c) certificate failing to refer an individual to the DSU have its section 14(c) certificate suspended until it has been documented that all employees working at subminimum wage have been referred to the DSU.

Some commenters suggested that coordination and guidance from the Federal Departments on the identification issues would be helpful.

Discussion: The use of the phrase "who are known" in several sections of these regulations highlights that the DSU must be aware that an individual with a disability is employed at the subminimum wage level in order to provide the services required by section 511 of the Act and final part 397, including the services and activities required by final § 397.40. Such awareness may be made through the self-identification by the individual with a disability, the vocational rehabilitation process, cooperative or coordinated activities with other agencies, or referral to the DSU, including referral by employing entities. Otherwise, there is no mandate in section 511 of the Act for the DSUs to seek out or solicit these individuals. To impose such a requirement in these final regulations would be extremely burdensome on the DSUs because of the thousands of entities holding special wage certificates under section 14(c) of the FLSA. It would not be practical or reasonable to expect or require the DSU to take on the role of seeking out individuals with disabilities who are

employed at subminimum wage. Moreover, confidentiality laws and regulations would prohibit the automatic release of personal information about the individual with a disability to the DSU without the written consent of the individual.

Furthermore, there is no statutory mandate for entities holding section 14(c) certificates to refer to the DSU employees or individuals with disabilities seeking to enter subminimum wage employment.

We considered using the words "who are referred" instead of "who are known," but that phrase implied an active referral process required by other entities, all of whom are outside of the Department's purview. The phrase "who are known" allows for any method of identifying individuals to the DSU and clarifies there is no mandate that the DSU seek out or solicit individuals with disabilities employed at subminimum wage. In final § 397.40(a)(2), we are including "self-referred" in the list detailing examples of how the DSU knows of an individual. The Secretary has also added a paragraph in final § 397.40(c)(3)(ii) to clarify when an individual with a disability becomes "known" to the DSU.

While we agree that there is benefit in identifying individuals with disabilities in subminimum wage employment or those potentially seeking such employment, through interagency agreements with other State agencies such as the State educational agency, the State intellectual and developmental disabilities agency, and any other appropriate agency, we cannot require other agencies to make these referrals because section 511 does not impose any requirements on most of the agencies suggested by the commenters. State and local educational agencies will be providing, in effect, a referral when they transmit documentation to the DSU demonstrating the completion of transition and other services by students with disabilities. As stated in an earlier section of this preamble, we have encouraged DSUs and various other State and local agencies with whom they have relationships for cooperation and coordination of services, to include provisions in their interagency agreements related to the referral of individuals employed at subminimum wage. We do not believe it is appropriate to amend these final regulations to require such provisions because these matters are best left to the States to determine what meets their unique needs and circumstances. We expect that DSUs will use the opportunity as they develop relationships and agreements through the coordination and cooperative agreements set out in final 34 CFR 361.24 to seek cross-agency referrals.

With regard to entities holding 14(c) certificates under the FLSA, all authority to impose requirements (*e.g.*, consequences for failure to comply including suspension or revocation of the special wage certificate) rests with the Department of Labor and are beyond the scope of these final regulations.

We appreciate the question from the commenter who asked whether the DSU is required to track an individual who is employed in a sheltered workshop setting at subminimum wage, and who contacted the agency for independent living services. While such is not specifically required by statute, section 511 of the Act requires the DSU to provide certain services and/or documentation to individuals with disabilities, including youth with disabilities, who are seeking (for purposes of youth with disabilities only) or maintaining subminimum wage employment (for individuals with disabilities of any age). The Secretary has interpreted, for purposes of final part 397, and stated throughout this preamble, that the DSU must provide these required services or documentation to any individual with a disability whom it knows is seeking or maintaining employment at subminimum wage, not only individuals who have participated in the VR program or been referred by the CAP. As stated above, the DSU can know of these individuals in a variety of ways, including through the programs it administers, such as the VR program or the independent living programs. Therefore, if the DSU knows of an individual through the independent living program and knows that individual is seeking or maintaining subminimum wage employment, the DSU must provide the services and documentation required by section 511 of the Act and final part 397, including the requirements of final § 397.40.

We address the comment that we add requirements to the comprehensive statewide assessment to include information about individuals who are working in segregated and subminimum wage jobs for employers using section 14(c) certificates in the *Analysis of Comments and Changes* section for 34 CFR part 361, under the discussion of 34 CFR 361.29, earlier in this preamble.

It is anticipated that joint guidance from the Departments of Education and Labor is forthcoming and will address, among other aspects of WIOA, the limitations on use of subminimum wage if the required services and documentation have not been provided. In the meantime, the expectation is that, at every opportunity, DSUs will identify individuals with disabilities seeking employment or who are currently employed at a subminimum wage.

Changes: We revised final § 397.40(a)(2) to include "self-referral" and added a paragraph in final § 397.40(c)(3)(ii) to clarify when an individual with a disability becomes "known" to the DSU.

Financial Interest

Comments: With regard to self-advocacy, self-determination, and peer mentoring training opportunities, several commenters requested clarification related to "financial interest" and what entities may not provide these services. One commenter proposed language that specifically includes the entity that employs the individual at subminimum wages among those entities deemed to have a financial interest for the purpose of this section. Some commenters asked that we clarify that an entity providing subminimum wage employment to an individual may not provide self-advocacy, self-determination, and peer mentoring training opportunities to the individual.

A few commenters recommended that the Department further clarify that an entity that holds a section 14(c) certificate, but does not have a financial interest in the outcome of the individual, may provide the services required under section 511(c)(1). Some of those commenters expressed concern that an overly restrictive interpretation would have a detrimental impact on rural areas with few providers.

Several commenters regarded section 14(c) certificate holders as clearly having a "financial interest" and therefore, should be precluded from providing services required under this section. Although these entities may not have an immediate financial interest in the employment outcome of the individual, some commenters viewed them as having a definite interest in encouraging the individual to apply for vocational rehabilitation services in anticipation of being selected at a later time to provide employment or supported employment services.

Several commenters suggested that if the DSU contracts with public and private service providers to provide the services required for individuals who are currently in subminimum wage employment, rather than provide the services directly, language be added to proposed § 397.40 in the final regulations that explicitly and specifically prohibits section 14(c) certificate holders from providing these

services, to avoid what the commenters perceived as a clear conflict of interest for these entities. In this scenario, commenters emphasized that employers would have a financial interest in the outcome of these services and would not be positioned to provide adequate or objective career counseling.

Discussion: With regard to self-advocacy, self-determination, and peer mentoring training opportunities, several commenters requested clarification of "financial interest" and what entities may not provide these services. Based upon the comments and our assessment, we have determined that all entities holding special wage certificates under section 14(c), irrespective of whether any employ the individual receiving the services, have a financial interest or a potential future financial interest in providing these services. Therefore, these entities may not be used to provide these services. The Secretary believes that many organizations and providers are available and are already providing self-advocacy, self-determination, and peer mentoring training services, such as the centers for independent living (CILs) in each State. Although some commenters have expressed concern about the potentially detrimental impact on rural areas with few providers, the Secretary believes that virtual and electronic technology allows access to these services even if the provider is not physically located in a particular rural area.

We agree with the several commenters who suggested that if the DSU contracts with public and private service providers to provide the services required for individuals who are currently in subminimum wage employment, rather than provide the services directly itself, then the services may be provided, so long as the service providers are not section 14(c) certificate holders. We have added language in final § 397.40, therefore, that prohibits section 14(c) certificate holders from providing these services.

Changes: We inserted language in final § 397.40(e) stating that a contractor providing the services on behalf of the DSU may not be an entity holding a special wage certificate under section 14(c) of the FLSA as defined in final § 397.5(d).

Time Frames and Documentation Requirements

Comments: One commenter recommended that the Department set a time frame for providing documentation of the completion of activities under proposed § 397.40 to individuals with disabilities in subminimum wage employment, suggesting that this would circumvent resource-intensive disputes and inconsistencies in the interpretation of timeliness.

Discussion: Upon the suggestion of commenters, we include a specific time period for providing documentation of the completion of activities under final § 397.40 to individuals with disabilities in subminimum wage employment. This time frame is consistent with that in § 397.10 for the provision of documentation to youth with disabilities, thereby ensuring consistency between all provisions in final part 397 related to documentation. Similarly, the Secretary has revised final § 397.40 to set minimal content requirements for the documentation that must be provided to the individual demonstrating completion of the career counseling and information and referral services. Again, this new regulatory text is consistent with that contained in final § 397.10 and § 397.30.

Changes: We have included a time frame in final § 397.40(d) of no later than 45 calendar days after completion of the required activities or services for the DSU to provide documentation of activities in this section to individuals with disabilities; however, where extenuating circumstances exist, the DSU can have up to 90 calendar days after completion of the required activities or services. We also added final § 397.40(d)(1)(ii) to provide a time frame of 10 calendar days for DSUs to provide this documentation to an individual who has refused to participate in a required activity. We also added final § 397.40(d)(2) and (3) to specify minimum content requirements for the documentation DSUs must provide to individuals, including individuals who refuse to participate in a required activity. We added final § 397.40(d)(4) requiring DSUs to retain a copy of all documentation required by part 397, in a manner consistent with 2 CFR 200.333.

Clarifications

Comments: One commenter asked for an explanation as to why the DSU is only required to provide individuals in subminimum wage employment with self-advocacy, self-determination, and peer mentoring training opportunities, all of which are fundamental to achieving independence and self-sufficiency, if the employer holding a section 14(c) certificate has fifteen or fewer employees.

Clarification was sought by a few commenters regarding how proposed part 397 would impact clients of the DSU who are being paid subminimum wages in a community rehabilitation program as part of their training under an individualized plan for employment. Additionally, a commenter asked if the DSU may contract with businesses to perform a service in a workshop, for a limited time, as part of the individual's individualized plan for employment.

Discussion: The requirement that the DSU must provide individuals in subminimum wage employment with self-advocacy, self-determination, and peer mentoring training opportunities only when the employer holding a section 14(c) certificate has fifteen or fewer employees is consistent with the requirement of section 511(c)(3) of the Act. Employers holding a section 14(c) certificate that have more than fifteen employees are responsible for ensuring that individuals in subminimum wage employment are provided self-advocacy, self-determination, and peer mentoring training opportunities in accordance with section 511(c)(1)(B) of the Act. This provision removes the burden that would otherwise be experienced by small businesses as a result of these requirements by having the DSU provide the services instead.

The Secretary does not believe that final part 397 would impact clients of the DSU who receive a training stipend that is below minimum wage for work performed in a community rehabilitation program as part of their training under an individualized plan for employment. That being said, we encourage that all training and assessment take place in an integrated setting to the maximum extent possible to reinforce the expectation under the Act that all individuals with disabilities, given the proper training and supports, can achieve competitive integrated employment. However, neither section 511 of the Act nor final part 397 prohibits a DSU from entering into a contract with a business in which clients in training receive a training stipend that is below minimum wage. Unlike the prohibition against these contracts for State and local educational agencies, such a prohibition for DSUs would go beyond the scope of section 511 of the Act and these final regulations. We wish to emphasize, however, that section 511(b)(2) of the Act and final § 397.31 address contracting prohibitions for State and local educational agencies entering into contracts with entities holding section 14(c) certificates for the purpose of operating a program for youth in which work is compensated at a subminimum wage. In this case, work associated with a work experience, work adjustment training and extended employment, or other activities for which work is

compensated must be at or above the minimum wage.

Changes: None.

Review of Documentation (§ 397.50)

Comments: One commenter on proposed § 397.50 recommended that we clarify the review process and the necessary documentation required.

Most commenters responding to proposed § 397.50 regarding the role of the DSU in the review of individual documentation maintained by entities, as defined in proposed § 397.5(d) under this part, stated that the proposed regulation did not include sufficient language to provide for any enforcement mechanism, should the DSU discover that documentation does not exist or is not sufficient. Some commenters asked that an enforcement mechanism be included, reflecting, at a minimum, the requirement that the DSU report documentation deficiencies to the Department of Labor for action, or to the CAP. Some commenters suggested that, although the proposed regulation establishes a much needed opportunity to review individual documentation, it does not indicate what actions, including authorized corrective actions or revocation of section 14(c) certificates, may be taken if deficiencies are identified by the DSU or its contractor.

Several commenters recommended that we remove the proposed language that allows a contractor working for the DSU to conduct documentation reviews of section 14(c) certificate holders, viewing this as conflicting with section 511. They suggested that if the final regulations continue to allow contractors to conduct documentation reviews, that additional language be added that specifies parameters for such contractors, including a prohibition of the use of organizations that are section 14(c) certificate holders to conduct such reviews.

Several commenters requested that specified timelines for the review of documentation be added to enhance enforcement, and that language be added to specify that the CAP and protection and advocacy system have jurisdiction in reviewing compliance with Section 511 requirements.

A few commenters requested that we clarify whether the review of documentation by the DSU is a requirement, and if so, noted that the DSUs do not have the resources or expertise to conduct such reviews, suggesting that the reviews are best conducted by the agency responsible for the administration of the special wage certificate.

Another commenter shared concerns about the record-keeping responsibilities and the supporting documentation for monitoring purposes. Other commenters had questions and concerns pertaining to whether the DSU can make a blanket documentation of an entity, or if requests to review documentation must be made on an individual basis. Commenters recommended that the final regulations task the Department of Labor with the responsibility for documentation reviews based upon its experience with reviewing and monitoring entities for compliance with section 14(c) of the FLSA.

Discussion: We appreciate the comments regarding the need to review documentation of individuals who are employed at subminimum wage, consistent with the requirements in section 511. The commenters raise many important issues that necessitate clarification. As we discussed in an earlier section of the preamble for final part 397, neither section 511(e)(2)(B) of the Act nor final § 397.50 requires either the DSU or the Department of Labor to review documentation maintained by entities holding special wage certificates. Rather, both section 511(e)(2)(B) of the Act and final § 397.50 subject those entities to a review of documentation should the DSU or the Department of Labor conduct such reviews. We appreciate the concerns expressed by commenters about the strategies, responsibilities, resources, and expertise required to conduct documentation reviews. However, there is no statutory basis to task the Department of Labor, Wage and Hour Division, with this exclusive responsibility even though it has more experience in conducting reviews of entities involving documentation of compliance with section 14(c) under the FLSA. As noted previously, section 511(e)(2)(B) of the Act and final §§ 397.50 specify that both the DSU and the Department of Labor have authority to conduct these reviews. Therefore, to task only the Department of Labor with this responsibility in these final regulations would be inconsistent with the statute. While we understand the concerns about lack of resources, we disagree that the DSUs do not have sufficient expertise to conduct the reviews. In fact, much of the documentation to be reviewed would be that generated by the DSU itself and, therefore, would be familiar to the DSU. Moreover, we do not believe it is necessary to revise final § 397.50 to identify the documentation to be reviewed during a review under this section because the documentation that must be reviewed is set out in these regulations in final §§ 397.10, 397.20, 397.30, and 397.40. Given the intent of section 511 to limit the use of subminimum wage, the Secretary believes that DSUs, in conjunction with the Department of Labor may have an impact on the degree to which youth and other individuals with disabilities seek or maintain employment at subminimum wage through the documentation review process and the requirements set out elsewhere in this section.

Because there is no requirement that these reviews be done, neither the statute nor these final regulations establish a time frame for the reviews. Section 511(e)(B) of the Act provides that the reviews are to be done "at such a time" as may be necessary to fulfill the intent of section 511. Therefore, the timing of any such reviews must be determined by the DSU or the Department of Labor as either deems necessary.

We disagree with commenters that the DSU should report violations discovered during a review of documentation to the CAP. As previously discussed, the applicability of final part 397 to CAPs and protection and advocacy systems must be consistent with their responsibilities under their respective authorizing statutes and regulations. Monitoring and oversight activities are beyond the scope of the CAP's authority under section 112 of the Act. Therefore, we do not believe it is appropriate to include any specific language regarding their authority or jurisdiction in these final regulations.

We also appreciate the many comments and suggested regulatory language submitted by a variety of commenters related to the DSU's role in the review of documentation. We agree that enforcement measures and consequences for non-compliance are important; however, section 511 of the Act does not include specific enforcement authority for DSUs and to include such measures in the final regulations would be inconsistent with the Act. Enforcement of section 14(c) of the Fair Labor Standards Act rests with the Department of Labor, Wage and Hour Division. Additionally, consequences for non-compliance with the requirements for documentation prior to hiring youth with disabilities or continuing to employ individuals with disabilities of any age and the retention of documentation records by entities under section 511 also rests with the Department of Labor, Wage and Hour Division. Although section 511 does not require DSUs to report documentation

deficiencies to the Department of Labor, Wage and Hour Division for action, the Secretary agrees with commenters that such reporting would be consistent with the purpose of final part 397.

Similarly, if a parent or an individual with a disability brings an instance of non-compliance with the documentation or other requirements of section 511 to the attention of the DSU, we would encourage the DSU to report this to the Department of Labor, Wage and Hour Division as well. Therefore, the Secretary has revised final § 397.50 by adding a new paragraph (b) to specify that DSUs should report deficiencies to the Department of Labor's Wage and Hour Division. The Secretary has intentionally used "should" rather than "must" because there is no requirement that the DSUs conduct reviews and, there is no mechanism for enforcement for failing to report deficiencies. We also want to emphasize that the Secretary purposely used "should" rather than "may" to signal that the Department strongly encourages DSUs to report such deficiencies whenever they are found.

We disagree with commenters that the use of a contractor working for the DSU to conduct documentation reviews of section 14(c) certificate holders is inconsistent with section 511. In fact, section 511(e)(2)(B) refers to "representatives working directly for" the DSU or Department of Labor. If the authority to conduct reviews were limited to DSU or Department of labor personnel, the statute would have used such wording. Use of the words "representative working directly for" the DSU or Department of labor implies that it could be agency staff or contractors for those agencies. We agree, however, that if a contractor is working on behalf of the DSU to review documentation, the contractor may not be an entity holding a special wage certificate under section 14(c) of the FLSA. We believe that this is consistent with the intent of section 511 of the Act and, therefore, we include this language in final § 397.50(a).

Changes: We have revised final § 397.50 by adding a new paragraph (b) and redesignating the proposed language as paragraph (a). We have inserted additional language in final § 397.50(a) stating that the contractor may not be an entity holding a special wage certificate under section 14(c) of the FLSA. Final § 397.50(b) states that DSUs should report deficiencies noted during documentation reviews to the Department of Labor's Wage and Hour Division.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an "economically significant" rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This regulatory action is a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

We also have determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

We have assessed the potential costs and benefits of this regulatory action. The potential costs associated with the regulations are those resulting from statutory requirements and those we have determined as necessary for administering these programs effectively and efficiently. Elsewhere in this section under the *Paperwork Reduction Act of 1995,* we identify and explain burdens specifically associated with information collection requirements.

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, we have determined that the benefits would justify the costs.

Need for Regulatory Action

Executive Order 12866 emphasizes that "Federal agencies should promulgate only such regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling public need, such as material failures of private markets to protect or improve the health and safety of the public, the environment, or the well-being of the American people." The Department's goal in regulating is to incorporate the provisions of the Act, as amended by WIOA, into the Department's regulations governing the VR program and Supported Employment program in parts 361 and 363, respectively, as well as to clarify, update, and improve these final regulations. This final regulatory action is also necessary to establish a new part 397 to implement specific provisions of section 511 of the Act, as added by WIOA, which fall under the purview of the Secretary. Section 511 of the Act, in general, places limitations on the use of

subminimum wages for individuals with disabilities.

Response to Comments on Reporting Burden Estimates VR Services Portion of the Unified or Combined State Plan Time Estimated for Submission

Comments: One commenter stated that the time estimated for compiling the VR services portion of the Unified or Combined State plan is not accurate, given all the new requirements under the Act, as amended by WIOA, for collaboration with other entities, providing training and technical assistance to employers, providing pre-employment transition services to students with disabilities, changes to CSPD requirements, and the new requirements in section 511 of the Act.

Discussion: We appreciate the concerns expressed by the commenter regarding the estimated burden associated with developing and submitting the VR services portion of the Unified or Combined State plan. The estimated additional burden represents the hours needed by a DSU to compile and submit information as part of the VR services portion of the Unified or Combined State plan describing how the DSU is implementing new VR program requirements under WIOA, not the time the DSU engages in the actual implementation of the various activities described in the plan. Consequently, we believe the estimated burden is accurate.

Changes: None.

Reports; Standards and Indicators

The Department received numerous comments on the burden associated with new data collection and reporting requirements under this rule and the joint rule implementing the performance accountability system for the core programs under section 116 of WIOA. Most of these commenters stated that we underestimated the costs of new data collection and reporting requirements in the *Summary of Potential Costs and Benefits* section of the *Regulatory Impact Analysis* for these rules. In particular, commenters raised concerns about estimates of the amount of time needed for the collection of new data and the quarterly reporting of individual data on open and closed service records, as well as the cost of changes to State management information systems.

Data Collection

Comments: In the NPRM, the Department estimated that it would take 15 minutes per vocational rehabilitation counselor to collect the new data required under WIOA. Several commenters stated that we underestimated the burden for collecting new data. One commenter asserted that this estimate did not allow adequate time for counselors to collect the new data. Another commenter suggested that a more accurate estimate of the time required is 15 minutes per open service record and not per counselor. Several commenters indicated the burden for data collection should be based upon varying estimates for the total amount of minutes to collect this data, based on an individual service record basis, including 15, 30, 60, and 120 minutes per service record.

Discussion: Upon further review, we have determined that time per data element provides a better estimate of the additional burden associated with the collection of new data required under WIOA, including the requirements in § 361.40 of these final regulations. As a result of this change in methodology the estimated annual burden for the collection of new data elements has increased significantly from the estimate in the NPRM. Specifically, we now estimate the burden for the collection of new data elements to be reported in the Individual Service Report (RSA–911) at one minute per data element. Additional information on the calculation of this burden estimate is provided in the *Summary of Potential Costs and Benefits* section of this *Regulatory Impact Analysis* under the subheading *Reports; Standards and Indicators.*

Changes: The estimated burden associated with the collection of new data in the RSA–911 Service Report discussed under the *Summary of Potential Costs and Benefits* of this final regulation (see *Reports; Standards and Indicators*) is calculated based on an average of one minute per data element.

Data Reporting

Comments: In the NPRM, the Department estimated that it would take an additional 50 hours per year per DSU to submit the RSA–911 data file due to the need to report all open service record data quarterly rather than closed service records annually. Several commenters stated that we underestimated the burden related to the change in reporting for the RSA–911, including our estimate of the number of hours it currently takes to prepare the current annual submission of the RSA–911 report. One commenter suggested that if it currently takes an average of 50 hours to submit the RSA–911 data file annually, it should take 200 hours to produce the four required quarterly reports because the staff time required to generate and verify the data is the same as it is for an annual report. However, another commenter stated that it will take 150 hours per quarter for an annual total of 600 hours to report RSA–911 data. Still another commenter said that due to the increase in complexity of the RSA–911 reporting, it would be appropriate to recalculate the quarterly burden for submitting the RSA–911 report as 400 hours, instead of 50 hours. One commenter claimed that its staff spent approximately 1,000 staff hours preparing the current annual RSA–911 report.

Discussion: We disagree that the hours needed to submit the RSA–911 file of data open records on a quarterly basis will require at least four times as many hours as the previous annual submission of data on closed records. DSUs spend an extensive amount of time each year analyzing and revising their closed record data prior to reporting. However, under these regulations, DSUs are expected to report a quarterly "snapshot" of their open case data, a process that will be much less labor intensive for each submission. States are expected to maintain accurate and timely data in their case management systems. These data should be quickly and efficiently exported via reporting software to generate the RSA–911 report each quarter. However, we recognize that States may incur some additional burden in ensuring the quality of the new data to be reported and thus have increased the estimated quarterly RSA–911 data submission burden.

Changes: The estimated annual burden for the submission of the RSA–911 data file on a quarterly basis has been increased from an average of 100 hours (25 hours per quarter), as estimated in the NPRM, to 120 hours (30 hours per quarter) per DSU.

Changes to State DSU Information Systems

Comments: Several commenters stated that the Department underestimated the burden associated with updating and modifying agency case management systems. One commenter stated that its cost estimate for making the required changes to the agency's case management system to collect new data and report open service record data on a quarterly basis vastly exceeds the Department's estimate of $31,000. Another commenter noted that the burden estimates omit any mention of the costs to train staff and monitor data quality during implementation, and to build or change data collection instruments and processes that may be needed to collect information directly from participants post-exit. Three

commenters specifically provided cost estimates for modifying their information systems to collect and report the additional data required by WIOA of $200,000 to $500,000, $1,000,000 to $2,000,000, and $6,311,040. One commenter indicated there will be additional costs to update the agency's data collection software, which includes interfacing with a centralized data collection database at the State level, as well as several State and Federal databases. Three commenters indicated that DSUs will incur additional costs to modify, develop and maintain information technology systems to capture the required data. Another commenter cited costs for modifying systems to capture new or modified data elements and building automation to link vocational rehabilitation service records to Unemployment Insurance wage data for the reporting of employment or earnings.

Discussion: In response to the comments regarding the burden associated with the reporting of data in accordance with final § 361.40 and as a result of further Departmental review, we have increased the burden estimate for modifying and maintaining agency information systems to collect and report the required new data. We recognize that modifications to agency case management systems necessitated by the redesigned RSA–911 will vary widely because agencies themselves range in size, the sophistication of their information technology systems, and how the system is supported. We are also aware that in addition to modifying their systems, agencies will incur increased labor and contractual costs to maintain their systems. The Department has taken these factors into consideration in calculating burden estimates for this final regulation and the joint final regulations. Additional information on the calculation of these burden estimates is provided in the *Summary of Potential Costs and Benefits* section of this *Regulatory Impact Analysis* under the subheading *Reports; Standards and Indicators.*

Changes: The Department has expanded its analysis and revised its burden estimates associated with modifying and maintaining agency information systems under the *Summary of Potential Costs and Benefits* of these final regulations (see subheading *Reports; Standards and Indicators)* to reflect State variation.

Proration of Burden

Comments: None.

Discussion: DSUs will report data required by section 101(a)(10)(C) of the Act, as amended by WIOA, under these final regulations and by section 116 of WIOA under the joint final regulations through the RSA–911. To more appropriately reflect the costs attributable to these two rules, we have prorated the burden based on an analysis of all new WIOA data elements to be reported through the RSA–911. Using this methodology, the Department estimates that approximately 64 percent of the increase in burden is related to these final regulations, while 36 percent is related to the joint final regulations.

Changes: Estimates of the total increase in burden for the collection and reporting of new data are prorated to reflect the 64 percent of burden attributed to requirements under these final regulations.

Summary of Potential Costs and Benefits

The Secretary believes the changes made by WIOA implemented through these final regulations will improve the programs covered in this final regulatory action and will yield substantial benefits in terms of program management, efficiency, and effectiveness. The Secretary believes that the final regulations represent the least burdensome way to implement the amendments to the Act made by WIOA. Due to the number of regulatory changes, our analysis focuses solely on new requirements imposed by WIOA, organized in the following manner. First, we discuss the potential costs and benefits related to implementing changes to the VR program under section A that specifically relate to: competitive integrated employment and employment outcomes, pre-employment transition services and transition services, and additional VR program provisions. Second, we discuss the potential costs and benefits related to implementing changes to the Supported Employment program under section B. Finally, we discuss the costs and benefits pertaining to implementing requirements of section 511 of the Act that fall under the purview of the Department under section C.

Where possible, the Department derived estimates by comparing the costs and benefits incurred under existing program regulations against the benefits and costs associated with implementing requirements contained in these final regulations. The Department also made an effort, when feasible, to quantify and monetize the benefits and costs of the final regulations. When unable to quantify benefits and costs—for example, due to data limitations—we describe them qualitatively. In accordance with the regulatory analysis guidance contained in OMB Circular A–4 and consistent with the Department's practices in previous rulemakings, this regulatory analysis focuses on the likely consequences (benefits and costs that accrue to individuals with disabilities) of these final regulations. In this analysis, the Department also considers the transfer of benefits from one group to another that do not affect total resources available to the VR program and Supported Employment program. However, in a number of instances, the Department is unable to quantify these transfers due to limitations of the data it currently collects.

This *Regulatory Impact Analysis* presents the Department's estimate of the additional labor and other costs and benefits associated with the implementation of the provisions in these final regulations. In estimating DSU labor costs for this analysis, we use Bureau of Labor Statistics (BLS) data on mean hourly wage rate for State employees, as well as data on employer compensation costs to calculate loaded wage factors.[1] [2] Loaded wage factors account for non-wage factors such as health and retirement benefits. We then multiplied the loaded wage factor by each occupational category's wage rate to calculate an hourly compensation rate used throughout this analysis to estimate the labor costs for each provision. For DSU personnel, we used a loaded wage factor of 1.57, which represents the ratio of average total compensation to average wages.[3]

For Federal employees we use wage rates from the Office of Personnel

[1] Bureau of Labor Statistics. (2014–2015). *May 2014–2015 national industry-specific occupational employment and wage estimates: NAICS 999200—State government, excluding schools and hospitals (OES designation).* Retrieved from: *http://www.bls.gov/oes/current/naics4_999200.htm.*

[2] Bureau of Labor Statistics. (2016). *2015). 2014 Employer Costs for Employee Compensation.* Retrieved from: *http://www.bls.gov/schedule/archives/ecec_nr.htm.*

The Department calculated this value using data from Table 3. "Employer Costs per Hour Worked for Employee Compensation and Costs as a Percent of Total Compensation: State and Local Government Workers, by Major Occupational and Industry Group." Wages and salaries for all workers. Average Series ID CMU3020000000000D, CMU3020000000000P. To calculate the average wage and salary in 2014–2015 of $21,2228.41, we averaged the wage and salaries for all workers provided in March, June, September, and December releases.

[3] The State and local loaded wage factor was applied to all non-Federal employees. Discerning the number of State and local-sector employees and private-sector employees at the local level is difficult; therefore, the Departments used the State and local-sector loaded wage factor (1.5657) instead of the private-sector wage factor (1.43) for all non-Federal employees to avoid underestimating the costs.

Management's (OPM) Salary Table for the 2015 General Schedule for Federal employees.[4] For Federal employees, we used a loaded wage factor of 1.63 based on internal data from DOL.

A. Vocational Rehabilitation Program

Competitive Integrated Employment and Employment Outcomes

The Act, as amended by WIOA, emphasizes the achievement of competitive integrated employment by individuals with disabilities, including those with the most significant disabilities. Congress added a new term and accompanying definition to the Act—"competitive integrated employment," which represents, in general, a consolidation of two existing regulatory terms and their definitions—"competitive employment" and "integrated setting." In implementing the new term and its definition in these final regulations, we replaced the existing regulatory term and definition of "competitive employment" with the new term "competitive integrated employment," by mirroring the statute and incorporating relevant critical criteria from the existing regulatory definition of "integrated setting." Because this change is more technical than substantive, and given that the substance of the definition already existed in two separate definitions, we believe this particular change will have no significant impact on the VR program, thereby resulting in no added cost burden to DSUs.

In addition to implementing the new term and definition of "competitive integrated employment" in these final regulations, we also have revised the regulatory definition of "employment outcome." While the Act, as amended by WIOA, made only technical changes to the statutory definition of "employment outcome," the Secretary believes a regulatory change is necessary in light of other amendments made by WIOA throughout the Act that emphasize the achievement of competitive integrated employment under the VR program and Supported Employment program. Consequently, the Secretary defines "employment outcome" in these final regulations as an outcome in competitive integrated employment or supported employment, thereby eliminating uncompensated employment (*e.g.*, homemakers and unpaid family workers), which had been permitted to date as a matter of the Secretary's discretion, from the scope of employment outcomes for purposes of the VR program. The Secretary believes the regulatory definition of "employment outcome" in final § 361.5(c)(15) is consistent with all amendments to the Act made by WIOA, from the purpose of the Act to the addition of section 511. With the change to the definition of "employment outcome," individuals with disabilities requiring homemaker or other unpaid family worker services will need to obtain those services, more appropriately, from independent living and other programs serving individuals with disabilities, not the VR program.

It is difficult to quantify the extent to which the change to the definition of "employment outcome" in these final regulations, which has the effect of eliminating homemakers and unpaid family workers from its scope, will affect VR program costs nationally due to a number of highly variable factors. For example, it is not known whether individuals who previously had achieved homemaker outcomes or would seek such outcomes will choose to pursue competitive integrated employment through the VR program in the future, or seek services from other resources, such as those available from independent living, aging, or other programs serving individuals with disabilities. Based on data reported by DSUs through the RSA–911 for the period beginning in fiscal year (FY) 1980 and ending in FY 2015, the percentage of individuals exiting the VR program as homemakers nationally declined significantly from 15 percent of all individuals achieving an employment outcome in FY 1980 to 1.7 percent in FY 2015 (representing 3,257 of the 186,209 total employment outcomes that year). While the national percentage of homemaker outcomes compared to all employment outcomes is small, some DSUs have a greater percentage of homemaker outcomes than others, particularly those serving only individuals who are blind and visually impaired. In FY 2015, the 24 DSUs that only provided services to individuals who are blind and visually impaired reported that 885 of the 6,442 employment outcomes in that year, or about 13.7 percent, were homemaker outcomes. DSUs that serve individuals with disabilities other than those with blindness and visual impairments reported 480 homemaker outcomes in that year, or 0.5 percent of the 96,404 employment outcomes. In addition, the 32 DSUs that serve individuals with all disabilities reported 1,892 homemaker outcomes in FY 2015, representing 2.3 percent of their total 83,362 employment outcomes.

The average cost per employment outcome, including the average cost per homemaker outcome, can be calculated based on data reported by DSUs in the RSA–911 on the cost of purchased services for individuals exiting the VR program with an employment outcome. In FY 2015, the average cost per homemaker outcome for the VR program was $6,574, while the comparable average cost per employment outcome for all individuals exiting the VR program with an employment outcome that year was $5,627. It is possible that this higher average cost is because individuals obtaining a homemaker outcome generally require more intensive services or costly equipment because the nature or severity of their disabilities have prevented them from pursuing competitive integrated employment. However, there may be other factors that increase the average cost of these outcomes. For example, it may be that some of these individuals originally had a goal of competitive employment, but after receiving services for an intensive or long period of time without obtaining such an outcome, they may have chosen to change their goal. Further analysis is needed to identify the factors that contribute to the average higher cost of homemaker closures.

Given current information reported to the Department by DSUs, we are not able to predict how many individuals who would have possibly had a homemaker outcome might now choose to seek competitive integrated employment. However, for the purpose of providing a gross estimate of these costs, we assume that approximately one-fourth (814) of the number of individuals who exited the VR program with a homemaker outcome will choose a goal of competitive integrated employment and continue to seek services through the VR program. We also assume that obtaining competitive integrated employment for these individuals may be more expensive than the current cost for obtaining a homemaker outcome, but also assume it is unlikely that the average costs for providing services to these individuals would exceed more than 150 percent of their current costs (or approximately 175 percent of the average cost per employment outcome for all agencies in FY 2015). As such, we estimate that the additional cost to DSUs to provide VR services to those individuals who previously would have exited the program with homemaker outcomes will not exceed $3,287 per outcome, or about

[4] The wage rate for Federal employees is based on Step 5 of the General Schedule (**Source:** OPM, 2014–2015, "Salary Table for the 2014–2015 General Schedule"). Retrieved from: *https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2014/GS_h.pdf.*

$2,675,618 per year for all DSUs. Alternatively, assuming that about 75 percent of the number of individuals who would have otherwise attained a homemaker outcome will no longer seek services from DSUs (2,443), at an average cost of $6,574, there will be a savings of $16,060,282 to the VR program. Based on these assumptions, we estimate an overall net savings to the VR program of approximately $13,384,664.

We recognize that the change in the definition of "employment outcome" could potentially increase the demand for services from independent living and other programs, such as the Independent Living Services for Older Individuals Who Are Blind (OIB) program and other programs for aging individuals or persons with disabilities, that can provide services similar to those that such individuals would have previously sought from the VR program. We also recognize that meeting this potential increase in demand may result in a cost transfer to other Federal, State, and local programs. However, without additional information, such as the likelihood of how many consumers would access which programs, we cannot provide sound quantifiable estimates of potential cost transfers at this time.

For illustrative purposes we provide a quantitative description of the potential cost transfer to the OIB program resulting from the change in the definition of "employment outcome" in these final regulations. RSA–911 data show that 75.6 percent of individuals with a homemaker outcome in FY 2015 were individuals with blindness and visual impairments. In addition, 49 percent (1,208) of such individuals with a homemaker outcome were age 55 or older at application. We expect many of the individuals in the upper age range of this subgroup will be referred to and receive services through the OIB program. However, considering the differences in the focus of the VR and OIB programs and that a number of individuals with homemaker outcomes may have received employment-related services for a long period of time without obtaining a competitive integrated employment outcome, we expect the average cost per individual served for this population under the OIB program will be significantly lower than the average cost under the VR program. Assuming 75 percent of such individuals were to receive services from the OIB program at an average annual cost of $1,500 per individual, the annual cost transfer would be approximately $1.4 million. To assist States in meeting the increased demand for OIB services, including assistance in reducing the impact of the change in the definition of "employment outcome" in these final regulations for those States that have typically reported higher numbers of homemaker outcomes, the Administration's FY 2017 Budget Request includes a $2 million increase for the OIB program.

Pre-Employment Transition Services and Transition Services

The Act, as amended by WIOA, places heightened emphasis on the provision of pre-employment transition services and other transition services to students and youth with disabilities, as applicable. As a result, the Secretary makes numerous amendments in these final VR program regulations to implement new statutory requirements. A few of those changes are relevant to this discussion.

Final § 361.65(a)(3) requires DSUs to reserve at least 15 percent of the State's VR allotment for the provision of pre-employment transition services to students with disabilities who are eligible or potentially eligible for vocational rehabilitation services. Based on a total of $3.024 billion in VR grant funds awarded to States from FY 2015 appropriations, the total amount of funds required to be reserved for pre-employment transition services is $453.6 million. Overall, this reservation of funds will decrease the amounts available to support other authorized activities that State agencies provide through the VR program and result in a transfer of benefits from the VR eligible individuals a State agency may have historically served to students with disabilities in need of pre-employment transition services. Additionally, under final § 361.65(a)(3)(ii)(B), States may not include administrative costs associated with the provision of pre-employment transition services in the calculation or use of that reserved amount. We are unable to estimate the potential increase in DSU administrative costs that may arise from implementation of new section 113 of the Act or the required reservation of funds at this time. However, to implement these requirements, DSUs will need to dedicate resources to: (1) Ensure that the 15 percent minimum is reserved from the State's VR program allotment; (2) track the provision of pre-employment transition services to ensure the reserved funds were spent solely on allowable services specified in section 113 of the Act, as added by WIOA, and its implementing regulation in final § 361.48(a) and not on administrative costs; and (3) provide for administrative costs related to pre-employment transition services with non-reserved VR program funds.

Second, section 113 of the Act, as added by WIOA, requires DSUs to provide pre-employment transition services to students with disabilities who are eligible or potentially eligible for vocational rehabilitation services. In final § 361.48(a), "potentially eligible" means all students with disabilities who satisfy the definition in final § 361.5(c)(51), regardless of whether they have applied, and been determined eligible, for the VR program. The Secretary believes this interpretation is consistent with congressional intent and the stated desires of some DSUs and other stakeholders expressed through comments.

Although pre-employment transition services are a new category of services identified in the Act, many of these services historically were provided under the broader category of transition services. Therefore, the provision of these services is not new to DSUs. However, until the enactment of WIOA, all such services were provided only to those students with disabilities who had been determined eligible for the VR program. Consequently, providing pre-employment transition services to all students with disabilities under final § 361.48(a) will likely increase staff time and resources spent on the provision of these services.

We are unable to provide a quantitative estimate of the impact of this requirement on DSUs at this time because we do not currently have data on the number of students with disabilities that will be referred for such services or adequate data on the cost of providing pre-employment transition services. In the future, information provided by the State in the VR services portion of the Unified or Combined State plan and RSA data collections, such as the revised RSA–911, should assist the Department in assessing the impact of the pre-employment transition service requirements.

In general, the extent of the impact of the reservation on a particular State will likely depend on the extent to which it has been providing transition services that are now specified under section 113 as pre-employment transition services to students with disabilities. DSUs that have provided extensive transition services to students with disabilities, including services that would meet the definition of pre-employment transition services, are likely to see less transfer of benefits among individuals served. For State agencies that have not provided these services or have only provided these services to a small extent, there may be more extensive transfers of

services and benefits of the VR program among individuals (*i.e.*, to students with disabilities and away from other individuals who otherwise would have been served). We are extremely limited in our ability to estimate the annual amount that State agencies have spent in providing similar services to eligible individuals prior to the implementation of section 113 of the Act that would have met the definition of a student with a disability because we do not collect the necessary annual data under the currently approved RSA–911 report.

Under the current RSA–911, DSUs report individual level data in the year in which the service record is closed and the information reported on services and service costs are cumulative over the duration of the service record. In addition, while DSUs may directly provide many of the pre-employment transition services with VR staff, only the cost of services purchased by the agency on behalf of an individual are reported under the current RSA–911. Further, the pre-employment transition services that States are required to provide to students with disabilities are not specifically reported in the service categories of the currently approved RSA–911.

However, for illustrative purposes, FY 2015 data on closed service records reported in the RSA–911 (the most recent year for which full data are available) for youth who were between the ages of 16 and 21 at the time of application do provide some limited insight into the amount spent on purchased services for the service categories that DSUs would have most likely reported the receipt of services similar to pre-employment transition services. Although, the reservation requirement went into effect in FY 2015, we believe that it is still an appropriate base year since youth whose service records were closed in that year were not likely to have been affected by the new requirement.

DSUs reported service record closures in the FY 2015 RSA–911 for 98,454 youth who were between the ages of 16 and 21 at application and total purchase service costs of about $526.5 million (including about $11.6 million in title VI Supported Employment funds) for such youth. Because reporting is limited to closed cases, we are unable to determine the amount of the purchased services actually expended in FY 2015. However, at least 85 percent of these purchases were for categories of service that would not include pre-employment transition services as defined in final § 361.5(c)(42) (*e.g.*, postsecondary education, assessment, diagnosis and treatment, and on-the-job supports). Similarly, for the subset of youth whose service records were closed in FY 2015 that were in secondary education and had an IEP or were receiving services under section 504 at the time of application to the VR program (53,734 students), about 82 percent of the $245 million in reported purchased services for this group were for categories of service that would not meet the statutory definition of pre-employment transition services.

While it is important to note that RSA data show significant variation in the number and amount of funds spent for this age group among State agencies, available information indicates that many State agencies will experience challenges in meeting the new reservation requirement and will need to develop and implement aggressive strategies in order to expend these funds in the initial years of implementation.

Further, we recognize that the FY 2015 data include only those students with disabilities who had applied and been determined eligible for VR services and that under these final regulations DSUs will provide pre-employment transition services to students with disabilities who may not have applied or been determined eligible for the VR program. These final regulations also clarify that, in addition to secondary education, the term "students with disabilities" includes students in postsecondary or other recognized education programs that meet the age and other requirements contained in final § 361.5(c)(51).

Therefore, we anticipate that many DSUs will need to serve a larger number of students with disabilities in order to expend the reserved funds than they had prior to the passage of WIOA, thereby increasing the potential total value of the benefits transferred as a result of final § 361.48(a).

Fiscal reports submitted by DSUs appear to confirm the early challenges DSUs are having in spending these funds. FY 2015 fourth quarter Federal Financial (SF–425) reports document that in total, DSUs expended 33.6 percent of the $453.6 million that were required to be reserved for pre-employment transition services based on final FY 2015 State VR grant awards. Provided that States matched their Federal VR grant funds, the remaining amount of the required reservation would have been carried over for obligation and liquidation in FY 2016.

Despite these challenges, we are optimistic that as States implement the strategies described in the VR services portion of their Unified or Combined State plans to address the needs of students with disabilities for pre-employment transition services consistent with § 361.29 (a)(4) (*e.g.*, working with employers to provide opportunities for work-based learning experiences (including internships, short-term employment, apprenticeships, and fellowships), as required under final § 361.32(b), and coordinating with schools to ensure the provision of pre-employment transition services for students with disabilities as required under final § 361.48(a)(4)), they will adopt policies and practices that enable them to effectively spend the funds reserved for this purpose to improve employment outcomes for students with disabilities.

Third, section 103(b)(7) of the Act, as added by WIOA, and in its implementing regulation in final § 361.49(a)(7) permit DSUs to provide transition services to groups of youth and students with disabilities regardless of whether they have applied, and been determined eligible, for the VR program. Such services to groups were not permitted prior to the passage of WIOA. The regulation benefits DSUs in two significant ways by: (1) Giving them the ability to serve groups of youth and students with disabilities simultaneously, who may need only basic generalized services (*i.e.*, group tours of universities and vocational training programs, employer or business site visits to learn about career opportunities, career fairs coordinated with workforce development and employers to facilitate mock interviews and resume writing, and other general services), thereby reducing the amount of funds expended per individual; and (2) reducing administrative burden on the DSUs, as well as the burden on students or youth with disabilities and their families, by not having to engage in processes for determining eligibility, conducting assessments, and developing individualized plans for employment. However, we are unable to quantify the impact of this regulatory provision due to the variability in the number of individuals who may seek out these services nationally, the degree to which individuals will require these services within each State, and the services that will be provided in each State.

Additional Vocational Rehabilitation Program Provisions VR Services Portion of the Unified or Combined State Plan

Section 101(a)(1) of the Act, as amended by WIOA, requires the VR State plan, which has been a stand-alone State plan, to be submitted as a VR services portion of a Unified or Combined State plan for all six core programs of the workforce development system, including the VR program.

Requirements related to the submission of Unified or Combined State plans take effect in July 2016. Discussion of the burden associated with new Unified or Combined State plan requirements affecting all core programs, including the VR program, will be addressed in the *Regulatory Impact Analysis* for the joint final regulations published elsewhere in this issue of the **Federal Register**. This *Regulatory Impact Analysis* focuses solely on the impact of new requirements affecting the VR services portion of the Unified or Combined State plan and not any plan requirement that affects all core programs.

In preparing for the transition to the submission of Unified or Combined State plans every four years, with modifications submitted every two years of the four-year plan, the final regulations no longer require DSUs to submit particular reports and updates annually, but, rather, at such time and in such manner as determined by the Secretary as required in final § 361.29. This flexibility allows for VR program-specific reporting to be done in a manner consistent with those for the Unified or Combined State plan under section 102 or 103 of WIOA, thus avoiding additional burden or costs to DSUs through the submission of separate reports annually or whenever updates are made.

Section 101(a) of the Act, as amended by WIOA, requires DSUs to include additional descriptive information in the VR services portion of the Unified or Combined State plan. Therefore, final § 361.29 requires DSUs to describe in the VR services portion of the Unified or Combined State plan: (1) The results of the comprehensive statewide needs assessment with respect to the needs of students and youth with disabilities for pre-employment transition services and other transition services, as appropriate; (2) goals and priorities to address these needs; and (3) strategies for the achievement of these goals. Final § 361.24(c) also requires that the VR services portion of the Unified or Combined State plan include a description of how the DSU will work with employers to identify competitive integrated employment and career exploration opportunities, in order to facilitate the provision of VR services, including pre-employment transition services and transition services for youth and students with disabilities, as applicable. Final § 361.24(g) further requires that the VR services portion of the Unified or Combined State plan contain a description of collaboration with the State agency responsible for administering the State Medicaid plan under title XIX of the Social Security Act, the State agency responsible for providing services for individuals with developmental disabilities, and the State agency responsible for providing mental health services, to develop opportunities for community-based employment in integrated settings, to the greatest extent practicable. As a result, DSUs will be required to expend additional effort in the development of these descriptions in the VR services portion of the Unified or Combined State plan beyond the 25 hours previously estimated for the development and submission of the entire stand-alone VR State plan, now the VR services portion of the Unified or Combined State plan. We estimate that DSUs will require an additional five hours for the development of these descriptions, for a total of 30 hours (25 hours previous burden plus 5 hours new additional burden) per DSU, or 2,400 hours for all 80 DSUs. The average hourly compensation rate of $54.21—based on data obtained from the Bureau of Labor Statistics for State social and community service managers (*e.g.*, field services manager or other program manager responsible for development of the VR services portion of the Unified or Combined State plan) and the loaded wage factor—is more consistent with State rates of pay than the $22.00 per hour wage rate used to calculate costs from the most recent State plan information collection extension. At an hourly compensation rate of $54.21, each DSU would expend $271 in additional costs for the five hours needed to develop the new descriptions required for the VR services portion of the Unified or Combined State plan, resulting in a total of $21,684 and 400 additional hours for all 80 DSUs. Despite the additional costs incurred by all 80 DSUs in the development and submission of the State plan, we believe that the additional burden is more accurate and outweighed by the benefit to the public through a more comprehensive understanding of the activities DSUs engage in to assist individuals with disabilities to obtain the skills necessary to achieve competitive integrated employment in job-driven careers.

Order of Selection

Final § 361.36(a)(3)(v) implements section 101(a)(5) of the Act, as amended by WIOA, by permitting DSUs, at their discretion, to serve eligible individuals who require specific services or equipment to maintain employment, regardless of whether they are receiving VR services under an order of selection. DSUs implementing an order of selection are not required to use this authority; rather, they may choose to do so based on agency policy, or the availability of financial and staff resources. Under final § 361.36(a)(3)(v), DSUs implementing an order of selection must state in the VR services portion of the Unified or Combined State plan that they have elected to exercise this discretion, thereby signaling a decision to serve eligible individuals who otherwise might have been placed on a waiting list under the State's order of selection, and who are at risk of losing their employment. This change will increase flexibility for a State managing its resources. While a State that elects to implement this authority could prevent an individual from losing employment by avoiding a delay in services, DSUs doing so would potentially need to reallocate resources to cover expenditures for services or equipment for individuals who meet the qualifications of this provision and fall outside an open priority category of the DSU's order of selection.

For FY 2015, the VR State plans of 35 of the 80 DSUs (44 percent) documented that the agency had established an order of selection, one agency more than in FY 2014. This total includes two of the 24 DSUs serving only individuals who are blind and visually impaired and 33 of the 56 other DSUs. Based on data reported through the RSA–911 in FY 2015, nationwide, 20.4 percent of the individuals whose service records were closed and who received services were employed at application, with an average cost of purchased services of $4,617. In addition, according to data reported through the VR program Cumulative Caseload (RSA–113) report, 30,311 individuals nationwide were on a waiting list for VR services at the beginning of FY 2015 due to the implementation of an order of selection. Assuming that 20.4 percent of the 30,311 individuals on the waiting list could potentially benefit from the provision of services and equipment to maintain employment (which assumes individuals on a waiting list are just as likely to be employed at the time of application as individuals whose records were closed and received services), a possible 6,183 individuals could benefit from this regulatory change, for a total cost of $28,546,911 across all 80 DSUs. This figure represents the potential reallocation of resources to cover the cost of services for individuals who, prior to enactment of WIOA, may not have received them, and away from eligible individuals who would have received services based on a DSU's order of selection policy.

However, the implementation of an order of selection by a DSU may differ from year to year, as well as within a given fiscal year. In fact, not all DSUs that indicate they have established order of selections as part of their State plans actually implement those orders or report that they had individuals on waiting lists during the year. For example, 63 percent of such agencies (22 of 35) reported that they had individuals on a waiting list in FY 2015. In addition, we are unable to predict which DSUs that have implemented an order of selection will choose this option. The degree to which individuals will be referred for this service could vary widely among DSUs, as could the level of services or equipment that an individual may need to maintain employment.

Reports; Standards and Indicators

Final § 361.40 implements changes to reporting requirements in section 116(b) in title I of WIOA and section 101(a)(10) of the Act, as amended by WIOA. Final § 361.40 does not list the actual data to be reported, rather, it requires the collection and reporting of the information specified in sections 13, 14, and 101(a)(10) of the Act. New requirements under section 101(a)(10) include the reporting of data on the number of: Individuals with open service records and the types of services these individuals are receiving (including supported employment services); students with disabilities receiving pre-employment transition services; and individuals referred to the State VR program by one-stop operators and individuals referred to such one-stop operators by DSUs. The RSA–911 is revised as described in the information collection published for a 30-day public comment period at FR Document 2016–09713 consistent with the requirements in final § 361.40.

Final § 361.40 also requires States to report the data necessary to assess DSU performance on the standards and indicators subject to the performance accountability provisions described in section 116 of WIOA. The common performance accountability measures apply to all core programs of the workforce development system, including the VR program, and are implemented in part 677 of the joint regulations and set forth in subpart E of part 361. The impact and analysis of the joint regulations governing the common performance accountability system are addressed in the regulatory action for the joint regulations published elsewhere in this issue of the **Federal Register**.

In response to the comments regarding the burden associated with the collection of data under final § 361.40, described in the Comments section of this *Regulatory Impact Analysis,* and as a result of further Departmental review, we have adjusted the burden estimates as described here.

We have increased the estimated burden for the collection of the new data required by section 101(a)(10), including data required to assess State agency performance under section 106 of the Act by recalculating the estimates using the time DSUs will spend collecting these additional data elements. We estimate that on average it will take DSU staff one minute per data element to collect the new required data.

For the first year of data collection, DSUs will incur greater data collection burden than in subsequent years. As required by statute, the WIOA performance accountability system goes into effect July 1, 2016. All participants who are still receiving services (have not exited) by the start of program year (PY) 2016 become WIOA participants and will be counted and tracked in accordance with the WIOA performance requirements set forth in section 116 of WIOA. The final RSA–911 Information Collection Request (ICR) will include new and/or revised data elements and definitions as necessary to provide alignment with the WIOA Participant Individual Record Layout (PIRL) and comply with new requirements under the Act as amended by WIOA.

In order to meet the requirements in final § 361.40, DSUs will need to collect additional information for new applicants and VR consumers as well as current eligible individuals who, as of the effective date of section 116 of title I (July 1, 2016), met the definition of "participant," as that term is defined under the joint final regulations implementing the jointly administered performance accountability system requirements of section 116 of title I of WIOA published elsewhere in this issue of the **Federal Register**.

DSUs are at varying stages of revising their case management systems consistent with the new joint data specifications described in the PIRL and the new elements required under title I of the Act as proposed in the ICR, published in the **Federal Register** on April 27, 2016 (81 FR 24888).

Based on data reported by DSUs through the Quarterly Caseload Report (RSA 113) for FYs 2014 and 2015, we estimate that in the first year of data collection DSUs will in total incur a minimum of about 800,000 hours of additional burden to collect new data for VR consumers (an average of 10,000 to 11,250 per DSU), including participants and reportable individuals in the VR system at the beginning of FY 2016, individuals who will be determined eligible during the first year of data collection, students with disabilities who are receiving pre-employment transition services and data needed for subminimum wage determinations under section 511 of the Act.

Based on data reported through the RSA–113 for FY 2015 and the proportion of new VR-specific data elements to all new data elements required by WIOA (64 percent), we estimate that DSUs will spend a total of approximately 512,000 hours collecting the new VR-specific data elements, or an average of 6,400 hours per DSU in the first year of data collection. We further estimate that vocational rehabilitation counselors will complete 50 percent of data collection activities for new VR-specific data elements, and that vocational rehabilitation technicians or similar personnel will complete the remaining 50 percent.

Using an hourly compensation rate of $36.66 for vocational rehabilitation counselors (wage rate based on State-employed rehabilitation counselors), the estimated cost for 50 percent of the data collection burden (256,000 hours) is $9,384,960. Using an hourly compensation rate of $28.29 for vocational rehabilitation assistants or equivalent positions (wage rate based on State-employed social and human service assistants [5] plus the loaded wage factor), the estimated cost for the remaining 50 percent of the data collection burden is $7,242,240. Consequently, we estimate that the total additional cost for all 80 DSUs to collect the new VR program-specific data elements is $16,627,200, or an average of $207,840 per DSU for the initial year of data collection.

For the second and subsequent years of data collection under these final regulations, we estimate that in total DSUs will incur about 200,000 hours of additional burden per year under WIOA. For new VR-specific data elements, we estimate 128,000 hours, or an average of 1,600 hours of additional annual burden per DSU, in the second and subsequent years of data collection. Using the same strategy to calculate the costs for the first year of data collection, we estimate that the total additional

[5] Bureau of Labor Statistics. (2015) *May 2015 national industry-specific occupational employment and wage estimates: NAICS 999200—State government, excluding schools and hospitals (OES designation).* Retrieved from: *http://www.bls.gov/oes/current/oes211093.htm.*

annual cost for all 80 DSUs to collect the new VR program-specific data elements is $4,156,800, or an average of $51,960 per DSU for the second and subsequent years of data collection. The remaining portion of the burden for new data collection attributed to the performance accountability requirements in section 116 of title I of WIOA ($10,558,080 or $131,976 per DSU) is included in the *Regulatory Impact Analysis* for the final joint regulations, published elsewhere in this issue of the **Federal Register**.

As described in the discussion of comments on this *Regulatory Impact Analysis,* we estimate an average of 70 additional burden hours per year, or a total of 120 hours per year (30 hours per quarter), for each DSU to submit the RSA–911 data file of open case service records on a quarterly basis. As a result, the estimated total number of hours needed for the submission of the data file for 80 agencies will increase from 4,000 to 9,600 hours, resulting in an increase of 5,600 hours. Using an average hourly compensation rate of $57.02 (wages based on State-employed database administrators), the estimated additional cost for all 80 DSUs to submit the RSA–911 data file of open service records on a quarterly basis is $319,312. The estimated additional cost per DSU is $3,991.

The total additional VR-specific burden hours for both collection and submission of required data will be 6,470 hours per DSU (6,400 data collection hours and 70 data submission hours), or a total of 517,600 hours for all 80 DSUs. The estimated total additional VR program-specific cost for both collection and submission per DSU is $211,831, with a total additional burden cost of $16,946,512 for all 80 DSUs.

DSUs will also incur additional costs related to programming and modifications of their case management systems to collect and report new VR program-specific data required under section 101(a)(10) of the Act. Additional burden related to the programming of case management systems as a result of the redesigned RSA–911 will vary widely because DSUs range in size and the sophistication of their information technology systems.

Upon further Departmental review since the publication of the NPRM, including the review of comments summarized in the Comments section of this *Regulatory Impact Analysis,* we have adjusted the estimates associated with the modification of DSU data systems. The adjusted estimates are based on: The apportionment of the data elements in the RSA–911 necessitated by the requirements of section 116 of WIOA and section 101(a)(10) of the Act, as amended by WIOA; adjustments to the wage rates for DSU personnel; and updated information regarding the variation in the level of effort required by DSUs to modify and maintain their data systems.

Although we estimate that each DSU will require computer systems analysts for this one-time task, the related burden for changing a State's case management system has been broken down to reflect the variation among the 80 DSUs with respect to their size and updated information regarding the number of DSUs that modify and maintain their case management and reporting systems and those that contract for these services. Roughly 30 of the 80 DSUs use case management and reporting systems purchased from software providers who are responsible for maintaining and updating the software. We estimate these 30 DSUs will require two computer systems analysts to spend 150 hours integrating the software changes into their own State systems, resulting in 300 hours per DSU, or a total of 9,000 hours in additional burden for all 30 DSUs. Of the remaining 50 DSUs that do not have agreements with a software provider to maintain and update software, five of these agencies are categorized as large agencies (more than 5,000 employment outcomes) and 45 of these agencies are categorized as small to medium-sized agencies (less than 1,000 employment outcomes, and between 1,000 and 5,000 employment outcomes, respectively). We estimate the five large agencies will require five computer systems analysts to spend 1,000 hours each to maintain and update agency software (for a total of 5,000 hours per agency), while the 45 small to medium-sized agencies will require two staff members to spend 1,000 hours each to maintain and update the software (for a total of 2,000 hours per agency) in order to make the necessary software changes. As a result, we estimate that the large agencies will need a total of 25,000 total hours and the small to medium-size agencies will need 90,000 hours, for a total of 115,000 hours for the 50 agencies to maintain and update computer software. Combining these estimates with the 9,000 hours for the 30 agencies that we believe will only have to integrate the software changes their providers are contracted to make, the total burden estimate for all 80 agencies is 124,000 hours. The VR program-specific burden (prorated at 64 percent of total burden) is estimated at 79,360 hours. We estimate that the cost burden for all 80 agencies to maintain and update their computer software based on a total of 79,360 VR-specific hours and an hourly compensation rate of $56.17 for State-employed computer systems analysts, will be $4,457,651. The balance of the burden in modifying agency data systems associated with the common data reporting requirements under title I of WIOA (36 percent) is included in the *Regulatory Impact Analysis* of the joint final regulations published elsewhere in this issue of the **Federal Register**.

In addition to maintaining and updating software, 48 agencies that utilize vendor supplied case management software will incur additional software licensing or user fees. Our discussions with case management software vendors informed our revised estimate of the average cost of $700.00 per user annually for software licensing or user fees, which will include a 20 percent increase due to new WIOA requirements, resulting in $140 of additional costs per user. Information obtained in discussions with case management software vendors also resulted in an estimate of approximately 6,600 users in States served by vendor systems. We estimate an additional total software licensing or user costs related to new WIOA requirements of $924,000. After adjusting this cost to reflect only the VR program-specific burden (64 percent), we estimate that the 48 States will incur an additional $591,360 in licensing or user fees, or $12,320 per agency.

Finally, the 80 DSUs will be required to train vocational rehabilitation counselors regarding the new data reporting requirements. To estimate this labor cost, we assume an average of 62 vocational rehabilitation counselors per agency and 8 hours of training per counselor. Using an hourly compensation rate of $36.66 per vocational rehabilitation counselor, the estimated labor costs for vocational rehabilitation counselors to receive training on collecting the new data is $1,454,669 for all 80 agencies, or $18,183 per agency. We estimate that development of the training materials and methodologies will require 1 staff trainer 8 hours per agency. Using the social and community service manager hourly compensation rate ($54.21) as a proxy for the staff trainer, the total cost for development of the training is $34,694, or $434 per agency. The total cost for development of the training and vocational rehabilitation counselor participation in the training is $1,489,363. Since we are estimating that approximately 64 percent of the burden related to performance accountability is VR-specific burden, the estimated cost

will be $953,192 for all 80 agencies, or $11,915 per agency.

Including all of the associated costs with the maintenance and updating of software ($4,457,651), licensing fees ($591,360), and agency staff training ($953,192), the estimated aggregate VR program-specific burden for all 80 agencies is $6,002,203, which does not include the additional initial year combined RSA–911 data collection and submission burden of $16,946,512 because that burden estimate was described separately above.

At the Federal level, RSA will develop its performance accountability and data analysis capacity using new staff positions. We estimate that it will take two full-time data management specialist positions, one at a GS–13 Step 5 and one at a GS–14 Step 5, to complete the necessary database programming requirements. With an hourly compensation rate of $64.71 for the GS–13 position and $76.48 for the GS–14 position, the total cost for software development is $293,675. Since we are estimating that approximately 64 percent of the burden related to performance accountability is VR-specific burden, the estimated cost will be $187,952.

We believe that these data collection and reporting costs are outweighed by the benefits to the VR program because the new information to be reported and having access to more timely information on individuals currently participating in the VR program will better enable the Department and its Federal partners to assess the performance of the program and monitor the implementation of WIOA, particularly as it relates to key policy changes, such as the provision of pre-employment transition services and the integration of the VR program in the workforce development system.

Extended Evaluation

Final §§ 361.41 and 361.42 remove requirements related to extended evaluation because the Act, as amended by WIOA, no longer includes references to such evaluations. Instead, a DSU must use trial work experiences when conducting an exploration of an individual with a significant disability's abilities, capabilities, and capacity to perform in work situations. These revisions streamline the eligibility determination process for all applicants whose ability to benefit from VR services is in question.

VR program data collected by the Department do not distinguish between individuals who had a trial work experience and those that had an extended evaluation. However, RSA–911 data show that 4,924 individuals exited from the VR program during or after trial work experiences or extended evaluations in FY 2015. DSUs expended a total of $4,126,785 on the provision of services to these individuals for an average cost of $838 per individual. Because we are unable to estimate how many of the 4,924 individuals were in extended evaluation, as opposed to trial work experiences, we cannot quantify either the current costs or the potential change in costs for this specific group of individuals. Based on the monitoring of DSUs, we note that the use of these services varies among DSUs, mainly due to variations in opportunities for individuals to participate in trial work experiences, and the extent to which DSUs historically utilized extended evaluation. We believe that the benefits of streamlining the eligibility determination process for applicants whose ability to benefit from VR services is in question and ensuring that ineligibility determinations are based on a full assessment of the capacity of an applicant to perform in realistic work settings outweighs the costs of removing the limited exception to trial work experiences.

Time Frame for Completing the Individualized Plan for Employment

Final § 361.45 implements section 102(b) of the Act, as amended by WIOA, by requiring DSUs to develop individualized plans for employment as soon as possible, but not later than 90 days after the date of determination of eligibility, unless the DSU and the eligible individual agree to the extension of that deadline to a specific date by which the individualized plan for employment must be completed. Due to variations in current DSU timelines for the development of the individualized plan for employment, the establishment of a 90-day timeframe by WIOA will ensure consistency across the VR program nationally and the timely delivery of services, thereby improving DSU performance and the achievement of successful employment outcomes by individuals with disabilities.

We are unable to quantify potential additional costs to DSUs to develop individualized plans for employment within 90 days of an eligibility determination due to the variance in timelines currently in place. It is likely that DSUs that have had prolonged timelines beyond 90 days prior to the enactment of WIOA could experience a change in annual expenditure patterns. For example, if larger numbers of individuals, with approved individualized plans for employment, begin to receive VR services at an earlier time than had historically been the case, an agency will expend its funds at a faster rate. However, while the overall cost per individual served is not likely to be affected by this provision, the average time before some DSUs incur expenses related to the development of, and provision of VR services under, individualized plans for employment could be shortened, resulting in a shift in the outlay of program funds for services sooner than in previous years. Therefore, in any given fiscal year, the outlay of program funds for these DSUs could be higher. While costs over the life of the service record should not be affected, some DSUs could find it necessary to implement an order of selection due to the transfer of costs that would have been incurred in a subsequent fiscal year to the current fiscal year. As always, DSUs are encouraged to conduct planning that incorporates programmatic and fiscal elements to make projections and assessments of VR program resources and the number of individuals served, using management tools including order of selection, as appropriate.

The Establishment, Development, or Improvement of Assistive Technology Demonstration, Loan, Reutilization, or Financing Programs

Section 103(b)(8) of the Act, as added by WIOA, permits a DSU to establish, develop, or improve assistive technology demonstration, loan, reutilization, or financing programs. Thus, final § 361.49(a)(8) permits DSUs to establish, develop, or improve these assistive technology programs in coordination with activities authorized under the Assistive Technology Act of 1998, to promote access to assistive technology for individuals with disabilities and employers. This regulation reflects the integral role assistive technology plays in the vocational rehabilitation and employment of individuals with disabilities. We are not able to quantify additional costs associated with this provision due to the variable nature of the specific assistive technology needs of individuals with disabilities, and the availability of assistive technology demonstration, loan, reutilization, or financing programs within each State.

Maintenance of Effort Requirements

Section 111(a) of the Act, as amended by WIOA, and final § 361.62(a) require the Secretary to reduce a State's annual VR program award to satisfy a maintenance of effort (MOE) deficit in any prior year. Before the enactment of WIOA, the Secretary could only reduce

the subsequent year's grant to satisfy an MOE deficit from the preceding fiscal year. If an MOE deficit was discovered after it was too late to reduce the succeeding year's grant, the Secretary was required to seek recovery through an audit disallowance, whereby the State repaid the deficit amount with non-Federal funds.

Because the Secretary is now able to reduce any subsequent year's VR program grant for any prior year's MOE deficit, DSUs benefit as they are no longer required to repay MOE shortfalls with non-Federal funds, thereby increasing the availability of non-Federal funds, in those instances, for obligation as match under the VR program. Since FY 2010, two States were required to pay a total of $791,342 in non-Federal funds for MOE penalties because their MOE shortfall was not known prior to the awarding of Federal funds in the year after the MOE deficit. Consequently, these funds were unavailable to be used as matching funds for the VR program in the year they were paid. On the other hand, the new authority could have resulted in the deduction of the $791,342 MOE penalties from a Federal award that was not limited to the year immediately following the year with the MOE deficit.

B. The Supported Employment Program

Services to Youth With the Most Significant Disabilities in Supported Employment

Section 603(d) of the Act, as amended by WIOA, and final § 363.22 require DSUs to reserve 50 percent of their State Supported Employment Services Program grant allotment to provide supported employment services, including extended services, to youth with the most significant disabilities. This new requirement is consistent with the heightened emphasis throughout the Act on the provision of services to youth with disabilities, especially those with the most significant disabilities, and is consistent with the final VR program regulations in part 361, since the Supported Employment program is supplemental to that program.

In addition, section 606(b) of the Act, as amended by WIOA, and final § 363.23 require States to provide a 10 percent match for the 50 percent of the Supported Employment allotment reserved for the provision of supported employment services, including extended services, to youth with the most significant disabilities. Prior to the enactment of WIOA, there was no match requirement under the Supported Employment program.

Finally, section 604 of the Act, as amended by WIOA, and final § 363.4(b) permit DSUs to provide extended services, for a period not to exceed four years, to youth with the most significant disabilities. DSUs may use the reserved funds to provide these extended services, as well as supported employment services, to youth with the most significant disabilities. Prior to the enactment of WIOA, DSUs were not permitted to provide extended services to any individual, including youth with the most significant disabilities.

After setting aside funds to assist in carrying out section 21 of the Act, the FY 2015 Federal appropriation provided $27,272,520 for distribution to DSUs under the Supported Employment State Grants program. Assuming States were able to provide the required 10 percent non-Federal match for the available Supported Employment formula grant funds in FY 2015, the 50 percent reservation would result in the dedication of $13,636,260 for supported employment services, including extended services, to youth with the most significant disabilities. Conversely, the reserved funds would not be available for the provision of supported employment services to individuals who are not youth with the most significant disabilities, and may be viewed as a transfer of title VI funds from these individuals to youth with the most significant disabilities. The 10 percent match requirement would generate $1,515,140 in non-Federal funds for supported employment services, including extended services, for youth with the most significant disabilities. The match requirement represents additional non-Federal funds that States must expend in order to obligate and expend the Federal funds reserved for youth with the most significant disabilities. If the appropriation increases in future years, the match requirement would result in additional supported employment resources for youth with the most significant disabilities. However, States will have to identify additional non-Federal resources in order to match the Federal funds reserved for this purpose.

Finally, as stated above, DSUs may provide extended services to youth with the most significant disabilities, whereas prior to the enactment of WIOA such services were not permitted for individuals of any age. Under the Act, as amended by WIOA, DSUs still may not provide extended services to individuals with the most significant disabilities who are not also youth with the most significant disabilities. Since extended services have not previously been an authorized activity with the use of VR program or supported employment program funds, this change could have a significant impact on States by creating a funding source for these services that previously was not available. However, because this is not a service that was previously permitted under either the VR program or the Supported Employment program, the Department has no data on which to quantify the impact this new requirement will have on States.

Extension of Time for the Provision of Supported Employment Services

Section 7(39) of the Act, as amended by WIOA, and final § 361.5(c)(54) amend the definition of "supported employment" to permit the provision of supported employment services for a period up to 24 months, rather than the previous 18 months. Although contained in part 361, the definition of supported employment services applies to both the VR program and Supported Employment program. DSUs have the authority to exceed this time period under special circumstances if jointly agreed to by the individual and the vocational rehabilitation counselor.

The change will benefit individuals with the most significant disabilities who require ongoing support services for a longer period of time to achieve stability in the employment setting, prior to full transition to extended services. This provision could result in DSUs using more resources under both the VR program and Supported Employment program to provide ongoing services.

DSUs typically have not provided ongoing support services for a full 18 months for a majority of their consumers. In FY 2015, 13,652 individuals achieved supported employment outcomes within 21 months following the development of the individualized plans for employment, which period we assume could include the provision of supported employment services for a full 18 months and a minimum period of 90 days prior to program closure. Of these individuals, 9,592, or approximately 70.2 percent, achieved supported employment outcomes within 12 months. While we anticipate that most individuals may not need supported employment services for the full 24 months, in FY 2015, 1,783 individuals achieved supported employment outcomes within a period ranging from 21 months to 27 months of the development of the individualized plan for employment. DSUs in total expended $13,237,902 on purchased services for these individuals, or an average of $7,425 per individual.

Assuming this period includes the provision of supported employment services for a full 24 months and a minimum period of 90 days prior to program closure, we estimate that an approximate number of individuals would benefit from the provision of supported employment services for an additional six months and that DSUs would incur similar costs for the provision of these services as a result of the regulatory change.

Limitations on Supported Employment Administrative Costs

Section 603(c) of the Act, as amended by WIOA, and final § 363.51(b) reduce the maximum amount of a State's grant allotment under the Supported Employment program that can be used for administrative costs from 5 percent of the State's grant allotment to 2.5 percent. As a result, a larger portion of Federal Supported Employment funds must be spent on the provision of supported employment services, including extended services to youth with the most significant disabilities, rather than administrative costs. However, any administrative costs incurred beyond the 2.5 percent limit on the use of Supported Employment funds may be paid for with VR program funds.

Based upon the $27,272,520 allotted to States under the Supported Employment program in FY 2015, the total allowable amount of these Federal funds that could be used to support administrative costs would be reduced by half, from $1,363,626 to $681,813. Thus, for those DSUs that have typically used more than 2.5 percent of their Supported Employment program allotment to cover administrative costs, the change would provide a small increase in the amount of funds available for the provision of services to individuals with the most significant disabilities pursuing a supported employment outcome. DSUs may shift these excess costs to the VR program since it does not have a cap on the amount of funds that can be spent on administrative costs under that program. We cannot estimate the impact of this shift on the VR program because DSUs do not report data showing the amount of VR program funds spent on administrative costs for the Supported Employment program.

C. Limitations on the Use of Subminimum Wage

Section 511 of the Act, as added by WIOA, imposes limitations on the payment of subminimum wages by employers who hold special wage certificates under the Fair Labor Standards Act. These statutory requirements take effect on July 22, 2016.

Pursuant to section 511 of the Act, as added by WIOA, final § 397.10 requires the DSU, in consultation with the State educational agency, to develop a process, or utilize an existing process, that ensures individuals with disabilities, including youth with disabilities, receive documentation demonstrating completion of the various activities required by section 511. Final §§ 397.20 and 397.30 establish the documentation that the DSUs and local educational agencies, as appropriate, must provide to demonstrate an individual's completion of the various activities required by section 511(a)(2) of the Act. These include completing pre-employment transition services under final § 361.48(a) and the determination under an application for VR services under final §§ 361.42 and 361.43. Final § 397.40 establishes the documentation that the DSUs must provide to individuals with disabilities upon the completion of certain information and career counseling-related services, as required by section 511(c) of the Act. We are not able to quantify the costs to the DSUs related to the provision of this required documentation because the number of youth and other individuals who potentially could receive services under part 397 will vary widely from State to State. In addition, there exists no reliable national data on which to base a calculation of costs. However, DSUs generate documentation throughout the vocational rehabilitation process that may meet the requirements of final §§ 397.20 and 397.30, including written notification of a consumer's eligibility or ineligibility, copies of individualized plans for employment and subsequent amendments, and written notification when the consumer's record is closed. As a result, the use of this documentation to meet section 511 requirements should not result in significant additional burden to DSUs.

Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 does not require the public to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control numbers assigned to collections of information in these final regulations are: 1205–0522 (Required Elements for Submission of the Unified or Combined State Plan and Plan Modifications under the Workforce Innovation and Opportunity Act), 1820–0013 (Cumulative Case Report), 1820–0017 (Annual Vocational Rehabilitation Program/Cost Report), 1820–0508 (VR Case Service Report), 1820–0563 (Annual Report of Appeals), 1820–0693 (Program Improvement Plan), and 1820–0694 (VR Program Corrective Action Plan). WIOA made several significant changes that affect the VR program collections of information. These substantive changes will be submitted to OMB with the final regulations.

Required Elements for Submission of the Unified or Combined State Plan and Plan Modifications Under the Workforce Innovation and Opportunity Act (1205–0522)

Section 101(a) of the Act, as amended by WIOA, adds new content requirements to the State plan, which is now submitted as the VR services portion of the Unified or Combined State Plan under section 102 or 103 of title I of WIOA. As a result, these information collection requirements are contained in the Required Elements for Submission of the Unified or Combined State Plan and Plan Modifications, and we will discontinue the VR State Plan (OMB 1820–0500). In the NPRM, we described the substantive changes to the content of the VR State Plan, now collected under the VR services portion and supported employment supplement of the Unified or Combined State Plan (OMB control number 1205–0522), caused by final §§ 361.10, 361.18, 361.24, 361.29, and 361.36, along with final §§ 363.10 and 363.11. In addition, the form includes previously approved information collection requirements related to a number of regulations that remained unchanged as a result of the amendments to the Act, including §§ 361.12, 361.13, 361.15, 361.16, 361.17, 361.19, 361.20, 361.21, 361.22, 361.23, 361.25, 361.26, 361.27, 361.30, 361.31, 361.34, 361.35, 361.37, 361.40, 361.46, 361.51, 361.52, 361.53, and 361.55. We have made no changes in the content of the VR services portion of the Unified or Combined State Plan and supported employment supplement since publication of the NPRM.

In the NPRM, we increased the estimated time for each DSU to prepare and submit the VR services portion of the Unified or Combined State Plan and its supported employment supplement from 25 to 30 hours annually.

In addition, the total cost of this data collection increased due to the proposed adjustment to the average hourly wage rate of State personnel used to estimate the annual burden for this data collection from $22.00 to $39.78, so that wage rates are consistent with data reported by the Bureau of Labor Statistics. As a result of these changes, we estimated in the NPRM a total annual burden of 2,400 hours (30 hours for each of the 80 respondents), at

$39.78 per hour, for a total annual cost of $95,472.00. Since publication of the NPRM, we have adjusted the total annual estimated cost burden for submission of the VR services portion of the Unified or Combined State Plan due to further adjustments in the average hourly wage rate for State personnel responsible for the submission of the form of $54.21 based on data from the Bureau of Labor Statistics, for a total of $130,104 for all 80 agencies.

VR Case Service Report (1820–0508)

The VR Case Service Report is used to collect annual individual level data on the individuals that have exited the VR program, including individuals receiving services with funds provided under the Supported Employment program. Sections 101(a)(10) and 607 of the Act contain data reporting requirements under the VR program and Supported Employment program, respectively. WIOA amends these sections to require States to report additional data describing the individuals served and the services provided through these programs. In addition, WIOA amends section 106 of the Act by requiring that the standards and indicators used to assess the performance of the VR program be consistent with the performance accountability measures for the core programs of the workforce development system established under section 116 of WIOA. We described in the NPRM the substantive changes made to final §§ 361.40 and 363.52 that cause substantive changes to the active and OMB-approved data collection under 1820–0508—the VR Case Service Report (RSA–911). Since publication of the NPRM, we have made no substantive changes to the RSA–911 as a result of changes in these final regulations or the joint final regulations governing the performance accountability system published elsewhere in this issue of the **Federal Register**. However, since the NPRM, we have modified the RSA–911 to incorporate changes in the data collected through the joint ICR. In addition, we have revised the layout of the form in response to comments to better align the collection of specific data elements with the VR process and to clarify the data needed to track the provision of pre-employment transition services and the achievement of supported employment outcomes.

In the NPRM, we increased the estimated burden for the submission of the RSA–911 caused by the reporting of the data for both open and closed cases on a quarterly basis. We estimated the total annual reporting burden to be 8,000 hours at $33.63 per hour (a rate more consistent with the rate reported through the Bureau of Labor Statistics for State-employed database administrators), for a total annual cost of $269,040.

As described in the *Regulatory Impact Analysis* section of these final regulations, we have increased the estimated burden associated with the RSA–911 since publication of the NPRM for several reasons. We now include in the estimated burden the time needed for both collection and submission of the data. Previous burden estimates were based only on the time needed to prepare and submit the RSA–911. In addition, we have changed the method used to estimate the time needed to collect the data from a total of 15 minutes per vocational rehabilitation counselor to one minute for each new data element in the form. We also have revised the estimated hours associated with the submission of the data on a quarterly basis from a total of 100 per year to a total of 120 hours (30 hours per quarter). Finally, we now estimate that 64 percent of the new data elements are required by substantive changes to the VR program-specific requirements in section 101(a)(10) of the Act and the remaining 36 percent are required by section 116 of WIOA. We have prorated the estimated burden for the collection of the new data elements based on these percentages. As a result of these changes, the total additional VR-specific burden hours for both collection and submission of required data is 6,470 hours per VR agency (6,400 data collection hours and 70 data submission hours), or a total of 517,600 hours for all 80 VR agencies. The estimated total additional VR program-specific cost for both collection and submission per VR agency is $211,831, with a total additional burden cost of $16,946,512 for all 80 VR agencies.

Intergovernmental Review

These programs are subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for these programs.

Assessment of Educational Impact

In the NPRM we requested comments on whether the proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available. We received no comments.

Federalism

Executive Order 13132 requires us to ensure meaningful and timely input by State and local elected officials in the development of regulatory policies that have federalism implications. "Federalism implications" means substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. In the NPRM we stated that parts 361, 363, and 397 may have federalism implications and encouraged State and local elected officials to review and provide comments on the proposed regulations. In the *Public Comment* section of this preamble, we discuss any comments we received on this subject.

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(Catalog of Federal Domestic Assistance Numbers: 84.126A State Vocational Rehabilitation Services program; and 84.187 State Supported Employment Services program)

List of Subjects

34 CFR Part 361

Administrative practice and procedure, Grant programs-education, Grant programs-social programs, Reporting and recordkeeping requirements, Vocational rehabilitation.

34 CFR Part 363

Grant programs-education, Grant programs-social programs, Manpower training programs, Reporting and recordkeeping requirements, Vocational rehabilitation.

34 CFR Part 397

Individuals with disabilities, Reporting and recordkeeping requirements, Students, Vocational rehabilitation, Youth.

Dated: June 30, 2016.

John B. King, Jr.,

Secretary of Education.

The Secretary of Education amends 34 CFR chapter III as follows:

■ 1. Part 361 is revised to read as follows:

PART 361—STATE VOCATIONAL REHABILITATION SERVICES PROGRAM

Subpart A—General

Sec.

361.1 Purpose.
361.2 Eligibility for a grant.
361.3 Authorized activities.
361.4 Applicable regulations.
361.5 Applicable definitions.

Subpart B—State Plan and Other Requirements for Vocational Rehabilitation Services

361.10 Submission, approval, and disapproval of the State plan.
361.11 Withholding of funds.

Administration

361.12 Methods of administration.
361.13 State agency for administration.
361.14 Substitute State agency.
361.15 Local administration.
361.16 Establishment of an independent commission or a State Rehabilitation Council.
361.17 Requirements for a State Rehabilitation Council.
361.18 Comprehensive system of personnel development.
361.19 Affirmative action for individuals with disabilities.
361.20 Public participation requirements.
361.21 Consultations regarding the administration of the vocational rehabilitation services portion of the Unified or Combined State Plan.
361.22 Coordination with education officials.
361.23 *[Reserved]*
361.24 Cooperation and coordination with other entities.
361.25 Statewideness.
361.26 Waiver of statewideness.
361.27 Shared funding and administration of joint programs.
361.28 Third-party cooperative arrangements involving funds from other public agencies.
361.29 Statewide assessment; annual estimates; annual State goals and priorities; strategies; and progress reports.
361.30 Services to American Indians.
361.31 Cooperative agreements with private nonprofit organizations.
361.32 Provision of training and services for employers.
361.33 [Reserved]
361.34 Supported employment State plan supplement.
361.35 Innovation and expansion activities.
361.36 Ability to serve all eligible individuals; order of selection for services.
361.37 Information and referral programs.
361.38 Protection, use, and release of personal information.
361.39 State-imposed requirements.
361.40 Reports; Evaluation standards and performance indicators.

Provision and Scope of Services

361.41 Processing referrals and applications.
361.42 Assessment for determining eligibility and priority for services.
361.43 Procedures for ineligibility determination.
361.44 Closure without eligibility determination.
361.45 Development of the individualized plan for employment.
361.46 Content of the individualized plan for employment.
361.47 Record of services.
361.48 Scope of vocational rehabilitation services for individuals with disabilities.
361.49 Scope of vocational rehabilitation services for groups of individuals with disabilities.
361.50 Written policies governing the provision of services for individuals with disabilities.
361.51 Standards for facilities and providers of services.
361.52 Informed choice.
361.53 Comparable services and benefits.
361.54 Participation of individuals in cost of services based on financial need.
361.55 Semi-annual and annual review of individuals in extended employment and other employment under special certificate provisions of the Fair Labor Standards Act.
361.56 Requirements for closing the record of services of an individual who has achieved an employment outcome.
361.57 Review of determinations made by designated State unit personnel.

Subpart C—Financing of State Vocational Rehabilitation Programs

361.60 Matching requirements.
361.61 Limitation on use of funds for construction expenditures.
361.62 Maintenance of effort requirements.
361.63 Program income.
361.64 Obligation of Federal funds.
361.65 Allotment and payment of Federal funds for vocational rehabilitation services.

Subparts D–F—[Reserved]

Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), unless otherwise noted.

Subpart A—General

§ 361.1 Purpose.

Under the State Vocational Rehabilitation Services Program, the Secretary provides grants to assist States in operating statewide comprehensive, coordinated, effective, efficient, and accountable vocational rehabilitation programs, each of which is—

(a) An integral part of a statewide workforce development system; and

(b) Designed to assess, plan, develop, and provide vocational rehabilitation services for individuals with disabilities, consistent with their unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice so that they may prepare for and engage in competitive integrated employment and achieve economic self-sufficiency.

(Authority: Sections 12(c) and 100(a) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 720(a))

§ 361.2 Eligibility for a grant.

Any State that submits to the Secretary a vocational rehabilitation services portion of the Unified or Combined State Plan that meets the requirements of section 101(a) of the Act and this part is eligible for a grant under this program.

(Authority: Section 101(a) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 721(a))

§ 361.3 Authorized activities.

The Secretary makes payments to a State to assist in—

(a) The costs of providing vocational rehabilitation services under the vocational rehabilitation services portion of the Unified or Combined State Plan; and

(b) Administrative costs under the vocational rehabilitation services portion of the Unified or Combined State Plan, including one-stop infrastructure costs.

(Authority: Sections 12(c) and 111(a)(1) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 731(a)(1))

§ 361.4 Applicable regulations.

The following regulations apply to this program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 76 (State-Administered Programs).

(2) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(3) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(4) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(5) 34 CFR part 82 (New Restrictions on Lobbying).

(b) The regulations in this part 361.

(c) 2 CFR part 190 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)) as adopted in 2 CFR part 3485.

(d) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards) as adopted in 2 CFR part 3474, except the requirements to accept third-party in-kind contributions to meet cost-sharing or matching requirements, as otherwise authorized under 2 CFR 200.306(b).

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c))

§ 361.5 Applicable definitions.

The following definitions apply to this part:

(a) Definitions in EDGAR 77.1.

(b) Definitions in 2 CFR part 200, subpart A.

(c) The following definitions:

(1) *Act* means the Rehabilitation Act of 1973, as amended (29 U.S.C. 701 *et seq.*).

(2) *Administrative costs under the vocational rehabilitation services portion of the Unified or Combined State Plan* means expenditures incurred in the performance of administrative functions under the vocational rehabilitation program carried out under this part, including expenses related to program planning, development, monitoring, and evaluation, including, but not limited to, expenses for—

(i) Quality assurance;

(ii) Budgeting, accounting, financial management, information systems, and related data processing;

(iii) Providing information about the program to the public;

(iv) Technical assistance and support services to other State agencies, private nonprofit organizations, and businesses and industries, except for technical assistance and support services described in § 361.49(a)(4);

(v) The State Rehabilitation Council and other advisory committees;

(vi) Professional organization membership dues for designated State unit employees;

(vii) The removal of architectural barriers in State vocational rehabilitation agency offices and State-operated rehabilitation facilities;

(viii) Operating and maintaining designated State unit facilities, equipment, and grounds, as well as the infrastructure of the one-stop system;

(ix) Supplies;

(x) Administration of the comprehensive system of personnel development described in § 361.18, including personnel administration, administration of affirmative action plans, and training and staff development;

(xi) Administrative salaries, including clerical and other support staff salaries, in support of these administrative functions;

(xii) Travel costs related to carrying out the program, other than travel costs related to the provision of services;

(xiii) Costs incurred in conducting reviews of determinations made by personnel of the designated State unit, including costs associated with mediation and impartial due process hearings under § 361.57; and

(xiv) Legal expenses required in the administration of the program.

(Authority: Sections 7(1) and 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(1) and 709(c))

(3) *Applicant* means an individual who submits an application for vocational rehabilitation services in accordance with § 361.41(b)(2).

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c))

(4) *Appropriate modes of communication* means specialized aids and supports that enable an individual with a disability to comprehend and respond to information that is being communicated. Appropriate modes of communication include, but are not limited to, the use of interpreters, open and closed captioned videos, specialized telecommunications services and audio recordings, Brailled and large print materials, materials in electronic formats, augmentative communication devices, graphic presentations, and simple language materials.

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c))

(5) *Assessment for determining eligibility and vocational rehabilitation needs* means, as appropriate in each case—

(i)(A) A review of existing data—

(*1*) To determine if an individual is eligible for vocational rehabilitation services; and

(*2*) To assign priority for an order of selection described in § 361.36 in the States that use an order of selection; and

(B) To the extent necessary, the provision of appropriate assessment activities to obtain necessary additional data to make the eligibility determination and assignment;

(ii) To the extent additional data are necessary to make a determination of the employment outcomes and the nature and scope of vocational rehabilitation services to be included in the individualized plan for employment of an eligible individual, a comprehensive assessment to determine the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, including the need for supported employment, of the eligible individual. This comprehensive assessment—

(A) Is limited to information that is necessary to identify the rehabilitation needs of the individual and to develop the individualized plan for employment of the eligible individual;

(B) Uses as a primary source of information, to the maximum extent possible and appropriate and in accordance with confidentiality requirements—

(*1*) Existing information obtained for the purposes of determining the eligibility of the individual and assigning priority for an order of selection described in § 361.36 for the individual; and

(*2*) Information that can be provided by the individual and, if appropriate, by the family of the individual;

(C) May include, to the degree needed to make such a determination, an assessment of the personality, interests, interpersonal skills, intelligence and related functional capacities, educational achievements, work experience, vocational aptitudes, personal and social adjustments, and employment opportunities of the individual and the medical, psychiatric, psychological, and other pertinent vocational, educational, cultural, social, recreational, and environmental factors that affect the employment and rehabilitation needs of the individual;

(D) May include, to the degree needed, an appraisal of the patterns of work behavior of the individual and services needed for the individual to acquire occupational skills and to develop work attitudes, work habits, work tolerance, and social and behavior patterns necessary for successful job performance, including the use of work in real job situations to assess and develop the capacities of the individual to perform adequately in a work environment; and

(E) To the maximum extent possible, relies on information obtained from experiences in integrated employment settings in the community and in other integrated community settings;

(iii) Referral, for the provision of rehabilitation technology services to the individual, to assess and develop the

capacities of the individual to perform in a work environment; and

(iv) An exploration of the individual's abilities, capabilities, and capacity to perform in work situations, which must be assessed periodically during trial work experiences, including experiences in which the individual is provided appropriate supports and training.

(Authority: Sections 7(2) and 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(2) and 709(c))

(6) *Assistive technology terms*—(i) *Assistive technology* has the meaning given such term in section 3 of the Assistive Technology Act of 1998 (29 U.S.C. 3002).

(ii) *Assistive technology device* has the meaning given such term in section 3 of the Assistive Technology Act of 1998, except that the reference in such section to the term *individuals with disabilities* will be deemed to mean more than one individual with a disability as defined in paragraph (20)(A) of the Act.

(iii) *Assistive technology service* has the meaning given such term in section 3 of the Assistive Technology Act of 1998, except that the reference in such section to the term—

(A) *Individual with a disability* will be deemed to mean an individual with a disability, as defined in paragraph (20)(A) of the Act; and

(B) *Individuals with disabilities* will be deemed to mean more than one such individual.

(Authority: Sections 7(3) and 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(3) and 709(c))

(7) *Community rehabilitation program*—(i) *Community rehabilitation program* means a program that provides directly or facilitates the provision of one or more of the following vocational rehabilitation services to individuals with disabilities to enable those individuals to maximize their opportunities for employment, including career advancement:

(A) Medical, psychiatric, psychological, social, and vocational services that are provided under one management.

(B) Testing, fitting, or training in the use of prosthetic and orthotic devices.

(C) Recreational therapy.

(D) Physical and occupational therapy.

(E) Speech, language, and hearing therapy.

(F) Psychiatric, psychological, and social services, including positive behavior management.

(G) Assessment for determining eligibility and vocational rehabilitation needs.

(H) Rehabilitation technology.

(I) Job development, placement, and retention services.

(J) Evaluation or control of specific disabilities.

(K) Orientation and mobility services for individuals who are blind.

(L) Extended employment.

(M) Psychosocial rehabilitation services.

(N) Supported employment services and extended services.

(O) Customized employment.

(P) Services to family members if necessary to enable the applicant or eligible individual to achieve an employment outcome.

(Q) Personal assistance services.

(R) Services similar to the services described in paragraphs (c)(7)(i)(A) through (Q) of this section.

(ii) For the purposes of this definition, *program* means an agency, organization, or institution, or unit of an agency, organization, or institution, that provides directly or facilitates the provision of vocational rehabilitation services as one of its major functions.

(Authority: Section 7(4) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(4))

(8) *Comparable services and benefits*—(i) *Comparable services and benefits* means services and benefits, including accommodations and auxiliary aids and services, that are—

(A) Provided or paid for, in whole or in part, by other Federal, State, or local public agencies, by health insurance, or by employee benefits;

(B) Available to the individual at the time needed to ensure the progress of the individual toward achieving the employment outcome in the individual's individualized plan for employment in accordance with § 361.53; and

(C) Commensurate to the services that the individual would otherwise receive from the designated State vocational rehabilitation agency.

(ii) For the purposes of this definition, comparable services and benefits do not include awards and scholarships based on merit.

(Authority: Sections 12(c) and 101(a)(8) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 721(a)(8))

(9) *Competitive integrated employment* means work that—

(i) Is performed on a full-time or part-time basis (including self-employment) and for which an individual is compensated at a rate that–

(A) Is not less than the higher of the rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) or the rate required under the applicable State or local minimum wage law for the place of employment;

(B) Is not less than the customary rate paid by the employer for the same or similar work performed by other employees who are not individuals with disabilities and who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills; and

(C) In the case of an individual who is self-employed, yields an income that is comparable to the income received by other individuals who are not individuals with disabilities and who are self-employed in similar occupations or on similar tasks and who have similar training, experience, and skills; and

(D) Is eligible for the level of benefits provided to other employees; and

(ii) Is at a location—

(A) Typically found in the community; and

(B) Where the employee with a disability interacts for the purpose of performing the duties of the position with other employees within the particular work unit and the entire work site, and, as appropriate to the work performed, other persons (*e.g.*, customers and vendors), who are not individuals with disabilities (not including supervisory personnel or individuals who are providing services to such employee) to the same extent that employees who are not individuals with disabilities and who are in comparable positions interact with these persons; and

(iii) Presents, as appropriate, opportunities for advancement that are similar to those for other employees who are not individuals with disabilities and who have similar positions.

(Authority: Sections 7(5) and 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(5) and 709(c))

(10) *Construction of a facility for a public or nonprofit community rehabilitation program* means—

(i) The acquisition of land in connection with the construction of a new building for a community rehabilitation program;

(ii) The construction of new buildings;

(iii) The acquisition of existing buildings;

(iv) The expansion, remodeling, alteration, or renovation of existing buildings;

(v) Architect's fees, site surveys, and soil investigation, if necessary, in

connection with the acquisition of land or existing buildings, or the construction, expansion, remodeling, or alteration of community rehabilitation facilities;

(vi) The acquisition of initial fixed or movable equipment of any new, newly acquired, newly expanded, newly remodeled, newly altered, or newly renovated buildings that are to be used for community rehabilitation program purposes; and

(vii) Other direct expenditures appropriate to the construction project, except costs of off-site improvements.

(Authority: Sections 7(6) and 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(6) and 709(c))

(11) *Customized employment* means competitive integrated employment, for an individual with a significant disability, that is—

(i) Based on an individualized determination of the unique strengths, needs, and interests of the individual with a significant disability;

(ii) Designed to meet the specific abilities of the individual with a significant disability and the business needs of the employer; and

(iii) Carried out through flexible strategies, such as—

(A) Job exploration by the individual; and

(B) Working with an employer to facilitate placement, including—

(*1*) Customizing a job description based on current employer needs or on previously unidentified and unmet employer needs;

(*2*) Developing a set of job duties, a work schedule and job arrangement, and specifics of supervision (including performance evaluation and review), and determining a job location;

(*3*) Using a professional representative chosen by the individual, or if elected self-representation, to work with an employer to facilitate placement; and

(*4*) Providing services and supports at the job location.

(Authority: Section 7(7) and 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(7) and 709(c))

(12) *Designated State agency* or *State agency* means the sole State agency, designated, in accordance with § 361.13(a), to administer, or supervise the local administration of, the vocational rehabilitation services portion of the Unified or Combined State Plan. The term includes the State agency for individuals who are blind, if designated as the sole State agency with respect to that part of the Unified or Combined State Plan relating to the vocational rehabilitation of individuals who are blind.

(Authority: Sections 7(8)(A) and 101(a)(2)(A) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(8)(A) and 721(a)(2)(A))

(13) *Designated State unit* or *State unit* means either—

(i) The State vocational rehabilitation bureau, division, or other organizational unit that is primarily concerned with vocational rehabilitation or vocational and other rehabilitation of individuals with disabilities and that is responsible for the administration of the vocational rehabilitation program of the State agency, as required under § 361.13(b); or

(ii) The State agency that is primarily concerned with vocational rehabilitation or vocational and other rehabilitation of individuals with disabilities.

(Authority: Sections 7(8)(B) and 101(a)(2)(B) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(8)(B) and 721(a)(2)(B))

(14) *Eligible individual* means an applicant for vocational rehabilitation services who meets the eligibility requirements of § 361.42(a).

(Authority: Sections 7(20)(A) and 102(a)(1) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(20)(A) and 722(a)(1))

(15) *Employment outcome* means, with respect to an individual, entering, advancing in, or retaining full-time or, if appropriate, part-time competitive integrated employment, as defined in paragraph (c)(9) of this section (including customized employment, self-employment, telecommuting, or business ownership), or supported employment as defined in paragraph (c)(53) of this section, that is consistent with an individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

Note to paragraph (c)(15): A designated State unit may continue services to individuals with uncompensated employment goals on their approved individualized plans for employment prior to September 19, 2016 until June 30, 2017, unless a longer period of time is required based on the needs of the individual with the disability, as documented in the individual's service record.

(Authority: Sections 7(11), 12(c), 100(a)(2), and 102(b)(4)(A) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(11), 709(c), 720(a)(2), and 722(b)(4)(A))

(16) *Establishment, development, or improvement of a public or nonprofit community rehabilitation program* means—

(i) The establishment of a facility for a public or nonprofit community rehabilitation program, as defined in paragraph (c)(17) of this section, to provide vocational rehabilitation services to applicants or eligible individuals;

(ii) Staffing, if necessary to establish, develop, or improve a public or nonprofit community rehabilitation program for the purpose of providing vocational rehabilitation services to applicants or eligible individuals, for a maximum period of four years, with Federal financial participation available at the applicable matching rate for the following levels of staffing costs:

(A) 100 percent of staffing costs for the first year;

(B) 75 percent of staffing costs for the second year;

(C) 60 percent of staffing costs for the third year; and

(D) 45 percent of staffing costs for the fourth year; and

(iii) Other expenditures and activities related to the establishment, development, or improvement of a public or nonprofit community rehabilitation program that are necessary to make the program functional or increase its effectiveness in providing vocational rehabilitation services to applicants or eligible individuals, but are not ongoing operating expenses of the program.

(Authority: Sections 7(12) and 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(12) and 709(c))

(17) *Establishment of a facility for a public or nonprofit community rehabilitation program* means—

(i) The acquisition of an existing building and, if necessary, the land in connection with the acquisition, if the building has been completed in all respects for at least one year prior to the date of acquisition and the Federal share of the cost of acquisition is not more than $300,000;

(ii) The remodeling or alteration of an existing building, provided the estimated cost of remodeling or alteration does not exceed the appraised value of the existing building;

(iii) The expansion of an existing building, provided that—

(A) The existing building is complete in all respects;

(B) The total size in square footage of the expanded building, notwithstanding the number of expansions, is not greater than twice the size of the existing building;

(C) The expansion is joined structurally to the existing building and does not constitute a separate building; and

(D) The costs of the expansion do not exceed the appraised value of the existing building;

(iv) Architect's fees, site survey, and soil investigation, if necessary in

connection with the acquisition, remodeling, alteration, or expansion of an existing building; and

(v) The acquisition of fixed or movable equipment, including the costs of installation of the equipment, if necessary to establish, develop, or improve a community rehabilitation program.

(Authority: Sections 7(12) and 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(12) and 709(c))

(18) *Extended employment* means work in a non-integrated or sheltered setting for a public or private nonprofit agency or organization that provides compensation in accordance with the Fair Labor Standards Act.

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c))

(19) *Extended services* means ongoing support services and other appropriate services that are—

(i) Needed to support and maintain an individual with a most significant disability including a youth with a most significant disability, in supported employment;

(ii) Organized or made available, singly or in combination, in such a way as to assist an eligible individual in maintaining supported employment;

(iii) Based on the needs of an eligible individual, as specified in an individualized plan for employment;

(iv) Provided by a State agency, a private nonprofit organization, employer, or any other appropriate resource, after an individual has made the transition from support from the designated State unit; and

(v) Provided to a youth with a most significant disability by the designated State unit in accordance with requirements set forth in this part and part 363 for a period not to exceed four years, or at such time that a youth reaches age 25 and no longer meets the definition of a youth with a disability under paragraph (c)(58) of this section, whichever occurs first. The designated State unit may not provide extended services to an individual with a most significant disability who is not a youth with a most significant disability.

(Authority: Sections 7(13), 12(c), and 604(b) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(13), 709(c), and 795i(b))

(20) *Extreme medical risk* means a probability of substantially increasing functional impairment or death if medical services, including mental health services, are not provided expeditiously.

(Authority: Sections 12(c) and 101(a)(8)(A)(i)(III) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 721(a)(8)(A)(i)(III))

(21) *Fair hearing board* means a committee, body, or group of persons established by a State prior to January 1, 1985, that—

(i) Is authorized under State law to review determinations made by personnel of the designated State unit that affect the provision of vocational rehabilitation services; and

(ii) Carries out the responsibilities of the impartial hearing officer in accordance with the requirements in § 361.57(j).

(Authority: Sections 12(c) and 102(c)(6) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 722(c)(6))

(22) *Family member,* for purposes of receiving vocational rehabilitation services in accordance with § 361.48(b)(9), means an individual—

(i) Who either—

(A) Is a relative or guardian of an applicant or eligible individual; or

(B) Lives in the same household as an applicant or eligible individual;

(ii) Who has a substantial interest in the well-being of that individual; and

(iii) Whose receipt of vocational rehabilitation services is necessary to enable the applicant or eligible individual to achieve an employment outcome.

(Authority: Sections 12(c) and 103(a)(19) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 723(a)(19))

(23) *Governor* means a chief executive officer of a State.

(Authority: Section 7(15) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(15))

(24) *Impartial hearing officer*—(i) *Impartial hearing officer* means an individual who—

(A) Is not an employee of a public agency (other than an administrative law judge, hearing examiner, or employee of an institution of higher education);

(B) Is not a member of the State Rehabilitation Council for the designated State unit;

(C) Has not been involved previously in the vocational rehabilitation of the applicant or recipient of services;

(D) Has knowledge of the delivery of vocational rehabilitation services, the vocational rehabilitation services portion of the Unified or Combined State Plan, and the Federal and State regulations governing the provision of services;

(E) Has received training with respect to the performance of official duties; and

(F) Has no personal, professional, or financial interest that could affect the objectivity of the individual.

(ii) An individual is not considered to be an employee of a public agency for the purposes of this definition solely because the individual is paid by the agency to serve as a hearing officer.

(Authority: Sections 7(16) and 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(16) and 709(c))

(25) *Indian; American Indian; Indian American; Indian Tribe*—(i) *In general.* The terms "Indian", "American Indian", and "Indian American" mean an individual who is a member of an Indian tribe and include a Native and a descendant of a Native, as such terms are defined in subsections (b) and (r) of section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

(ii) *Indian tribe.* The term "Indian tribe" means any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaska native village or regional village corporation (as defined in or established pursuant to the Alaska Native Claims Settlement Act) and a tribal organization (as defined in section 4(l) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450(b)(l)).

(Authority: Section 7(19) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(19))

(26) *Individual who is blind* means a person who is blind within the meaning of applicable State law.

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c))

(27) *Individual with a disability,* except as provided in paragraph (c)(28) of this section, means an individual—

(i) Who has a physical or mental impairment;

(ii) Whose impairment constitutes or results in a substantial impediment to employment; and

(iii) Who can benefit in terms of an employment outcome from the provision of vocational rehabilitation services.

(Authority: Section 7(20)(A) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(20)(A))

(28) *Individual with a disability,* for purposes of §§ 361.5(c)(13), 361.13(a), 361.13(b)(1), 361.17(a), (b), (c), and (j), 361.18(b), 361.19, 361.20, 361.23(b)(2), 361.29(a) and (d)(8), and 361.51(b), means an individual—

(i) Who has a physical or mental impairment that substantially limits one or more major life activities;

(ii) Who has a record of such an impairment; or

(iii) Who is regarded as having such an impairment.

(Authority: Section 7(20)(B) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(20)(B))

(29) *Individual with a most significant disability* means an individual with a significant disability who meets the designated State unit's criteria for an individual with a most significant disability. These criteria must be consistent with the requirements in § 361.36(d)(1) and (2).

(Authority: Sections 7(21)(E) and 101(a)(5)(C) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(21)(E) and 721(a)(5)(C))

(30) *Individual with a significant disability* means an individual with a disability—

(i) Who has a severe physical or mental impairment that seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;

(ii) Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

(iii) Who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), spinal cord conditions (including paraplegia and quadriplegia), sickle cell anemia, intellectual disability, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation.

(Authority: Section 7(21)(A) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(21)(A))

(31) *Individual's representative* means any representative chosen by an applicant or eligible individual, as appropriate, including a parent, guardian, other family member, or advocate, unless a representative has been appointed by a court to represent the individual, in which case the court-appointed representative is the individual's representative.

(Authority: Sections 7(22) and 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(22) and 709(c))

(32) *Integrated setting* means—

(i) With respect to the provision of services, a setting typically found in the community in which applicants or eligible individuals interact with non-disabled individuals other than non-disabled individuals who are providing services to those applicants or eligible individuals; and

(ii) With respect to an employment outcome, means a setting—

(A) Typically found in the community; and

(B) Where the employee with a disability interacts, for the purpose of performing the duties of the position, with other employees within the particular work unit and the entire work site, and, as appropriate to the work performed, other persons (*e.g.*, customers and vendors) who are not individuals with disabilities (not including supervisory personnel or individuals who are providing services to such employee) to the same extent that employees who are not individuals with disabilities and who are in comparable positions interact with these persons.

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c))

(33) *Local workforce development board* means a local board, as defined in section 3 of the Workforce Innovation and Opportunity Act.

(Authority: Section 7(25) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(25))

(34) *Maintenance* means monetary support provided to an individual for expenses, such as food, shelter, and clothing, that are in excess of the normal expenses of the individual and that are necessitated by the individual's participation in an assessment for determining eligibility and vocational rehabilitation needs or the individual's receipt of vocational rehabilitation services under an individualized plan for employment.

(Authority: Sections 12(c) and 103(a)(7) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 723(a)(7))

(i) *Examples:* The following are examples of expenses that would meet the definition of *maintenance.* The examples are illustrative, do not address all possible circumstances, and are not intended to substitute for individual counselor judgment.

Example 1: The cost of a uniform or other suitable clothing that is required for an individual's job placement or job-seeking activities.

Example 2: The cost of short-term shelter that is required in order for an individual to participate in assessment activities or vocational training at a site that is not within commuting distance of an individual's home.

Example 3: The initial one-time costs, such as a security deposit or charges for the initiation of utilities, that are required in order for an individual to relocate for a job placement.

(ii) [Reserved]

(35) *Mediation* means the act or process of using an independent third party to act as a mediator, intermediary, or conciliator to assist persons or parties in settling differences or disputes prior to pursuing formal administrative or other legal remedies. Mediation under the program must be conducted in accordance with the requirements in § 361.57(d) by a qualified and impartial mediator as defined in § 361.5(c)(43).

(Authority: Sections 12(c) and 102(c)(4) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 722(c)(4))

(36) *Nonprofit,* with respect to a community rehabilitation program, means a community rehabilitation program carried out by a corporation or association, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual and the income of which is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986.

(Authority: Section 7(26) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(26))

(37) *Ongoing support services,* as used in the definition of *supported employment,* means services that—

(i) Are needed to support and maintain an individual with a most significant disability, including a youth with a most significant disability, in supported employment;

(ii) Are identified based on a determination by the designated State unit of the individual's need as specified in an individualized plan for employment;

(iii) Are furnished by the designated State unit from the time of job placement until transition to extended services, unless post-employment services are provided following transition, and thereafter by one or more extended services providers throughout the individual's term of employment in a particular job placement;

(iv) Include an assessment of employment stability and provision of specific services or the coordination of services at or away from the worksite that are needed to maintain stability based on—

(A) At a minimum, twice-monthly monitoring at the worksite of each individual in supported employment; or

(B) If under specific circumstances, especially at the request of the individual, the individualized plan for employment provides for off-site monitoring, twice monthly meetings with the individual;

(v) Consist of—

(A) Any particularized assessment supplementary to the comprehensive assessment of rehabilitation needs described in paragraph (c)(5)(ii) of this section;

(B) The provision of skilled job trainers who accompany the individual for intensive job skill training at the work site;

(C) Job development and training;

(D) Social skills training;

(E) Regular observation or supervision of the individual;

(F) Follow-up services including regular contact with the employers, the individuals, the parents, family members, guardians, advocates or authorized representatives of the individuals, and other suitable professional and informed advisors, in order to reinforce and stabilize the job placement;

(G) Facilitation of natural supports at the worksite;

(H) Any other service identified in the scope of vocational rehabilitation services for individuals, described in § 361.48(b); or

(I) Any service similar to the foregoing services.

(Authority: Sections 7(27) and 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(27) and 709(c))

(38) *Personal assistance services* means a range of services, including, among other things, training in managing, supervising, and directing personal assistance services, provided by one or more persons, that are—

(i) Designed to assist an individual with a disability to perform daily living activities on or off the job that the individual would typically perform without assistance if the individual did not have a disability;

(ii) Designed to increase the individual's control in life and ability to perform everyday activities on or off the job;

(iii) Necessary to the achievement of an employment outcome; and

(iv) Provided only while the individual is receiving other vocational rehabilitation services. The services may include training in managing, supervising, and directing personal assistance services.

(Authority: Sections 7(28), 12(c), 102(b)(4)(B)(i)(I)(bb), and 103(a)(9) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(28), 709(c), 722(b)(4)(B)(i)(I)(bb), and 723(a)(9))

(39) *Physical and mental restoration services* means—

(i) Corrective surgery or therapeutic treatment that is likely, within a reasonable period of time, to correct or modify substantially a stable or slowly progressive physical or mental impairment that constitutes a substantial impediment to employment;

(ii) Diagnosis of and treatment for mental or emotional disorders by qualified personnel in accordance with State licensure laws;

(iii) Dentistry;

(iv) Nursing services;

(v) Necessary hospitalization (either inpatient or outpatient care) in connection with surgery or treatment and clinic services;

(vi) Drugs and supplies;

(vii) Prosthetic and orthotic devices;

(viii) Eyeglasses and visual services, including visual training, and the examination and services necessary for the prescription and provision of eyeglasses, contact lenses, microscopic lenses, telescopic lenses, and other special visual aids prescribed by personnel who are qualified in accordance with State licensure laws;

(ix) Podiatry;

(x) Physical therapy;

(xi) Occupational therapy;

(xii) Speech or hearing therapy;

(xiii) Mental health services;

(xiv) Treatment of either acute or chronic medical complications and emergencies that are associated with or arise out of the provision of physical and mental restoration services, or that are inherent in the condition under treatment;

(xv) Special services for the treatment of individuals with end-stage renal disease, including transplantation, dialysis, artificial kidneys, and supplies; and

(xvi) Other medical or medically related rehabilitation services.

(Authority: Sections 12(c) and 103(a)(6) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 723(a)(6))

(40) *Physical or mental impairment* means—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculo-skeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine; or

(ii) Any mental or psychological disorder such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(Authority: Sections 7(20)(A) and 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(20)(A) and 709(c))

(41) *Post-employment services* means one or more of the services identified in § 361.48(b) that are provided subsequent to the achievement of an employment outcome and that are necessary for an individual to maintain, regain, or advance in employment, consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(Authority: Sections 12(c) and 103(a)(20) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 723(a)(20))

Note to paragraph (c)(41): Post-employment services are intended to ensure that the employment outcome remains consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. These services are available to meet rehabilitation needs that do not require a complex and comprehensive provision of services and, thus, should be limited in scope and duration. If more comprehensive services are required, then a new rehabilitation effort should be considered. Post-employment services are to be provided under an amended individualized plan for employment; thus, a re-determination of eligibility is not required. The provision of post-employment services is subject to the same requirements in this part as the provision of any other vocational rehabilitation service. Post-employment services are available to assist an individual to maintain employment, *e.g.*, the individual's employment is jeopardized because of conflicts with supervisors or co-workers, and the individual needs mental health services and counseling to maintain the employment, or the individual requires assistive technology to maintain the employment; to regain employment, *e.g.*, the individual's job is eliminated through reorganization and new placement services are needed; and to advance in employment, *e.g.*, the employment is no longer consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(42) *Pre-employment transition services* means the required activities and authorized activities specified in § 361.48(a)(2) and (3).

(Authority: Sections 7(30) and 113(b) and (c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(30) and 733(b) and (c))

(43) *Qualified and impartial mediator*—(i) *Qualified and impartial mediator* means an individual who—

(A) Is not an employee of a public agency (other than an administrative law judge, hearing examiner, employee

of a State office of mediators, or employee of an institution of higher education);

(B) Is not a member of the State Rehabilitation Council for the designated State unit;

(C) Has not been involved previously in the vocational rehabilitation of the applicant or recipient of services;

(D) Is knowledgeable of the vocational rehabilitation program and the applicable Federal and State laws, regulations, and policies governing the provision of vocational rehabilitation services;

(E) Has been trained in effective mediation techniques consistent with any State-approved or -recognized certification, licensing, registration, or other requirements; and

(F) Has no personal, professional, or financial interest that could affect the individual's objectivity during the mediation proceedings.

(ii) An individual is not considered to be an employee of the designated State agency or designated State unit for the purposes of this definition solely because the individual is paid by the designated State agency or designated State unit to serve as a mediator.

(Authority: Sections 12(c) and 102(c)(4) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 722(c)(4))

(44) *Rehabilitation engineering* means the systematic application of engineering sciences to design, develop, adapt, test, evaluate, apply, and distribute technological solutions to problems confronted by individuals with disabilities in functional areas, such as mobility, communications, hearing, vision, and cognition, and in activities associated with employment, independent living, education, and integration into the community.

(Authority: Sections 7(32) and (12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(32) and 709(c))

(45) *Rehabilitation technology* means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of, and address the barriers confronted by, individuals with disabilities in areas that include education, rehabilitation, employment, transportation, independent living, and recreation. The term includes rehabilitation engineering, assistive technology devices, and assistive technology services.

(Authority: Section 7(32) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(32))

(46) *Reservation* means a Federal or State Indian reservation, a public domain Indian allotment, a former Indian reservation in Oklahoma, and land held by incorporated Native groups, regional corporations, and village corporations under the provisions of the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*); or a defined area of land recognized by a State or the Federal Government where there is a concentration of tribal members and on which the tribal government is providing structured activities and services.

(Authority: Section 121(e) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 741(e))

(47) *Sole local agency* means a unit or combination of units of general local government or one or more Indian tribes that has the sole responsibility under an agreement with, and the supervision of, the State agency to conduct a local or tribal vocational rehabilitation program, in accordance with the vocational rehabilitation services portion of the Unified or Combined State Plan.

(Authority: Section 7(24) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(24))

(48) *State* means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(Authority: Section 7(34) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(34))

(49) *State workforce development board* means a State workforce development board, as defined in section 3 of the Workforce Innovation and Opportunity Act (29 U.S.C. 3102).

(Authority: Section 7(35) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(35))

(50) *Statewide workforce development system* means a workforce development system, as defined in section 3 of the Workforce Innovation and Opportunity Act (29 U.S.C. 3102).

(Authority: Section 7(36) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(36))

(51) *Student with a disability*—(i) *Student with a disability* means, in general, an individual with a disability in a secondary, postsecondary, or other recognized education program who—

(A)(*1*) Is not younger than the earliest age for the provision of transition services under section 614(d)(1)(A)(i)(VIII) of the Individuals with Disabilities Education Act (20 U.S.C. 1414(d)(1)(A)(i)(VIII)); or

(*2*) If the State involved elects to use a lower minimum age for receipt of pre-employment transition services under this Act, is not younger than that minimum age; and

(B)(*1*) Is not older than 21 years of age; or

(*2*) If the State law for the State provides for a higher maximum age for receipt of services under the Individuals with Disabilities Education Act (20 U.S.C. 1400 *et seq.*), is not older than that maximum age; and

(C)(*1*) Is eligible for, and receiving, special education or related services under Part B of the Individuals with Disabilities Education Act (20 U.S.C. 1411 *et seq.*); or

(*2*) Is a student who is an individual with a disability, for purposes of section 504.

(ii) *Students with disabilities* means more than one student with a disability.

(Authority: Sections 7(37) and 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(37) and 709(c))

(52) *Substantial impediment to employment* means that a physical or mental impairment (in light of attendant medical, psychological, vocational, educational, communication, and other related factors) hinders an individual from preparing for, entering into, engaging in, advancing in, or retaining employment consistent with the individual's abilities and capabilities.

(Authority: Sections 7(20)(A) and 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(20)(A) and 709(c))

(53) *Supported employment*—(i) *Supported employment* means competitive integrated employment, including customized employment, or employment in an integrated work setting in which an individual with a most significant disability, including a youth with a most significant disability, is working on a short-term basis toward competitive integrated employment that is individualized, and customized, consistent with the unique strengths, abilities, interests, and informed choice of the individual, including with ongoing support services for individuals with the most significant disabilities—

(A) For whom competitive integrated employment has not historically occurred, or for whom competitive integrated employment has been interrupted or intermittent as a result of a significant disability; and

(B) Who, because of the nature and severity of their disabilities, need intensive supported employment services and extended services after the transition from support provided by the designated State unit, in order to perform this work.

(ii) For purposes of this part, an individual with a most significant disability, whose supported employment in an integrated setting does not satisfy the criteria of competitive integrated employment, as defined in paragraph (c)(9) of this section is considered to be working on a short-term basis toward competitive integrated employment so long as the individual can reasonably anticipate achieving competitive integrated employment—

(A) Within six months of achieving a supported employment outcome; or

(B) In limited circumstances, within a period not to exceed 12 months from the achievement of the supported employment outcome, if a longer period is necessary based on the needs of the individual, and the individual has demonstrated progress toward competitive earnings based on information contained in the service record.

(Authority: Sections 7(38), 12(c), and 602 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(38), 709(c), and 795g)

(54) *Supported employment services* means ongoing support services, including customized employment, and other appropriate services needed to support and maintain an individual with a most significant disability, including a youth with a most significant disability, in supported employment that are—

(i) Organized and made available, singly or in combination, in such a way as to assist an eligible individual to achieve competitive integrated employment;

(ii) Based on a determination of the needs of an eligible individual, as specified in an individualized plan for employment;

(iii) Provided by the designated State unit for a period of time not to exceed 24 months, unless under special circumstances the eligible individual and the rehabilitation counselor jointly agree to extend the time to achieve the employment outcome identified in the individualized plan for employment; and

(iv) Following transition, as post-employment services that are unavailable from an extended services provider and that are necessary to maintain or regain the job placement or advance in employment.

(Authority: Sections 7(39), 12(c), and 103(a)(16) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(39), 709(c), and 723(a)(16))

(55) *Transition services* means a coordinated set of activities for a student or youth with a disability—

(i) Designed within an outcome-oriented process that promotes movement from school to post-school activities, including postsecondary education, vocational training, competitive integrated employment, supported employment, continuing and adult education, adult services, independent living, or community participation;

(ii) Based upon the individual student's or youth's needs, taking into account the student's or youth's preferences and interests;

(iii) That includes instruction, community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocational evaluation;

(iv) That promotes or facilitates the achievement of the employment outcome identified in the student's or youth's individualized plan for employment; and

(v) That includes outreach to and engagement of the parents, or, as appropriate, the representative of such a student or youth with a disability.

(Authority: Sections 12(c) and 103(a)(15) and (b)(7) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 723(a)(15) and (b)(7))

(56) *Transportation* means travel and related expenses that are necessary to enable an applicant or eligible individual to participate in a vocational rehabilitation service, including expenses for training in the use of public transportation vehicles and systems.

(Authority: Sections 12(c) and 103(a)(8) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 723(a)(8))

(i) *Examples.* The following are examples of expenses that would meet the definition of *transportation.* The examples are purely illustrative, do not address all possible circumstances, and are not intended as substitutes for individual counselor judgment.

Example 1: Travel and related expenses for a personal care attendant or aide if the services of that person are necessary to enable the applicant or eligible individual to travel to participate in any vocational rehabilitation service.

Example 2: The purchase and repair of vehicles, including vans, but not the modification of these vehicles, as modification would be considered a rehabilitation technology service.

Example 3: Relocation expenses incurred by an eligible individual in connection with a job placement that is a significant distance from the eligible individual's current residence.

(ii) [Reserved]

(57) *Vocational rehabilitation services*—(i) If provided to an individual, means those services listed in § 361.48; and

(ii) If provided for the benefit of groups of individuals, means those services listed in § 361.49.

(Authority: Sections 7(40) and 103 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(40) and 723)

(58) *Youth with a disability*—(i) *Youth with a disability* means an individual with a disability who is not—

(A) Younger than 14 years of age; and

(B) Older than 24 years of age.

(ii) *Youth with disabilities* means more than one youth with a disability.

(Authority: Section 7(42) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(42))

Subpart B—State Plan and Other Requirements for Vocational Rehabilitation Services

§ 361.10 Submission, approval, and disapproval of the State plan.

(a) *Purpose.* (1) To be eligible to receive funds under this part for a fiscal year, a State must submit, and have approved, a vocational rehabilitation services portion of a Unified or Combined State Plan in accordance with section 102 or 103 of the Workforce Innovation and Opportunity Act.

(2) The vocational rehabilitation services portion of the Unified or Combined State Plan must satisfy all requirements set forth in this part.

(b) *Separate part relating to the vocational rehabilitation of individuals who are blind.* If a separate State agency administers or supervises the administration of a separate part of the vocational rehabilitation services portion of the Unified or Combined State Plan relating to the vocational rehabilitation of individuals who are blind, that part of the vocational rehabilitation services portion of the Unified or Combined State Plan must separately conform to all applicable requirements under this part.

(c) *Public participation.* Prior to the adoption of any substantive policies or procedures specific to the provision of vocational rehabilitation services under the vocational rehabilitation services portion of the Unified or Combined State Plan, including making any substantive amendment to those policies and procedures, the designated State agency must conduct public meetings throughout the State, in accordance with the requirements of § 361.20.

(d) *[Reserved]*

(e) *Submission of policies and procedures.* The State is not required to

submit policies, procedures, or descriptions required under this part that have been previously submitted to the Secretary and that demonstrate that the State meets the requirements of this part, including any policies, procedures, or descriptions submitted under this part that are in effect on July 22, 2014.

(f) *Due process.* If the Secretary disapproves the vocational rehabilitation services portion of the Unified or Combined State Plan, the Secretary will follow these procedures:

(1) *Informal resolution.* Prior to disapproving the vocational rehabilitation services portion of the Unified or Combined State Plan, the Secretary attempts to resolve disputes informally with State officials.

(2) *Notice.* If, after reasonable effort has been made to resolve the dispute, no resolution has been reached, the Secretary provides notice to the State agency of the intention to disapprove the vocational rehabilitation services portion of the Unified or Combined State Plan and of the opportunity for a hearing.

(3) *State plan hearing.* If the State agency requests a hearing, the Secretary designates one or more individuals, either from the Department or elsewhere, not responsible for or connected with the administration of this program, to conduct a hearing in accordance with the provisions of 34 CFR part 81, subpart A.

(4) *Initial decision.* The hearing officer issues an initial decision in accordance with 34 CFR 81.41.

(5) *Petition for review of an initial decision.* The State agency may seek the Secretary's review of the initial decision in accordance with 34 CFR part 81.

(6) *Review by the Secretary.* The Secretary reviews the initial decision in accordance with 34 CFR 81.43.

(7) *Final decision of the Department.* The final decision of the Department is made in accordance with 34 CFR 81.44.

(8) *Judicial review.* A State may appeal the Secretary's decision to disapprove the vocational rehabilitation services portion of the Unified or Combined State Plan by filing a petition for review with the United States Court of Appeals for the circuit in which the State is located, in accordance with section 107(d) of the Act.

(Approved by the Office of Management and Budget under control number 1205–0522)

(Authority: Sections 101(a) and (b) and 107(d) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 721(a) and (b) and 727(d); and 20 U.S.C. 1231g(a))

§ 361.11 Withholding of funds.

(a) *Basis for withholding.* The Secretary may withhold or limit payments under section 111 or 603(a) of the Act, as provided by section 107(c) of the Act, if the Secretary determines that—

(1) The vocational rehabilitation services portion of the Unified or Combined State Plan, including the supported employment supplement, has been so changed that it no longer conforms with the requirements of this part or part 363; or

(2) In the administration of the vocational rehabilitation services portion of the Unified or Combined State Plan there is a failure to comply substantially with any provision of such plan or with an evaluation standard or performance indicator established under section 106 of the Act.

(b) *Informal resolution.* Prior to withholding or limiting payments in accordance with this section, the Secretary attempts to resolve disputed issues informally with State officials.

(c) *Notice.* If, after reasonable effort has been made to resolve the dispute, no resolution has been reached, the Secretary provides notice to the State agency of the intention to withhold or limit payments and of the opportunity for a hearing.

(d) *Withholding hearing.* If the State agency requests a hearing, the Secretary designates one or more individuals, either from the Department or elsewhere, not responsible for or connected with the administration of this program, to conduct a hearing in accordance with the provisions of 34 CFR part 81, subpart A.

(e) *Initial decision.* The hearing officer issues an initial decision in accordance with 34 CFR 81.41.

(f) *Petition for review of an initial decision.* The State agency may seek the Secretary's review of the initial decision in accordance with 34 CFR 81.42.

(g) *Review by the Secretary.* The Secretary reviews the initial decision in accordance with 34 CFR 81.43.

(h) *Final decision of the Department.* The final decision of the Department is made in accordance with 34 CFR 81.44.

(i) *Judicial review.* A State may appeal the Secretary's decision to withhold or limit payments by filing a petition for review with the United States Court of Appeals for the circuit in which the State is located, in accordance with section 107(d) of the Act.

(Authority: Sections 12(c), 101(b), and 107(c) and (d) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 721(b) and 727(c) and (d))

Administration

§ 361.12 Methods of administration.

The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that the State agency, and the designated State unit if applicable, employs methods of administration found necessary by the Secretary for the proper and efficient administration of the plan and for carrying out all functions for which the State is responsible under the plan and this part. These methods must include procedures to ensure accurate data collection and financial accountability.

(Approved by the Office of Management and Budget under control number 1205–0522)

(Authority: Sections 12(c) and 101(a)(6) and (a)(10)(A) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 721(a)(6) and (a)(10)(A))

§ 361.13 State agency for administration.

(a) *Designation of State agency.* The vocational rehabilitation services portion of the Unified or Combined State Plan must designate a State agency as the sole State agency to administer the vocational rehabilitation services portion of the Unified or Combined State Plan, or to supervise its administration in a political subdivision of the State by a sole local agency, in accordance with the following requirements:

(1) *General.* Except as provided in paragraphs (a)(2) and (3) of this section, the vocational rehabilitation services portion of the Unified or Combined State Plan must provide that the designated State agency is one of the following types of agencies:

(i) A State agency that is primarily concerned with vocational rehabilitation or vocational and other rehabilitation of individuals with disabilities; or

(ii) A State agency that includes a vocational rehabilitation unit as provided in paragraph (b) of this section.

(2) *American Samoa.* In the case of American Samoa, the vocational rehabilitation services portion of the Unified or Combined State Plan must designate the Governor.

(3) *Designated State agency for individuals who are blind.* If a State commission or other agency that provides assistance or services to individuals who are blind is authorized under State law to provide vocational rehabilitation services to individuals who are blind, and this commission or agency is primarily concerned with vocational rehabilitation or includes a vocational rehabilitation unit as provided in paragraph (b) of this section, the vocational rehabilitation services portion of the Unified or Combined State Plan may designate that agency as the sole State agency to

administer the part of the plan under which vocational rehabilitation services are provided for individuals who are blind or to supervise its administration in a political subdivision of the State by a sole local agency.

(b) *Designation of State unit*—(1) *General.* If the designated State agency is not of the type specified in paragraph (a)(1)(i) of this section or if the designated State agency specified in paragraph (a)(3) of this section is not primarily concerned with vocational rehabilitation or vocational and other rehabilitation of individuals with disabilities, the vocational rehabilitation services portion of the Unified or Combined State Plan must assure that the agency (or each agency if two agencies are designated) includes a vocational rehabilitation bureau, division, or unit that—

(i) Is primarily concerned with vocational rehabilitation or vocational and other rehabilitation of individuals with disabilities and is responsible for the administration of the State agency's vocational rehabilitation program under the vocational rehabilitation services portion of the Unified or Combined State Plan;

(ii) Has a full-time director who is responsible for the day-to-day operations of the vocational rehabilitation program;

(iii) Has a staff, at least 90 percent of whom are employed full time on the rehabilitation work of the organizational unit;

(iv) Is located at an organizational level and has an organizational status within the State agency comparable to that of other major organizational units of the agency; and

(v) Has the sole authority and responsibility described within the designated State agency in paragraph (a) of this section to expend funds made available under the Act in a manner that is consistent with the purpose of the Act.

(2) In the case of a State that has not designated a separate State agency for individuals who are blind, as provided for in paragraph (a)(3) of this section, the State may assign responsibility for the part of the vocational rehabilitation services portion of the Unified or Combined State Plan under which vocational rehabilitation services are provided to individuals who are blind to one organizational unit of the designated State agency and may assign responsibility for the rest of the plan to another organizational unit of the designated State agency, with the provisions of paragraph (b)(1) of this section applying separately to each of these units.

(c) *Responsibility for administration*—(1) *Required activities.* At a minimum, the following activities are the responsibility of the designated State unit or the sole local agency under the supervision of the State unit:

(i) All decisions affecting eligibility for vocational rehabilitation services, the nature and scope of available services, and the provision of these services.

(ii) The determination to close the record of services of an individual who has achieved an employment outcome in accordance with § 361.56.

(iii) Policy formulation and implementation.

(iv) The allocation and expenditure of vocational rehabilitation funds.

(v) Participation as a partner in the one-stop service delivery system established under title I of the Workforce Innovation and Opportunity Act, in accordance with 20 CFR part 678.

(2) *Non-delegable responsibility.* The responsibility for the functions described in paragraph (c)(1) of this section may not be delegated to any other agency or individual.

(Approved by the Office of Management and Budget under control number 1205–0522)

(Authority: Section 101(a)(2) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 721(a)(2))

§ 361.14 Substitute State agency.

(a) *General provisions.* (1) If the Secretary has withheld all funding from a State under § 361.11, the State may designate another agency to substitute for the designated State agency in carrying out the State's program of vocational rehabilitation services.

(2) Any public or nonprofit private organization or agency within the State or any political subdivision of the State is eligible to be a substitute agency.

(3) The substitute agency must submit a vocational rehabilitation services portion of the Unified or Combined State Plan that meets the requirements of this part.

(4) The Secretary makes no grant to a substitute agency until the Secretary approves its plan.

(b) *Substitute agency matching share.* The Secretary does not make any payment to a substitute agency unless it has provided assurances that it will contribute the same matching share as the State would have been required to contribute if the State agency were carrying out the vocational rehabilitation program.

(Authority: Section 107(c)(3) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 727(c)(3))

§ 361.15 Local administration.

(a) If the vocational rehabilitation services portion of the Unified or Combined State Plan provides for the administration of the plan by a local agency, the designated State agency must—

(1) Ensure that each local agency is under the supervision of the designated State unit and is the sole local agency as defined in § 361.5(c)(47) that is responsible for the administration of the program within the political subdivision that it serves; and

(2) Develop methods that each local agency will use to administer the vocational rehabilitation program, in accordance with the vocational rehabilitation services portion of the Unified or Combined State Plan.

(b) A separate local agency serving individuals who are blind may administer that part of the plan relating to vocational rehabilitation of individuals who are blind, under the supervision of the designated State unit for individuals who are blind.

(Approved by the Office of Management and Budget under control number 1205–0522)

(Authority: Sections 7(24) and 101(a)(2)(A) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(24) and 721(a)(2)(A))

§ 361.16 Establishment of an independent commission or a State Rehabilitation Council.

(a) *General requirement.* Except as provided in paragraph (b) of this section, the vocational rehabilitation services portion of the Unified or Combined State Plan must contain one of the following two assurances:

(1) An assurance that the designated State agency is an independent State commission that—

(i) Is responsible under State law for operating, or overseeing the operation of, the vocational rehabilitation program in the State and is primarily concerned with vocational rehabilitation or vocational and other rehabilitation services, in accordance with § 361.13(a)(1)(i);

(ii) Is consumer-controlled by persons who—

(A) Are individuals with physical or mental impairments that substantially limit major life activities; and

(B) Represent individuals with a broad range of disabilities, unless the designated State unit under the direction of the commission is the State agency for individuals who are blind;

(iii) Includes family members, advocates, or other representatives of individuals with mental impairments; and

(iv) Conducts the functions identified in § 361.17(h)(4).

(2) An assurance that—

(i) The State has established a State Rehabilitation Council (Council) that meets the requirements of § 361.17;

(ii) The designated State unit, in accordance with § 361.29, jointly develops, agrees to, and reviews annually State goals and priorities and jointly submits to the Secretary annual reports of progress with the Council;

(iii) The designated State unit regularly consults with the Council regarding the development, implementation, and revision of State policies and procedures of general applicability pertaining to the provision of vocational rehabilitation services;

(iv) The designated State unit transmits to the Council—

(A) All plans, reports, and other information required under this part to be submitted to the Secretary;

(B) All policies and information on all practices and procedures of general applicability provided to or used by rehabilitation personnel providing vocational rehabilitation services under this part; and

(C) Copies of due process hearing decisions issued under this part and transmitted in a manner to ensure that the identity of the participants in the hearings is kept confidential; and

(v) The vocational rehabilitation services portion of the Unified or Combined State Plan, and any revision to the vocational rehabilitation services portion of the Unified or Combined State Plan, includes a summary of input provided by the Council, including recommendations from the annual report of the Council, the review and analysis of consumer satisfaction described in § 361.17(h)(4), and other reports prepared by the Council, and the designated State unit's response to the input and recommendations, including its reasons for rejecting any input or recommendation of the Council.

(b) *Exception for separate State agency for individuals who are blind.* In the case of a State that designates a separate State agency under § 361.13(a)(3) to administer the part of the vocational rehabilitation services portion of the Unified or Combined State Plan under which vocational rehabilitation services are provided to individuals who are blind, the State must either establish a separate State Rehabilitation Council for each agency that does not meet the requirements in paragraph (a)(1) of this section or establish one State Rehabilitation Council for both agencies if neither agency meets the requirements of paragraph (a)(1) of this section.

(Approved by the Office of Management and Budget under control number 1205–0522)

(Authority: Sections 101(a)(21) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 721(a)(21))

§ 361.17 Requirements for a State Rehabilitation Council.

If the State has established a Council under § 361.16(a)(2) or (b), the Council must meet the following requirements:

(a) *Appointment.* (1) The members of the Council must be appointed by the Governor or, in the case of a State that, under State law, vests authority for the administration of the activities carried out under this part in an entity other than the Governor (such as one or more houses of the State legislature or an independent board), the chief officer of that entity.

(2) The appointing authority must select members of the Council after soliciting recommendations from representatives of organizations representing a broad range of individuals with disabilities and organizations interested in individuals with disabilities. In selecting members, the appointing authority must consider, to the greatest extent practicable, the extent to which minority populations are represented on the Council.

(b) *Composition*—(1) *General.* Except as provided in paragraph (b)(3) of this section, the Council must be composed of at least 15 members, including—

(i) At least one representative of the Statewide Independent Living Council, who must be the chairperson or other designee of the Statewide Independent Living Council;

(ii) At least one representative of a parent training and information center established pursuant to section 682(a) of the Individuals with Disabilities Education Act;

(iii) At least one representative of the Client Assistance Program established under part 370 of this chapter, who must be the director of or other individual recommended by the Client Assistance Program;

(iv) At least one qualified vocational rehabilitation counselor with knowledge of and experience with vocational rehabilitation programs who serves as an ex officio, nonvoting member of the Council if employed by the designated State agency;

(v) At least one representative of community rehabilitation program service providers;

(vi) Four representatives of business, industry, and labor;

(vii) Representatives of disability groups that include a cross section of—

(A) Individuals with physical, cognitive, sensory, and mental disabilities; and

(B) Representatives of individuals with disabilities who have difficulty representing themselves or are unable due to their disabilities to represent themselves;

(viii) Current or former applicants for, or recipients of, vocational rehabilitation services;

(ix) In a State in which one or more projects are funded under section 121 of the Act (American Indian Vocational Rehabilitation Services), at least one representative of the directors of the projects in such State;

(x) At least one representative of the State educational agency responsible for the public education of students with disabilities who are eligible to receive services under this part and part B of the Individuals with Disabilities Education Act;

(xi) At least one representative of the State workforce development board; and

(xii) The director of the designated State unit as an ex officio, nonvoting member of the Council.

(2) *Employees of the designated State agency.* Employees of the designated State agency may serve only as nonvoting members of the Council. This provision does not apply to the representative appointed pursuant to paragraph (b)(1)(iii) of this section.

(3) *Composition of a separate Council for a separate State agency for individuals who are blind.* Except as provided in paragraph (b)(4) of this section, if the State establishes a separate Council for a separate State agency for individuals who are blind, that Council must—

(i) Conform with all of the composition requirements for a Council under paragraph (b)(1) of this section, except the requirements in paragraph (b)(1)(vii), unless the exception in paragraph (b)(4) of this section applies; and

(ii) Include—

(A) At least one representative of a disability advocacy group representing individuals who are blind; and

(B) At least one representative of an individual who is blind, has multiple disabilities, and has difficulty representing himself or herself or is unable due to disabilities to represent himself or herself.

(4) *Exception.* If State law in effect on October 29, 1992 requires a separate Council under paragraph (b)(3) of this section to have fewer than 15 members, the separate Council is in compliance with the composition requirements in paragraphs (b)(1)(vi) and (viii) of this section if it includes at least one representative who meets the requirements for each of those paragraphs.

(c) *Majority.* (1) A majority of the Council members must be individuals

with disabilities who meet the requirements of § 361.5(c)(28) and are not employed by the designated State unit.

(2) In the case of a separate Council established under § 361.16(b), a majority of the Council members must be individuals who are blind and are not employed by the designated State unit.

(d) *Chairperson.* (1) The chairperson must be selected by the members of the Council from among the voting members of the Council, subject to the veto power of the Governor; or

(2) In States in which the Governor does not have veto power pursuant to State law, the appointing authority described in paragraph (a)(1) of this section must designate a member of the Council to serve as the chairperson of the Council or must require the Council to designate a member to serve as chairperson.

(e) *Terms of appointment.* (1) Each member of the Council must be appointed for a term of no more than three years, and each member of the Council, other than a representative identified in paragraph (b)(1)(iii) or (ix) of this section, may serve for no more than two consecutive full terms.

(2) A member appointed to fill a vacancy occurring prior to the end of the term for which the predecessor was appointed must be appointed for the remainder of the predecessor's term.

(3) The terms of service of the members initially appointed must be, as specified by the appointing authority as described in paragraph (a)(1) of this section, for varied numbers of years to ensure that terms expire on a staggered basis.

(f) *Vacancies.* (1) A vacancy in the membership of the Council must be filled in the same manner as the original appointment, except the appointing authority as described in paragraph (a)(1) of this section may delegate the authority to fill that vacancy to the remaining members of the Council after making the original appointment.

(2) No vacancy affects the power of the remaining members to execute the duties of the Council.

(g) *Conflict of interest.* No member of the Council may cast a vote on any matter that would provide direct financial benefit to the member or the member's organization or otherwise give the appearance of a conflict of interest under State law.

(h) *Functions.* The Council must, after consulting with the State workforce development board—

(1) Review, analyze, and advise the designated State unit regarding the performance of the State unit's responsibilities under this part, particularly responsibilities related to—

(i) Eligibility, including order of selection;

(ii) The extent, scope, and effectiveness of services provided; and

(iii) Functions performed by State agencies that affect or potentially affect the ability of individuals with disabilities in achieving employment outcomes under this part;

(2) In partnership with the designated State unit—

(i) Develop, agree to, and review State goals and priorities in accordance with § 361.29(c); and

(ii) Evaluate the effectiveness of the vocational rehabilitation program and submit reports of progress to the Secretary in accordance with § 361.29(e);

(3) Advise the designated State agency and the designated State unit regarding activities carried out under this part and assist in the preparation of the vocational rehabilitation services portion of the Unified or Combined State Plan and amendments to the plan, applications, reports, needs assessments, and evaluations required by this part;

(4) To the extent feasible, conduct a review and analysis of the effectiveness of, and consumer satisfaction with—

(i) The functions performed by the designated State agency;

(ii) The vocational rehabilitation services provided by State agencies and other public and private entities responsible for providing vocational rehabilitation services to individuals with disabilities under the Act; and

(iii) The employment outcomes achieved by eligible individuals receiving services under this part, including the availability of health and other employment benefits in connection with those employment outcomes;

(5) Prepare and submit to the Governor and to the Secretary no later than 90 days after the end of the Federal fiscal year an annual report on the status of vocational rehabilitation programs operated within the State and make the report available to the public through appropriate modes of communication;

(6) To avoid duplication of efforts and enhance the number of individuals served, coordinate activities with the activities of other councils within the State, including the Statewide Independent Living Council established under chapter 1, title VII of the Act, the advisory panel established under section 612(a)(21) of the Individuals with Disabilities Education Act, the State Developmental Disabilities Planning Council described in section 124 of the Developmental Disabilities Assistance and Bill of Rights Act, the State mental health planning council established under section 1914(a) of the Public Health Service Act, and the State workforce development board, and with the activities of entities carrying out programs under the Assistive Technology Act of 1998;

(7) Provide for coordination and the establishment of working relationships between the designated State agency and the Statewide Independent Living Council and centers for independent living within the State; and

(8) Perform other comparable functions, consistent with the purpose of this part, as the Council determines to be appropriate, that are comparable to the other functions performed by the Council.

(i) *Resources.* (1) The Council, in conjunction with the designated State unit, must prepare a plan for the provision of resources, including staff and other personnel, that may be necessary and sufficient for the Council to carry out its functions under this part.

(2) The resource plan must, to the maximum extent possible, rely on the use of resources in existence during the period of implementation of the plan.

(3) Any disagreements between the designated State unit and the Council regarding the amount of resources necessary to carry out the functions of the Council must be resolved by the Governor, consistent with paragraphs (i)(1) and (2) of this section.

(4) The Council must, consistent with State law, supervise and evaluate the staff and personnel that are necessary to carry out its functions.

(5) Those staff and personnel that are assisting the Council in carrying out its functions may not be assigned duties by the designated State unit or any other agency or office of the State that would create a conflict of interest.

(j) *Meetings.* The Council must—

(1) Convene at least four meetings a year in locations determined by the Council to be necessary to conduct Council business. The meetings must be publicly announced, open, and accessible to the general public, including individuals with disabilities, unless there is a valid reason for an executive session; and

(2) Conduct forums or hearings, as appropriate, that are publicly announced, open, and accessible to the public, including individuals with disabilities.

(k) *Compensation.* Funds appropriated under title I of the Act, except funds to carry out sections 112 and 121 of the Act, may be used to compensate and reimburse the expenses

of Council members in accordance with section 105(g) of the Act.

(Approved by the Office of Management and Budget under control number 1205–0522)

(Authority: Section 105 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 725)

§ 361.18 Comprehensive system of personnel development.

The vocational rehabilitation services portion of the Unified or Combined State Plan must describe the procedures and activities the State agency will undertake to establish and maintain a comprehensive system of personnel development designed to ensure an adequate supply of qualified rehabilitation personnel, including professionals and paraprofessionals, for the designated State unit. If the State agency has a State Rehabilitation Council, this description must, at a minimum, specify that the Council has an opportunity to review and comment on the development of plans, policies, and procedures necessary to meet the requirements of paragraphs (b) through (d) of this section. This description must also conform with the following requirements:

(a) *Personnel and personnel development data system.* The vocational rehabilitation services portion of the Unified or Combined State Plan must describe the development and maintenance of a system by the State agency for collecting and analyzing on an annual basis data on qualified personnel needs and personnel development, in accordance with the following requirements:

(1) Data on qualified personnel needs must include—

(i) The number of personnel who are employed by the State agency in the provision of vocational rehabilitation services in relation to the number of individuals served, broken down by personnel category;

(ii) The number of personnel currently needed by the State agency to provide vocational rehabilitation services, broken down by personnel category; and

(iii) Projections of the number of personnel, broken down by personnel category, who will be needed by the State agency to provide vocational rehabilitation services in the State in five years based on projections of the number of individuals to be served, including individuals with significant disabilities, the number of personnel expected to retire or leave the field, and other relevant factors.

(2) Data on personnel development must include—

(i) A list of the institutions of higher education in the State that are preparing vocational rehabilitation professionals, by type of program;

(ii) The number of students enrolled at each of those institutions, broken down by type of program; and

(iii) The number of students who graduated during the prior year from each of those institutions with certification or licensure, or with the credentials for certification or licensure, broken down by the personnel category for which they have received, or have the credentials to receive, certification or licensure.

(b) *Plan for recruitment, preparation, and retention of qualified personnel.* The vocational rehabilitation services portion of the Unified or Combined State Plan must describe the development, updating, and implementation of a plan to address the current and projected needs for personnel who are qualified in accordance with paragraph (c) of this section. The plan must identify the personnel needs based on the data collection and analysis system described in paragraph (a) of this section and must provide for the coordination and facilitation of efforts between the designated State unit and institutions of higher education and professional associations to recruit, prepare, and retain personnel who are qualified in accordance with paragraph (c) of this section, including personnel from minority backgrounds and personnel who are individuals with disabilities.

(c) *Personnel standards.* (1) The vocational rehabilitation services portion of the Unified or Combined State Plan must include the State agency's policies and describe—

(i) Standards that are consistent with any national or State-approved or recognized certification, licensing, or registration requirements, or, in the absence of these requirements, other comparable requirements (including State personnel requirements) that apply to the profession or discipline in which that category of personnel is providing vocational rehabilitation services; and

(ii) The establishment and maintenance of education and experience requirements, to ensure that the personnel have a 21st-century understanding of the evolving labor force and the needs of individuals with disabilities, including requirements for—

(A)(*1*) Attainment of a baccalaureate degree in a field of study reasonably related to vocational rehabilitation, to indicate a level of competency and skill demonstrating basic preparation in a field of study such as vocational rehabilitation counseling, social work, psychology, disability studies, business administration, human resources, special education, supported employment, customized employment, economics, or another field that reasonably prepares individuals to work with consumers and employers; and

(*2*) Demonstrated paid or unpaid experience, for not less than one year, consisting of—

(*i*) Direct work with individuals with disabilities in a setting such as an independent living center;

(*ii*) Direct service or advocacy activities that provide such individual with experience and skills in working with individuals with disabilities; or

(*iii*) Direct experience in competitive integrated employment environments as an employer, as a small business owner or operator, or in self-employment, or other experience in human resources or recruitment, or experience in supervising employees, training, or other activities; or

(B) Attainment of a master's or doctoral degree in a field of study such as vocational rehabilitation counseling, law, social work, psychology, disability studies, business administration, human resources, special education, management, public administration, or another field that reasonably provides competence in the employment sector, in a disability field, or in both business-related and rehabilitation-related fields; and

(2) As used in this section—

(i) *Profession or discipline* means a specific occupational category, including any paraprofessional occupational category, that—

(A) Provides rehabilitation services to individuals with disabilities;

(B) Has been established or designated by the State unit; and

(C) Has a specified scope of responsibility.

(ii) Ensuring that personnel have a 21st-century understanding of the evolving labor force and the needs of individuals with disabilities means that personnel have specialized training and experience that enables them to work effectively with individuals with disabilities to assist them to achieve competitive integrated employment and with employers who hire such individuals. Relevant personnel skills include, but are not limited to—

(A) Understanding the functional limitations of various disabilities and the vocational implications of functional limitations on employment, especially with regard to individuals whose disabilities may require specialized services or groups of individuals with disabilities who

comprise an increasing proportion of the State VR caseloads, such as individuals with traumatic brain injury, post-traumatic stress syndrome, mental illnesses, autism, blindness or deaf-blindness;

(B) Vocational assessment tools and strategies and the interpretation of vocational assessment results, including, when appropriate, situational and work-based assessments and analysis of transferrable work skills;

(C) Counseling and guidance skills, including individual and group counseling and career guidance;

(D) Effective use of practices leading to competitive integrated employment, such as supported employment, customized employment, internships, apprenticeships, paid work experiences, etc.;

(E) Case management and employment services planning, including familiarity and use of the broad range of disability, employment, and social services programs in the state and local area, such as independent living programs, Social Security work incentives, and the Social Security Administration's Ticket-to-Work program;

(F) Caseload management, including familiarity with effective caseload management practices and the use of any available automated or information technology resources;

(G) In-depth knowledge of labor market trends, occupational requirements, and other labor market information that provides information about employers, business practices, and employer personnel needs, such as data provided by the Bureau of Labor Statistics and the Department of Labor's O*NET occupational system;

(H) The use of labor market information for vocational rehabilitation counseling, vocational planning, and the provision of information to consumers for the purposes of making informed choices, business engagement and business relationships, and job development and job placement;

(I) The use of labor market information to support building and maintaining relationships with employers and to inform delivery of job development and job placement activities that respond to today's labor market;

(J) Understanding the effective utilization of rehabilitation technology and job accommodations;

(K) Training in understanding the provisions of the Americans with Disabilities Act and other employment discrimination and employment-related laws;

(L) Advocacy skills to modify attitudinal and environmental barriers to employment for individuals with disabilities, including those with the most significant disabilities;

(M) Skills to address cultural diversity among consumers, particularly affecting workplace settings, including racial and ethnic diversity and generational differences; and

(N) Understanding confidentiality and ethical standards and practices, especially related to new challenges in use of social media, new partnerships, and data sharing.

(d) *Staff development.* (1) The vocational rehabilitation services portion of the Unified or Combined State Plan must include the State agency's policies and describe the procedures and activities the State agency will undertake to ensure that all personnel employed by the State unit receive appropriate and adequate training, including a description of—

(i) A system of staff development for rehabilitation professionals and paraprofessionals within the State unit, particularly with respect to assessment, vocational counseling, job placement, and rehabilitation technology, including training implemented in coordination with entities carrying out State programs under section 4 of the Assistive Technology Act of 1998 (29 U.S.C. 3003);

(ii) Procedures for acquiring and disseminating to rehabilitation professionals and paraprofessionals within the designated State unit significant knowledge from research and other sources; and

(iii) Policies and procedures relating to the establishment and maintenance of standards to ensure that personnel, including rehabilitation professionals and paraprofessionals, needed within the designated State unit to carry out this part are appropriately and adequately prepared and trained.

(2) The specific training areas for staff development must be based on the needs of each State unit and may include, but are not limited to—

(i) Training regarding the Workforce Innovation and Opportunity Act and the amendments it made to the Rehabilitation Act of 1973;

(ii) Training with respect to the requirements of the Americans with Disabilities Act, the Individuals with Disabilities Education Act, and Social Security work incentive programs, including programs under the Ticket to Work and Work Incentives Improvement Act of 1999, training to facilitate informed choice under this program, and training to improve the provision of services to culturally diverse populations; and

(iii) Activities related to—

(A) Recruitment and retention of qualified rehabilitation personnel;

(B) Succession planning; and

(C) Leadership development and capacity building.

(e) *Personnel to address individual communication needs.* The vocational rehabilitation services portion of the Unified or Combined State Plan must describe how the designated State unit includes among its personnel, or obtains the services of—

(1) Individuals able to communicate in the native languages of applicants, recipients of services, and eligible individuals who have limited English proficiency; and

(2) Individuals able to communicate with applicants, recipients of services, and eligible individuals in appropriate modes of communication.

(f) *Coordination with personnel development under the Individuals with Disabilities Education Act.* The vocational rehabilitation services portion of the Unified or Combined State Plan must describe the procedures and activities the State agency will undertake to coordinate its comprehensive system of personnel development under the Act with personnel development under the Individuals with Disabilities Education Act.

(Approved by the Office of Management and Budget under control number 1205–0522)

(Authority: Sections 12(c) and 101(a)(7) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 721(a)(7))

§ 361.19 Affirmative action for individuals with disabilities.

The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that the State agency takes affirmative action to employ and advance in employment qualified individuals with disabilities covered under and on the same terms and conditions as stated in section 503 of the Act.

(Approved by the Office of Management and Budget under control number 1205–0522)

(Authority: Section 101(a)(6)(B) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 721(a)(6)(B))

§ 361.20 Public participation requirements.

(a) *Conduct of public meetings.* (1) The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that prior to the adoption of any substantive policies or procedures governing the provision of vocational rehabilitation services under the Unified or Combined State Plan, the

designated State agency conducts public meetings throughout the State to provide the public, including individuals with disabilities, an opportunity to comment on the policies or procedures.

(2) For purposes of this section, substantive changes to the policies or procedures governing the provision of vocational rehabilitation services that would require the conduct of public meetings are those that directly impact the nature and scope of the services provided to individuals with disabilities, or the manner in which individuals interact with the designated State agency or in matters related to the delivery of vocational rehabilitation services. Examples of substantive changes include, but are not limited to—

(i) Any changes to policies or procedures that fundamentally alter the rights and responsibilities of individuals with disabilities in the vocational rehabilitation process;

(ii) Organizational changes to the designated State agency or unit that would likely affect the manner in which services are delivered;

(iii) Any changes that affect the nature and scope of vocational rehabilitation services provided by the designated State agency or unit;

(iv) Changes in formal or informal dispute procedures;

(v) The adoption or amendment of policies instituting an order of selection; and

(vi) Changes to policies and procedures regarding the financial participation of eligible individuals.

(3) Non-substantive, *e.g.*, administrative changes that would not require the need for public hearings include:

(i) Internal procedures that do not directly affect individuals receiving vocational rehabilitation services, such as payment processing or personnel procedures;

(ii) Changes to the case management system that only affect vocational rehabilitation personnel;

(iii) Changes in indirect cost allocations, internal fiscal review procedures, or routine reporting requirements;

(iv) Minor revisions to vocational rehabilitation procedures or policies to correct production errors, such as typographical and grammatical mistakes; and

(v) Changes to contract procedures that do not affect the delivery of vocational rehabilitation services.

(b) *Notice requirements.* The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that the designated State agency, prior to conducting the public meetings, provides appropriate and sufficient notice throughout the State of the meetings in accordance with—

(1) State law governing public meetings; or

(2) In the absence of State law governing public meetings, procedures developed by the designated State agency in consultation with the State Rehabilitation Council.

(c) *Summary of input of the State Rehabilitation Council.* The vocational rehabilitation services portion of the Unified or Combined State Plan must provide a summary of the input of the State Rehabilitation Council, if the State agency has a Council, into the vocational rehabilitation services portion of the Unified or Combined State Plan and any amendment to that portion of the plan, in accordance with § 361.16(a)(2)(v).

(d) *Special consultation requirements.* The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that the State agency actively consults with the director of the Client Assistance Program, the State Rehabilitation Council, if the State agency has a Council, and, as appropriate, Indian tribes, tribal organizations, and native Hawaiian organizations on its policies and procedures governing the provision of vocational rehabilitation services under the vocational rehabilitation services portion of the Unified or Combined State Plan.

(e) *Appropriate modes of communication.* The State unit must provide to the public, through appropriate modes of communication, notices of the public meetings, any materials furnished prior to or during the public meetings, and the policies and procedures governing the provision of vocational rehabilitation services under the vocational rehabilitation services portion of the Unified or Combined State Plan.

(Approved by the Office of Management and Budget under control number 1205–0522)

(Authority: Sections 12(c), 101(a)(16)(A), and 105(c)(3) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 721(a)(16)(A), and 725(c)(3))

§ 361.21 Consultations regarding the administration of the vocational rehabilitation services portion of the Unified or Combined State plan.

The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that, in connection with matters of general policy arising in the administration of the vocational rehabilitation services portion of the Unified or Combined State Plan, the designated State agency takes into account the views of—

(a) Individuals and groups of individuals who are recipients of vocational rehabilitation services or, as appropriate, the individuals' representatives;

(b) Personnel working in programs that provide vocational rehabilitation services to individuals with disabilities;

(c) Providers of vocational rehabilitation services to individuals with disabilities;

(d) The director of the Client Assistance Program; and

(e) The State Rehabilitation Council, if the State has a Council.

(Approved by the Office of Management and Budget under control number 1205–0522)

(Authority: Sections 101(a)(16)(B) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 721(a)(16)(B))

§ 361.22 Coordination with education officials.

(a) *Plans, policies, and procedures.* (1) The vocational rehabilitation services portion of the Unified or Combined State Plan must contain plans, policies, and procedures for coordination between the designated State agency and education officials responsible for the public education of students with disabilities that are designed to facilitate the transition of students with disabilities from the receipt of educational services, including pre-employment transition services, in school to the receipt of vocational rehabilitation services under the responsibility of the designated State agency.

(2) These plans, policies, and procedures in paragraph (a)(1) of this section must provide for the development and approval of an individualized plan for employment in accordance with § 361.45 as early as possible during the transition planning process and not later than the time a student with a disability determined to be eligible for vocational rehabilitation services leaves the school setting or, if the designated State unit is operating under an order of selection, before each eligible student with a disability able to be served under the order leaves the school setting.

(b) *Formal interagency agreement.* The vocational rehabilitation services portion of the Unified or Combined State Plan must include information on a formal interagency agreement with the State educational agency that, at a minimum, provides for—

(1) Consultation and technical assistance, which may be provided

using alternative means for meeting participation (such as video conferences and conference calls), to assist educational agencies in planning for the transition of students with disabilities from school to post-school activities, including pre-employment transition services and other vocational rehabilitation services;

(2) Transition planning by personnel of the designated State agency and educational agency personnel for students with disabilities that facilitates the development and implementation of their individualized education programs (IEPs) under section 614(d) of the Individuals with Disabilities Education Act;

(3) The roles and responsibilities, including financial responsibilities, of each agency, including provisions for determining State lead agencies and qualified personnel responsible for transition services and pre-employment transition services;

(4) Procedures for outreach to and identification of students with disabilities who are in need of transition services and pre-employment transition services. Outreach to these students should occur as early as possible during the transition planning process and must include, at a minimum, a description of the purpose of the vocational rehabilitation program, eligibility requirements, application procedures, and scope of services that may be provided to eligible individuals;

(5) Coordination necessary to satisfy documentation requirements set forth in 34 CFR part 397 with regard to students and youth with disabilities who are seeking subminimum wage employment; and

(6) Assurance that, in accordance with 34 CFR 397.31, neither the State educational agency nor the local educational agency will enter into a contract or other arrangement with an entity, as defined in 34 CFR 397.5(d), for the purpose of operating a program under which a youth with a disability is engaged in work compensated at a subminimum wage.

(c) *Construction.* Nothing in this part will be construed to reduce the obligation under the Individuals with Disabilities Education Act (20 U.S.C. 1400 *et seq.*) of a local educational agency or any other agency to provide or pay for any transition services that are also considered special education or related services and that are necessary for ensuring a free appropriate public education to children with disabilities within the State involved.

(Approved by the Office of Management and Budget under control number 1205–0522)

(Authority: Sections 12(c), 101(a)(11)(D), 101(c), and 511 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 721(a)(11)(D), 721(c), and 794g)

§ 361.23 [Reserved]

§ 361.24 Cooperation and coordination with other entities.

(a) *Interagency cooperation.* The vocational rehabilitation services portion of the Unified or Combined State Plan must describe the designated State agency's cooperation with and use of the services and facilities of Federal, State, and local agencies and programs, including the State programs carried out under section 4 of the Assistive Technology Act of 1998 (29 U.S.C. 3003), programs carried out by the Under Secretary for Rural Development of the Department of Agriculture, noneducational agencies serving out-of-school youth, and State use contracting programs, to the extent that such Federal, State, and local agencies and programs are not carrying out activities through the statewide workforce development system.

(b) *Coordination with the Statewide Independent Living Council and independent living centers.* The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that the designated State unit, the Statewide Independent Living Council established under title VII, chapter 1, part B of the Act, and the independent living centers established under title VII, Chapter 1, Part C of the Act have developed working relationships and coordinate their activities.

(c) *Coordination with Employers.* The vocational rehabilitation services portion of the Unified or Combined State Plan must describe how the designated State unit will work with employers to identify competitive integrated employment opportunities and career exploration opportunities, in order to facilitate the provision of—

(1) Vocational rehabilitation services; and

(2) Transition services for youth with disabilities and students with disabilities, such as pre-employment transition services.

(d) *Cooperative agreement with recipients of grants for services to American Indians*—(1) *General.* In applicable cases, the vocational rehabilitation services portion of the Unified or Combined State Plan must assure that the designated State agency has entered into a formal cooperative agreement with each grant recipient in the State that receives funds under part C of the Act (American Indian Vocational Rehabilitation Services).

(2) *Contents of formal cooperative agreement.* The agreement required under paragraph (d)(1) of this section must describe strategies for collaboration and coordination in providing vocational rehabilitation services to American Indians who are individuals with disabilities, including—

(i) Strategies for interagency referral and information sharing that will assist in eligibility determinations and the development of individualized plans for employment;

(ii) Procedures for ensuring that American Indians who are individuals with disabilities and are living on or near a reservation or tribal service area are provided vocational rehabilitation services;

(iii) Strategies for the provision of transition planning by personnel of the designated State unit, the State educational agency, and the recipient of funds under part C of the Act, that will facilitate the development and approval of the individualized plan for employment under § 361.45; and

(iv) Provisions for sharing resources in cooperative studies and assessments, joint training activities, and other collaborative activities designed to improve the provision of services to American Indians who are individuals with disabilities.

(e) *Reciprocal referral services between two designated State units in the same State.* If there is a separate designated State unit for individuals who are blind, the two designated State units must establish reciprocal referral services, use each other's services and facilities to the extent feasible, jointly plan activities to improve services in the State for individuals with multiple impairments, including visual impairments, and otherwise cooperate to provide more effective services, including, if appropriate, entering into a written cooperative agreement.

(f) *Cooperative agreement regarding individuals eligible for home and community-based waiver programs.* The vocational rehabilitation services portion of the Unified or Combined State Plan must include an assurance that the designated State unit has entered into a formal cooperative agreement with the State agency responsible for administering the State Medicaid plan under title XIX of the Social Security Act (42 U.S.C. 1396 *et seq.*) and the State agency with primary responsibility for providing services and supports for individuals with intellectual disabilities and individuals with developmental disabilities, with respect to the delivery of vocational rehabilitation services, including

extended services, for individuals with the most significant disabilities who have been determined to be eligible for home and community-based services under a Medicaid waiver, Medicaid State plan amendment, or other authority related to a State Medicaid program.

(g) *Interagency cooperation.* The vocational rehabilitation services portion of the Unified or Combined State Plan shall describe how the designated State agency will collaborate with the State agency responsible for administering the State Medicaid plan under title XIX of the Social Security Act (42 U.S.C. 1396 *et seq.*), the State agency responsible for providing services for individuals with developmental disabilities, and the State agency responsible for providing mental health services, to develop opportunities for community-based employment in integrated settings, to the greatest extent practicable.

(h) *Coordination with assistive technology programs.* The vocational rehabilitation services portion of the Unified or Combined State Plan must include an assurance that the designated State unit, and the lead agency and implementing entity (if any) designated by the Governor of the State under section 4 of the Assistive Technology Act of 1998 (29 U.S.C. 3003), have developed working relationships and will enter into agreements for the coordination of their activities, including the referral of individuals with disabilities to programs and activities described in that section.

(i) *Coordination with ticket to work and self-sufficiency program.* The vocational rehabilitation services portion of the Unified or Combined State Plan must include an assurance that the designated State unit will coordinate activities with any other State agency that is functioning as an employment network under the Ticket to Work and Self-Sufficiency Program established under section 1148 of the Social Security Act (42 U.S.C. 1320b–19).

(Approved by the Office of Management and Budget under control number 1205–0522)

(Authority: Sections 12(c) and 101(a)(11) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 721(a)(11))

§ 361.25 Statewideness.

The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that services provided under the vocational rehabilitation services portion of the Unified or Combined State Plan will be available in all political subdivisions of the State, unless a waiver of statewideness is requested and approved in accordance with § 361.26.

(Approved by the Office of Management and Budget under control number 1205–0522)

(Authority: Section 101(a)(4) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 721(a)(4))

§ 361.26 Waiver of statewideness.

(a) *Availability.* The State unit may provide services in one or more political subdivisions of the State that increase services or expand the scope of services that are available statewide under the vocational rehabilitation services portion of the Unified or Combined State Plan if—

(1) The non-Federal share of the cost of these services is met from funds provided by a local public agency, including funds contributed to a local public agency by a private agency, organization, or individual;

(2) The services are likely to promote the vocational rehabilitation of substantially larger numbers of individuals with disabilities or of individuals with disabilities with particular types of impairments; and

(3) For purposes other than those specified in § 361.60(b)(3)(i) and consistent with the requirements in § 361.60(b)(3)(ii), the State includes in its vocational rehabilitation services portion of the Unified or Combined State Plan, and the Secretary approves, a waiver of the statewideness requirement, in accordance with the requirements of paragraph (b) of this section.

(b) *Request for waiver.* The request for a waiver of statewideness must—

(1) Identify the types of services to be provided;

(2) Contain a written assurance from the local public agency that it will make available to the State unit the non-Federal share of funds;

(3) Contain a written assurance that State unit approval will be obtained for each proposed service before it is put into effect; and

(4) Contain a written assurance that all other requirements of the vocational rehabilitation services portion of the Unified or Combined State Plan, including a State's order of selection requirements, will apply to all services approved under the waiver.

(Approved by the Office of Management and Budget under control number 1205–0522)

(Authority: Section 101(a)(4) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 721(a)(4))

§ 361.27 Shared funding and administration of joint programs.

(a) If the vocational rehabilitation services portion of the Unified or Combined State Plan provides for the designated State agency to share funding and administrative responsibility with another State agency or local public agency to carry out a joint program to provide services to individuals with disabilities, the State must submit to the Secretary for approval a plan that describes its shared funding and administrative arrangement.

(b) The plan under paragraph (a) of this section must include—

(1) A description of the nature and scope of the joint program;

(2) The services to be provided under the joint program;

(3) The respective roles of each participating agency in the administration and provision of services; and

(4) The share of the costs to be assumed by each agency.

(c) If a proposed joint program does not comply with the statewideness requirement in § 361.25, the State unit must obtain a waiver of statewideness, in accordance with § 361.26.

(Approved by the Office of Management and Budget under control number 1205–0522)

(Authority: Section 101(a)(2)(A) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 721(a)(2)(A))

§ 361.28 Third-party cooperative arrangements involving funds from other public agencies.

(a) The designated State unit may enter into a third-party cooperative arrangement for providing or contracting for the provision of vocational rehabilitation services with another State agency or a local public agency that is providing part or all of the non-Federal share in accordance with paragraph (c) of this section, if the designated State unit ensures that—

(1) The services provided by the cooperating agency are not the customary or typical services provided by that agency but are new services that have a vocational rehabilitation focus or existing services that have been modified, adapted, expanded, or reconfigured to have a vocational rehabilitation focus;

(2) The services provided by the cooperating agency are only available to applicants for, or recipients of, services from the designated State unit;

(3) Program expenditures and staff providing services under the cooperative arrangement are under the administrative supervision of the designated State unit; and

(4) All requirements of the vocational rehabilitation services portion of the Unified or Combined State Plan, including a State's order of selection,

will apply to all services provided under the cooperative arrangement.

(b) If a third party cooperative arrangement does not comply with the statewideness requirement in § 361.25, the State unit must obtain a waiver of statewideness, in accordance with § 361.26.

(c) The cooperating agency's contribution toward the non-Federal share required under the arrangement, as set forth in paragraph (a) of this section, may be made through:

(1) Cash transfers to the designated State unit;

(2) Certified personnel expenditures for the time cooperating agency staff spent providing direct vocational rehabilitation services pursuant to a third-party cooperative arrangement that meets the requirements of this section. Certified personnel expenditures may include the allocable portion of staff salary and fringe benefits based upon the amount of time cooperating agency staff directly spent providing services under the arrangement; and

(3) other direct expenditures incurred by the cooperating agency for the sole purpose of providing services under this section pursuant to a third-party cooperative arrangement that—

(i) Meets the requirements of this section;

(ii) Are verifiable as being incurred under the third-party cooperative arrangement; and

(iii) Do not meet the definition of third-party in-kind contributions under 2 CFR 200.96.

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c))

§ 361.29 Statewide assessment; annual estimates; annual State goals and priorities; strategies; and progress reports.

(a) *Comprehensive statewide assessment.* (1) The vocational rehabilitation services portion of the Unified or Combined State Plan must include—

(i) The results of a comprehensive, statewide assessment, jointly conducted by the designated State unit and the State Rehabilitation Council (if the State unit has a Council) every three years. Results of the assessment are to be included in the vocational rehabilitation portion of the Unified or Combined State Plan, submitted in accordance with the requirements of § 361.10(a) and the joint regulations of this part. The comprehensive needs assessment must describe the rehabilitation needs of individuals with disabilities residing within the State, particularly the vocational rehabilitation services needs of—

(A) Individuals with the most significant disabilities, including their need for supported employment services;

(B) Individuals with disabilities who are minorities and individuals with disabilities who have been unserved or underserved by the vocational rehabilitation program carried out under this part;

(C) Individuals with disabilities served through other components of the statewide workforce development system as identified by those individuals and personnel assisting those individuals through the components of the system; and

(D) Youth with disabilities, and students with disabilities, including

(*1*) Their need for pre-employment transition services or other transition services; and

(*2*) An assessment of the needs of individuals with disabilities for transition services and pre-employment transition services, and the extent to which such services provided under this part are coordinated with transition services provided under the Individuals with Disabilities Education Act (20 U.S.C. 1400 *et seq.*) in order to meet the needs of individuals with disabilities.

(ii) An assessment of the need to establish, develop, or improve community rehabilitation programs within the State.

(2) The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that the State will submit to the Secretary a report containing information regarding updates to the assessments under paragraph (a) of this section for any year in which the State updates the assessments at such time and in such manner as the Secretary determines appropriate.

(b) *Annual estimates.* The vocational rehabilitation services portion of the Unified or Combined State Plan must include, and must assure that the State will submit a report to the Secretary (at such time and in such manner determined appropriate by the Secretary) that includes, State estimates of—

(1) The number of individuals in the State who are eligible for services under this part;

(2) The number of eligible individuals who will receive services provided with funds provided under this part and under part § 363, including, if the designated State agency uses an order of selection in accordance with § 361.36, estimates of the number of individuals to be served under each priority category within the order;

(3) The number of individuals who are eligible for services under paragraph (b)(1) of this section, but are not receiving such services due to an order of selection; and

(4) The costs of the services described in paragraph (b)(2) of this section, including, if the designated State agency uses an order of selection, the service costs for each priority category within the order.

(c) *Goals and priorities*—(1) *In general.* The vocational rehabilitation services portion of the Unified or Combined State Plan must identify the goals and priorities of the State in carrying out the program.

(2) *Council.* The goals and priorities must be jointly developed, agreed to, reviewed annually, and, as necessary, revised by the designated State unit and the State Rehabilitation Council, if the State unit has a Council.

(3) *Submission.* The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that the State will submit to the Secretary a report containing information regarding revisions in the goals and priorities for any year in which the State revises the goals and priorities at such time and in such manner as determined appropriate by the Secretary.

(4) *Basis for goals and priorities.* The State goals and priorities must be based on an analysis of—

(i) The comprehensive statewide assessment described in paragraph (a) of this section, including any updates to the assessment;

(ii) The performance of the State on the standards and indicators established under section 106 of the Act; and

(iii) Other available information on the operation and the effectiveness of the vocational rehabilitation program carried out in the State, including any reports received from the State Rehabilitation Council under § 361.17(h) and the findings and recommendations from monitoring activities conducted under section 107 of the Act.

(5) *Service and outcome goals for categories in order of selection.* If the designated State agency uses an order of selection in accordance with § 361.36, the vocational rehabilitation services portion of the Unified or Combined State Plan must identify the State's service and outcome goals and the time within which these goals may be achieved for individuals in each priority category within the order.

(d) *Strategies.* The vocational rehabilitation services portion of the Unified or Combined State Plan must describe the strategies the State will use

to address the needs identified in the assessment conducted under paragraph (a) of this section and achieve the goals and priorities identified in paragraph (c) of this section, including—

(1) The methods to be used to expand and improve services to individuals with disabilities, including how a broad range of assistive technology services and assistive technology devices will be provided to those individuals at each stage of the rehabilitation process and how those services and devices will be provided to individuals with disabilities on a statewide basis;

(2) The methods to be used to improve and expand vocational rehabilitation services for students with disabilities, including the coordination of services designed to facilitate the transition of such students from the receipt of educational services in school to postsecondary life, including the receipt of vocational rehabilitation services under the Act, postsecondary education, employment, and pre-employment transition services;

(3) Strategies developed and implemented by the State to address the needs of students and youth with disabilities identified in the assessments described in paragraph (a) of this section and strategies to achieve the goals and priorities identified by the State to improve and expand vocational rehabilitation services for students and youth with disabilities on a statewide basis;

(4) Strategies to provide pre-employment transition services;

(5) Outreach procedures to identify and serve individuals with disabilities who are minorities and individuals with disabilities who have been unserved or underserved by the vocational rehabilitation program;

(6) As applicable, the plan of the State for establishing, developing, or improving community rehabilitation programs;

(7) Strategies to improve the performance of the State with respect to the evaluation standards and performance indicators established pursuant to section 106 of the Act and section 116 of Workforce Innovation and Opportunity Act; and

(8) Strategies for assisting other components of the statewide workforce development system in assisting individuals with disabilities.

(e) *Evaluation and reports of progress.* (1) The vocational rehabilitation services portion of the Unified or Combined State Plan must include—

(i) The results of an evaluation of the effectiveness of the vocational rehabilitation program; and

(ii) A joint report by the designated State unit and the State Rehabilitation Council, if the State unit has a Council, to the Secretary on the progress made in improving the effectiveness of the program from the previous year. This evaluation and joint report must include—

(A) An evaluation of the extent to which the goals and priorities identified in paragraph (c) of this section were achieved;

(B) A description of the strategies that contributed to the achievement of the goals and priorities;

(C) To the extent to which the goals and priorities were not achieved, a description of the factors that impeded that achievement; and

(D) An assessment of the performance of the State on the standards and indicators established pursuant to section 106 of the Act.

(2) The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that the designated State unit and the State Rehabilitation Council, if the State unit has a Council, will jointly submit to the Secretary a report that contains the information described in paragraph (e)(1) of this section at such time and in such manner the Secretary determines appropriate.

(Approved by the Office of Management and Budget under control number 1205–0522)

(Authority: Section 101(a)(15) and (25) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 721(a)(15) and (25))

§ 361.30 Services to American Indians.

The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that the designated State agency provides vocational rehabilitation services to American Indians who are individuals with disabilities residing in the State to the same extent as the designated State agency provides vocational rehabilitation services to other significant populations of individuals with disabilities residing in the State.

(Approved by the Office of Management and Budget under control number 1205–0522)

(Authority: Sections 101(a)(13) and 121(b)(3) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 721(a)(13) and 741(b)(3))

§ 361.31 Cooperative agreements with private nonprofit organizations.

The vocational rehabilitation services portion of the Unified or Combined State Plan must describe the manner in which cooperative agreements with private nonprofit vocational rehabilitation service providers will be established.

(Approved by the Office of Management and Budget under control number 1205–0522)

(Authority: Section 101(a)(24)(B) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 721(a)(24)(B))

§ 361.32 Provision of training and services for employers.

The designated State unit may expend payments received under this part to educate and provide services to employers who have hired or are interested in hiring individuals with disabilities under the vocational rehabilitation program, including—

(a) Providing training and technical assistance to employers regarding the employment of individuals with disabilities, including disability awareness, and the requirements of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*) and other employment-related laws;

(b) Working with employers to—

(1) Provide opportunities for work-based learning experiences (including internships, short-term employment, apprenticeships, and fellowships);

(2) Provide opportunities for pre-employment transition services, in accordance with the requirements under § 361.48(a);

(3) Recruit qualified applicants who are individuals with disabilities;

(4) Train employees who are individuals with disabilities; and

(5) Promote awareness of disability-related obstacles to continued employment.

(c) Providing consultation, technical assistance, and support to employers on workplace accommodations, assistive technology, and facilities and workplace access through collaboration with community partners and employers, across States and nationally, to enable the employers to recruit, job match, hire, and retain qualified individuals with disabilities who are recipients of vocational rehabilitation services under this part, or who are applicants for such services; and

(d) Assisting employers with utilizing available financial support for hiring or accommodating individuals with disabilities.

(Approved by the Office of Management and Budget under control number 1205–0522)

(Authority: Section 109 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 728A)

§ 361.33 [Reserved]

§ 361.34 Supported employment State plan supplement.

(a) The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that the State has an acceptable plan under

part 363 of this chapter that provides for the use of funds under that part to supplement funds under this part for the cost of services leading to supported employment.

(b) The supported employment plan, including any needed revisions, must be submitted as a supplement to the vocational rehabilitation services portion of the Unified or Combined State Plan submitted under this part.

(Approved by the Office of Management and Budget under control number 1205–0522)

(Authority: Sections 101(a)(22) and 606 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 721(a)(22) and 795k)

§ 361.35 Innovation and expansion activities.

(a) The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that the State will reserve and use a portion of the funds allotted to the State under section 110 of the Act—

(1) For the development and implementation of innovative approaches to expand and improve the provision of vocational rehabilitation services to individuals with disabilities, particularly individuals with the most significant disabilities, including transition services for students and youth with disabilities and pre-employment transition services for students with disabilities, consistent with the findings of the comprehensive statewide assessment of the rehabilitation needs of individuals with disabilities under § 361.29(a) and the State's goals and priorities under § 361.29(c);

(2) To support the funding of the State Rehabilitation Council, if the State has a Council, consistent with the resource plan identified in § 361.17(i); and

(3) To support the funding of the Statewide Independent Living Council, consistent with the Statewide Independent Living Council resource plan prepared under Section 705(e)(1) of the Act.

(b) The vocational rehabilitation services portion of the Unified or Combined State Plan must—

(1) Describe how the reserved funds will be used; and

(2) Include a report describing how the reserved funds were used.

(Approved by the Office of Management and Budget under control number 1205–0522)

(Authority: Sections 12(c) and 101(a)(18) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 721(a) (18))

§ 361.36 Ability to serve all eligible individuals; order of selection for services.

(a) *General provisions*—(1) The designated State unit either must be able to provide the full range of services listed in section 103(a) of the Act and § 361.48, as appropriate, to all eligible individuals or, in the event that vocational rehabilitation services cannot be provided to all eligible individuals in the State who apply for the services, include in the vocational rehabilitation services portion of the Unified or Combined State Plan the order to be followed in selecting eligible individuals to be provided vocational rehabilitation services.

(2) The ability of the designated State unit to provide the full range of vocational rehabilitation services to all eligible individuals must be supported by a determination that satisfies the requirements of paragraph (b) or (c) of this section and a determination that, on the basis of the designated State unit's projected fiscal and personnel resources and its assessment of the rehabilitation needs of individuals with significant disabilities within the State, it can—

(i) Continue to provide services to all individuals currently receiving services;

(ii) Provide assessment services to all individuals expected to apply for services in the next fiscal year;

(iii) Provide services to all individuals who are expected to be determined eligible in the next fiscal year; and

(iv) Meet all program requirements.

(3) If the designated State unit is unable to provide the full range of vocational rehabilitation services to all eligible individuals in the State who apply for the services, the vocational rehabilitation services portion of the Unified or Combined State Plan must—

(i) Show the order to be followed in selecting eligible individuals to be provided vocational rehabilitation services;

(ii) Provide a justification for the order of selection;

(iii) Identify service and outcome goals and the time within which the goals may be achieved for individuals in each priority category within the order, as required under § 361.29(c)(5);

(iv) Assure that—

(A) In accordance with criteria established by the State for the order of selection, individuals with the most significant disabilities will be selected first for the provision of vocational rehabilitation services; and

(B) Individuals who do not meet the order of selection criteria will have access to services provided through the information and referral system established under § 361.37; and

(v) State whether the designated State unit will elect to serve, in its discretion, eligible individuals (whether or not the individuals are receiving vocational rehabilitation services under the order of selection) who require specific services or equipment to maintain employment, notwithstanding the assurance provided pursuant to paragraph (3)(iv)(A) of this section.

(b) *Basis for assurance that services can be provided to all eligible individuals.* (1) For a designated State unit that determined, for the current fiscal year and the preceding fiscal year, that it is able to provide the full range of services, as appropriate, to all eligible individuals, the State unit, during the current fiscal and preceding fiscal year, must have in fact—

(i) Provided assessment services to all applicants and the full range of services, as appropriate, to all eligible individuals;

(ii) Made referral forms widely available throughout the State;

(iii) Conducted outreach efforts to identify and serve individuals with disabilities who have been unserved or underserved by the vocational rehabilitation system; and

(iv) Not delayed, through waiting lists or other means, determinations of eligibility, the development of individualized plans for employment for individuals determined eligible for vocational rehabilitation services, or the provision of services for eligible individuals for whom individualized plans for employment have been developed.

(2) For a designated State unit that was unable to provide the full range of services to all eligible individuals during the current or preceding fiscal year or that has not met the requirements in paragraph (b)(1) of this section, the determination that the designated State unit is able to provide the full range of vocational rehabilitation services to all eligible individuals in the next fiscal year must be based on—

(i) A demonstration that circumstances have changed that will allow the designated State unit to meet the requirements of paragraph (a)(2) of this section in the next fiscal year, including—

(A) An estimate of the number of and projected costs of serving, in the next fiscal year, individuals with existing individualized plans for employment;

(B) The projected number of individuals with disabilities who will apply for services and will be determined eligible in the next fiscal year and the projected costs of serving those individuals;

(C) The projected costs of administering the program in the next fiscal year, including, but not limited to, costs of staff salaries and benefits,

outreach activities, and required statewide studies; and

(D) The projected revenues and projected number of qualified personnel for the program in the next fiscal year.

(ii) Comparable data, as relevant, for the current or preceding fiscal year, or for both years, of the costs listed in paragraphs (b)(2)(i)(A) through (C) of this section and the resources identified in paragraph (b)(2)(i)(D) of this section and an explanation of any projected increases or decreases in these costs and resources; and

(iii) A determination that the projected revenues and the projected number of qualified personnel for the program in the next fiscal year are adequate to cover the costs identified in paragraphs (b)(2)(i)(A) through (C) of this section to ensure the provision of the full range of services, as appropriate, to all eligible individuals.

(c) *Determining need for establishing and implementing an order of selection.* (1) The designated State unit must determine, prior to the beginning of each fiscal year, whether to establish and implement an order of selection.

(2) If the designated State unit determines that it does not need to establish an order of selection, it must reevaluate this determination whenever changed circumstances during the course of a fiscal year, such as a decrease in its fiscal or personnel resources or an increase in its program costs, indicate that it may no longer be able to provide the full range of services, as appropriate, to all eligible individuals, as described in paragraph (a)(2) of this section.

(3) If a designated State unit establishes an order of selection, but determines that it does not need to implement that order at the beginning of the fiscal year, it must continue to meet the requirements of paragraph (a)(2) of this section, or it must implement the order of selection by closing one or more priority categories.

(d) *Establishing an order of selection*—(1) *Basis for order of selection.* An order of selection must be based on a refinement of the three criteria in the definition of *individual with a significant disability* in section 7(21)(A) of the Act and § 361.5(c)(30).

(2) *Factors that cannot be used in determining order of selection of eligible individuals.* An order of selection may not be based on any other factors, including—

(i) Any duration of residency requirement, provided the individual is present in the State;

(ii) Type of disability;

(iii) Age, sex, race, color, or national origin;

(iv) Source of referral;

(v) Type of expected employment outcome;

(vi) The need for specific services except those services provided in accordance with 361.36(a)(3)(v), or anticipated cost of services required by an individual; or

(vii) The income level of an individual or an individual's family.

(e) *Administrative requirements.* In administering the order of selection, the designated State unit must—

(1) Implement the order of selection on a statewide basis;

(2) Notify all eligible individuals of the priority categories in a State's order of selection, their assignment to a particular category, and their right to appeal their category assignment;

(3) Continue to provide services to any recipient who has begun to receive services irrespective of the severity of the individual's disability as follows—

(i) The designated State unit must continue to provide pre-employment transition services to students with disabilities who were receiving such services prior to being determined eligible for vocational rehabilitation services; and

(ii) The designated State unit must continue to provide to an eligible individual all needed services listed on the individualized plan for employment if the individual had begun receiving such services prior to the effective date of the State's order of selection; and

(4) Ensure that its funding arrangements for providing services under the vocational rehabilitation services portion of the Unified or Combined State Plan, including third-party arrangements and awards under the establishment authority, are consistent with the order of selection. If any funding arrangements are inconsistent with the order of selection, the designated State unit must renegotiate these funding arrangements so that they are consistent with the order of selection.

(f) *State Rehabilitation Council.* The designated State unit must consult with the State Rehabilitation Council, if the State unit has a Council, regarding the—

(1) Need to establish an order of selection, including any reevaluation of the need under paragraph (c)(2) of this section;

(2) Priority categories of the particular order of selection;

(3) Criteria for determining individuals with the most significant disabilities; and

(4) Administration of the order of selection.

(Approved by the Office of Management and Budget under control number 1205–0522)

(Authority: Sections 12(d); 101(a)(5); 101(a)(12); 101(a)(15)(A), (B) and (C); 101(a)(21)(A)(ii); and 504(a) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(d), 721(a)(5), 721(a)(12), 721(a)(15)(A), (B) and (C); 721(a)(21)(A)(ii), and 794(a))

§ 361.37 Information and referral programs.

(a) *General provisions.* The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that—

(1) The designated State agency will implement an information and referral system adequate to ensure that individuals with disabilities, including eligible individuals who do not meet the agency's order of selection criteria for receiving vocational rehabilitation services if the agency is operating on an order of selection, are provided accurate vocational rehabilitation information and guidance (which may include counseling and referral for job placement) using appropriate modes of communication to assist them in preparing for, securing, retaining, advancing in, or regaining employment; and

(2) The designated State agency will refer individuals with disabilities to other appropriate Federal and State programs, including other components of the statewide workforce development system.

(b) The designated State unit must refer to appropriate programs and service providers best suited to address the specific rehabilitation, independent living and employment needs of an individual with a disability who makes an informed choice not to pursue an employment outcome under the vocational rehabilitation program, as defined in § 361.5(c)(15). Before making the referral required by this paragraph, the State unit must—

(1) Consistent with § 361.42(a)(4)(i), explain to the individual that the purpose of the vocational rehabilitation program is to assist individuals to achieve an employment outcome as defined in § 361.5(c)(15);

(2) Consistent with § 361.52, provide the individual with information concerning the availability of employment options, and of vocational rehabilitation services, to assist the individual to achieve an appropriate employment outcome;

(3) Inform the individual that services under the vocational rehabilitation program can be provided to eligible individuals in an extended employment setting if necessary for purposes of training or otherwise preparing for employment in an integrated setting;

(4) Inform the individual that, if he or she initially chooses not to pursue an employment outcome as defined in § 361.5(c)(15), he or she can seek services from the designated State unit at a later date if, at that time, he or she chooses to pursue an employment outcome; and

(5) Refer the individual, as appropriate, to the Social Security Administration in order to obtain information concerning the ability of individuals with disabilities to work while receiving benefits from the Social Security Administration.

(c) *Criteria for appropriate referrals.* In making the referrals identified in paragraph (a)(2) of this section, the designated State unit must—

(1) Refer the individual to Federal or State programs, including programs carried out by other components of the statewide workforce development system, best suited to address the specific employment needs of an individual with a disability; and

(2) Provide the individual who is being referred—

(i) A notice of the referral by the designated State agency to the agency carrying out the program;

(ii) Information identifying a specific point of contact within the agency to which the individual is being referred; and

(iii) Information and advice regarding the most suitable services to assist the individual to prepare for, secure, retain, or regain employment.

(d) *Order of selection.* In providing the information and referral services under this section to eligible individuals who are not in the priority category or categories to receive vocational rehabilitation services under the State's order of selection, the State unit must identify, as part of its reporting under section 101(a)(10) of the Act and § 361.40, the number of eligible individuals who did not meet the agency's order of selection criteria for receiving vocational rehabilitation services and did receive information and referral services under this section.

(Approved by the Office of Management and Budget under control number 1205–0522)

(Authority: Sections 7(11), 12(c), 101(a)(5)(E), 101(a)(10)(C)(ii), and 101(a)(20) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(11), 709(c), 721(a)(5)(E), 721(a)(10)(C)(ii), and 721(a)(20))

§ 361.38 Protection, use, and release of personal information.

(a) *General provisions.* (1) The State agency and the State unit must adopt and implement written policies and procedures to safeguard the confidentiality of all personal information, including photographs and lists of names. These policies and procedures must ensure that—

(i) Specific safeguards are established to protect current and stored personal information, including a requirement that data only be released when governed by a written agreement between the designated State unit and receiving entity under paragraphs (d) and (e)(1) of this section, which addresses the requirements in this section;

(ii) All applicants and recipients of services and, as appropriate, those individuals' representatives, service providers, cooperating agencies, and interested persons are informed through appropriate modes of communication of the confidentiality of personal information and the conditions for accessing and releasing this information;

(iii) All applicants and recipients of services or their representatives are informed about the State unit's need to collect personal information and the policies governing its use, including—

(A) Identification of the authority under which information is collected;

(B) Explanation of the principal purposes for which the State unit intends to use or release the information;

(C) Explanation of whether providing requested information to the State unit is mandatory or voluntary and the effects of not providing requested information;

(D) Identification of those situations in which the State unit requires or does not require informed written consent of the individual before information may be released; and

(E) Identification of other agencies to which information is routinely released;

(iv) An explanation of State policies and procedures affecting personal information will be provided to each individual in that individual's native language or through the appropriate mode of communication; and

(v) These policies and procedures provide no fewer protections for individuals than State laws and regulations.

(2) The State unit may establish reasonable fees to cover extraordinary costs of duplicating records or making extensive searches and must establish policies and procedures governing access to records.

(b) *State program use.* All personal information in the possession of the State agency or the designated State unit must be used only for the purposes directly connected with the administration of the vocational rehabilitation program. Information containing identifiable personal information may not be shared with advisory or other bodies that do not have official responsibility for administration of the program. In the administration of the program, the State unit may obtain personal information from service providers and cooperating agencies under assurances that the information may not be further divulged, except as provided under paragraphs (c), (d), and (e) of this section.

(c) *Release to applicants and recipients of services.* (1) Except as provided in paragraphs (c)(2) and (3) of this section, if requested in writing by an applicant or recipient of services, the State unit must make all requested information in that individual's record of services accessible to and must release the information to the individual or the individual's representative in a timely manner.

(2) Medical, psychological, or other information that the State unit determines may be harmful to the individual may not be released directly to the individual, but must be provided to the individual through a third party chosen by the individual, which may include, among others, an advocate, a family member, or a qualified medical or mental health professional, unless a representative has been appointed by a court to represent the individual, in which case the information must be released to the court-appointed representative.

(3) If personal information has been obtained from another agency or organization, it may be released only by, or under the conditions established by, the other agency or organization.

(4) An applicant or recipient of services who believes that information in the individual's record of services is inaccurate or misleading may request that the designated State unit amend the information. If the information is not amended, the request for an amendment must be documented in the record of services, consistent with § 361.47(a)(12).

(d) *Release for audit, evaluation, and research.* Personal information may be released to an organization, agency, or individual engaged in audit, evaluation, or research only for purposes directly connected with the administration of the vocational rehabilitation program or for purposes that would significantly improve the quality of life for applicants and recipients of services and only if, in accordance with a written agreement, the organization, agency, or individual assures that—

(1) The information will be used only for the purposes for which it is being provided;

(2) The information will be released only to persons officially connected with the audit, evaluation, or research;

(3) The information will not be released to the involved individual;

(4) The information will be managed in a manner to safeguard confidentiality; and

(5) The final product will not reveal any personal identifying information without the informed written consent of the involved individual or the individual's representative.

(e) *Release to other programs or authorities.* (1) Upon receiving the informed written consent of the individual or, if appropriate, the individual's representative, the State unit may release personal information to another agency or organization, in accordance with a written agreement, for its program purposes only to the extent that the information may be released to the involved individual or the individual's representative and only to the extent that the other agency or organization demonstrates that the information requested is necessary for its program.

(2) Medical or psychological information that the State unit determines may be harmful to the individual may be released if the other agency or organization assures the State unit that the information will be used only for the purpose for which it is being provided and will not be further released to the individual.

(3) The State unit must release personal information if required by Federal law or regulations.

(4) The State unit must release personal information in response to investigations in connection with law enforcement, fraud, or abuse, unless expressly prohibited by Federal or State laws or regulations, and in response to an order issued by a judge, magistrate, or other authorized judicial officer.

(5) The State unit also may release personal information in order to protect the individual or others if the individual poses a threat to his or her safety or to the safety of others.

(Authority: Sections 12(c) and 101(a)(6)(A) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 721(a)(6)(A))

§ 361.39 State-imposed requirements.

The designated State unit must, upon request, identify those regulations and policies relating to the administration or operation of its vocational rehabilitation program that are State-imposed, including any regulations or policy based on State interpretation of any Federal law, regulation, or guideline.

(Authority: Section 17 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 714)

§ 361.40 Reports; Evaluation standards and performance indicators.

(a) *Reports.* (1) The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that the designated State agency will submit reports, including reports required under sections 13, 14, and 101(a)(10) of the Act—

(i) In the form and level of detail and at the time required by the Secretary regarding applicants for and eligible individuals receiving services, including students receiving pre-employment transition services in accordance with § 361.48(a); and

(ii) In a manner that provides a complete count (other than the information obtained through sampling consistent with section 101(a)(10)(E) of the Act) of the applicants and eligible individuals to—

(A) Permit the greatest possible cross-classification of data; and

(B) Protect the confidentiality of the identity of each individual.

(2) The designated State agency must comply with any requirements necessary to ensure the accuracy and verification of those reports.

(b) *[Reserved]*

(Approved by the Office of Management and Budget under control number 1205–0522)

(Authority: Sections 12(c), 101(a)(10)(A) and (F), and 106 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c),721(a)(10)(A) and (F), and 726)

Provision and Scope of Services

§ 361.41 Processing referrals and applications.

(a) *Referrals.* The designated State unit must establish and implement standards for the prompt and equitable handling of referrals of individuals for vocational rehabilitation services, including referrals of individuals made through the one-stop service delivery systems under section 121 of the Workforce Innovation and Opportunity Act. The standards must include timelines for making good faith efforts to inform these individuals of application requirements and to gather information necessary to initiate an assessment for determining eligibility and priority for services.

(b) *Applications.* (1) Once an individual has submitted an application for vocational rehabilitation services, including applications made through common intake procedures in one-stop centers under section 121 of the Workforce Innovation and Opportunity Act, an eligibility determination must be made within 60 days, unless—

(i) Exceptional and unforeseen circumstances beyond the control of the designated State unit preclude making an eligibility determination within 60 days and the designated State unit and the individual agree to a specific extension of time; or

(ii) An exploration of the individual's abilities, capabilities, and capacity to perform in work situations is carried out in accordance with § 361.42(e).

(2) An individual is considered to have submitted an application when the individual or the individual's representative, as appropriate—

(i)(A) Has completed and signed an agency application form;

(B) Has completed a common intake application form in a one-stop center requesting vocational rehabilitation services; or

(C) Has otherwise requested services from the designated State unit;

(ii) Has provided to the designated State unit information necessary to initiate an assessment to determine eligibility and priority for services; and

(iii) Is available to complete the assessment process.

(3) The designated State unit must ensure that its application forms are widely available throughout the State, particularly in the one-stop centers under section 121 of the Workforce Innovation and Opportunity Act.

(Authority: Sections 12(c), 101(a)(6)(A), and 102(a)(6) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 721(a)(6)(A), and 722(a)(6))

§ 361.42 Assessment for determining eligibility and priority for services.

In order to determine whether an individual is eligible for vocational rehabilitation services and the individual's priority under an order of selection for services (if the State is operating under an order of selection), the designated State unit must conduct an assessment for determining eligibility and priority for services. The assessment must be conducted in the most integrated setting possible, consistent with the individual's needs and informed choice, and in accordance with the following provisions:

(a) *Eligibility requirements*—(1) *Basic requirements.* The designated State unit's determination of an applicant's eligibility for vocational rehabilitation services must be based only on the following requirements:

(i) A determination by qualified personnel that the applicant has a physical or mental impairment;

(ii) A determination by qualified personnel that the applicant's physical or mental impairment constitutes or results in a substantial impediment to employment for the applicant; and

(iii) A determination by a qualified vocational rehabilitation counselor

employed by the designated State unit that the applicant requires vocational rehabilitation services to prepare for, secure, retain, advance in, or regain employment that is consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interest, and informed choice. For purposes of an assessment for determining eligibility and vocational rehabilitation needs under this part, an individual is presumed to have a goal of an employment outcome.

(2) *Presumption of benefit.* The designated State unit must presume that an applicant who meets the eligibility requirements in paragraphs (a)(1)(i) and (ii) of this section can benefit in terms of an employment outcome.

(3) *Presumption of eligibility for Social Security recipients and beneficiaries.* (i) Any applicant who has been determined eligible for Social Security benefits under title II or title XVI of the Social Security Act is—

(A) Presumed eligible for vocational rehabilitation services under paragraphs (a)(1) and (2) of this section; and

(B) Considered an individual with a significant disability as defined in § 361.5(c)(29).

(ii) If an applicant for vocational rehabilitation services asserts that he or she is eligible for Social Security benefits under title II or title XVI of the Social Security Act (and, therefore, is presumed eligible for vocational rehabilitation services under paragraph (a)(3)(i)(A) of this section), but is unable to provide appropriate evidence, such as an award letter, to support that assertion, the State unit must verify the applicant's eligibility under title II or title XVI of the Social Security Act by contacting the Social Security Administration. This verification must be made within a reasonable period of time that enables the State unit to determine the applicant's eligibility for vocational rehabilitation services within 60 days of the individual submitting an application for services in accordance with § 361.41(b)(2).

(4) *Achievement of an employment outcome.* Any eligible individual, including an individual whose eligibility for vocational rehabilitation services is based on the individual being eligible for Social Security benefits under title II or title XVI of the Social Security Act, must intend to achieve an employment outcome that is consistent with the applicant's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(i) The State unit is responsible for informing individuals, through its application process for vocational rehabilitation services, that individuals who receive services under the program must intend to achieve an employment outcome.

(ii) The applicant's completion of the application process for vocational rehabilitation services is sufficient evidence of the individual's intent to achieve an employment outcome, and no additional demonstration on the part of the applicant is required for purposes of satisfying paragraph (a)(4) of this section.

(5) *Interpretation.* Nothing in this section, including paragraph (a)(3)(i), is to be construed to create an entitlement to any vocational rehabilitation service.

(b) *Interim determination of eligibility.* (1) The designated State unit may initiate the provision of vocational rehabilitation services for an applicant on the basis of an interim determination of eligibility prior to the 60-day period described in § 361.41(b)(2).

(2) If a State chooses to make interim determinations of eligibility, the designated State unit must—

(i) Establish criteria and conditions for making those determinations;

(ii) Develop and implement procedures for making the determinations; and

(iii) Determine the scope of services that may be provided pending the final determination of eligibility.

(3) If a State elects to use an interim eligibility determination, the designated State unit must make a final determination of eligibility within 60 days of the individual submitting an application for services in accordance with § 361.41(b)(2).

(c) *Prohibited factors.* (1) The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that the State unit will not impose, as part of determining eligibility under this section, a duration of residence requirement that excludes from services any applicant who is present in the State. The designated State unit may not require the applicant to demonstrate a presence in the State through the production of any documentation that under State or local law, or practical circumstances, results in a de facto duration of residence requirement.

(2) In making a determination of eligibility under this section, the designated State unit also must ensure that—

(i) No applicant or group of applicants is excluded or found ineligible solely on the basis of the type of disability; and

(ii) The eligibility requirements are applied without regard to the—

(A) Age, sex, race, color, or national origin of the applicant;

(B) Type of expected employment outcome;

(C) Source of referral for vocational rehabilitation services;

(D) Particular service needs or anticipated cost of services required by an applicant or the income level of an applicant or applicant's family;

(E) Applicants' employment history or current employment status; and

(F) Applicants' educational status or current educational credential.

(d) *Review and assessment of data for eligibility determination.* Except as provided in paragraph (e) of this section, the designated State unit—

(1) Must base its determination of each of the basic eligibility requirements in paragraph (a) of this section on—

(i) A review and assessment of existing data, including counselor observations, education records, information provided by the individual or the individual's family, particularly information used by education officials, and determinations made by officials of other agencies; and

(ii) To the extent existing data do not describe the current functioning of the individual or are unavailable, insufficient, or inappropriate to make an eligibility determination, an assessment of additional data resulting from the provision of vocational rehabilitation services, including trial work experiences, assistive technology devices and services, personal assistance services, and any other support services that are necessary to determine whether an individual is eligible; and

(2) Must base its presumption under paragraph (a)(3)(i) of this section that an applicant who has been determined eligible for Social Security benefits under title II or title XVI of the Social Security Act satisfies each of the basic eligibility requirements in paragraph (a) of this section on determinations made by the Social Security Administration.

(e) *Trial work experiences for individuals with significant disabilities.* (1) Prior to any determination that an individual with a disability is unable to benefit from vocational rehabilitation services in terms of an employment outcome because of the severity of that individual's disability or that the individual is ineligible for vocational rehabilitation services, the designated State unit must conduct an exploration of the individual's abilities, capabilities, and capacity to perform in realistic work situations.

(2)(i) The designated State unit must develop a written plan to assess periodically the individual's abilities, capabilities, and capacity to perform in competitive integrated work situations

through the use of trial work experiences, which must be provided in competitive integrated employment settings to the maximum extent possible, consistent with the informed choice and rehabilitation needs of the individual.

(ii) Trial work experiences include supported employment, on-the-job training, and other experiences using realistic integrated work settings.

(iii) Trial work experiences must be of sufficient variety and over a sufficient period of time for the designated State unit to determine that—

(A) There is sufficient evidence to conclude that the individual can benefit from the provision of vocational rehabilitation services in terms of an employment outcome; or

(B) There is clear and convincing evidence that due to the severity of the individual's disability, the individual is incapable of benefitting from the provision of vocational rehabilitation services in terms of an employment outcome; and

(iv) The designated State unit must provide appropriate supports, including, but not limited to, assistive technology devices and services and personal assistance services, to accommodate the rehabilitation needs of the individual during the trial work experiences.

(f) *Data for determination of priority for services under an order of selection.* If the designated State unit is operating under an order of selection for services, as provided in § 361.36, the State unit must base its priority assignments on—

(1) A review of the data that was developed under paragraphs (d) and (e) of this section to make the eligibility determination; and

(2) An assessment of additional data, to the extent necessary.

(Authority: Sections 7(2), 12(c), 101(a)(12), 102(a), 103(a)(1), 103(a)(9), 103(a)(10), and 103(a)(14) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(2), 709(c), 721(a)(12), 722(a), 723(a)(1), 723(a)(9), 723(a)(10), and 723(a)(14))

Note to § 361.42: *Clear and convincing evidence* means that the designated State unit has a high degree of certainty before it can conclude that an individual is incapable of benefiting from services in terms of an employment outcome. The clear and convincing standard constitutes the highest standard used in our civil system of law and is to be individually applied on a case-by-case basis. The term *clear* means unequivocal. For example, the use of an intelligence test result alone would not constitute clear and convincing evidence. Clear and convincing evidence might include a description of assessments, including situational assessments and supported employment assessments, from service providers who have concluded that they would be unable to meet the individual's needs due to the severity of the individual's disability. The demonstration of "clear and convincing evidence" must include, if appropriate, a functional assessment of skill development activities, with any necessary supports (including assistive technology), in real life settings. (S. Rep. No. 357, 102d Cong., 2d. Sess. 37–38 (1992))

§ 361.43 Procedures for ineligibility determination.

If the State unit determines that an applicant is ineligible for vocational rehabilitation services or determines that an individual receiving services under an individualized plan for employment is no longer eligible for services, the State unit must—

(a) Make the determination only after providing an opportunity for full consultation with the individual or, as appropriate, with the individual's representative;

(b) Inform the individual in writing, supplemented as necessary by other appropriate modes of communication consistent with the informed choice of the individual, of the ineligibility determination, including the reasons for that determination, the requirements under this section, and the means by which the individual may express and seek remedy for any dissatisfaction, including the procedures for review of State unit personnel determinations in accordance with § 361.57;

(c) Provide the individual with a description of services available from a client assistance program established under 34 CFR part 370 and information on how to contact that program;

(d) Refer the individual—

(1) To other programs that are part of the one-stop service delivery system under the Workforce Innovation and Opportunity Act that can address the individual's training or employment-related needs; or

(2) To Federal, State, or local programs or service providers, including, as appropriate, independent living programs and extended employment providers, best suited to meet their rehabilitation needs, if the ineligibility determination is based on a finding that the individual has chosen not to pursue, or is incapable of achieving, an employment outcome as defined in § 361.5(c)(15).

(e) Review within 12 months and annually thereafter if requested by the individual or, if appropriate, by the individual's representative any ineligibility determination that is based on a finding that the individual is incapable of achieving an employment outcome. This review need not be conducted in situations in which the individual has refused it, the individual is no longer present in the State, the individual's whereabouts are unknown, or the individual's medical condition is rapidly progressive or terminal.

(Authority: Sections 12(c) and 102(a)(5) and (c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 722(a)(5)and (c))

§ 361.44 Closure without eligibility determination.

The designated State unit may not close an applicant's record of services prior to making an eligibility determination unless the applicant declines to participate in, or is unavailable to complete, an assessment for determining eligibility and priority for services, and the State unit has made a reasonable number of attempts to contact the applicant or, if appropriate, the applicant's representative to encourage the applicant's participation.

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c))

§ 361.45 Development of the individualized plan for employment.

(a) *General requirements.* The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that—

(1) An individualized plan for employment meeting the requirements of this section and § 361.46 is developed and implemented in a timely manner for each individual determined to be eligible for vocational rehabilitation services or, if the designated State unit is operating under an order of selection in accordance with § 361.36, for each eligible individual to whom the State unit is able to provide services; and

(2) Services will be provided in accordance with the provisions of the individualized plan for employment.

(b) *Purpose.* (1) The designated State unit must conduct an assessment for determining vocational rehabilitation needs, if appropriate, for each eligible individual or, if the State is operating under an order of selection, for each eligible individual to whom the State is able to provide services. The purpose of this assessment is to determine the employment outcome, and the nature and scope of vocational rehabilitation services to be included in the individualized plan for employment.

(2) The individualized plan for employment must be designed to achieve a specific employment outcome, as defined in § 361.5(c)(15), that is selected by the individual consistent with the individual's unique strengths, resources, priorities, concerns, abilities,

capabilities, interests, and informed choice.

(c) *Required information.* The State unit must provide the following information to each eligible individual or, as appropriate, the individual's representative, in writing and, if appropriate, in the native language or mode of communication of the individual or the individual's representative:

(1) *Options for developing an individualized plan for employment.* Information on the available options for developing the individualized plan for employment, including the option that an eligible individual or, as appropriate, the individual's representative may develop all or part of the individualized plan for employment—

(i) Without assistance from the State unit or other entity; or

(ii) With assistance from—

(A) A qualified vocational rehabilitation counselor employed by the State unit;

(B) A qualified vocational rehabilitation counselor who is not employed by the State unit;

(C) A disability advocacy organization; or

(D) Resources other than those in paragraph (c)(1)(ii)(A) through (C) of this section.

(2) *Additional information.* Additional information to assist the eligible individual or, as appropriate, the individual's representative in developing the individualized plan for employment, including—

(i) Information describing the full range of components that must be included in an individualized plan for employment;

(ii) As appropriate to each eligible individual—

(A) An explanation of agency guidelines and criteria for determining an eligible individual's financial commitments under an individualized plan for employment;

(B) Information on the availability of assistance in completing State unit forms required as part of the individualized plan for employment; and

(C) Additional information that the eligible individual requests or the State unit determines to be necessary to the development of the individualized plan for employment;

(iii) A description of the rights and remedies available to the individual, including, if appropriate, recourse to the processes described in § 361.57; and

(iv) A description of the availability of a client assistance program established under part 370 of this chapter and information on how to contact the client assistance program.

(3) *Individuals entitled to benefits under title II or XVI of the Social Security Act.* For individuals entitled to benefits under title II or XVI of the Social Security Act on the basis of a disability or blindness, the State unit must provide to the individual general information on additional supports and assistance for individuals with disabilities desiring to enter the workforce, including assistance with benefits planning.

(d) *Mandatory procedures.* The designated State unit must ensure that—

(1) The individualized plan for employment is a written document prepared on forms provided by the State unit;

(2) The individualized plan for employment is developed and implemented in a manner that gives eligible individuals the opportunity to exercise informed choice, consistent with § 361.52, in selecting—

(i) The employment outcome, including the employment setting;

(ii) The specific vocational rehabilitation services needed to achieve the employment outcome, including the settings in which services will be provided;

(iii) The entity or entities that will provide the vocational rehabilitation services; and

(iv) The methods available for procuring the services;

(3) The individualized plan for employment is—

(i) Agreed to and signed by the eligible individual or, as appropriate, the individual's representative; and

(ii) Approved and signed by a qualified vocational rehabilitation counselor employed by the designated State unit;

(4) A copy of the individualized plan for employment and a copy of any amendments to the individualized plan for employment are provided to the eligible individual or, as appropriate, to the individual's representative, in writing and, if appropriate, in the native language or mode of communication of the individual or, as appropriate, the individual's representative;

(5) The individualized plan for employment is reviewed at least annually by a qualified vocational rehabilitation counselor and the eligible individual or, as appropriate, the individual's representative to assess the eligible individual's progress in achieving the identified employment outcome;

(6) The individualized plan for employment is amended, as necessary, by the individual or, as appropriate, the individual's representative, in collaboration with a representative of the State unit or a qualified vocational rehabilitation counselor (to the extent determined to be appropriate by the individual), if there are substantive changes in the employment outcome, the vocational rehabilitation services to be provided, or the providers of the vocational rehabilitation services;

(7) Amendments to the individualized plan for employment do not take effect until agreed to and signed by the eligible individual or, as appropriate, the individual's representative and by a qualified vocational rehabilitation counselor employed by the designated State unit;

(8) The individualized plan for employment is amended, as necessary, to include the postemployment services and service providers that are necessary for the individual to maintain, advance in or regain employment, consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice; and

(9) An individualized plan for employment for a student with a disability is developed—

(i) In consideration of the student's individualized education program or 504 services, as applicable; and

(ii) In accordance with the plans, policies, procedures, and terms of the interagency agreement required under § 361.22.

(e) *Standards for developing the individualized plan for employment.* The individualized plan for employment must be developed as soon as possible, but not later than 90 days after the date of determination of eligibility, unless the State unit and the eligible individual agree to the extension of that deadline to a specific date by which the individualized plan for employment must be completed.

(f) *Data for preparing the individualized plan for employment.* (1) *Preparation without comprehensive assessment.* To the extent possible, the employment outcome and the nature and scope of rehabilitation services to be included in the individual's individualized plan for employment must be determined based on the data used for the assessment of eligibility and priority for services under § 361.42.

(2) *Preparation based on comprehensive assessment.*

(i) If additional data are necessary to determine the employment outcome and the nature and scope of services to be included in the individualized plan for employment of an eligible individual, the State unit must conduct a comprehensive assessment of the unique strengths, resources, priorities, concerns, abilities, capabilities,

interests, and informed choice, including the need for supported employment services, of the eligible individual, in the most integrated setting possible, consistent with the informed choice of the individual in accordance with the provisions of § 361.5(c)(5)(ii).

(ii) In preparing the comprehensive assessment, the State unit must use, to the maximum extent possible and appropriate and in accordance with confidentiality requirements, existing information that is current as of the date of the development of the individualized plan for employment, including information—

(A) Available from other programs and providers, particularly information used by education officials and the Social Security Administration;

(B) Provided by the individual and the individual's family; and

(C) Obtained under the assessment for determining the individual's eligibility and vocational rehabilitation needs.

(Authority: Sections 7(2)(B), 101(a)(9), 102(b), and 103(a)(1) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(2)(B), 721(a)(9), 722(b), and 723(a)(1))

§ 361.46 Content of the individualized plan for employment.

(a) *Mandatory components.* Regardless of the approach in § 361.45(c)(1) that an eligible individual selects for purposes of developing the individualized plan for employment, each individualized plan for employment must—

(1) Include a description of the specific employment outcome, as defined in § 361.5(c)(15), that is chosen by the eligible individual and is consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, career interests, and informed choice consistent with the general goal of competitive integrated employment (except that in the case of an eligible individual who is a student or a youth with a disability, the description may be a description of the individual's projected post-school employment outcome);

(2) Include a description under § 361.48 of—

(i) These specific rehabilitation services needed to achieve the employment outcome, including, as appropriate, the provision of assistive technology devices, assistive technology services, and personal assistance services, including training in the management of those services; and

(ii) In the case of a plan for an eligible individual that is a student or youth with a disability, the specific transition services and supports needed to achieve the individual's employment outcome or projected post-school employment outcome.

(3) Provide for services in the most integrated setting that is appropriate for the services involved and is consistent with the informed choice of the eligible individual;

(4) Include timelines for the achievement of the employment outcome and for the initiation of services;

(5) Include a description of the entity or entities chosen by the eligible individual or, as appropriate, the individual's representative that will provide the vocational rehabilitation services and the methods used to procure those services;

(6) Include a description of the criteria that will be used to evaluate progress toward achievement of the employment outcome; and

(7) Include the terms and conditions of the individualized plan for employment, including, as appropriate, information describing—

(i) The responsibilities of the designated State unit;

(ii) The responsibilities of the eligible individual, including—

(A) The responsibilities the individual will assume in relation to achieving the employment outcome;

(B) If applicable, the extent of the individual's participation in paying for the cost of services; and

(C) The responsibility of the individual with regard to applying for and securing comparable services and benefits as described in § 361.53; and

(iii) The responsibilities of other entities as the result of arrangements made pursuant to the comparable services or benefits requirements in § 361.53.

(b) *Supported employment requirements.* An individualized plan for employment for an individual with a most significant disability for whom an employment outcome in a supported employment setting has been determined to be appropriate must—

(1) Specify the supported employment services to be provided by the designated State unit;

(2) Specify the expected extended services needed, which may include natural supports;

(3) Identify the source of extended services or, to the extent that it is not possible to identify the source of extended services at the time the individualized plan for employment is developed, include a description of the basis for concluding that there is a reasonable expectation that those sources will become available;

(4) Provide for periodic monitoring to ensure that the individual is making satisfactory progress toward meeting the weekly work requirement established in the individualized plan for employment by the time of transition to extended services;

(5) Provide for the coordination of services provided under an individualized plan for employment with services provided under other individualized plans established under other Federal or State programs;

(6) To the extent that job skills training is provided, identify that the training will be provided on site; and

(7) Include placement in an integrated setting for the maximum number of hours possible based on the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of individuals with the most significant disabilities.

(c) *Post-employment services.* The individualized plan for employment for each individual must contain, as determined to be necessary, statements concerning—

(1) The expected need for post-employment services prior to closing the record of services of an individual who has achieved an employment outcome;

(2) A description of the terms and conditions for the provision of any post-employment services; and

(3) If appropriate, a statement of how post-employment services will be provided or arranged through other entities as the result of arrangements made pursuant to the comparable services or benefits requirements in § 361.53.

(d) *Coordination of services for students with disabilities.* The individualized plan for employment for a student with a disability must be coordinated with the individualized education program or 504 services, as applicable, for that individual in terms of the goals, objectives, and services identified in the education program.

(Approved by the Office of Management and Budget under control number 1205–0522)

(Authority: Sections 101(a)(8), 101(a)(9), and 102(b)(4) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 721(a)(8), 721(a)(9), and 722(b)(4))

§ 361.47 Record of services.

(a) The designated State unit must maintain for each applicant and eligible individual a record of services that includes, to the extent pertinent, the following documentation:

(1) If an applicant has been determined to be an eligible individual, documentation supporting that

determination in accordance with the requirements under § 361.42.

(2) If an applicant or eligible individual receiving services under an individualized plan for employment has been determined to be ineligible, documentation supporting that determination in accordance with the requirements under § 361.43.

(3) Documentation that describes the justification for closing an applicant's or eligible individual's record of services if that closure is based on reasons other than ineligibility, including, as appropriate, documentation indicating that the State unit has satisfied the requirements in § 361.44.

(4) If an individual has been determined to be an individual with a significant disability or an individual with a most significant disability, documentation supporting that determination.

(5) If an individual with a significant disability requires an exploration of abilities, capabilities, and capacity to perform in realistic work situations through the use of trial work experiences to determine whether the individual is an eligible individual, documentation supporting the need for, and the plan relating to, that exploration and documentation regarding the periodic assessments carried out during the trial work experiences in accordance with the requirements under § 361.42(e).

(6) The individualized plan for employment, and any amendments to the individualized plan for employment, consistent with the requirements under § 361.46.

(7) Documentation describing the extent to which the applicant or eligible individual exercised informed choice regarding the provision of assessment services and the extent to which the eligible individual exercised informed choice in the development of the individualized plan for employment with respect to the selection of the specific employment outcome, the specific vocational rehabilitation services needed to achieve the employment outcome, the entity to provide the services, the employment setting, the settings in which the services will be provided, and the methods to procure the services.

(8) In the event that an individual's individualized plan for employment provides for vocational rehabilitation services in a non-integrated setting, a justification to support the need for the non-integrated setting.

(9) In the event that an individual obtains competitive employment, verification that the individual is compensated at or above the minimum wage and that the individual's wage and level of benefits are not less than that customarily paid by the employer for the same or similar work performed by non-disabled individuals in accordance with § 361.5(c)(9)(i).

(10) In the event an individual achieves an employment outcome in which the individual is compensated in accordance with section 14(c) of the Fair Labor Standards Act or the designated State unit closes the record of services of an individual in extended employment on the basis that the individual is unable to achieve an employment outcome consistent with § 361.5(c)(15) or that an eligible individual through informed choice chooses to remain in extended employment, documentation of the results of the semi-annual and annual reviews required under § 361.55, of the individual's input into those reviews, and of the individual's or, if appropriate, the individual's representative's acknowledgment that those reviews were conducted.

(11) Documentation concerning any action or decision resulting from a request by an individual under § 361.57 for a review of determinations made by designated State unit personnel.

(12) In the event that an applicant or eligible individual requests under § 361.38(c)(4) that documentation in the record of services be amended and the documentation is not amended, documentation of the request.

(13) In the event an individual is referred to another program through the State unit's information and referral system under § 361.37, including other components of the statewide workforce development system, documentation on the nature and scope of services provided by the designated State unit to the individual and on the referral itself, consistent with the requirements of § 361.37.

(14) In the event an individual's record of service is closed under § 361.56, documentation that demonstrates the services provided under the individual's individualized plan for employment contributed to the achievement of the employment outcome.

(15) In the event an individual's record of service is closed under § 361.56, documentation verifying that the provisions of § 361.56 have been satisfied.

(b) The State unit, in consultation with the State Rehabilitation Council if the State has a Council, must determine the type of documentation that the State unit must maintain for each applicant and eligible individual in order to meet the requirements in paragraph (a) of this section.

(Authority: Sections 12(c), 101(a)(6), (9), (14), and (20) and 102(a), (b), and (d) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 721(a)(6), (9), (14), and (20), and 722(a), (b), and (d))

§ 361.48 Scope of vocational rehabilitation services for individuals with disabilities.

(a) *Pre-employment transition services.* Each State must ensure that the designated State unit, in collaboration with the local educational agencies involved, provide, or arrange for the provision of, pre-employment transition services for all students with disabilities, as defined in § 361.5(c)(51), in need of such services, without regard to the type of disability, from Federal funds reserved in accordance with § 361.65, and any funds made available from State, local, or private funding sources. Funds reserved and made available may be used for the required, authorized, and pre-employment transition coordination activities under paragraphs (2), (3) and (4) of this section.

(1) *Availability of services.* Pre-employment transition services must be made available Statewide to all students with disabilities, regardless of whether the student has applied or been determined eligible for vocational rehabilitation services.

(2) *Required activities.* The designated State unit must provide the following pre-employment transition services:

(i) Job exploration counseling;

(ii) Work-based learning experiences, which may include in-school or after school opportunities, or experience outside the traditional school setting (including internships), that is provided in an integrated environment in the community to the maximum extent possible;

(iii) Counseling on opportunities for enrollment in comprehensive transition or postsecondary educational programs at institutions of higher education;

(iv) Workplace readiness training to develop social skills and independent living; and

(v) Instruction in self-advocacy (including instruction in person-centered planning), which may include peer mentoring (including peer mentoring from individuals with disabilities working in competitive integrated employment).

(3) *Authorized activities.* Funds available and remaining after the provision of the required activities described in paragraph (a)(2) of this section may be used to improve the transition of students with disabilities from school to postsecondary education or an employment outcome by—

(i) Implementing effective strategies to increase the likelihood of independent

living and inclusion in communities and competitive integrated workplaces;

(ii) Developing and improving strategies for individuals with intellectual disabilities and individuals with significant disabilities to live independently; participate in postsecondary education experiences; and obtain, advance in and retain competitive integrated employment;

(iii) Providing instruction to vocational rehabilitation counselors, school transition personnel, and other persons supporting students with disabilities;

(iv) Disseminating information about innovative, effective, and efficient approaches to achieve the goals of this section;

(v) Coordinating activities with transition services provided by local educational agencies under the Individuals with Disabilities Education Act (20 U.S.C. 1400 *et seq.*);

(vi) Applying evidence-based findings to improve policy, procedure, practice, and the preparation of personnel, in order to better achieve the goals of this section;

(vii) Developing model transition demonstration projects;

(viii) Establishing or supporting multistate or regional partnerships involving States, local educational agencies, designated State units, developmental disability agencies, private businesses, or other participants to achieve the goals of this section; and

(ix) Disseminating information and strategies to improve the transition to postsecondary activities of individuals who are members of traditionally unserved and underserved populations.

(4) *Pre-employment transition coordination.* Each local office of a designated State unit must carry out responsibilities consisting of—

(i) Attending individualized education program meetings for students with disabilities, when invited;

(ii) Working with the local workforce development boards, one-stop centers, and employers to develop work opportunities for students with disabilities, including internships, summer employment and other employment opportunities available throughout the school year, and apprenticeships;

(iii) Working with schools, including those carrying out activities under section 614(d) of the IDEA, to coordinate and ensure the provision of pre-employment transition services under this section;

(iv) When invited, attending person-centered planning meetings for individuals receiving services under title XIX of the Social Security Act (42 U.S.C. 1396 *et seq.*); and

(b) *Services for individuals who have applied for or been determined eligible for vocational rehabilitation services.* As appropriate to the vocational rehabilitation needs of each individual and consistent with each individual's individualized plan for employment, the designated State unit must ensure that the following vocational rehabilitation services are available to assist the individual with a disability in preparing for, securing, retaining, advancing in or regaining an employment outcome that is consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice:

(1) Assessment for determining eligibility and priority for services by qualified personnel, including, if appropriate, an assessment by personnel skilled in rehabilitation technology, in accordance with § 361.42.

(2) Assessment for determining vocational rehabilitation needs by qualified personnel, including, if appropriate, an assessment by personnel skilled in rehabilitation technology, in accordance with § 361.45.

(3) Vocational rehabilitation counseling and guidance, including information and support services to assist an individual in exercising informed choice in accordance with § 361.52.

(4) Referral and other services necessary to assist applicants and eligible individuals to secure needed services from other agencies, including other components of the statewide workforce development system, in accordance with §§ 361.23, 361.24, and 361.37, and to advise those individuals about client assistance programs established under 34 CFR part 370.

(5) In accordance with the definition in § 361.5(c)(39), physical and mental restoration services, to the extent that financial support is not readily available from a source other than the designated State unit (such as through health insurance or a comparable service or benefit as defined in § 361.5(c)(10)).

(6) Vocational and other training services, including personal and vocational adjustment training, advanced training in, but not limited to, a field of science, technology, engineering, mathematics (including computer science), medicine, law, or business); books, tools, and other training materials, except that no training or training services in an institution of higher education (universities, colleges, community or junior colleges, vocational schools, technical institutes, or hospital schools of nursing or any other postsecondary education institution) may be paid for with funds under this part unless maximum efforts have been made by the State unit and the individual to secure grant assistance in whole or in part from other sources to pay for that training.

(7) Maintenance, in accordance with the definition of that term in § 361.5(c)(34).

(8) Transportation in connection with the provision of any vocational rehabilitation service and in accordance with the definition of that term in § 361.5(c)(57).

(9) Vocational rehabilitation services to family members, as defined in § 361.5(c)(23), of an applicant or eligible individual if necessary to enable the applicant or eligible individual to achieve an employment outcome.

(10) Interpreter services, including sign language and oral interpreter services, for individuals who are deaf or hard of hearing and tactile interpreting services for individuals who are deaf-blind provided by qualified personnel.

(11) Reader services, rehabilitation teaching services, and orientation and mobility services for individuals who are blind.

(12) Job-related services, including job search and placement assistance, job retention services, follow-up services, and follow-along services.

(13) Supported employment services in accordance with the definition of that term in § 361.5(c)(54).

(14) Personal assistance services in accordance with the definition of that term in § 361.5(c)(39).

(15) Post-employment services in accordance with the definition of that term in § 361.5(c)(42).

(16) Occupational licenses, tools, equipment, initial stocks, and supplies.

(17) Rehabilitation technology in accordance with the definition of that term in § 361.5(c)(45), including vehicular modification, telecommunications, sensory, and other technological aids and devices.

(18) Transition services for students and youth with disabilities, that facilitate the transition from school to postsecondary life, such as achievement of an employment outcome in competitive integrated employment, or pre-employment transition services for students.

(19) Technical assistance and other consultation services to conduct market analyses, develop business plans, and otherwise provide resources, to the extent those resources are authorized to be provided through the statewide workforce development system, to eligible individuals who are pursuing

self-employment or telecommuting or establishing a small business operation as an employment outcome.

(20) Customized employment in accordance with the definition of that term in § 361.5(c)(11).

(21) Other goods and services determined necessary for the individual with a disability to achieve an employment outcome.

(Authority: Sections 7(37), 12(c), 103(a), and 113 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(37), 709(c), 723(a), and 733)

§ 361.49 Scope of vocational rehabilitation services for groups of individuals with disabilities.

(a) The designated State unit may provide for the following vocational rehabilitation services for the benefit of groups of individuals with disabilities:

(1) The establishment, development, or improvement of a public or other nonprofit community rehabilitation program that is used to provide vocational rehabilitation services that promote integration into the community and prepare individuals with disabilities for competitive integrated employment, including supported employment and customized employment, and under special circumstances, the construction of a facility for a public or nonprofit community rehabilitation program as defined in §§ 361.5(c)(10), 361.5(c)(16) and 361.5(c)(17). Examples of special circumstances include the destruction by natural disaster of the only available center serving an area or a State determination that construction is necessary in a rural area because no other public agencies or private nonprofit organizations are currently able to provide vocational rehabilitation services to individuals.

(2) Telecommunications systems that have the potential for substantially improving vocational rehabilitation service delivery methods and developing appropriate programming to meet the particular needs of individuals with disabilities, including telephone, television, video description services, satellite, tactile-vibratory devices, and similar systems, as appropriate.

(3) Special services to provide nonvisual access to information for individuals who are blind, including the use of telecommunications, Braille, sound recordings, or other appropriate media; captioned television, films, or video cassettes for individuals who are deaf or hard of hearing; tactile materials for individuals who are deaf-blind; and other special services that provide information through tactile, vibratory, auditory, and visual media.

(4) Technical assistance to businesses that are seeking to employ individuals with disabilities.

(5) In the case of any small business enterprise operated by individuals with significant disabilities under the supervision of the designated State unit, including enterprises established under the Randolph-Sheppard program, management services and supervision provided by the State unit along with the acquisition by the State unit of vending facilities or other equipment, initial stocks and supplies, and initial operating expenses, in accordance with the following requirements:

(i) *Management services and supervision* includes inspection, quality control, consultation, accounting, regulating, in-service training, and related services provided on a systematic basis to support and improve small business enterprises operated by individuals with significant disabilities. Management services and supervision may be provided throughout the operation of the small business enterprise.

(ii) *Initial stocks and supplies* includes those items necessary to the establishment of a new business enterprise during the initial establishment period, which may not exceed six months.

(iii) Costs of establishing a small business enterprise may include operational costs during the initial establishment period, which may not exceed six months.

(iv) If the designated State unit provides for these services, it must ensure that only individuals with significant disabilities will be selected to participate in this supervised program.

(v) If the designated State unit provides for these services and chooses to set aside funds from the proceeds of the operation of the small business enterprises, the State unit must maintain a description of the methods used in setting aside funds and the purposes for which funds are set aside. Funds may be used only for small business enterprises purposes, and benefits that are provided to operators from set-aside funds must be provided on an equitable basis.

(6) Consultation and technical assistance services to assist State educational agencies and local educational agencies in planning for the transition of students and youth with disabilities from school to postsecondary life, including employment.

(7) Transition services to youth with disabilities and students with disabilities who may not have yet applied or been determined eligible for vocational rehabilitation services, for which a vocational rehabilitation counselor works in concert with educational agencies, providers of job training programs, providers of services under the Medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 *et seq.*), entities designated by the State to provide services for individuals with developmental disabilities, centers for independent living (as defined in section 702 of the Act), housing and transportation authorities, workforce development systems, and businesses and employers. These specific transition services are to benefit a group of students with disabilities or youth with disabilities and are not individualized services directly related to an individualized plan for employment goal. Services may include, but are not limited to, group tours of universities and vocational training programs, employer or business site visits to learn about career opportunities, career fairs coordinated with workforce development and employers to facilitate mock interviews and resume writing, and other general services applicable to groups of students with disabilities and youth with disabilities.

(8) The establishment, development, or improvement of assistive technology demonstration, loan, reutilization, or financing programs in coordination with activities authorized under the Assistive Technology Act of 1998 (29 U.S.C. 3001 *et seq.*) to promote access to assistive technology for individuals with disabilities and employers.

(9) Support (including, as appropriate, tuition) for advanced training in a field of science, technology, engineering, or mathematics (including computer science), medicine, law, or business, provided after an individual eligible to receive services under this title demonstrates—

(i) Such eligibility;

(ii) Previous completion of a bachelor's degree program at an institution of higher education or scheduled completion of such a degree program prior to matriculating in the program for which the individual proposes to use the support; and

(iii) Acceptance by a program at an institution of higher education in the United States that confers a master's degree in a field of science, technology, engineering, or mathematics (including computer science), a juris doctor degree, a master of business administration degree, or a doctor of medicine degree, except that—

(A) No training provided at an institution of higher education may be paid for with funds under this program

unless maximum efforts have been made by the designated State unit to secure grant assistance, in whole or in part, from other sources to pay for such training; and

(B) Nothing in this paragraph prevents any designated State unit from providing similar support to individuals with disabilities within the State who are eligible to receive support under this title and who are not served under this section.

(b) If the designated State unit provides for vocational rehabilitation services for groups of individuals, it must—

(1) Develop and maintain written policies covering the nature and scope of each of the vocational rehabilitation services it provides and the criteria under which each service is provided; and

(2) Maintain information to ensure the proper and efficient administration of those services in the form and detail and at the time required by the Secretary, including the types of services provided, the costs of those services, and, to the extent feasible, estimates of the numbers of individuals benefiting from those services.

(Authority: Sections 12(c), 101(a)(6)(A), and 103(b) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 721(a)(6), and 723(b))

§ 361.50 Written policies governing the provision of services for individuals with disabilities.

(a) *Policies.* The State unit must develop and maintain written policies covering the nature and scope of each of the vocational rehabilitation services specified in § 361.48 and the criteria under which each service is provided. The policies must ensure that the provision of services is based on the rehabilitation needs of each individual as identified in that individual's individualized plan for employment and is consistent with the individual's informed choice. The written policies may not establish any arbitrary limits on the nature and scope of vocational rehabilitation services to be provided to the individual to achieve an employment outcome. The policies must be developed in accordance with the following provisions:

(b) *Out-of-State services.* (1) The State unit may establish a preference for in-State services, provided that the preference does not effectively deny an individual a necessary service. If the individual chooses an out-of-State service at a higher cost than an in-State service, if either service would meet the individual's rehabilitation needs, the designated State unit is not responsible for those costs in excess of the cost of the in-State service.

(2) The State unit may not establish policies that effectively prohibit the provision of out-of-State services.

(c) *Payment for services.* (1) The State unit must establish and maintain written policies to govern the rates of payment for all purchased vocational rehabilitation services.

(2) The State unit may establish a fee schedule designed to ensure a reasonable cost to the program for each service, if the schedule is—

(i) Not so low as to effectively deny an individual a necessary service; and

(ii) Not absolute and permits exceptions so that individual needs can be addressed.

(3) The State unit may not place absolute dollar limits on specific service categories or on the total services provided to an individual.

(d) *Duration of services.* (1) The State unit may establish reasonable time periods for the provision of services provided that the time periods are—

(i) Not so short as to effectively deny an individual a necessary service; and

(ii) Not absolute and permit exceptions so that individual needs can be addressed.

(2) The State unit may not establish absolute time limits on the provision of specific services or on the provision of services to an individual. The duration of each service needed by an individual must be determined on an individual basis and reflected in that individual's individualized plan for employment.

(e) *Authorization of services.* The State unit must establish policies related to the timely authorization of services, including any conditions under which verbal authorization can be given.

(Authority: Sections 12(c) and 101(a)(6) of the Rehabilitation Act of 1973, as amended and 29 U.S.C. 709(c) and 721(a)(6))

§ 361.51 Standards for facilities and providers of services.

(a) *Accessibility of facilities.* The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that any facility used in connection with the delivery of vocational rehabilitation services under this part meets program accessibility requirements consistent with the requirements, as applicable, of the Architectural Barriers Act of 1968, the Americans with Disabilities Act of 1990, section 504 of the Act, and the regulations implementing these laws.

(b) *Affirmative action.* The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that community rehabilitation programs that receive assistance under part B of title I of the Act take affirmative action to employ and advance in employment qualified individuals with disabilities covered under and on the same terms and conditions as in section 503 of the Act.

(c) *Special communication needs personnel.* The designated State unit must ensure that providers of vocational rehabilitation services are able to communicate—

(1) In the native language of applicants and eligible individuals who have limited English proficiency; and

(2) By using appropriate modes of communication used by applicants and eligible individuals.

(Approved by the Office of Management and Budget under control number 1205–0522)

(Authority: Sections 12(c) and 101(a)(6)(B) and (C) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 721(a)(6)(B) and (C))

§ 361.52 Informed choice.

(a) *General provision.* The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that applicants and recipients of services or, as appropriate, their representatives are provided information and support services to assist applicants and recipients of services in exercising informed choice throughout the rehabilitation process consistent with the provisions of section 102(d) of the Act and the requirements of this section.

(b) *Written policies and procedures.* The designated State unit, in consultation with its State Rehabilitation Council, if it has a Council, must develop and implement written policies and procedures that enable an applicant or recipient of services to exercise informed choice throughout the vocational rehabilitation process. These policies and procedures must provide for—

(1) Informing each applicant and recipient of services (including students with disabilities who are making the transition from programs under the responsibility of an educational agency to programs under the responsibility of the designated State unit and including youth with disabilities), through appropriate modes of communication, about the availability of and opportunities to exercise informed choice, including the availability of support services for individuals with cognitive or other disabilities who require assistance in exercising informed choice throughout the vocational rehabilitation process;

(2) Assisting applicants and recipients of services in exercising informed

choice in decisions related to the provision of assessment services;

(3) Developing and implementing flexible procurement policies and methods that facilitate the provision of vocational rehabilitation services and that afford recipients of services meaningful choices among the methods used to procure vocational rehabilitation services;

(4) Assisting eligible individuals or, as appropriate, the individuals' representatives, in acquiring information that enables them to exercise informed choice in the development of their individualized plans for employment with respect to the selection of the—

(i) Employment outcome;

(ii) Specific vocational rehabilitation services needed to achieve the employment outcome;

(iii) Entity that will provide the services;

(iv) Employment setting and the settings in which the services will be provided; and

(v) Methods available for procuring the services; and

(5) Ensuring that the availability and scope of informed choice is consistent with the obligations of the designated State agency under this part.

(c) *Information and assistance in the selection of vocational rehabilitation services and service providers.* In assisting an applicant and eligible individual in exercising informed choice during the assessment for determining eligibility and vocational rehabilitation needs and during development of the individualized plan for employment, the designated State unit must provide the individual or the individual's representative, or assist the individual or the individual's representative in acquiring, information necessary to make an informed choice about the specific vocational rehabilitation services, including the providers of those services, that are needed to achieve the individual's employment outcome. This information must include, at a minimum, information relating to the—

(1) Cost, accessibility, and duration of potential services;

(2) Consumer satisfaction with those services to the extent that information relating to consumer satisfaction is available;

(3) Qualifications of potential service providers;

(4) Types of services offered by the potential providers;

(5) Degree to which services are provided in integrated settings; and

(6) Outcomes achieved by individuals working with service providers, to the extent that such information is available.

(d) *Methods or sources of information.* In providing or assisting the individual or the individual's representative in acquiring the information required under paragraph (c) of this section, the State unit may use, but is not limited to, the following methods or sources of information:

(1) Lists of services and service providers.

(2) Periodic consumer satisfaction surveys and reports.

(3) Referrals to other consumers, consumer groups, or disability advisory councils qualified to discuss the services or service providers.

(4) Relevant accreditation, certification, or other information relating to the qualifications of service providers.

(5) Opportunities for individuals to visit or experience various work and service provider settings.

(Approved by the Office of Management and Budget under control number 1205–0522)

(Authority: Sections 12(c), 101(a)(19), 102(b)(2)(B), and 102(d) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 721(a)(19), 722(b)(2)(B), and 722(d))

§ 361.53 Comparable services and benefits.

(a) *Determination of availability.* The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that prior to providing an accommodation or auxiliary aid or service or any vocational rehabilitation services, except those services listed in paragraph (b) of this section, to an eligible individual or to members of the individual's family, the State unit must determine whether comparable services and benefits, as defined in § 361.5(c)(8), exist under any other program and whether those services and benefits are available to the individual unless such a determination would interrupt or delay—

(1) The progress of the individual toward achieving the employment outcome identified in the individualized plan for employment;

(2) An immediate job placement; or

(3) The provision of vocational rehabilitation services to any individual who is determined to be at extreme medical risk, based on medical evidence provided by an appropriate qualified medical professional.

(b) *Exempt services.* The following vocational rehabilitation services described in § 361.48(b) are exempt from a determination of the availability of comparable services and benefits under paragraph (a) of this section:

(1) Assessment for determining eligibility and vocational rehabilitation needs.

(2) Counseling and guidance, including information and support services to assist an individual in exercising informed choice.

(3) Referral and other services to secure needed services from other agencies, including other components of the statewide workforce development system, if those services are not available under this part.

(4) Job-related services, including job search and placement assistance, job retention services, follow-up services, and follow-along services.

(5) Rehabilitation technology, including telecommunications, sensory, and other technological aids and devices.

(6) Post-employment services consisting of the services listed under paragraphs (b)(1) through (5) of this section.

(c) *Provision of services.* (1) If comparable services or benefits exist under any other program and are available to the individual at the time needed to ensure the progress of the individual toward achieving the employment outcome in the individual's individualized plan for employment, the designated State unit must use those comparable services or benefits to meet, in whole or part, the costs of the vocational rehabilitation services.

(2) If comparable services or benefits exist under any other program, but are not available to the individual at the time needed to ensure the progress of the individual toward achieving the employment outcome specified in the individualized plan for employment, the designated State unit must provide vocational rehabilitation services until those comparable services and benefits become available.

(d) *Interagency coordination.* (1) The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that the Governor, in consultation with the entity in the State responsible for the vocational rehabilitation program and other appropriate agencies, will ensure that an interagency agreement or other mechanism for interagency coordination takes effect between the designated State vocational rehabilitation unit and any appropriate public entity, including the State entity responsible for administering the State Medicaid program, a public institution of higher education, and a component of the statewide workforce development system, to ensure the provision of vocational rehabilitation services, and,

if appropriate, accommodations or auxiliary aids and services, (other than those services listed in paragraph (b) of this section) that are included in the individualized plan for employment of an eligible individual, including the provision of those vocational rehabilitation services (including, if appropriate, accommodations or auxiliary aids and services) during the pendency of any interagency dispute in accordance with the provisions of paragraph (d)(3)(iii) of this section.

(2) The Governor may meet the requirements of paragraph (d)(1) of this section through—

(i) A State statute or regulation;

(ii) A signed agreement between the respective officials of the public entities that clearly identifies the responsibilities of each public entity for the provision of the services; or

(iii) Another appropriate mechanism as determined by the designated State vocational rehabilitation unit.

(3) The interagency agreement or other mechanism for interagency coordination must include the following:

(i) *Agency financial responsibility.* An identification of, or description of a method for defining, the financial responsibility of the designated State unit and other public entities for the provision of vocational rehabilitation services, and, if appropriate, accommodations or auxiliary aids and services other than those listed in paragraph (b) of this section and a provision stating the financial responsibility of the public entity for providing those services.

(ii) *Conditions, terms, and procedures of reimbursement.* Information specifying the conditions, terms, and procedures under which the designated State unit must be reimbursed by the other public entities for providing vocational rehabilitation services, and accommodations or auxiliary aids and services based on the terms of the interagency agreement or other mechanism for interagency coordination.

(iii) *Interagency disputes.* Information specifying procedures for resolving interagency disputes under the interagency agreement or other mechanism for interagency coordination, including procedures under which the designated State unit may initiate proceedings to secure reimbursement from other public entities or otherwise implement the provisions of the agreement or mechanism.

(iv) *Procedures for coordination of services.* Information specifying policies and procedures for public entities to determine and identify interagency coordination responsibilities of each public entity to promote the coordination and timely delivery of vocational rehabilitation services, and accommodations or auxiliary aids and services, other than those listed in paragraph (b) of this section.

(e) *Responsibilities under other law.* (1) If a public entity (other than the designated State unit) is obligated under Federal law (such as the Americans with Disabilities Act, section 504 of the Act, or section 188 of the Workforce Innovation and Opportunity Act) or State law, or assigned responsibility under State policy or an interagency agreement established under this section, to provide or pay for any services considered to be vocational rehabilitation services (*e.g.,* interpreter services under § 361.48(j)), and, if appropriate, accommodations or auxiliary aids and services other than those services listed in paragraph (b) of this section, the public entity must fulfill that obligation or responsibility through—

(i) The terms of the interagency agreement or other requirements of this section;

(ii) Providing or paying for the service directly or by contract; or

(iii) Other arrangement.

(2) If a public entity other than the designated State unit fails to provide or pay for vocational rehabilitation services, and, if appropriate, accommodations or auxiliary aids and services for an eligible individual as established under this section, the designated State unit must provide or pay for those services to the individual and may claim reimbursement for the services from the public entity that failed to provide or pay for those services. The public entity must reimburse the designated State unit pursuant to the terms of the interagency agreement or other mechanism described in paragraph (d) of this section in accordance with the procedures established in the agreement or mechanism pursuant to paragraph (d)(3)(ii) of this section.

(Approved by the Office of Management and Budget under control number 1205–0522)

(Authority: Sections 12(c) and 101(a)(8) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 721(a)(8))

§ 361.54 Participation of individuals in cost of services based on financial need.

(a) *No Federal requirement.* There is no Federal requirement that the financial need of individuals be considered in the provision of vocational rehabilitation services.

(b) *State unit requirements.* (1) The State unit may choose to consider the financial need of eligible individuals or individuals who are receiving services through trial work experiences under § 361.42(e) for purposes of determining the extent of their participation in the costs of vocational rehabilitation services, other than those services identified in paragraph (b)(3) of this section.

(2) If the State unit chooses to consider financial need—

(i) It must maintain written policies—

(A) Explaining the method for determining the financial need of an eligible individual; and

(B) Specifying the types of vocational rehabilitation services for which the unit has established a financial needs test;

(ii) The policies must be applied uniformly to all individuals in similar circumstances;

(iii) The policies may require different levels of need for different geographic regions in the State, but must be applied uniformly to all individuals within each geographic region; and

(iv) The policies must ensure that the level of an individual's participation in the cost of vocational rehabilitation services is—

(A) Reasonable;

(B) Based on the individual's financial need, including consideration of any disability-related expenses paid by the individual; and

(C) Not so high as to effectively deny the individual a necessary service.

(3) The designated State unit may not apply a financial needs test, or require the financial participation of the individual—

(i) As a condition for furnishing the following vocational rehabilitation services:

(A) Assessment for determining eligibility and priority for services under § 361.48(b)(1), except those non-assessment services that are provided to an individual with a significant disability during either an exploration of the individual's abilities, capabilities, and capacity to perform in work situations through the use of trial work experiences under § 361.42(e).

(B) Assessment for determining vocational rehabilitation needs under § 361.48(b)(2).

(C) Vocational rehabilitation counseling and guidance under § 361.48(b)(3).

(D) Referral and other services under § 361.48(b)(4).

(E) Job-related services under § 361.48(b)(12).

(F) Personal assistance services under § 361.48(b)(14).

(G) Any auxiliary aid or service (*e.g.*, interpreter services under § 361.48(b)(10), reader services under § 361.48(b)(11)) that an individual with a disability requires under section 504 of the Act (29 U.S.C. 794) or the Americans with Disabilities Act (42 U.S.C. 12101, *et seq.*), or regulations implementing those laws, in order for the individual to participate in the vocational rehabilitation program as authorized under this part; or

(ii) As a condition for furnishing any vocational rehabilitation service if the individual in need of the service has been determined eligible for Social Security benefits under titles II or XVI of the Social Security Act.

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c))

§ 361.55 Semi-annual and annual review of individuals in extended employment and other employment under special certificate provisions of the Fair Labor Standards Act.

(a) The vocational rehabilitation services portion of the Unified or Combined State Plan must assure that the designated State unit conducts a semi-annual review and reevaluation for the first two years of such employment and annually thereafter, in accordance with the requirements in paragraph (b) of this section for an individual with a disability served under this part—

(1) Who has a record of service, as described in § 361.47, as either an applicant or eligible individual under the vocational rehabilitation program; and

(2)(i) Who has achieved employment in which the individual is compensated in accordance with section 14(c) of the Fair Labor Standards Act; or

(ii) Who is in extended employment, including those individuals whose record of service is closed while the individual is in extended employment on the basis that the individual is unable to achieve an employment outcome consistent with § 361.5(c)(15) or that the individual made an informed choice to remain in extended employment.

(b) For each individual with a disability who meets the criteria in paragraph (a) of this section, the designated State unit must—

(1) Semi-annually review and reevaluate the status of each individual for two years after the individual's record of services is closed (and annually thereafter) to determine the interests, priorities, and needs of the individual with respect to competitive integrated employment or training for competitive integrated employment;

(2) Enable the individual or, if appropriate, the individual's representative to provide input into the review and reevaluation and must document that input in the record of services, consistent with § 361.47(a)(10), with the individual's or, as appropriate, the individual's representative's signed acknowledgment that the review and reevaluation have been conducted; and

(3) Make maximum efforts, including identifying and providing vocational rehabilitation services, reasonable accommodations, and other necessary support services, to assist the individual in engaging in competitive integrated employment as defined in § 361.5(c)(9).

(Approved by the Office of Management and Budget under control number 1205–0522)

(Authority: Sections 12(c) and 101(a)(14) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 721(a)(14))

§ 361.56 Requirements for closing the record of services of an individual who has achieved an employment outcome.

The record of services of an individual who has achieved an employment outcome may be closed only if all of the following requirements are met:

(a) *Employment outcome achieved.* The individual has achieved the employment outcome that is described in the individual's individualized plan for employment in accordance with § 361.46(a)(1) and is consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(b) *Employment outcome maintained.* The individual has maintained the employment outcome for an appropriate period of time, but not less than 90 days, necessary to ensure the stability of the employment outcome, and the individual no longer needs vocational rehabilitation services.

(c) *Satisfactory outcome.* At the end of the appropriate period under paragraph (b) of this section, the individual and the qualified rehabilitation counselor employed by the designated State unit consider the employment outcome to be satisfactory and agree that the individual is performing well in the employment.

(d) *Post-employment services.* The individual is informed through appropriate modes of communication of the availability of post-employment services.

(Authority: Sections 12(c), 101(a)(6), and 106(a)(2) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 721(a)(6), and 726(a)(2))

§ 361.57 Review of determinations made by designated State unit personnel.

(a) *Procedures.* The designated State unit must develop and implement procedures to ensure that an applicant or recipient of services who is dissatisfied with any determination made by personnel of the designated State unit that affects the provision of vocational rehabilitation services may request, or, if appropriate, may request through the individual's representative, a timely review of that determination. The procedures must be in accordance with paragraphs (b) through (k) of this section:

(b) *General requirements.* (1) *Notification.* Procedures established by the State unit under this section must provide an applicant or recipient or, as appropriate, the individual's representative notice of—

(i) The right to obtain review of State unit determinations that affect the provision of vocational rehabilitation services through an impartial due process hearing under paragraph (e) of this section;

(ii) The right to pursue mediation under paragraph (d) of this section with respect to determinations made by designated State unit personnel that affect the provision of vocational rehabilitation services to an applicant or recipient;

(iii) The names and addresses of individuals with whom requests for mediation or due process hearings may be filed;

(iv) The manner in which a mediator or impartial hearing officer may be selected consistent with the requirements of paragraphs (d) and (f) of this section; and

(v) The availability of the client assistance program, established under 34 CFR part 370, to assist the applicant or recipient during mediation sessions or impartial due process hearings.

(2) *Timing.* Notice described in paragraph (b)(1) of this section must be provided in writing—

(i) At the time the individual applies for vocational rehabilitation services under this part;

(ii) At the time the individual is assigned to a category in the State's order of selection, if the State has established an order of selection under § 361.36;

(iii) At the time the individualized plan for employment is developed; and

(iv) Whenever vocational rehabilitation services for an individual are reduced, suspended, or terminated.

(3) *Evidence and representation.* Procedures established under this section must—

(i) Provide an applicant or recipient or, as appropriate, the individual's representative with an opportunity to submit during mediation sessions or due process hearings evidence and other information that supports the applicant's or recipient's position; and

(ii) Allow an applicant or recipient to be represented during mediation sessions or due process hearings by counsel or other advocate selected by the applicant or recipient.

(4) *Impact on provision of services.* The State unit may not institute a suspension, reduction, or termination of vocational rehabilitation services being provided to an applicant or recipient, including evaluation and assessment services and individualized plan for employment development, pending a resolution through mediation, pending a decision by a hearing officer or reviewing official, or pending informal resolution under this section unless—

(i) The individual or, in appropriate cases, the individual's representative requests a suspension, reduction, or termination of services; or

(ii) The State agency has evidence that the services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the individual or the individual's representative.

(5) *Ineligibility.* Applicants who are found ineligible for vocational rehabilitation services and previously eligible individuals who are determined to be no longer eligible for vocational rehabilitation services pursuant to § 361.43 are permitted to challenge the determinations of ineligibility under the procedures described in this section.

(c) *Informal dispute resolution.* The State unit may develop an informal process for resolving a request for review without conducting mediation or a formal hearing. A State's informal process must not be used to deny the right of an applicant or recipient to a hearing under paragraph (e) of this section or any other right provided under this part, including the right to pursue mediation under paragraph (d) of this section. If informal resolution under this paragraph or mediation under paragraph (d) of this section is not successful in resolving the dispute within the time period established under paragraph (e)(1) of this section, a formal hearing must be conducted within that same time period, unless the parties agree to a specific extension of time.

(d) *Mediation.* (1) The State must establish and implement procedures, as required under paragraph (b)(1)(ii) of this section, to allow an applicant or recipient and the State unit to resolve disputes involving State unit determinations that affect the provision of vocational rehabilitation services through a mediation process that must be made available, at a minimum, whenever an applicant or recipient or, as appropriate, the individual's representative requests an impartial due process hearing under this section.

(2) Mediation procedures established by the State unit under paragraph (d) of this section must ensure that—

(i) Participation in the mediation process is voluntary on the part of the applicant or recipient, as appropriate, and on the part of the State unit;

(ii) Use of the mediation process is not used to deny or delay the applicant's or recipient's right to pursue resolution of the dispute through an impartial hearing held within the time period specified in paragraph (e)(1) of this section or any other rights provided under this part. At any point during the mediation process, either party or the mediator may elect to terminate the mediation. In the event mediation is terminated, either party may pursue resolution through an impartial hearing;

(iii) The mediation process is conducted by a qualified and impartial mediator, as defined in § 361.5(c)(43), who must be selected from a list of qualified and impartial mediators maintained by the State—

(A) On a random basis;

(B) By agreement between the director of the designated State unit and the applicant or recipient or, as appropriate, the recipient's representative; or

(C) In accordance with a procedure established in the State for assigning mediators, provided this procedure ensures the neutrality of the mediator assigned; and

(iv) Mediation sessions are scheduled and conducted in a timely manner and are held in a location and manner that is convenient to the parties to the dispute.

(3) Discussions that occur during the mediation process must be kept confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings, and the parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of the process.

(4) An agreement reached by the parties to the dispute in the mediation process must be described in a written mediation agreement that is developed by the parties with the assistance of the qualified and impartial mediator and signed by both parties. Copies of the agreement must be sent to both parties.

(5) The costs of the mediation process must be paid by the State. The State is not required to pay for any costs related to the representation of an applicant or recipient authorized under paragraph (b)(3)(ii) of this section.

(e) *Impartial due process hearings.* The State unit must establish and implement formal review procedures, as required under paragraph (b)(1)(i) of this section, that provide that—

(1) Hearing conducted by an impartial hearing officer, selected in accordance with paragraph (f) of this section, must be held within 60 days of an applicant's or recipient 's request for review of a determination made by personnel of the State unit that affects the provision of vocational rehabilitation services to the individual, unless informal resolution or a mediation agreement is achieved prior to the 60th day or the parties agree to a specific extension of time;

(2) In addition to the rights described in paragraph (b)(3) of this section, the applicant or recipient or, if appropriate, the individual's representative must be given the opportunity to present witnesses during the hearing and to examine all witnesses and other relevant sources of information and evidence;

(3) The impartial hearing officer must—

(i) Make a decision based on the provisions of the approved vocational rehabilitation services portion of the Unified or Combined State Plan, the Act, Federal vocational rehabilitation regulations, and State regulations and policies that are consistent with Federal requirements; and

(ii) Provide to the individual or, if appropriate, the individual's representative and to the State unit a full written report of the findings and grounds for the decision within 30 days of the completion of the hearing; and

(4) The hearing officer's decision is final, except that a party may request an impartial review under paragraph (g)(1) of this section if the State has established procedures for that review, and a party involved in a hearing may bring a civil action under paragraph (i) of this section.

(f) *Selection of impartial hearing officers.* The impartial hearing officer for a particular case must be selected—

(1) From a list of qualified impartial hearing officers maintained by the State unit. Impartial hearing officers included on the list must be—

(i) Identified by the State unit if the State unit is an independent commission; or

(ii) Jointly identified by the State unit and the State Rehabilitation Council if the State has a Council; and

(2)(i) On a random basis; or

(ii) By agreement between the director of the designated State unit and the applicant or recipient or, as appropriate, the individual's representative.

(g) *Administrative review of hearing officer's decision.* The State may establish procedures to enable a party who is dissatisfied with the decision of the impartial hearing officer to seek an impartial administrative review of the decision under paragraph (e)(3) of this section in accordance with the following requirements:

(1) A request for administrative review under paragraph (g) of this section must be made within 20 days of the mailing of the impartial hearing officer's decision.

(2) Administrative review of the hearing officer's decision must be conducted by—

(i) The chief official of the designated State agency if the State has established both a designated State agency and a designated State unit under § 361.13(b); or

(ii) An official from the office of the Governor.

(3) The reviewing official described in paragraph (g)(2)(i) of this section—

(i) Provides both parties with an opportunity to submit additional evidence and information relevant to a final decision concerning the matter under review;

(ii) May not overturn or modify the hearing officer's decision, or any part of that decision, that supports the position of the applicant or recipient unless the reviewing official concludes, based on clear and convincing evidence, that the decision of the impartial hearing officer is clearly erroneous on the basis of being contrary to the approved vocational rehabilitation services portion of the Unified or Combined State Plan, the Act, Federal vocational rehabilitation regulations, or State regulations and policies that are consistent with Federal requirements;

(iii) Makes an independent, final decision following a review of the entire hearing record and provides the decision in writing, including a full report of the findings and the statutory, regulatory, or policy grounds for the decision, to the applicant or recipient or, as appropriate, the individual's representative and to the State unit within 30 days of the request for administrative review under paragraph (g)(1) of this section; and

(iv) May not delegate the responsibility for making the final decision under paragraph (g) of this section to any officer or employee of the designated State unit.

(4) The reviewing official's decision under paragraph (g) of this section is final unless either party brings a civil action under paragraph (i) of this section.

(h) *Implementation of final decisions.* If a party brings a civil action under paragraph (h) of this section to challenge the final decision of a hearing officer under paragraph (e) of this section or to challenge the final decision of a State reviewing official under paragraph (g) of this section, the final decision of the hearing officer or State reviewing official must be implemented pending review by the court.

(i) *Civil action.* (1) Any party who disagrees with the findings and decision of an impartial hearing officer under paragraph (e) of this section in a State that has not established administrative review procedures under paragraph (g) of this section and any party who disagrees with the findings and decision under paragraph (g)(3)(iii) of this section have a right to bring a civil action with respect to the matter in dispute. The action may be brought in any State court of competent jurisdiction or in a district court of the United States of competent jurisdiction without regard to the amount in controversy.

(2) In any action brought under paragraph (i) of this section, the court—

(i) Receives the records related to the impartial due process hearing and the records related to the administrative review process, if applicable;

(ii) Hears additional evidence at the request of a party; and

(iii) Basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate.

(j) *State fair hearing board.* A fair hearing board as defined in § 361.5(c)(21) is authorized to carry out the responsibilities of the impartial hearing officer under paragraph (e) of this section in accordance with the following criteria:

(1) The fair hearing board may conduct due process hearings either collectively or by assigning responsibility for conducting the hearing to one or more members of the fair hearing board.

(2) The final decision issued by the fair hearing board following a hearing under paragraph (j)(1) of this section must be made collectively by, or by a majority vote of, the fair hearing board.

(3) The provisions of paragraphs (b)(1), (2), and (3) of this section that relate to due process hearings and of paragraphs (e), (f), (g), and (h) of this section do not apply to fair hearing boards under this paragraph (j).

(k) *Data collection.* (1) The director of the designated State unit must collect and submit, at a minimum, the following data to the Secretary for inclusion each year in the annual report to Congress under section 13 of the Act:

(i) A copy of the standards used by State reviewing officials for reviewing decisions made by impartial hearing officers under this section.

(ii) The number of mediations held, including the number of mediation agreements reached.

(iii) The number of hearings and reviews sought from impartial hearing officers and State reviewing officials, including the type of complaints and the issues involved.

(iv) The number of hearing officer decisions that were not reviewed by administrative reviewing officials.

(v) The number of hearing decisions that were reviewed by State reviewing officials and, based on these reviews, the number of hearing decisions that were—

(A) Sustained in favor of an applicant or recipient;

(B) Sustained in favor of the designated State unit;

(C) Reversed in whole or in part in favor of the applicant or recipient; and

(D) Reversed in whole or in part in favor of the State unit.

(2) The State unit director also must collect and submit to the Secretary copies of all final decisions issued by impartial hearing officers under paragraph (e) of this section and by State review officials under paragraph (g) of this section.

(3) The confidentiality of records of applicants and recipients maintained by the State unit may not preclude the access of the Secretary to those records for the purposes described in this section.

(Authority: Sections 12(c) and 102(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 722(c))

Subpart C—Financing of State Vocational Rehabilitation Programs

§ 361.60 Matching requirements.

(a) *Federal share*—(1) *General.* Except as provided in paragraph (a)(2) of this section, the Federal share for expenditures made by the State under the vocational rehabilitation services portion of the Unified or Combined State Plan, including expenditures for the provision of vocational rehabilitation services and the administration of the vocational rehabilitation services portion of the Unified or Combined State Plan, is 78.7 percent.

(2) *Construction projects.* The Federal share for expenditures made for the construction of a facility for community rehabilitation program purposes may

not be more than 50 percent of the total cost of the project.

(b) *Non-Federal share*—(1) *General.* Except as provided in paragraph (b)(2) and (b)(3) of this section, expenditures made under the vocational rehabilitation services portion of the Unified or Combined State Plan to meet the non-Federal share under this section must be consistent with the provisions of 2 CFR 200.306(b).

(2) *Third party in-kind contributions.* Third party in-kind contributions specified in 2 CFR 200.306(b) may not be used to meet the non-Federal share under this section.

(3) *Contributions by private entities.* Expenditures made from those cash contributions provided by private organizations, agencies, or individuals and that are deposited in the State agency's account or, if applicable, sole local agency's account, in accordance with State law prior to their expenditure and that are earmarked, under a condition imposed by the contributor, may be used as part of the non-Federal share under this section if the funds are earmarked for—

(i) Meeting in whole or in part the State's share for establishing a community rehabilitation program or constructing a particular facility for community rehabilitation program purposes;

(ii) Particular geographic areas within the State for any purpose under the vocational rehabilitation services portion of the Unified or Combined State Plan, other than those described in paragraph (b)(3)(i) of this section, in accordance with the following criteria:

(A) Before funds that are earmarked for a particular geographic area may be used as part of the non-Federal share, the State must notify the Secretary that the State cannot provide the full non-Federal share without using these funds.

(B) Funds that are earmarked for a particular geographic area may be used as part of the non-Federal share without requesting a waiver of statewideness under § 361.26.

(C) Except as provided in paragraph (b)(3)(i) of this section, all Federal funds must be used on a statewide basis consistent with § 361.25, unless a waiver of statewideness is obtained under § 361.26; and

(iii) Any other purpose under the vocational rehabilitation services portion of the Unified or Combined State Plan, provided the expenditures do not benefit in any way the donor, employee, officer, or agent, any member of his or her immediate family, his or her partner, an individual with whom the donor has a close personal relationship, or an individual, entity, or organization with whom the donor shares a financial or other interest. The Secretary does not consider a donor's receipt from the State unit of a subaward or contract with funds allotted under this part to be a benefit for the purposes of this paragraph if the subaward or contract is awarded under the State's regular competitive procedures.

(Authority: Sections 7(14), 12(c), 101(a)(3), 101(a)(4), and 104 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(14), 709(c), 721(a)(3), 721(a)(4), and 724))

Example for paragraph (b)(3): Contributions may be earmarked in accordance with § 361.60(b)(3)(iii) for providing particular services (*e.g.*, rehabilitation technology services); serving individuals with certain types of disabilities (*e.g.*, individuals who are blind), consistent with the State's order of selection, if applicable; providing services to special groups that State or Federal law permits to be targeted for services (*e.g.*, students with disabilities who are receiving special education services), consistent with the State's order of selection, if applicable; or carrying out particular types of administrative activities permissible under State law. Contributions also may be restricted to particular geographic areas to increase services or expand the scope of services that are available statewide under the vocational rehabilitation services portion of the Unified or Combined State Plan in accordance with the requirements in § 361.60(b)(3)(ii).

§ 361.61 Limitation on use of funds for construction expenditures.

No more than 10 percent of a State's allotment for any fiscal year under section 110 of the Act may be spent on the construction of facilities for community rehabilitation program purposes.

(Authority: Section 101(a)(17)(A) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 721(a)(17)(A))

§ 361.62 Maintenance of effort requirements.

(a) *General requirements.* The Secretary reduces the amount otherwise payable to a State for any fiscal year by the amount by which the total expenditures from non-Federal sources under the vocational rehabilitation services portion of the Unified or Combined State Plan for any previous fiscal year were less than the total of those expenditures for the fiscal year two years prior to that previous fiscal year.

(b) *Specific requirements for construction of facilities.* If the State provides for the construction of a facility for community rehabilitation program purposes, the amount of the State's share of expenditures for vocational rehabilitation services under the plan, other than for the construction of a facility for community rehabilitation program purposes or the establishment of a facility for community rehabilitation purposes, must be at least equal to the expenditures for those services for the second prior fiscal year.

(c) *Separate State agency for vocational rehabilitation services for individuals who are blind.* If there is a separate part of the vocational rehabilitation services portion of the Unified or Combined State Plan administered by a separate State agency to provide vocational rehabilitation services for individuals who are blind—

(1) Satisfaction of the maintenance of effort requirements under paragraphs (a) and (b) of this section is determined based on the total amount of a State's non-Federal expenditures under both parts of the vocational rehabilitation services portion of the Unified or Combined State Plan; and

(2) If a State fails to meet any maintenance of effort requirement, the Secretary reduces the amount otherwise payable to the State for a fiscal year under each part of the plan in direct proportion to the amount by which non-Federal expenditures under each part of the plan in any previous fiscal year were less than they were for that part of the plan for the fiscal year 2 years prior to that previous fiscal year.

(d) *Waiver or modification.* (1) The Secretary may waive or modify the maintenance of effort requirement in paragraph (a) of this section if the Secretary determines that a waiver or modification is necessary to permit the State to respond to exceptional or uncontrollable circumstances, such as a major natural disaster or a serious economic downturn, that—

(i) Cause significant unanticipated expenditures or reductions in revenue that result in a general reduction of programs within the State; or

(ii) Require the State to make substantial expenditures in the vocational rehabilitation program for long-term purposes due to the one-time costs associated with the construction of a facility for community rehabilitation program purposes, the establishment of a facility for community rehabilitation program purposes, or the acquisition of equipment.

(2) The Secretary may waive or modify the maintenance of effort requirement in paragraph (b) of this section or the 10 percent allotment limitation in § 361.61 if the Secretary determines that a waiver or modification is necessary to permit the State to respond to exceptional or

uncontrollable circumstances, such as a major natural disaster, that result in significant destruction of existing facilities and require the State to make substantial expenditures for the construction of a facility for community rehabilitation program purposes or the establishment of a facility for community rehabilitation program purposes in order to provide vocational rehabilitation services.

(3) A written request for waiver or modification, including supporting justification, must be submitted to the Secretary for consideration as soon as the State has determined that it has failed to satisfy its maintenance of effort requirement due to an exceptional or uncontrollable circumstance, as described in paragraphs (d)(1) and (2) of this section.

(Authority: Sections 101(a)(17) and 111(a)(2) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 721(a)(17) and 731(a)(2))

§ 361.63 Program income.

(a) *Definition.* For purposes of this section, program income means gross income received by the State that is directly generated by a supported activity under this part or earned as a result of the Federal award during the period of performance, as defined in 2 CFR 200.80.

(b) *Sources.* Sources of program income include, but are not limited to: Payments from the Social Security Administration for assisting Social Security beneficiaries and recipients to achieve employment outcomes; payments received from workers' compensation funds; payments received by the State agency from insurers, consumers, or others for services to defray part or all of the costs of services provided to particular individuals; and income generated by a State-operated community rehabilitation program for activities authorized under this part.

(c) *Use of program income.* (1) Except as provided in paragraph (c)(2) of this section, program income, whenever earned, must be used for the provision of vocational rehabilitation services and the administration of the vocational rehabilitation services portion of the Unified or Combined State Plan. Program income—

(i) Is considered earned in the fiscal year in which it is received; and

(ii) Must be disbursed during the period of performance of the award.

(2) Payments provided to a State from the Social Security Administration for assisting Social Security beneficiaries and recipients to achieve employment outcomes may also be used to carry out programs under part B of title I of the Act (client assistance), title VI of the Act (supported employment), and title VII of the Act (independent living).

(3)(i) The State must use program income to supplement Federal funds that support program activities that are subject to this part. See, for example, 2 CFR 200.307(e)(2).

(ii) Notwithstanding 2 CFR 200.305(a) and to the extent that program income funds are available, a State must disburse those funds (including repayments to a revolving fund), rebates, refunds, contract settlements, audit recoveries, and interest earned on such funds before requesting additional funds from the Department.

(4) Program income cannot be used to meet the non-Federal share requirement under § 361.60.

(Authority: Sections 12(c) and 108 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 728; 2 CFR part 200)

§ 361.64 Obligation of Federal funds.

(a) Except as provided in paragraph (b) of this section, any Federal award funds, including reallotted funds, that are appropriated for a fiscal year to carry out a program under this part that are not obligated by the State by the beginning of the succeeding fiscal year remain available for obligation by the State during that succeeding fiscal year.

(b) Federal funds appropriated for a fiscal year remain available for obligation in the succeeding fiscal year only to the extent that the State met the matching requirement for those Federal funds by obligating, in accordance with 34 CFR 76.707, the non-Federal share in the fiscal year for which the funds were appropriated.

(Authority: Section 19 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 716)

§ 361.65 Allotment and payment of Federal funds for vocational rehabilitation services.

(a) *Allotment.* (1) The allotment of Federal funds for vocational rehabilitation services for each State is computed in accordance with the requirements of section 110 of the Act, and payments are made to the State on a quarterly basis, unless some other period is established by the Secretary.

(2) If the vocational rehabilitation services portion of the Unified or Combined State Plan designates one State agency to administer, or supervise the administration of, the part of the plan under which vocational rehabilitation services are provided for individuals who are blind and another State agency to administer the rest of the plan, the division of the State's allotment is a matter for State determination.

(3) *Reservation for pre-employment transition services.* (i) Pursuant to section 110(d) of the Act, the State must reserve at least 15 percent of the State's allotment, received in accordance with section 110(a) of the Act for the provision of pre-employment transition services, as described in § 361.48(a) of this part.

(ii) The funds reserved in accordance with paragraph (a)(3)(i) of this section—

(A) Must only be used for pre-employment transition services specified in § 361.48(a); and

(B) Must not be used to pay for administrative costs, (as defined in § 361.5(c)(2)) associated with the provision of such services or any other vocational rehabilitation services.

(b) *Reallotment.* (1) The Secretary determines not later than 45 days before the end of a fiscal year which States, if any, will not use their full allotment.

(2) As soon as possible, but not later than the end of the fiscal year, the Secretary reallots these funds to other States that can use those additional funds during the period of performance of the award, provided the State can meet the matching requirement by obligating the non-Federal share of any reallotted funds in the fiscal year for which the funds were appropriated.

(3) In the event more funds are requested by agencies than are available, the Secretary will determine the process for allocating funds available for reallotment.

(4) Funds reallotted to another State are considered to be an increase in the recipient State's allotment for the fiscal year for which the funds were appropriated.

(Authority: Sections 12(c), 110, and 111 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 730, and 731)

Subparts D–F—[Reserved]

■ 2. Effective October 18, 2016, § 361.10 is amended by adding paragraph (d) to read as follows:

§ 361.10 Submission, approval, and disapproval of the State plan.

* * * * *

(d) *Submission, approval, disapproval, and duration.* All requirements regarding the submission, approval, disapproval, and duration of the vocational rehabilitation services portion of the Unified or Combined State Plan are governed by regulations set forth in subpart D of this part.

* * * * *

■ 3. Effective October 18, 2016, § 361.23 is added to read as follows:

§ 361.23 Requirements related to the statewide workforce development system.

As a required partner in the one-stop service delivery system (which is part of

the statewide workforce development system under title I of the Workforce Innovation and Opportunity Act), the designated State unit must satisfy all requirements set forth in regulations in subpart F of this part.

(Approved by the Office of Management and Budget under control number 1205–0522)

(Authority: Section 101(a)(11)(A) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 721(a)(11)(A); Section 121(b)(1)(B)(iv) of the Workforce Innovation and Opportunity Act; 29 U.S.C. 3151)

■ 4. Effective October 18, 2016, § 361.40 is amended by adding paragraph (b) to read as follows:

§ 361.40 Reports; Evaluation standards and performance indicators.

* * * * *

(b) *Evaluation standards and performance indicators*—(1) *Standards and indicators.* The evaluation standards and performance indicators for the vocational rehabilitation program carried out under this part are subject to the performance accountability provisions described in section 116(b) of the Workforce Innovation and Opportunity Act and implemented in regulations set forth in subpart E of this part.

(2) *Compliance.* A State's compliance with common performance measures and any necessary corrective actions will be determined in accordance with regulations set forth in subpart E of this part.

■ 5. Part 363 is revised to read as follows:

PART 363—THE STATE SUPPORTED EMPLOYMENT SERVICES PROGRAM

Subpart A—General

Sec.

363.1 What is the State Supported Employment Services program?
363.2 Who is eligible for an award?
363.3 Who is eligible for services?
363.4 What are the authorized activities under the State Supported Employment Services program?
363.5 What regulations apply?
363.6 What definitions apply?

Subpart B—How Does a State Apply for a Grant?

363.10 What documents must a State submit to receive a grant?
363.11 What are the vocational rehabilitation services portion of the Unified or Combined State Plan supplement requirements?

Subpart C—How Are State Supported Employment Services Programs Financed?

363.20 How does the Secretary allot funds?
363.21 How does the Secretary reallot funds?
363.22 How are funds reserved for youth with the most significant disabilities?
363.23 What are the matching requirements?
363.24 What is program income and how may it be used?
363.25 What is the period of availability of funds?

Subparts D–E—[Reserved]

Subpart F—What Post-Award Conditions Must Be Met by a State?

363.50 What collaborative agreements must the State develop?
363.51 What are the allowable administrative costs?
363.52 What are the information collection and reporting requirements?
363.53 What requirements must a designated State unit meet for the transition of an individual to extended services?
363.54 When will an individual be considered to have achieved an employment outcome in supported employment?
363.55 When will the service record of an individual who has achieved an employment outcome in supported employment be closed?
363.56 What notice requirements apply to this program?

Authority: Sections 602–608 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 795g–795m, unless otherwise noted.

Subpart A—General

§ 363.1 What is the State Supported Employment Services program?

(a) Under the State supported employment services program, the Secretary provides grants to assist States in developing and implementing collaborative programs with appropriate entities to provide programs of supported employment services for individuals with the most significant disabilities, including youth with the most significant disabilities, to enable them to achieve an employment outcome of supported employment in competitive integrated employment. Grants made under the State supported employment services program supplement a State's vocational rehabilitation program grants under 34 CFR part 361.

(b) For purposes of this part and 34 CFR part 361, "supported employment" means competitive integrated employment, including customized employment, or employment in an integrated work setting in which an individual with a most significant disability, including a youth with a most significant disability, is working on a short-term basis toward competitive integrated employment, that is individualized and customized, consistent with the unique strengths, abilities, interests, and informed choice of the individual, including with ongoing support services for individuals with the most significant disabilities—

(1)(i) For whom competitive integrated employment has not historically occurred; or

(ii) For whom competitive integrated employment has been interrupted or intermittent as a result of a significant disability; and

(2) Who, because of the nature and severity of the disability, need intensive supported employment services, and extended services after the transition from support provided by the designated State unit in order to perform the work.

(c) *Short-term basis.* For purposes of this part, an individual with a most significant disability, whose supported employment in an integrated setting does not satisfy the criteria of competitive integrated employment, as defined in 34 CFR 361.5(c)(9), is considered to be working on a short-term basis toward competitive integrated employment so long as the individual can reasonably anticipate achieving competitive integrated employment—

(1) Within six months of achieving a supported employment outcome; or,

(2) In limited circumstances, within a period not to exceed 12 months from the achievement of the supported employment outcome, if a longer period is necessary based on the needs of the individual, and the individual has demonstrated progress toward competitive earnings based on information contained in the service record.

(Authority: Sections 7(38), 7(39), 12(c), and 602 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(38) 705(39), 709(c), and 795g)

§ 363.2 Who is eligible for an award?

Any State that submits the documentation required by § 363.10, as part of the vocational rehabilitation services portion of the Unified or Combined State Plan under 34 CFR part 361, is eligible for an award under this part.

(Authority: Section 606(a) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 795k(a))

§ 363.3 Who is eligible for services?

A State may provide services under this part to any individual, including a youth with a disability, if—

(a) The individual has been determined to be—

(1) Eligible for vocational rehabilitation services in accordance with 34 CFR 361.42; and

(2) An individual with a most significant disability;

(b) For purposes of activities carried out under § 363.4(a)(2), the individual is a youth with a disability, as defined in 34 CFR 361.5(c)(59), who satisfies the requirements of this section; and

(c) Supported employment has been identified as the appropriate employment outcome for the individual on the basis of a comprehensive assessment of rehabilitation needs, as defined in 34 CFR 361.5(c)(5), including an evaluation of rehabilitation, career, and job needs.

(Authority: Section 605 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 795j)

§ 363.4 What are the authorized activities under the State Supported Employment Services program?

(a) The State may use funds allotted under this part to—

(1) Provide supported employment services, as defined in 34 CFR 361.5(c)(54);

(2) Provide extended services, as defined in 34 CFR 361.5(c)(19), to youth with the most significant disabilities, in accordance with § 363.11(f), for a period of time not to exceed four years, or until such time that a youth reaches the age of 25 and no longer meets the definition of a youth with a disability under 34 CFR 361.5(c)(58), whichever occurs first; and

(3) With funds reserved, in accordance with § 363.22 for the provision of supported employment services to youth with the most significant disabilities, leverage other public and private funds to increase resources for extended services and expand supported employment opportunities.

(b) Except as provided in paragraph (a)(2) of this section, a State may not use funds under this part to provide extended services to individuals with the most significant disabilities.

(c) Nothing in this part will be construed to prohibit a State from providing—

(1) Supported employment services in accordance with the vocational rehabilitation services portion of the Unified or Combined State Plan submitted under 34 CFR part 361 by using funds made available through a State allotment under that part.

(2) Discrete postemployment services in accordance with 34 CFR 361.48(b) by using funds made available under 34 CFR part 361 to an individual who is eligible under this part.

(d) A State must coordinate with the entities described in § 363.50(a) regarding the services provided to individuals with the most significant disabilities, including youth with the most significant disabilities, under this part and under 34 CFR part 361 to ensure that the services are complementary and not duplicative.

(Authority: Sections 7(39), 12(c), 604, 606(b)(6), and 608 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(39), 709(c), 795i, 795k(b)(6), and 795m)

§ 363.5 What regulations apply?

The following regulations apply to the State supported employment services program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 76 (State-Administered Programs).

(2) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(3) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(4) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(5) 34 CFR part 82 (New Restrictions on Lobbying).

(b) The regulations in this part 363.

(c) The following regulations in 34 CFR part 361 (The State Vocational Rehabilitation Services Program): §§ 361.5, 361.31, 361.32, 361.34, 361.35, 361.39, 361.40, 361.41, 361.42, 361.47(a), 361.48, 361.49, and 361.53.

(d) 2 CFR part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), as adopted in 2 CFR part 3474.

(e) 2 CFR part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)), as adopted in 2 CFR part 3485.

(Authority: Section 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c))

§ 363.6 What definitions apply?

The following definitions apply to this part:

(a) Definitions in 34 CFR part 361.

(b) Definitions in 34 CFR part 77.

(c) Definitions in 2 CFR part 200, subpart A.

(Authority: Sections 7 and 12(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705 and 709(c))

Subpart B—How Does a State Apply for a Grant?

§ 363.10 What documents must a State submit to receive a grant?

(a) To be eligible to receive a grant under this part, a State must submit to the Secretary, as part of the vocational rehabilitation services portion of the Unified or Combined State Plan under 34 CFR part 361, a State plan supplement that meets the requirements of § 363.11.

(b) A State must submit revisions to the vocational rehabilitation services portion of the Unified or Combined State Plan supplement submitted under this part as may be necessary.

(Approved by the Office of Management and Budget under control number 1205–0522)

(Authority: Section 606(a) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 795k(a))

§ 363.11 What are the vocational rehabilitation services portion of the Unified or Combined State Plan supplement requirements?

Each State plan supplement, submitted in accordance with § 363.10, must—

(a) Designate a designated State unit or, as applicable, units, as defined in 34 CFR 361.5(c)(13), as the State agency or agencies to administer the Supported Employment program under this part;

(b) Summarize the results of the needs assessment of individuals with most significant disabilities, including youth with the most significant disabilities, conducted under 34 CFR 361.29(a), with respect to the rehabilitation and career needs of individuals with most significant disabilities and their need for supported employment services. The results of the needs assessment must also address needs relating to coordination;

(c) Describe the quality, scope, and extent of supported employment services to be provided to eligible individuals with the most significant disabilities under this part, including youth with the most significant disabilities;

(d) Describe the State's goals and plans with respect to the distribution of funds received under § 363.20;

(e) Demonstrate evidence of the designated State unit's efforts to identify and make arrangements, including entering into cooperative agreements, with—

(1) Other State agencies and other appropriate entities to assist in the provision of supported employment services; and

(2) Other public or non-profit agencies or organizations within the State, employers, natural supports, and other entities with respect to the provision of extended services;

(f) Describe the activities to be conducted for youth with the most significant disabilities with the funds reserved in accordance with § 363.22, including—

(1) The provision of extended services to youth with the most significant disabilities for a period not to exceed

four years, in accordance with § 363.4(a)(2); and

(2) How the State will use supported employment funds reserved under § 363.22 to leverage other public and private funds to increase resources for extended services and expand supported employment opportunities for youth with the most significant disabilities;

(g) Assure that—

(1) Funds made available under this part will only be used to provide authorized supported employment services to individuals who are eligible under this part to receive such services;

(2) The comprehensive assessments of individuals with significant disabilities, including youth with the most significant disabilities, conducted under 34 CFR part 361 will include consideration of supported employment as an appropriate employment outcome;

(3) An individualized plan for employment, as described in 34 CFR 361.45 and 361.46, will be developed and updated, using funds received under 34 CFR part 361, in order to—

(i) Specify the supported employment services to be provided, including, as appropriate, transition services and pre-employment transition services to be provided for youth with the most significant disabilities;

(ii) Specify the expected extended services needed, including the extended services that may be provided under this part to youth with the most significant disabilities in accordance with an approved individualized plan for employment for a period not to exceed four years; and

(iii) Identify, as appropriate, the source of extended services, which may include natural supports, programs, or other entities, or an indication that it is not possible to identify the source of extended services at the time the individualized plan for employment is developed;

(4) The State will use funds provided under this part only to supplement, and not supplant, the funds received under 34 CFR part 361, in providing supported employment services specified in the individualized plan for employment;

(5) Services provided under an individualized plan for employment will be coordinated with services provided under other individualized plans established under other Federal or State programs;

(6) To the extent job skills training is provided, the training will be provided onsite;

(7) Supported employment services will include placement in an integrated setting based on the unique strengths, resources, interests, concerns, abilities, and capabilities of individuals with the most significant disabilities, including youth with the most significant disabilities;

(8) The designated State agency or agencies, as described in paragraph (a) of this section, will expend no more than 2.5 percent of the State's allotment under this part for administrative costs of carrying out this program; and

(9) The designated State agency or agencies will provide, directly or indirectly through public or private entities, non-Federal contributions in an amount that is not less than 10 percent of the costs of carrying out supported employment services provided to youth with the most significant disabilities with the funds reserved for such purpose under § 363.22; and

(h) Contain any other information and be submitted in the form and in accordance with the procedures that the Secretary may require.

(Approved by the Office of Management and Budget under control number 1205–0522)

(Authority: Section 606 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 795k)

Subpart C—How Are State Supported Employment Services Programs Financed?

§ 363.20 How does the Secretary allot funds?

(a) *States.* The Secretary will allot the sums appropriated for each fiscal year to carry out the activities of this part among the States on the basis of relative population of each State, except that—

(1) No State will receive less than $250,000, or 1/fxsp0;3 of 1 percent of the sums appropriated for the fiscal year for which the allotment is made, whichever amount is greater; and

(2) If the sums appropriated to carry out this part for the fiscal year exceed the sums appropriated to carry out this part (as in effect on September 30, 1992) in fiscal year 1992 by $1,000,000 or more, no State will receive less than $300,000, or 1/fxsp0;3 of 1 percent of the sums appropriated for the fiscal year for which the allotment is made, whichever amount is greater.

(b) *Certain Territories.* (1) For the purposes of this section, Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands are not considered to be States.

(2) Each jurisdiction described in paragraph (b)(1) of this section will be allotted not less than 1/8 of 1 percent of the amounts appropriated for the fiscal year for which the allotment is made.

(Authority: Section 603(a) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 795h(a))

§ 363.21 How does the Secretary reallot funds?

(a) Whenever the Secretary determines that any amount of an allotment to a State under § 363.20 for any fiscal year will not be expended by such State for carrying out the provisions of this part, the Secretary will make such amount available for carrying out the provisions of this part to one or more of the States that the Secretary determines will be able to use additional amounts during such year for carrying out such provisions.

(b) Any amount made available to a State for any fiscal year in accordance with paragraph (a) will be regarded as an increase in the State's allotment under this part for such year.

(Authority: Section 603(b) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 795h(b))

§ 363.22 How are funds reserved for youth with the most significant disabilities?

A State that receives an allotment under this part must reserve and expend 50 percent of such allotment for the provision of supported employment services, including extended services, to youth with the most significant disabilities in order to assist those youth in achieving an employment outcome in supported employment.

(Authority: Sections 12(c) and 603(d) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 795h(d))

§ 363.23 What are the matching requirements?

(a) *Non-Federal share.* (1) For funds allotted under § 363.20 and not reserved under § 363.22 for the provision of supported employment services to youth with the most significant disabilities, there is no non-Federal share requirement.

(2)(i) For funds allotted under § 363.20 and reserved under § 363.22 for the provision of supported employment services to youth with the most significant disabilities, a designated State agency must provide non-Federal expenditures in an amount that is not less than 10 percent of the total expenditures, including the Federal reserved funds and the non-Federal share, incurred for the provision of supported employment services to youth with the most significant disabilities, including extended services.

(ii) In the event that a designated State agency uses more than 50 percent of its allotment under this part to provide supported employment services to

youth with the most significant disabilities as required by § 363.22, there is no requirement that a designated State agency provide non-Federal expenditures to match the excess Federal funds spent for this purpose.

(3) Except as provided under paragraphs (b) and (c) of this section, non-Federal expenditures made under the vocational rehabilitation services portion of the Unified or Combined State Plan supplement to meet the non-Federal share requirement under this section must be consistent with the provision of 2 CFR 200.306.

(b) *Third-party in-kind contributions.* Third-party in-kind contributions, as described in 2 CFR 200.306(b), may not be used to meet the non-Federal share under this section.

(c)(1) *Contributions by private entities.* Expenditures made from contributions by private organizations, agencies, or individuals that are deposited into the sole account of the State agency, in accordance with State law may be used as part of the non-Federal share under this section, provided the expenditures under the vocational rehabilitation services portion of the Unified or Combined State Plan supplement, as described in § 363.11, do not benefit in any way the donor, an individual to whom the donor is related by blood or marriage or with whom the donor shares a financial interest.

(2) The Secretary does not consider a donor's receipt from the State unit of a contract or subaward with funds allotted under this part to be a benefit for the purpose of this paragraph if the contract or subaward is awarded under the State's regular competitive procedures.

(Authority: Sections 12(c) and 606(b)(7)(I) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 795k(b)(7)(I))

§ 363.24 What is program income and how may it be used?

(a) *Definition.* (1) *Program income* means gross income earned by the State that is directly generated by authorized activities supported under this part or earned as a result of the Federal award during the period of performance.

(2) Program income received through the transfer of Social Security Administration payments from the State Vocational Rehabilitation Services program, in accordance with 34 CFR 361.63(c)(2), will be treated as program income received under this part.

(b) *Use of program income.* (1) Program income must be used for the provision of services authorized under § 363.4. Program income earned or received during the fiscal year must be disbursed during the period of performance of the award, prior to requesting additional cash payments.

(2) States are authorized to treat program income as an addition to the grant funds to be used for additional allowable program expenditures, in accordance with 2 CFR 200.307(e)(2).

(3) Program income cannot be used to meet the non-Federal share requirement under § 363.23.

(Authority: Sections 12(c) and 108 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 728)

§ 363.25 What is the period of availability of funds?

(a) Except as provided in paragraph (b) of this section, any Federal award funds, including reallotted funds, that are appropriated for a fiscal year to carry out a program under this part that are not obligated by the State by the beginning of the succeeding fiscal year, and any program income received during a fiscal year that is not obligated or expended by the State prior to the beginning of the succeeding fiscal year in which the program income was received, remain available for obligation by the State during that succeeding fiscal year.

(b) Federal funds appropriated for a fiscal year and reserved for the provision of supported employment services to youth with the most significant disabilities, in accordance with § 363.22 of this part, remain available for obligation in the succeeding fiscal year only to the extent that the State met the matching requirement, as described in § 363.23, for those Federal funds by obligating, in accordance with 34 CFR 76.707, the non-Federal share in the fiscal year for which the funds were appropriated. Any reserved funds carried over may only be obligated and expended in that succeeding Federal fiscal year for the provision of supported employment services to youth with the most significant disabilities.

(Authority: Sections 12(c) and 19 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 716)

Subparts D–E—[Reserved]

Subpart F—What Post-Award Conditions Must Be Met by a State?

§ 363.50 What collaborative agreements must the State develop?

(a) A designated State unit must enter into one or more written collaborative agreements, memoranda of understanding, or other appropriate mechanisms with other public agencies, private nonprofit organizations, and other available funding sources, including employers and other natural supports, as appropriate, to assist with the provision of supported employment services and extended services to individuals with the most significant disabilities in the State, including youth with the most significant disabilities, to enable them to achieve an employment outcome of supported employment in competitive integrated employment.

(b) These agreements provide the mechanism for collaboration at the State level that is necessary to ensure the smooth transition from supported employment services to extended services, the transition of which is inherent to the definition of "supported employment" in § 363.1(b). The agreement may contain information regarding the—

(1) Supported employment services to be provided, for a period not to exceed 24 months, by the designated State unit with funds received under this part;

(2) Extended services to be provided to youth with the most significant disabilities, for a period not to exceed four years, by the designated State unit with the funds reserved under § 363.22 of this part;

(3) Extended services to be provided by other public agencies, private nonprofit organizations, or other sources, including employers and other natural supports, following the provision of authorized supported employment services, or extended services as appropriate for youth with the most significant disabilities, under this part; and

(4) Collaborative efforts that will be undertaken by all relevant entities to increase opportunities for competitive integrated employment in the State for individuals with the most significant disabilities, especially youth with the most significant disabilities.

(Authority: Sections 7(38), 7(39), 12(c), 602, and 606(b) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(38), 705(39), 709(c), 795g, and 795k(b))

§ 363.51 What are the allowable administrative costs?

(a) A State may use funds under this part to pay for expenditures incurred in the administration of activities carried out under this part, consistent with the definition of administrative costs in 34 CFR 361.5(c)(2).

(b) A designated State agency may not expend more than 2.5 percent of a State's allotment under this part for administrative costs for carrying out the State supported employment program.

(Authority: Sections 7(1), 12(c), and 603(c) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(1), 709(c), and 795h(c))

§ 363.52 What are the information collection and reporting requirements?

Each State agency designated in § 363.11(a) must collect and report separately the information required under 34 CFR 361.40 for—

(a) Eligible individuals receiving supported employment services under this part;

(b) Eligible individuals receiving supported employment services under 34 CFR part 361;

(c) Eligible youth receiving supported employment services and extended services under this part; and

(d) Eligible youth receiving supported employment services under 34 CFR part 361 and extended services.

(Authority: Sections 13 and 607 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 710 and 795l)

§ 363.53 What requirements must a designated State unit meet for the transition of an individual to extended services?

(a) A designated State unit must provide for the transition of an individual with a most significant disability, including a youth with a most significant disability, to extended services, as defined in 34 CFR 361.5(c)(19), no later than 24 months after the individual enters supported employment, unless a longer period is established in the individualized plan for employment.

(b) Prior to assisting the individual in transitioning from supported employment services to extended services, the designated State unit must ensure—

(1) The counselor and individual have considered extending the provision of supported employment services beyond 24 months, as appropriate, and have determined that no further supported employment services are necessary to support and maintain the individual in supported employment before the individual transitions to extended services; and

(2) The source of extended services for the individual has been identified in order to ensure there will be no interruption of services. The providers of extended services may include—

(i) A State agency, a private nonprofit organization, employer, or any other appropriate resource, after an individual has made the transition from support from the designated State unit; or,

(ii) The designated State unit, in the case of a youth with a most significant disability, in accordance with requirements set forth in 34 CFR 361.5(c)(19) and this part for a period not to exceed four years, or at such time that a youth reaches the age of 25 and no longer meets the definition of a youth with a disability under 34 CFR 361.5(c)(58), whichever occurs first. For youth who still require extended services after they can no longer receive them from the designated State unit, the designated State unit must identify another source of extended services for those youth in order to ensure there will be no interruption of services. The designated State unit may not provide extended services to individuals with the most significant disabilities who are not youth with the most significant disabilities.

(Authority: Sections 7(13), 12(c), and 604(b) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(13), 709(c) and 795i)

§ 363.54 When will an individual be considered to have achieved an employment outcome in supported employment?

An individual with a most significant disability, including a youth with a most significant disability, who is employed in competitive integrated employment or who is employed in an integrated setting working on a short-term basis to achieve competitive integrated employment will be considered to have achieved an employment outcome, including customized employment, in supported employment when—

(a) The individual has completed supported employment services provided under this part and 34 CFR part 361, except for any other vocational rehabilitation services listed on the individualized plan for employment provided to individuals who are working on a short-term basis toward the achievement of competitive integrated employment in supported employment. An individual has completed supported employment services when—

(1) The individual has received up to 24 months of supported employment services; or

(2) The counselor and individual have determined that an extension of time to provide supported employment services beyond 24 months is necessary to support and maintain the individual in supported employment before the individual transitions to extended services and that extension of time has concluded; and

(b) The individual has transitioned to extended services provided by either the designated State unit for youth with the most significant disabilities, or another provider, consistent with the provisions of §§ 363.4(a)(2) and 363.22; and

(c) The individual has maintained employment and achieved stability in the work setting for at least 90 days after transitioning to extended services; and

(d) The employment is individualized and customized consistent with the strengths, abilities, interests, and informed choice of the individual.

(Authority: Sections 7(11), 7(13), 7(38), 7(39), 7(40), 12(c), 602, and 606(b) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(11), 705(13), 705(38), 705(39), 705(40), 709(c), 795g, and 795k(b))

§ 363.55 When will the service record of an individual who has achieved an employment outcome in supported employment be closed?

(a) The service record of an individual with a most significant disability, including a youth with a most significant disability, who has achieved an employment outcome in supported employment in competitive integrated employment will be closed concurrently with the achievement of the employment outcome in supported employment when the individual—

(1) Satisfies requirements for case closure, as set forth in 34 CFR 361.56; and

(2) Is not receiving extended services or any other vocational rehabilitation service provided by the designated State unit with funds under this part or 34 CFR part 361.

(b) The service record of an individual with a most significant disability, including a youth with a most significant disability who is working toward competitive integrated employment on a short-term basis and is receiving extended services from funds other than those allotted under this part and 34 CFR part 361 will be closed when the individual—

(1) Achieves competitive integrated employment within the short-term basis period established pursuant to § 363.1(c); and the individual—

(i) Satisfies requirements for case closure, as set forth in 34 CFR 361.56; and

(ii) Is no longer receiving vocational rehabilitation services provided by the designated State unit with funds under 34 CFR part 361; or

(2) Does not achieve competitive integrated employment within the short-term basis period established pursuant to § 363.1(c).

(c) The service record of a youth with a most significant disability who is receiving extended services provided by the designated State unit from funds under this part or 34 CFR part 361 will be closed when—

(1) The youth with a most significant disability achieves an employment

outcome in supported employment in competitive integrated employment without entering the short-term basis period; and

(i) Is no longer eligible to receive extended services provided by the designated State unit with funds allotted under this part and 34 CFR part 361 because the individual—

(A) No longer meets age requirements established in the definition of a youth with a disability pursuant to 34 CFR 361.5(c)(58); or

(B) Has received extended services for a period of four years; or

(C) Has transitioned to extended services provided with funds other than those allotted under this part or part 361 prior to meeting the age or time restrictions established under paragraphs (c)(1)(i)(A) and (B) of this section, respectively; and

(ii) Satisfies requirements for case closure, as set forth in 34 CFR 361.56; and

(iii) The individual is no longer receiving any other vocational rehabilitation service from the designated State unit provided with funds under 34 CFR part 361; or

(2) The youth with a most significant disability who is working toward competitive integrated employment on a short-term basis—

(i) Achieves competitive integrated employment within the short-term basis period established pursuant to § 363.1(c);

(ii) Is no longer eligible to receive extended services provided by the designated State unit with funds allotted under this part and 34 CFR part 361 because the individual—

(A) No longer meets age requirements established in the definition of a youth with a disability pursuant to 34 CFR 361.5(c)(58); or

(B) Has received extended services for a period of four years; or

(C) Has transitioned to extended services provided with funds other than those allotted under this part or 34 CFR part 361 prior to meeting the age or time restrictions established under paragraphs (c)(2)(ii)(A) and (B) of this section, respectively; and

(iii) Satisfies requirements for case closure, as set forth in 34 CFR 361.56; or

(3) The youth with a most significant disability working toward competitive integrated employment on a short-term basis does not achieve competitive integrated employment within the short-term basis period established pursuant to § 363.1(c).

(Authority: Sections 7(11), 7(13), 7(38), 7(39), 7(40), 7(42), 12(c), 602, and 606(b) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(11), 705(13), 705(38), 705(39), 705(40), 705(42), 709(c), 795g, and 795k(b))

§ 363.56 What notice requirements apply to this program?

Each grantee must advise applicants for or recipients of services under this part, or as appropriate, the parents, family members, guardians, advocates, or authorized representatives of those individuals, including youth with the most significant disabilities, of the availability and purposes of the Client Assistance Program, including information on seeking assistance from that program.

(Authority: Section 20 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 717)

■ 6. Part 397 is added to read as follows:

PART 397—LIMITATIONS ON USE OF SUBMINIMUM WAGE

Subpart A—General Provisions

Sec.
397.1 Purpose.
397.2 What is the Department of Education's jurisdiction under this part?
397.3 What rules of construction apply to this part?
397.4 What regulations apply?
397.5 What definitions apply?

Subpart B—Coordinated Documentation Procedures Related to Youth with Disabilities

397.10 What documentation process must the designated State unit develop?

Subpart C—Designated State Unit Responsibilities Prior to Youth with Disabilities Starting Subminimum Wage Employment

397.20 What are the responsibilities of a designated State unit to youth with disabilities who are known to be seeking subminimum wage employment?

Subpart D—Local Educational Agency Responsibilities Prior to Youth with Disabilities Starting Subminimum Wage Employment

397.30 What are the responsibilities of a local educational agency to youth with disabilities who are known to be seeking subminimum wage employment?
397.31 What are the contracting limitations on educational agencies under this part?

Subpart E—Designated State Unit Responsibilities to Individuals with Disabilities During Subminimum Wage Employment

397.40 What are the responsibilities of a designated State unit for individuals with disabilities, regardless of age, who are employed at subminimum wage?

Subpart F—Review of Documentation

397.50 What is the role of the designated State unit in the review of documentation under this part?

Authority: Section 511 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 794g, unless otherwise noted.

Subpart A—General Provisions

§ 397.1 Purpose.

(a) The purpose of this part is to set forth requirements the designated State units and State and local educational agencies must satisfy to ensure that individuals with disabilities, especially youth with disabilities, have a meaningful opportunity to prepare for, obtain, maintain, advance in, or regain competitive integrated employment, including supported or customized employment.

(b) This part requires—

(1) A designated State unit to provide youth with disabilities documentation demonstrating that they have completed certain requirements, as described in this part, prior to starting subminimum wage employment with entities (as defined in § 397.5(d)) holding special wage certificates under section 14(c) of the Fair Labor Standards Act of 1938 (29 U.S.C. 214(c));

(2) A designated State unit to provide, at certain prescribed intervals for the duration of such employment, career counseling and information and referral services, designed to promote opportunities for competitive integrated employment, to individuals with disabilities, regardless of age, who are known to be employed at subminimum wage; and

(3) A designated State unit, in consultation with the State educational agency, to develop a process or utilize an existing process, to document completion of required activities under this part by a youth with a disability known to be seeking employment at subminimum wage.

(c) This part authorizes a designated State unit, or a representative of a designated State unit, to review individual documentation required to be maintained by these entities under this part.

(d) The provisions in this part work in concert with requirements in 34 CFR parts 300, 361, and 363, and do not alter any requirements under those parts.

(Authority: Sections 12(c) and 511 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 794g)

§ 397.2 What is the Department of Education's jurisdiction under this part?

(a) The Department of Education has jurisdiction under this part to implement guidelines for—

(1) Documentation requirements imposed on designated State units and local educational agencies, including the documentation process that the

designated State unit must develop in consultation with the State educational agency;

(2) Requirements related to the services that designated State units must provide to individuals regardless of age who are employed at subminimum wage; and

(3) Requirements under § 397.31.

(b) Nothing in this part will be construed to grant to the Department of Education, or its grantees, jurisdiction over requirements set forth in the Fair Labor Standards Act, including those imposed on entities holding special wage certificates under section 14(c) of that Act, which is administered by the Department of Labor.

(Authority: Sections 12(c), 511(b)(3), 511(c), and 511(d) of the Rehabilitation Act of 1973, as amended; 709(c), 794g(b)(3), 794g(c), and 794g(d))

§ 397.3 What rules of construction apply to this part?

Nothing in this part will be construed to—

(a) Change the purpose of the Rehabilitation Act, which is to empower individuals with disabilities to maximize opportunities for achieving competitive integrated employment;

(b) Promote subminimum wage employment as a vocational rehabilitation strategy or employment outcome, as defined in 34 CFR 361.5(c)(15); or

(c) Be inconsistent with the provisions of the Fair Labor Standards Act, as amended before or after July 22, 2014.

(Authority: Sections 12(c) and 511(b) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 794g(b))

§ 397.4 What regulations apply?

(a) The regulations in 34 CFR part 300 governing the definition of transition services, and the Individualized Education Program requirements related to the development of postsecondary goals and the transition services needed to assist the eligible child in reaching those goals (§§ 300.320(b), 300.321(b), 300.324(c), and 300.43).

(b) The regulations in 34 CFR part 361 governing the vocational rehabilitation program, especially those regarding protection and use of personal information in 34 CFR 361.38; eligibility determinations in 34 CFR 361.42; individualized plans for employment in 34 CFR 361.45 and 34 CFR 361.46; provision of vocational rehabilitation services, including pre-employment transition services, transition services, and supported employment services in 34 CFR 361.48; ineligibility determinations in 34 CFR 361.43; informed choice in 34 CFR 361.52; and case closures in 34 CFR 361.56.

(c) The regulations in 29 CFR part 525 governing the employment of individuals with disabilities at subminimum wage rates pursuant to a certificate issued by the Secretary of Labor.

(d) The regulations in this part 397.

(Authority: Sections 12(c), 102(a) and (b), 103(a), and 113 of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 722(a) and (b), 723(a), and 733; sections 601(34) and 614(d)(1)(A)(i)(VIII) of the Individuals with Disabilities Education Act (20 U.S.C. 1401(34) and 1414(d)); and section 14(c) of the Fair Labor Standards Act (29 U.S.C. 214(c))

§ 397.5 What definitions apply?

(a) The following terms have the meanings given to them in 34 CFR 361.5(c):

(1) Act;

(2) Competitive integrated employment;

(3) Customized employment;

(4) Designated State unit;

(5) Extended services;

(6) Individual with a disability;

(7) Individual with a most significant disability;

(8) Individual's representative;

(9) Individualized plan for employment;

(10) Pre-employment transition services;

(11) Student with a disability;

(12) Supported employment;

(13) Vocational rehabilitation services; and

(14) Youth with a disability.

(b) The following terms have the meanings given to them in 34 CFR part 300:

(1) Local educational agency (§ 300.28);

(2) State educational agency (§ 300.41); and

(3) Transition services (§ 300.43).

(c) The following terms have the meanings given to them in 29 CFR 525.3 and section 6(a)(1) of the Fair Labor Standards Act (29 U.S.C. 206(a)(1)):

(1) *Federal minimum wage* has the meaning given to that term in section 6(a)(1) of the Fair Labor Standards Act (29 U.S.C. 206(a)(1)); and

(2) *Special wage certificate* means a certificate issued to an employer under section 14(c) of the Fair Labor Standards Act (29 U.S.C. 214(c)) and 29 CFR part 525 that authorizes payment of subminimum wages, wages less than the statutory minimum wage.

(d) *Entity* means an employer, or a contractor or subcontractor of that employer, that holds a special wage certificate described in section 14(c) of the Fair Labor Standards Act (29 U.S.C. 214(c)).

(Authority: Sections 7, 12(c), and 511(a) and (f) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705, 709(c), and 794g(a) and (f); sections 601 and 614(d) of the Individuals with Disabilities Education Act, 20 U.S.C. 1401 and 1414(d); section 901 of the Elementary and Secondary Education Act of 1965, 20 U.S.C. 7801; and sections 6(a)(1) and 14(c) of the Fair Labor Standards Act, 29 U.S.C. 206(a)(1) and 29 U.S.C. 214(c))

Subpart B—Coordinated Documentation Procedures Related to Youth with Disabilities

§ 397.10 What documentation process must the designated State unit develop?

(a) The designated State unit, in consultation with the State educational agency, must develop a new process, or utilize an existing process, to document the completion of the actions described in § 397.20 and § 397.30 by a youth with a disability, as well as a process for the transmittal of that documentation from the educational agency to the designated State unit, consistent with confidentiality requirements of the Family Education Rights and Privacy Act (20 U.S.C. 1232g(b) and 34 CFR 99.30 and 99.31) and the Individuals with Disabilities Education Act (20 U.S.C. 1417(c) and 34 CFR 300.622).

(1) Such documentation must, at a minimum, contain the—

(i) Youth's name;

(ii) Determination made, including a summary of the reason for the determination, or description of the service or activity completed;

(iii) Name of the individual making the determination or the provider of the required service or activity;

(iv) Date determination made or required service or activity completed;

(v) Signature of the designated State unit or educational personnel making the determination or documenting completion of the required services or activity;

(vi) Date of signature described in paragraph (a)(1)(v) of this section;

(vii) Signature of designated State unit personnel transmitting documentation to the youth with a disability; and

(viii) Date and method (*e.g.*, hand-delivered, faxed, mailed, emailed, etc.) by which document was transmitted to the youth.

(2) In the event a youth with a disability or, as applicable, the youth's parent or guardian, refuses, through informed choice, to participate in the activities required by this part, such documentation must, at a minimum, contain the—

(i) Youth's name;

(ii) Description of the refusal and the reason for such refusal;

(iii) Signature of the youth or, as applicable, the youth's parent or guardian;

(iv) Signature of the designated State unit or educational personnel documenting the youth's refusal;

(v) Date of signatures; and

(vi) Date and method (*e.g.*, hand-delivered, faxed, mailed, emailed, etc.) by which documentation was transmitted to the youth.

(3) The documentation process must include procedures for the designated State unit to retain a copy of all documentation required by this part in a manner consistent with the designated State unit's case management system and the requirements of 2 CFR 200.333.

(b) The documentation process must ensure that—

(1) A designated State unit provides, in the case of a student with a disability, documentation of completion of appropriate pre-employment transition services, in accordance with § 361.48(a) of this chapter and as required by § 397.20(a)(1);

(2) In the case of a student with a disability, for actions described in § 397.30—

(i) The appropriate school official, responsible for the provision of transition services, must provide the designated State unit documentation of completion of appropriate transition services under the Individuals with Disabilities Education Act, including those provided under section 614(d)(1)(A)(i)(VIII) (20 U.S.C. 1414(d)(1)(A)(i)(VIII));

(ii) The designated State unit must provide documentation of completion of the transition services, as documented and provided by the appropriate school official in accordance with paragraph (b)(2) of this section, to the youth with a disability.

(c) The designated State unit must provide—

(1) Documentation required by this part in a form and manner consistent with this part and in an accessible format for the youth; and

(2)(i) Documentation required by paragraph (a)(1) of this section to a youth as soon as possible upon the completion of each of the required actions, but no later than—

(A) 45 calendar days after the determination or completion of the required activity or service; or

(B) 90 calendar days, if additional time is necessary due to extenuating circumstances, after the determination or completion of each of the required actions in § 397.20 and § 397.30(a). Extenuating circumstances should be interpreted narrowly to include circumstances such as the unexpected lengthy absence of the educational or designated State unit personnel necessary for the production of the documentation or the transmittal of that documentation due to illness or family emergency, or a natural disaster.

(ii) Documentation required by paragraph (a)(2) of this section, when a youth has refused to participate in an action required by this part, must be provided to the youth within 10 calendar days of the youth's refusal to participate.

(3) When transmitting documentation of the final determination or activity completed, as required by § 397.20 and § 397.30(a), the designated State unit must provide a coversheet that itemizes each of the documents that have been provided to the youth.

(Authority: Sections 12(c) and 511(d) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 794g(d))

Subpart C—Designated State Unit Responsibilities Prior to Youth With Disabilities Starting Subminimum Wage Employment

§ 397.20 What are the responsibilities of a designated State unit to youth with disabilities who are known to be seeking subminimum wage employment?

(a) A designated State unit must provide youth with disabilities documentation upon the completion of the following actions:

(1)(i) Pre-employment transition services that are available to a student with a disability under 34 CFR 361.48; or

(ii) Transition services under the Individuals with Disabilities Education Act (20 U.S.C. 1400 *et seq.*), such as transition services available to the individual under section 614(d) of that Act (20 U.S.C. 1414(d));

(2) Application for vocational rehabilitation services, in accordance with 34 CFR 361.41(b), with the result that the individual was determined—

(i) Ineligible for vocational rehabilitation services, in accordance with 34 CFR 361.43; or

(ii) Eligible for vocational rehabilitation services, in accordance with 34 CFR 361.42; and

(A) The youth with a disability had an approved individualized plan for employment, in accordance with 34 CFR 361.46;

(B) The youth with a disability was unable to achieve the employment outcome specified in the individualized plan for employment, as described in 34 CFR 361.5(c)(15) and 361.46, despite working toward the employment outcome with reasonable accommodations and appropriate supports and services, including supported employment services and customized employment services, for a reasonable period of time; and

(C) The youth with a disability's case record, which meets all of the requirements of 34 CFR 361.47, is closed.

(3)(i) Regardless of the determination made under paragraph (a)(2) of this section, the youth with a disability has received career counseling, and information and referrals from the designated State unit to Federal and State programs and other resources in the individual's geographic area that offer employment-related services and supports designed to enable the individual to explore, discover, experience, and attain competitive integrated employment.

(ii) The career counseling and information and referral services provided in accordance with paragraph (a)(3)(i) of this section must—

(A) Be provided by the designated State unit in a manner that facilitates informed choice and decision-making by the youth, or the youth's representative as appropriate;

(B) Not be for subminimum wage employment by an entity defined in § 397.5(d), and such employment-related services are not compensated at a subminimum wage and do not directly result in employment compensated at a subminimum wage provided by such an entity; and

(C) Be provided within 30 calendar days of a determination under paragraph (a)(2)(i) or (a)(2)(ii)(C) of this section for a youth known by the designated State unit to be seeking employment at subminimum wage.

(b) The following special requirements apply—

(1) For purposes of this part, all documentation provided by a designated State unit must satisfy the requirements for such documentation, as applicable, under 34 CFR part 361.

(2) The individualized plan for employment, required in paragraph (a)(2)(ii)(A) of this section, must include a specific employment goal consistent with competitive integrated employment, including supported or customized employment.

(3)(i) For purposes of paragraph (a)(2)(ii)(B) of this section, a determination as to what constitutes a "reasonable period of time" must be consistent with the disability-related and vocational needs of the individual, as well as the anticipated length of time required to complete the services identified in the individualized plan for employment.

(ii) For an individual whose specified employment goal is in supported employment, such reasonable period of time is up to 24 months, unless under special circumstances the individual and the rehabilitation counselor jointly agree to extend the time to achieve the employment outcome identified in the individualized plan for employment.

(Authority: Sections 7(5), 7(39), 12(c), 102(a) and (b), 103(a), 113, and 511(a) and (d) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 705(5), 705(39), 709(c), 722(a) and (b), 723(a), 733, and 794g(a) and (d))

Subpart D—Local Educational Agency Responsibilities Prior to Youth With Disabilities Starting Subminimum Wage Employment

§ 397.30 What are the responsibilities of a local educational agency to youth with disabilities who are known to be seeking subminimum wage employment?

(a) Of the documentation to demonstrate a youth with a disability's completion of the actions described in § 397.20(a), a local educational agency, as defined in § 397.5(b)(1), must provide the designated State unit with documentation that the youth has received transition services under the Individuals with Disabilities Education Act (20 U.S.C. 1400 *et seq.*), such as transition services available to the individual under section 614(d) of that Act (20 U.S.C. 1414(d)). The documentation must be provided to the designated State unit in a manner that complies with confidentiality requirements of the Family Education Rights and Privacy Act (20 U.S.C. 1232g(b) and 34 CFR 99.30 and 99.31) and the Individuals with Disabilities Education Act (20 U.S.C. 1417(c) and 34 CFR 300.622).

(b)(1) The documentation of completed services or activities required by paragraph (a) of this section must, at a minimum, contain the—

(i) Youth's name;

(ii) Description of the service or activity completed;

(iii) Name of the provider of the required service or activity;

(iv) Date required service or activity completed;

(v) Signature of educational personnel documenting completion of the required service or activity;

(vi) Date of signature described in paragraph (b)(1)(v) of this section; and

(vii) Signature of educational personnel transmitting documentation to the designated State unit; and

(viii) Date and method (*e.g.*, hand-delivered, faxed, mailed, emailed, etc.) by which document was transmitted to the designated State unit.

(2) In the event a youth with a disability or, as applicable, the youth's parent or guardian, refuses, through informed choice, to participate in the activities required by this part, such documentation must, at a minimum, contain the—

(i) Youth's name;

(ii) Description of the refusal and the reason for such refusal;

(iii) Signature of the youth or, as applicable, the youth's parent or guardian;

(iv) Signature of the educational personnel documenting the youth's refusal;

(v) Date of signatures required by paragraphs (b)(2)(iii) and (iv) of this section;

(vi) Signature of educational personnel transmitting documentation of the refusal to the designated State unit; and

(vii) Date and method (*e.g.*, hand-delivered, faxed, mailed, emailed, etc.) by which documentation was transmitted to the designated State unit.

(c)(1)(i) The educational personnel must transmit the documentation required by paragraph (b)(1) of this section to the designated State unit as soon as possible upon the completion of each of the required actions, but no later than—

(A) 30 calendar days after the completion of the required activity or service; or

(B) 60 calendar days, if additional time is necessary due to extenuating circumstances, after the completion of each of the required actions in paragraph (a) of this section. Extenuating circumstances should be interpreted narrowly to include the unexpected lengthy absence due to illness or family emergency of the educational personnel necessary to produce or transmit the documentation, or a natural disaster.

(ii) Documentation required by paragraph (b)(2) of this section, when a youth has refused to participate in an action required by this part, must be provided to the DSU within 5 calendar days of the youth's refusal to participate.

(2) When the educational personnel transmits the last documentation to the designated State unit regarding the services provided to the youth under paragraph (a) of this section, the educational personnel must provide a cover sheet that itemizes the documentation that has been provided to the designated State unit regarding that youth.

(d) The educational agency must retain a copy of all documentation provided to the designated State unit under this section in a manner consistent with the requirements of 2 CFR 200.333.

(Authority: Sections 12(c), 511(a)(2)(A), and 511(d) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c), 794g(a)(2)(A), and (d))

§ 397.31 What are the contracting limitations on educational agencies under this part?

Neither a local educational agency, as defined in § 397.5(b)(1), nor a State educational agency, as defined in § 397.5(b)(2), may enter into a contract or other arrangement with an entity, as defined in § 397.5(d), for the purpose of operating a program for a youth under which work is compensated at a subminimum wage.

(Authority: Section 511(b)(2) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 794g(b)(2))

Subpart E—Designated State Unit Responsibilities to Individuals With Disabilities During Subminimum Wage Employment

§ 397.40 What are the responsibilities of a designated State unit for individuals with disabilities, regardless of age, who are employed at a subminimum wage?

(a) *Counseling and information services.* (1) A designated State unit must provide career counseling and information and referral services, as described in § 397.20(a)(3), to individuals with disabilities, regardless of age, or the individual's representative as appropriate, who are known by the designated State unit to be employed by an entity, as defined in § 397.5(d), at a subminimum wage level.

(2) A designated State unit may know of an individual with a disability described in this paragraph through the vocational rehabilitation process, self-referral, or by referral from the client assistance program, another agency, or an entity, as defined in § 397.5(d).

(3) The career counseling and information and referral services must be provided in a manner that—

(i) Is understandable to the individual with a disability; and

(ii) Facilitates independent decision-making and informed choice as the individual makes decisions regarding opportunities for competitive integrated employment and career advancement, particularly with respect to supported employment, including customized employment.

(4) The career counseling and information and referral services provided under this section may include benefits counseling, particularly with regard to the interplay between

earned income and income-based financial, medical, and other benefits.

(b) *Other services.* (1) Upon a referral by an entity, as defined in § 397.5(d), that has fewer than 15 employees, of an individual with a disability who is employed at a subminimum wage by that entity, a designated State unit must also inform the individual within 30 calendar days of the referral by the entity, of self-advocacy, self-determination, and peer mentoring training opportunities available in the community.

(2) The services described in paragraph (b)(1) of this section must not be provided by an *entity* as defined in § 397.5(d).

(c) *Required intervals.* (1) For individuals hired at subminimum wage on or after July 22, 2016, the services required by this section must be carried out once every six months for the first year of the individual's subminimum wage employment and annually thereafter for the duration of such employment.

(2) For individuals already employed at subminimum wage prior to July 22, 2016, the services required by this section must be carried out once by July 22, 2017, and annually thereafter for the duration of such employment.

(3)(i) With regard to the intervals required by paragraphs (c)(1) and (2) of this section for purposes of the designated State unit's responsibilities to provide certain services to individuals employed at subminimum wage, the applicable intervals will be calculated based upon the date the individual becomes known to the designated State unit.

(ii) An individual with a disability may become "known" to the designated State unit through self-identification by the individual with a disability, referral by a third-party (including an *entity* as defined in § 397.5(d)), through the individual's involvement with the vocational rehabilitation process, or any other method.

(d) *Documentation.* (1)(i) The designated State unit must provide documentation to the individual as soon as possible, but no later than—

(A) 45 calendar days after completion of the activities required under this section; or

(B) 90 calendar days, if additional time is necessary due to extenuating circumstances, after the completion of the required actions in this section. Extenuating circumstances should be interpreted narrowly to include circumstances such as the unexpected lengthy absence of the designated State unit personnel, due to illness or other family emergency, who is responsible for producing or transmitting the documentation to the individual with a disability, or a natural disaster.

(ii) Documentation required by paragraph (d)(3) of this section, when an individual has refused to participate in an activity required by this section, must be provided to the individual within 10 calendar days of the individual's refusal to participate.

(2) Such documentation must, at a minimum, contain the—

(i) Name of the individual;

(ii) Description of the service or activity completed;

(iii) Name of the provider of the required service or activity;

(iv) Date required service or activity completed;

(v) Signature of individual documenting completion of the required service or activity;

(vi) Date of signature described in paragraph (d)(2)(v) of this section;

(vii) Signature of designated State unit personnel (if different from that in paragraph (d)(2)(v) of this section) transmitting documentation to the individual with a disability; and

(viii) Date and method (*e.g.,* hand-delivered, faxed, mailed, emailed, etc.) by which document was transmitted to the individual.

(3) In the event an individual with a disability or, as applicable, the individual's representative, refuses, through informed choice, to participate in the activities required by this section, such documentation must, at a minimum, contain the—

(i) Name of the individual;

(ii) Description of the refusal and the reason for such refusal;

(iii) Signature of the individual or, as applicable, the individual's representative;

(iv) Signature of the designated State unit personnel documenting the individual's refusal;

(v) Date of signatures; and

(vi) Date and method (*e.g.,* hand-delivered, faxed, mailed, emailed, etc.) by which documentation was transmitted to the individual.

(4) The designated State unit must retain a copy of all documentation required by this part in a manner consistent with the designated State unit's case management system and the requirements of 2 CFR 200.333.

(e) *Provision of services.* Nothing in this section will be construed as requiring a designated State unit to provide the services required by this section directly. A designated State unit may contract with other entities, *i.e.,* other public and private service providers, as appropriate, to fulfill the requirements of this section. The contractor providing the services on behalf of the designated State unit may not be an entity holding a special wage certificate under section 14(c) of the Fair Labor Standards Act (29 U.S.C. 214(c)) as defined in 397.5(d).

(Authority: Sections 12(c) and 511(c) and (d) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 794g(c) and (d))

Subpart F—Review of Documentation

§ 397.50 What is the role of the designated State unit in the review of documentation under this part?

(a) The designated State unit, or a contractor working directly for the designated State unit, is authorized to engage in the review of individual documentation required under this part that is maintained by an *entity,* as defined in 397.5(d), under this part. The contractor referred in this section may not be an entity holding a special wage certificate under section 14(c) of the Fair Labor Standards Act (29 U.S.C. 214(c)).

(b) If deficiencies are noted during a documentation review conducted under paragraph (a) of this section, the designated State unit should report the deficiency to the U.S. Department of Labor's Wage and Hour Division.

(Authority: Sections 12(c) and 511(e)(2)(B) of the Rehabilitation Act of 1973, as amended; 29 U.S.C. 709(c) and 794g(e)(2)(B))

[FR Doc. 2016–15980 Filed 8–8–16; 11:15 am]

BILLING CODE 4000–01–P

FEDERAL REGISTER

Vol. 81 Friday,

No. 161 August 19, 2016

Book 2 of 2 Books

Pages 55791–56470

Part V

Department of Labor

Employment and Training Administration

20 CFR Parts 676, 677, and 678

Department of Education

34 CFR Parts 361 and 463

Workforce Innovation and Opportunity Act; Joint Rule for Unified and Combined State Plans, Performance Accountability, and the One-Stop System Joint Provisions; Final Rule

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Parts 676, 677, and 678

[Docket No. ETA–2015–0002]

RIN 1205–AB74

DEPARTMENT OF EDUCATION

34 CFR Parts 361 and 463

RIN 1830–AA21

Workforce Innovation and Opportunity Act; Joint Rule for Unified and Combined State Plans, Performance Accountability, and the One-Stop System Joint Provisions; Final Rule

AGENCY: Office of Career, Technical, and Adult Education (OCTAE), Rehabilitation Services Administration (RSA), Education; Employment and Training Administration (ETA), Labor.

ACTION: Final rule.

SUMMARY: The Departments of Education (ED) and Labor (DOL) (or, collectively, Departments) issue this Joint Final Rule to implement jointly administered activities authorized by title I of the Workforce Innovation and Opportunity Act (WIOA) signed into law on July 22, 2014 (hereafter "Joint WIOA Final Rule"). Through these regulations, the Departments implement workforce education and employment system reforms and strengthen the nation's public workforce development system to provide increased economic opportunity and make the United States more competitive in the 21st century evolving labor market. This Joint WIOA Final Rule provides guidance for State and local workforce development systems that increase the skill and credential attainment, employment, retention, and earnings of participants, especially those with significant barriers to employment, thereby improving the quality of the workforce, reducing dependency on public benefits, increasing economic opportunity, and enhancing the productivity and competitiveness of the nation.

DATES: This final rule is effective October 18, 2016.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: This Joint WIOA Final Rule reflects changes made as a result of public comments received to the joint Notice of Proposed Rulemaking that was published on April 16, 2015, at 80 FR 20574.

WIOA strengthens the alignment of the public workforce development system's six core programs by compelling unified strategic planning requirements, common performance accountability measures, and requirements governing the one-stop delivery system. In so doing, WIOA placed heightened emphasis on coordination and collaboration at the Federal, State, local, and tribal levels to ensure a streamlined and coordinated service delivery system for job seekers, including those with disabilities, and employers. These regulations lay the foundation, through coordination and collaboration at the Federal level, for implementing the Departments' vision and goals of WIOA.

In addition to this Joint WIOA Final Rule, the Departments are issuing separate final rules to implement program-specific requirements of WIOA that fall under each Department's purview. The DOL is issuing a Final Rule governing program-specific requirements under titles I and III of WIOA (hereinafter "DOL WIOA Final Rule"). The ED is issuing three final rules: One implementing program-specific requirements of the Adult Education and Family Literacy Act (AEFLA), as reauthorized by title II of WIOA; and two final rules implementing all program-specific requirements for programs authorized under the Rehabilitation Act of 1973, as amended by title IV of WIOA. The Department-specific final rules are published elsewhere in this issue of the **Federal Register**. Developing and issuing all five WIOA final rules collaboratively reinforces WIOA's heightened emphasis on coordination and collaboration to ensure an integrated and seamless service delivery system for job seekers and employers.

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I. Executive Summary

Purpose of This Regulatory Action: President Barack Obama signed WIOA into law on July 22, 2014. WIOA is the first legislative reform of the public workforce system in more than 15 years, which passed Congress by a wide bipartisan majority. WIOA supersedes the Workforce Investment Act of 1998 (WIA) and amends the Wagner-Peyser Act and the Rehabilitation Act of 1973. WIOA strengthens and improves our nation's public workforce system and increases economic opportunities for individuals in the United States, especially youth and individuals with significant barriers to employment, to secure and advance in employment. WIOA reaffirms the role of the customer-focused one-stop delivery system, a cornerstone of the public workforce development system, and enhances and increases coordination among several key employment, education, and training programs.

WIOA supports innovative strategies to improve coordination among the six core programs and other Federal programs that support employment services, workforce development, adult education and literacy, and vocational rehabilitation (VR) activities.

In WIOA, Congress directed the Departments to issue regulations implementing statutory requirements to ensure that the public workforce system operates as a comprehensive, integrated, and streamlined system to provide pathways to prosperity and continuously improve the quality and performance of its services to job seekers and to employers. Therefore, the Departments are issuing this Joint WIOA Final Rule to implement jointly administered activities authorized under WIOA, specifically those related to the Unified and Combined State Plans, performance accountability, and the one-stop delivery system. In an effort to promote collaboration and coordination at the State and local levels among the core programs and other Federal partner programs, the Departments have collaborated extensively with the Department of Health and Human Services (HHS) and other Federal agencies in developing this Final Rule.

The Departments are publishing this Joint WIOA Final Rule to implement those provisions of WIOA that affect all of the six core programs, specifically the: Adult, dislocated worker, and youth programs authorized under title I and administered by DOL; AEFLA program authorized under title II and administered by ED; Employment Service program authorized under the Wagner-Peyser Act, as amended by title III, and administered by DOL (Wagner-Peyser Act Employment Service program); and VR program, authorized under title I of the Rehabilitation Act of 1973, as amended by title IV, and administered by ED. The requirements in these joint final regulations will be jointly administered by both Departments. The regulations contained in this Final Rule also impact other Federal programs that participate in the one-stop system and/or are identified as partner programs in a State's Combined State Plan if a State elects to submit such Plan rather than a Unified State Plan.

A critical part of the implementation of WIOA is the collection and reporting of accurate, timely information about individuals who receive services through the programs authorized under the law. Such information is critical to inform public policy and support analysis of effective strategies. In keeping with the Paperwork Reduction Act (PRA), the methods for collecting such information are provided to the public for comment through information collection requests (ICRs). The Joint WIOA Final Rule had two accompanying requests to support the performance and planning aspects of these rules. Soon after publication of the Notice of Proposed Rulemaking (NPRM) (80 FR 20574, April 16, 2015), the Departments published a notice in the **Federal Register** announcing the joint ICR for the WIOA Performance Management, Information, and Reporting System (80 FR 43474, July 22, 2015) and requested comments on this ICR during a 60-day public comment period (hereinafter "WIOA Joint Performance ICR") (see *https://www.regulations.gov/#!docketDetail;D=ETA-2015-0007*). On September 1, 2015, DOL solicited comments on its own WIOA performance accountability ICR to require the following programs to report on a standardized set of data elements through the WIOA Workforce Performance Accountability, Information, and Reporting System: WIOA adult, dislocated worker, and youth, Wagner-Peyser Act Employment Service, National Farmworker Jobs Programs (NFJP), Trade Adjustment Assistance, YouthBuild, Indian and Native American (INA) grantees, and the Jobs for Veterans' State Grants (80 FR 52798) (hereinafter "DOL Performance ICR") (see *https://www.regulations.gov/#!docketDetail;D=ETA-2015-0008*). On April 16, 2015, ED solicited comments on its ICR related to the VR program Case Service Report (RSA–911) to require VR agencies to report data required under sec. 101(a)(10) of the Rehabilitation Act, of 1973, as amended by WIOA, as well as performance accountability data under title I of WIOA (hereinafter "RSA–911"). The Departments received 112 public comment submissions in response to the WIOA Joint Performance ICR, DOL received public comments on the DOL Performance ICR, and ED received public comments on the RSA–911 (respectively).

On August 6, 2015, the Departments, together with the Departments of Health and Human Services, Agriculture, and Housing and Urban Development (HUD), proposed a new information collection regarding required elements for submission of the Unified or Combined State Plan and Plan modifications under WIOA (hereinafter "State Plan ICR") (80 FR 47003) (see *https://www.regulations.gov/#!docketDetail;D=ETA-2015-0006*). The State Plan ICR received a total of 16 public comments. These public comment submissions informed the development of the final State Plan ICR, which the Office of Management and Budget (OMB) approved on February 19, 2016. Most provisions in titles I through III of WIOA took effect on July 1, 2015, the first full program year after enactment; however, the new State Plans and performance accountability system requirements in the statute will take effect on July 1, 2016. Title IV took effect upon enactment unless otherwise indicated.

Section V. Rulemaking Analysis and Notices, D. Paperwork Reduction Act provides summary information about the public comments on the Joint Performance ICR and the State Plan ICR.

In addition to this Joint WIOA Final Rule, the Departments are publishing, in separate regulatory actions published in the **Federal Register**, four agency-specific final rules that implement the provisions of WIOA that are administered separately by the Departments—one published by DOL implementing the agency-specific provisions of title I, and three published by ED implementing the agency-specific provisions of titles II and IV. Readers should note that there are a number of cross-references in this Joint WIOA Final Rule to the agency-specific final rules. Finally, the Departments structured this Joint WIOA Final Rule so that the Code of Federal Regulations (CFR) parts will align with the CFR parts in the agency-specific final rules.

To implement those provisions of WIOA that affect the WIOA programs and which will be jointly administered by both Departments, these regulations implement a number of improvements that WIOA makes to the public workforce system. These include improvements to:

- Ensure that workforce education and employment services are coordinated and complementary by requiring a single, 4-year strategic State Plan for achieving the workforce goals of the State. Additionally, States may conduct, along with the core programs, collaborative planning with other Federal education and training programs specified in WIOA;
- Ensure that Federal investments in education, employment, and training are evidence-based, data-driven, and accountable to participants and taxpayers by establishing a common performance accountability system for the core programs, requiring other authorized programs to report on the common performance indicators, and providing easy-to-understand information to consumers and the public about training providers and

program performance to help inform their decision-making; and

• Enhance services provided to all job seekers and employers through the one-stop delivery system, also known as the American Job Center system, by: Requiring the colocation of the Wagner-Peyser Act Employment Service program; adding the Temporary Assistance for Needy Families (TANF) program as a required partner; providing for State-established certification to ensure high-quality American Job Centers; requiring partners to dedicate funding for allowable infrastructure and other shared costs that are commensurate to the partner's proportionate use and relative benefit received by the program; and promoting the development of integrated intake, case management, and reporting systems.

Changes From the Notice of Proposed Rulemaking

The Departments published a Joint WIOA NPRM on April 16, 2015 at 80 FR 20574. The Final Rule supports the tenets expressed in the NPRM. In response to comments received and to strengthen the intent of the law, the Departments have made numerous revisions, including but not limited to changes to the following areas:

• *State Plans:* The Joint WIOA Final Rule text, among other things: (1) Clarifies the expected involvement of stakeholders, core programs, and the State Workforce Development Boards (WDBs) in the State Plan development; (2) ensures consistency by requiring a description of joint planning and coordination across core programs, required one-stop partners, and other programs and activities included in the Unified and Combined State Plans; (3) requires States to provide an opportunity for public comment on and input into the development of Unified and Combined State Plans prior to their submission, and (4) clarifies requirements for Unified and Combined State Plan modifications. The preamble responds to suggestions regarding certain Unified and Combined State Plan requirements, as well as provides further guidance and clarifications with regard to certain regulatory requirements governing the Unified and Combined State Plans.

• *Performance Accountability:* The Joint WIOA Final Rule clarifies certain definitions, primary indicators of performance, and sanctions. Changes in the Final Rule text include, among others: (1) Revising the definitions of "participant," "exit," and "State;" (2) clarifying the credential attainment rate indicator; (3) adding the types of gain that are included in the measurable skill gains indicator; (4) clarifying the difference between the "adjusted level of performance" that is agreed upon at the time the Unified or Combined State Plan is approved and the "adjusted level of performance" that is determined at the end of the program year; and (5) adding a phased-in approach for sanctions due to failure to achieve adjusted levels of performance and a transition period for complete WIOA data to be available. The preamble explains intent to phase in implementation of the "effectiveness in serving employers" indicator and to implement a uniform, national customer satisfaction survey that is not tied to accountability provisions or the determination of sanctions. The preamble also provides further guidance and clarification regarding changes made to the Final Rule text, including the inclusion of outlying areas (American Samoa, Guam, Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, and, as applicable, the Republic of Palau) for purposes of the performance accountability system.

• *One-Stop Governance and Operations:* The Joint WIOA Final Rule includes changes to the operational aspects of one-stop operations including, among others: (1) Revising coverage of multiple program services and staff coverage in one-stop affiliate sites; (2) revising infrastructure funding regulations, and emphasizing partners' responsibilities towards infrastructure costs; (3) providing detailed information about career services; (4) clarifying the involvement of the TANF programs as one-stop partners; (5) simplifying provisions governing Memoranda of Understanding (MOU) negotiations; (6) emphasizing the need to conduct an open competition for one-stop operator selection; (7); changing the requirements related to hours of operation outside normal business hours; (8) emphasizing both physical and programmatic accessibility; (9) clarifying when the State funding mechanism is triggered for the funding of the one-stop system, including the funding limits applicable to the State funding mechanism; and (10) establishing a deadline to conform to the new common one-stop identifier.

As noted throughout this Final Rule, the Departments will be issuing guidance to help our regulated communities understand their rights and responsibilities under WIOA and these regulations. Consistent with the Administrative Procedure Act's exemption from its notice and comment requirement for general statements of policy, interpretations and procedural instructions, this guidance will provide interpretations of many of the terms and provisions of these regulations and more detailed procedural instructions that would not be appropriate to set out in regulations. The Departments will also be issuing guidance to provide information on current priorities and initiatives, suggested best practices, and in response to stakeholder questions.

The Departments also made a number of non-substantive changes to correct grammatical and typographical errors to improve the readability and conform the document stylistically that are not discussed in the analysis below.

II. Acronyms and Abbreviations

AEFLA Adult Education and Family Literacy Act
ABAWD Able-Bodied Adults Without Dependents
ABS Adult Basic Skills
APA Administrative Procedure Act
BFET Basic Food Employment and Training
BLS Bureau of Labor Statistics
CBO Community-based organization
CEO Chief elected official
CFR Code of Federal Regulations
CHIP Children's Health Insurance Program
CMS Case Management System
CRIS Common Reporting Information System
CRO Community Rehabilitation Organization
CSBG Community Services Block Grant
CTE Career and Technical Education
DOL U.S. Department of Labor
DSA Designated State Agency
DSU Designated State Unit
ED U.S. Department of Education
EEOC Equal Employment Opportunity Commission
EFL Educational Functioning Level
E.O. Executive Order
ESEA Elementary and Secondary Education Act of 1965
ESL English-as-a-second-language
ETA Employment and Training Administration
ETP Eligible training provider
FEDES Federal Employment Data Exchange System
FEIN Federal employer identification number
FERPA Family Educational Rights and Privacy Act
FY Fiscal Year
GED General Education Diploma
GPA Grade Point Average
GS General Schedule
HHS Department of Health and Human Services
HSE High School Equivalency
HUD Department of Housing and Urban Development
ICR Information Collection Request
INA Indian and Native American
INAP Indian and Native American Programs
IPE Individualized Plan for Employment
IT Information technology
ITA Individual Training Account
JVSG Jobs for Veterans State Grants

LMI Labor market information
LSAL The Longitudinal Study of Adult Learning
MOU Memorandum of Understanding
NAICS North American Industry Classification System
NASWA National Association of State Workforce Agencies
NFJP National Farmworker Jobs Program
NIST National Institute of Standards and Technology
NPRM Notice of Proposed Rulemaking
MIS Management Information System
OCTAE Office of Career, Technical, and Adult Education
OJT On-the-job training
OMB Office of Management and Budget
ORR Office of Refugee Resettlement
PII Personally identifiable information
PIRL Participant Individual Record Layout
POP Period of Participation
PRA Paperwork Reduction Act of 1995
PY Program Year
RFA Regulatory Flexibility Act
RFP Request for Proposals
RHY Runaway and Homeless Youth
RIA Regulatory Impact Analysis
RSA Rehabilitation Services Administration
SBA Small Business Administration
SBREFA Small Business Regulatory Enforcement Fairness Act of 1996
SCSEP Senior Community Service Employment Program
sec. Section of a Public Law or the United States Code
SLDS Statewide Longitudinal Data System
SNAP Supplemental Nutrition Assistance Program
SRC State Rehabilitation Council
SSA Social Security Administration
SSN Social Security Number
SWA State Workforce Agencies
TAA Trade Adjustment Assistance
TAG Technical Assistance Guide
TANF Temporary Assistance for Needy Families
TDD Telecommunications Device for the Deaf
TEGL Training and Employment Guidance Letter
UI Unemployment insurance
U.S.C. United States Code
VETS Veterans' Employment and Training Service
VEVRAA Vietnam Era Veterans' Readjustment Assistance Act
VR Vocational rehabilitation
WDB Workforce Development Board
WIA Workforce Investment Act of 1998
WIOA Workforce Innovation and Opportunity Act
WISPR Workforce Investment Streamlined Performance Reporting
WRIS Wage Record Interchange System

III. Public Comments Received on the Notice of Proposed Rulemaking

The Departments published five NPRMs related to WIOA on April 16, 2015. The first NPRM is the Joint Rule for Unified and Combined State Plans, Performance Accountability, and the One-Stop System Joint Provisions (80 FR 20574) (hereinafter "the Joint WIOA NPRM"); the second NPRM is the Workforce Innovation and Opportunity Act (80 FR 20690); the third NPRM is the Programs and Activities Authorized by the Adult Education and Family Literacy Act (Title II of the Workforce Innovation and Opportunity Act) (80 FR 20668); the fourth is the State Vocational Rehabilitation Services program; State Supported Employment Services program; Limitations on Use of Subminimum Wage (80 FR 21059); and the fifth is the Workforce Innovation and Opportunity Act, Miscellaneous Program Changes (80 FR 20688).

During the 60-day public comment period, the Departments received a total of 546 public comments on the Joint WIOA NPRM. In addition to these comments, the Departments also considered relevant public comments on the DOL and ED program-specific NPRMs.

General Comments

Comments: The Departments received many comments supporting these regulations. For example, the Departments received comments supporting cross-program data and performance measurement, the increased focus on adult education and services to immigrants, improved alignment between Federal initiatives and State and local needs, increased matching of apprenticeships with employers, as well as support for other provisions discussed in the section-by-section analysis below. Additionally, the Departments received comments commending the collaboration on joint regulations and encouraging additional coordinated guidance. Also, several commenters expressed support for the enactment of WIOA, noting the law will decrease unemployment, make the United States more competitive, lead to higher wages, and facilitate entry into the middle class.

A few commenters generally opposed the rulemaking, in part because they disagreed with the role WIOA assigns to the Federal government concerning covered programs. Others suggested that the NPRM itself was excessive, overly cumbersome, and not understandable to the layperson, needed clarification, and was inconsistent with the plain and simple language of WIOA.

Departments' Response: The Departments acknowledge these comments, but do not address them further in the Final Rule since they do not request specific changes to the regulatory text. However, the Departments note that the section-by-section analysis is drafted to provide additional clarity on complicated provisions, such as those related to the definitions used in the performance accountability regulations, requirements for the State funding mechanism for the one-stop system, and requirements for Unified and Combined State Plan modifications. Furthermore, revisions were made to various sections in the regulatory text to improve readability. Additionally, the Departments will continue to provide guidance and technical assistance, as needed, to assist States in implementing WIOA.

Accessibility of the Public Workforce System to Individuals With Disabilities

Comments: The Departments received many comments related to increased access to workforce services for individuals with disabilities, both in support of legislative changes and expressing concern that the regulations need to hold the public workforce system fully accountable to implement such changes. Several commenters noted that, under WIOA, individuals with disabilities will have greater access to workforce training programs and be able to take advantage of the benefits resulting from their training. However, one commenter asserted that the rule must do more to consider the unique needs of individuals with disabilities, who may take longer than others to achieve employment. Another commenter expressed concern that her organization would not have enough resources to provide pre-employment transition services to potentially eligible students with disabilities. A commenter encouraged efforts to improve the ability of the one-stop system to serve customers with disabilities through existing services and programs, and another urged the Departments to include specific requirements for training and access to text-to-speech and speech-to-text technologies for people with dyslexia and print disabilities.

Departments' Response: WIOA includes numerous provisions intended to increase employment opportunities for individuals with disabilities, and these regulations reinforce those statutory provisions. There are numerous discussions throughout part 678 reiterating the Departments' intent to ensure access to needed employment and training services to all individuals.

The Department has published a Final Rule to implement sec. 188 of WIOA, which prohibits discrimination against WIOA participants, by making technical changes only to its existing regulation implementing WIA (*i.e.,* (1) replicating at part 38 the rule from part 37, and (2) replacing references to the "Workforce Investment Act of 1998" or "WIA" with "Workforce Innovation and Opportunity Act" or "WIOA" to reflect the proper

statutory authority). *See* 80 FR 43,871 (July 23, 2015).

In addition, on January 26, 2016, DOL proposed updating these regulations to better align with the Americans with Disabilities Act Amendments Act of 2008, Public Law 110–325, sec. 2(b)(1), 122 Stat. 3553 (2008) and the relevant implementing regulations and guidance issued by the Department of Justice (28 CFR parts 35 and 36), as well as the final regulations and guidance issued by the Equal Employment Opportunity Commission (29 CFR part 1630, 76 FR 16978 (Mar. 25, 2011) (Equal Employment Opportunity Commission regulations implementing Americans with Disabilities Act title I)). *See* 81 FR 4493 (January 26, 2016). The proposed WIOA sec. 188 rule would ensure that the definition of "disability" is consistent with the Americans with Disabilities Act Amendments Act and current case law, which will enable more individuals with disabilities to be effectively served within the public workforce system. That NPRM also addresses accessibility requirements (such as those for information and electronic technologies) and service animals. The Departments encourage commenters to review carefully the provisions of part 678 in this Joint WIOA Final Rule, as well as the proposed WIOA sec. 188 rule.

With respect to the commenter's concerns about pre-employment transition services, the Departments acknowledge that the provision of these services is a new requirement imposed on the VR program under sec. 113 of the Rehabilitation Act of 1973, as amended by title IV of WIOA. States must reserve at least 15 percent of their VR allotment to provide these services to students with disabilities. The ED provides detailed discussions regarding this requirement in the VR program-specific final regulations published elsewhere in this issue of the **Federal Register**.

Requests To Extend the Comment Period

Comments: A few commenters requested a 60-day extension of the comment period. The commenters cited the size and complexity of the five proposed NPRMs implementing WIOA.

Departments' Response: While the Departments recognize that the issues addressed in the NPRM are complex and important, the Departments concluded that the 60-day comment period was sufficient to provide the public a meaningful opportunity to comment, and this conclusion is supported by the hundreds of complex and thoughtful comments received. Additionally, the NPRM was available to the public for a preliminary review on the **Federal Register** Web site upon submission of the NPRMs to the **Federal Register**, which was several weeks prior to publication, thereby providing stakeholders additional time prior to the publication date.

Conclusion

These final regulations provide the critical framework for the implementation of WIOA. However, achieving the goals of WIOA will take visionary leadership and coordination at the State, regional, and local levels, and partnerships across many programs. It will require investment and innovation to develop new information technology that supports this important work, and make the most of this investment of public funds. The Departments will support these activities through program funding, on-going technical assistance and the provision of guidance to all levels of the American Job Center system.

IV. Section-by-Section Discussion of Public Comments and the Final Joint Regulations

A. Unified and Combined State Plans Under Title I of the Workforce Innovation and Opportunity Act (20 CFR Part 676; 34 CFR Part 361, Subpart D; 34 CFR Part 463, Subpart H)

WIOA requires the Governor of each State to submit a Unified or Combined State Plan to the Secretary of Labor that outlines a 4-year strategy for the State's workforce development system. States must have approved State Plans in place to receive funding for the six core programs under WIOA—the adult, dislocated worker, and youth programs (WIOA title I); the AEFLA program (WIOA title II); the Employment Service program authorized under the Wagner-Peyser Act, as amended by WIOA title III (Wagner-Peyser Act Employment Service); and the VR program authorized under title I of the Rehabilitation Act of 1973, as amended by WIOA title IV (VR program). States must submit, at a minimum, a Unified State Plan, which encompasses the six core programs under WIOA. However, States are encouraged to submit a Combined State Plan, which must include the six core programs of the Unified State Plan, plus one or more Combined State Plan partner programs, as described at § 676.140(d): (1) Career and Technical Education (CTE) programs authorized under the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2301 *et seq.*); (2) TANF, authorized under part A of title IV of the Social Security Act (42 U.S.C. 601 *et seq.*); (3) Employment and training programs authorized under sec. 6(d)(4) of the Food and Nutrition Act of 2008 (7 U.S.C. 2015(d)(4)); (4) Work programs authorized under sec. 6(o) of the Food and Nutrition Act of 2008 (7 U.S.C. 2015(o)); (5) Trade adjustment assistance activities under chapter 2 of title II of the Trade Act of 1974 (19 U.S.C. 2271 *et seq.*); (6) Services for veterans authorized under chapter 41 of title 38 United States Code; (7) Programs authorized under State unemployment compensation laws (in accordance with applicable Federal law); (8) Senior Community Service Employment Programs under title V of the Older Americans Act of 1965 (42 U.S.C. 3056 *et seq.*); (9) Employment and training activities carried out by HUD; (10) Employment and training activities carried out under the Community Services Block Grant Act (CSBG) (42 U.S.C. 9901 *et seq.*); and (11) Reintegration of offenders programs authorized under sec. 212 of the Second Chance Act of 2007 (42 U.S.C. 17532). When a State elects this option, the Combined State Plan will take the place of the Unified State Plan for that State. Coordination across multiple Federal programs provides a wider range of coordinated and streamlined services to the customer.

This part describes the submission process and content requirements for the Unified and Combined State Plans under WIOA. The major content areas of the Unified or Combined State Plan include strategic and operational planning elements. Strategic planning elements include State analyses of economic and workforce factors, an assessment of workforce development activities, formulation of the State's vision and goals for preparing an educated and skilled workforce that meets the needs of employers, and a strategy to achieve the vision and goals. Operational planning elements include State strategy implementation, State operating systems and policies, program-specific requirements, assurances, and additional requirements imposed by the Secretaries of Labor and Education, or other Secretaries, as appropriate.

State WDBs are responsible for the development, implementation, and modification of the plan, and for convening all relevant programs, partners, and stakeholders. The Governor must ensure that the Unified or Combined State Plan is developed in a transparent manner and in consultation with representatives of Local WDBs and chief elected officials (CEOs), businesses, representatives of labor organizations, community-based

organizations (CBOs), adult education providers, institutions of higher education, other stakeholders with an interest in the services provided by the six core programs, and any Combined plan partner program included in a Combined Plan, as well as the general public, including individuals with disabilities. Other stakeholders include, but are not limited to, youth education and workforce development providers, disability advocates and service entities, youth-serving programs, and other advocacy organizations relevant to the programs covered by the Unified or Combined State Plan.

As noted in the NPRM, the Departments have chosen not to include all of the specific planning elements in the regulation. Instead, comprehensive State Plan requirements for both Unified and Combined State Plans are detailed in the WIOA Unified and Combined State Plan and Plan Modifications ICR, entitled "*Required Elements for Submission of the Unified or Combined State Plan and Plan Modifications under the Workforce Innovation and Opportunity Act*," under the OMB Collection Number 1205–0522 (hereafter "WIOA State Plan ICR"). ICRs must be renewed every 3 years. In future years, the WIOA State Plan ICR may undergo revisions. Throughout this preamble, "WIOA State Plan ICR" refers to the WIOA State Plan ICR as published on February 19, 2016. The WIOA State Plan ICR went through two rounds of public comment before being finalized and future revisions will be subject to public comment as well, as required under the PRA. In addition, the Departments jointly have issued guidance explaining the mechanics of how a State must submit its State Plan, through TEGL No. 14–15, Policy Directive RSA–PD–16–03, and Program Memorandum 16–1, all entitled *Workforce Innovation and Opportunity Act (WIOA) Requirements for Unified and Combined State Plans*, which were issued in March 2016. States must use the WIOA State Plan ICR to develop and submit the WIOA Unified or Combined State Plan and in accordance with instructions described in the jointly issued State Plan guidance.

In the section-by-section discussions of each Unified and Combined State Plan provision below, the heading references the DOL CFR part and section number. However, ED has identical provisions at 34 CFR part 361, subpart D (under its State VR program regulations) and at 34 CFR part 463, subpart H (under a new CFR part for AEFLA regulations). For purposes of brevity, the section-by-section discussions for each Department's provisions appear only once—in conjunction with the DOL section number—and constitute the Departments' collective explanation and rationale for each provision. When the regulations are published in the CFR, these joint performance regulations will appear in each of the CFR parts identified above.

Section 676.100 What are the purposes of the Unified and Combined State Plans?

Section 676.100 describes the principal purposes of the Unified and Combined State Plans, which communicate the State's vision for the State public workforce system and serve as vehicles for developing, aligning, and integrating the State public workforce system across Federal programs. Section 676.100(b) explains how the strategies articulated in the plan support the State's vision and overarching goals. The goals of the 4-year Unified and Combined State Plans are to align and integrate Federal education, employment, and training programs; direct investments to ensure that training and services are meeting the needs of employers and job seekers; apply consistent job-driven training strategies across all relevant Federal programs; and engage economic, education, and workforce partners in improving the workforce development system. The Departments received a few comments on this section, none of which necessitated substantive changes to the regulatory text. Section 676.100, as discussed below, remains unchanged from the NPRM except for minor technical edits.

Comments: Several commenters supported the Departments' stated purpose of the Unified and Combined State Plans. A commenter said the regulation should require that State WDBs be provided with regular (*e.g.*, quarterly) program information and data, and at least annual analysis of the State's progress toward State Plan goals.

Departments' Response: The Departments considered these comments and concur that regular receipt and review of program information, data, and analysis will better enable effective decision-making by the State WDB. Section 677.160 of the joint performance regulations requires States to report data annually for all six core programs; however, some programs will report data quarterly, specifically the WIOA title I programs, the Wagner-Peyser Act Employment Service program, and the VR program, in accordance with part 677 of this Joint WIOA Final Rule. The State's quarterly and annual reports are publicly available, and State and Local WDBs are encouraged to review this information regularly. Therefore, the Departments have concluded that it is unnecessary to amend the final regulations to require that data be provided to the WDBs regularly as the commenter recommended.

Comments: A commenter requested confirmation that the references to "relevant" and "job-driven" education and training, in proposed § 676.100(b)(2) and (3), refer to "evidence-based" strategies identified in the Job-Driven Checklist (from Vice President Biden's report "Ready to Work: Job-Driven Training and American Opportunity" and the study of "What Works in Job Training: A Synthesis of Evidence"). The commenter urged the Departments to provide clarification on how to, and encourage States to, use the joint State planning process to ensure that these evidence-based strategies are incorporated into their newly energized workforce development systems.

Departments' Response: The Departments agree that evidence- based strategies are important for the strategic planning required by this section. Paragraph (b)(2) of § 676.100 requires, as part of the description of the purpose of the Unified and Combined State Plans, that the plans direct investments to economic, education, and workforce training programs that focus on providing relevant education and training. Section 676.100(b)(3) further requires that plans apply strategies for job-driven training consistently across Federal programs. The references to "relevant" and "job-driven" education and training, in § 676.100(b)(2) and (3), include the "evidence-based" strategies identified in the Job-Driven Checklist from Vice President Biden's report "Ready to Work: Job-Driven Training and American Opportunity" and the study of "What Works in Job Training: A Synthesis of Evidence." Through the issuance of joint Departmental guidance and instructions, the Departments offered further clarification and encouragement to States regarding how the joint planning process can ensure that evidence-based strategies are incorporated throughout the workforce development system, including the priorities of the job-driven checklist. No change to the regulatory text was made in response to this comment.

Section 676.105 What are the general requirements for the Unified State Plan?

Section 676.105 describes the general requirements for the Unified State Plan that apply to all six core programs. These requirements set the foundation

for WIOA implementation by fostering strategic alignment, improving service integration, and ensuring that the public workforce system is industry-relevant, responds to the economic needs of the State, and matches employers with skilled workers. The Departments envision a plan that describes how the State will develop and implement a unified, integrated workforce development system rather than a plan that discusses the State's approach to operating each core program individually.

Section 676.105(a) explains that Unified State Plans must be submitted in accordance with § 676.130 and sec. 102(c) of WIOA as explained in joint planning guidelines issued by the Secretaries of Labor and Education, with instructions to States on how to submit Unified State Plans.

Section 676.105(b) implements WIOA's statutory requirements in sec. 102(a), and requires that the State submit the Unified State Plan to the Secretary of Labor to receive funding for the workforce development system's six core programs. The Departments made an editorial change under § 676.105(b) to clarify that at a minimum States must satisfy the requirements of a Unified State Plan to be eligible to receive funding for the workforce development system's six core programs. However, if a State submits a Combined State Plan then it will, by including all the requirements of a Unified State Plan as mandated by the regulation, also satisfy the requirements of a Unified State Plan. WIOA sec. 103(b)(1) and § 676.140(e)(1) of this regulation state that a Combined State Plan must include all of the requirements of a Unified State Plan. Therefore, if a State submits a complete Combined State Plan, it also will satisfy all the requirements of a Unified State Plan.

Section 676.105(c) requires, in accordance with sec. 102(a) of WIOA, that the State outline its 4-year strategy for WIOA's core programs and meet the requirements of WIOA sec. 102(b). Paragraph (c) of § 676.105 remains unchanged from that proposed in the NPRM.

Section 676.105(d), which implements sec. 102(b) of WIOA, describes the strategic and operational planning elements that must be included in the Unified State Plan. The final regulation, consistent with that proposed in the NPRM, concerns major structural elements rather than enumerating all the statutory State planning requirements. States still must comply with each of the statutory requirements, regardless of whether they are repeated in regulation. In addition to minor technical edits throughout, the Departments made two substantive changes to § 676.105(d)(3). First, in § 676.105(d)(3)(iv), the Departments specifically mention the assurance that the lead State agencies responsible for administering the core programs reviewed and commented on the appropriate operational planning of the Unified State Plan and approved those elements as serving the needs of the individuals served by the programs. Second, the Departments added a new paragraph (d)(3)(v) that requires the Unified State Plan to include a description of the joint planning and coordination across the core programs and other required one-stop partners and other programs in the workforce development system. While these provisions are new in these final regulations, they do not represent new requirements on the States because each of these requirements are contained in sec. 102(b) of WIOA and were applicable to the States regardless of whether they were mentioned in the NPRM.

In these final regulations, the Departments have added § 676.105(e) to make clear that all of the requirements of part 676 (which implements the Unified or Combined State Plan requirements of secs. 102 and 103 of WIOA) apply to the outlying areas. As a result, the outlying areas must submit a Unified or Combined State Plan to receive funding for all of the core programs. This regulatory change is discussed at greater length below.

Outlying Areas

Comments: The Departments received several comments related to the applicability of Unified or Combined State Plan requirements to outlying areas. In the NPRM, the Departments sought comments specifically related to this issue and provided two options: Either (1) require outlying areas to submit Unified or Combined State Plans or (2) exempt outlying areas from the Unified or Combined State Plan requirement as a prerequisite for receiving funds for core programs. The commenters were unanimous in their support of explicitly requiring outlying areas to submit Unified or Combined State Plans as a prerequisite for receiving funding for all core programs. In so doing, these commenters said this approach would ensure consistency and a unified planning process, increase the relevance and validity of national program comparisons, and contribute to a fair and equitable distribution of funds. These commenters also noted that this approach would avoid the concern that outlying areas would submit Unified or Combined State Plans that include only the adult education and VR programs, since titles II and IV of WIOA require the submission of such plans as a prerequisite to receive funding.

While supporting the approach that would require outlying areas to submit a Unified or Combined State Plan as a prerequisite to receive funding for all core programs, one commenter expressed concern that ED permits outlying areas to receive adult education program funds under title II through the Consolidated Grant to Insular Areas application process (Consolidated Grant process). The commenter recommended that if ED continues to permit the award of adult education funds through the Consolidated Grant process, the Departments should require that outlying areas choosing to go through the Consolidated Grant process include title II activities as part of the planning process for the Unified or Combined State Plan, even though their funding is awarded through the Consolidated Grant.

Another commenter expressed concern that, if the outlying areas were not required to submit Unified or Combined State Plans for all core programs, a situation could exist in which the VR program would be the only component of such a plan if any of the outlying areas opted to include adult education program funds in its Consolidated Grant application process. The commenter suggested that, in such a situation, the Departments should ensure that outlying areas are not penalized and denied funding for the VR program, which is one of the six core programs under WIOA.

Other commenters expressed general support for requiring outlying areas to submit Unified or Combined State Plans, and one commenter noted that the inconsistency in the definitions of "State" and "outlying areas" in WIOA raised questions as to congressional intent on the issue of whether the Unified or Combined State Plan requirements should be applicable to the outlying areas. A commenter suggested, if the intent of differing definitions was to treat outlying areas differently than States, a more comprehensive delineation should be provided. In particular, the delineation should specify more than just a "competitive process" for the title I programs since outlying areas have historically received funding for these programs on a formula basis. The commenter suggested that the requirement for competitions is inconsistent with the need for a Unified or Combined State Plan because, under

a competition, funds would come into question every year. The commenter further suggested that if outlying areas are not going to be treated differently for purposes of the State planning requirements, a reconciliation of terms should be provided by Congress, thereby eliminating all ambiguity and restoring formula funding for the outlying areas through submission of a Unified or Combined State Plan.

Departments' Response: The Departments agree that applying the Unified or Combined State Plan requirements to the outlying areas is most consistent with the vision under WIOA for all six core programs to provide an integrated and coordinated workforce development system.

The Departments want to make clear that the State Plan requirements in WIOA secs. 102 and 103 apply to outlying areas, not just to States. To that end, the Departments have added clarifying language in § 676.105(e) of these final regulations. The Departments have concluded that requiring the outlying areas to submit Unified or Combined State Plans that incorporate all of the core programs as a prerequisite to receive funding under any of the core programs is most consistent with the plain meaning of WIOA's planning and allocation of funds requirements when both are read together. Further, it is the only interpretation that gives full meaning to the unified strategic planning required across all core programs.

In resolving the apparent inconsistency and potential for confusion regarding the definitions of "State" and "outlying area," as it was explained in the NPRM preamble, the Final Rule relies on the Secretary of Labor's general authority to regulate at sec. 189 of WIOA, and applicable provisions of titles II and IV of WIOA. In so doing, the Departments ensure that all core programs—and all grantees under each of those programs—are treated similarly, thereby achieving the vision of WIOA as an integrated and coordinated one-stop delivery system and a unified, strategic planning process encompassing all core programs.

The Departments also agree with the commenter that the option, which has existed for ED, for outlying areas to include the adult education program as part of a Consolidated Grant application, raises some unique concerns with regard to the Unified or Combined State Plan requirements of WIOA. When an outlying area submits a Consolidated Grant application, pursuant to 48 U.S.C. 1469a, the application is submitted in lieu of any other State Plan required by any of the programs included in the Consolidated Grant application. The Departments have considered the suggestion made by the commenter; however, resolution of this particular concern goes beyond the scope of these joint regulations. The ED will take the recommendation under advisement and will address this issue more fully in its administration of the Consolidated Grant to Insular Areas.

The Departments recognize that this interpretation raises additional questions with regard to the competition provisions that apply to the title I core programs in WIOA sec. 127(b)(1)(B). The DOL will address this issue in guidance.

Joint Planning Guidelines

Comments: Proposed § 676.105(a) is, in the NPRM, the first mention of joint planning guidelines to be issued by the Secretaries of Labor and Education. A number of commenters questioned whether the joint guidelines would be subject to public comment, and a few commenters challenged whether, in issuing the joint guidelines, the Departments would be in compliance with the Administrative Procedures Act (APA).

Departments' Response: The Departments' joint planning guidelines, issued March 2016, complied with the APA. The APA does not require notice and comment for interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice. *See* 5 U.S.C. 553(b)(A). The planning guidance falls under these exceptions, and thus, was not subject to notice and comment rulemaking. Specifically, the guidance includes procedural rules explaining the mechanics of how a State must submit its State Plan, as well as interpretive rules as needed to explain the applicable statutory and regulatory requirement.

Comments: One commenter supported the inclusion of adult education as a core program in the Unified State Plan in § 676.105(b)(2), as well as the requirement that those who administer adult education programs be represented on State and Local WDBs. Multiple commenters asserted that any grant programs under the jurisdiction of DOL ETA and operated through the State Workforce Agency (SWA) or the one-stop delivery system should be required to be part of the State's Unified or Combined plan. As an example, the commenters said there should not be a separate planning process for the Jobs for Veterans' State Grant (JVSG) or Foreign Labor Certification. Another commenter said non-WIOA core program partners should be allowed to participate in the strategic portion of the planning process, even if they cannot fully align their program budgets and operational plans with a 2- or 4-year operational plan.

Departments' Response: The Departments acknowledge the commenter's support for inclusion of those who administer adult education programs on the State and Local WDBs in the regulation as proposed. State and Local WDB requirements, and related comments, are discussed in sections of the DOL WIOA Final Rule preamble, which is published elsewhere in this issue of the **Federal Register** (*see* 20 CFR 679.110(b)(3)(iii)(A) and 679.320(d)).

Regarding comments in support of including additional programs in the Unified State Plan, sec. 102(a) of WIOA and § 676.105(b) make clear that only the core programs (as defined in sec. 3(12) and (13) of WIOA) are to be included in such plan. Paragraph (b) of § 676.105 is consistent with the six core programs identified throughout WIOA. States may submit a Combined State Plan that could include the programs mentioned by commenters. If a State chooses to submit a Combined State Plan, the plan must include the six core programs and one or more of the Combined State Plan partner programs and activities described in sec. 103(a)(2) of WIOA, and § 676.140(d). The JVSG is a Combined State Plan partner program which States may include in a Combined State Plan as described under WIOA sec. 103 and § 676.140(d). Foreign Labor Certification is not a Combined Plan partner program under WIOA sec. 103; however, a State may include a description of Foreign Labor Certification in its State Plan among its description of other programs and activities.

Regarding the inclusion of non-WIOA core program partners in the strategic portion of the planning process, WIOA sec. 102(b)(2) requires State Plans to discuss alignment *among* core programs and the employment and training services within education and human services programs which operate in partnership with the one-stop delivery system, including those not authorized by WIOA. Although not described in the regulation for State Plans, this requirement is reflected in the WIOA State Plan ICR. The Departments agree that coordination with program partners and stakeholders to the fullest extent possible is vital for successful joint planning. In addition to the changes made to § 676.105(d)(3) as described above and relevant to these comments, the Departments revised § 676.140 regarding Combined State Plans, which

will be discussed in more detail below in connection with that section. Further comments regarding the importance of public comment, review, input and coordination in development of the plan are discussed in this preamble in § 676.130(c) and (d)(1) for Unified State Plans and under §§ 676.140(e)(4) and 676.143(b) and (c) for Combined State Plans.

Comments: A couple of commenters responded to the authority granted to the Secretaries by WIOA sec. 102(b)(2) to create additional operational planning requirements beyond those already detailed in statutory language. These commenters requested that the Secretaries, in their discretion, keep to a minimum any additional planning requirements to reduce the burden placed on States and to provide States with ample opportunity to comply with statutorily established planning elements.

Departments' Response: The Departments have considered these comments and agree. WIOA contains a detailed description of planning requirements, and the Departments have chosen not to include all of the specific planning elements in the regulation. However, as made clear in the NPRM and this preamble, States must comply with all State planning requirements set forth in WIOA regardless of whether the requirements are repeated in these regulations. Comprehensive State Plan requirements for both Unified and Combined State Plans are detailed through the WIOA State Plan ICR. The Departments have endeavored to keep additional planning requirements to a minimum, while also attempting to ensure that the WIOA reform principles of program integration and alignment, job-driven training, accountability and transparency are reflected in the State Plans.

Comments: The Departments received a number of comments that requested plan requirements be added. In response to these suggestions, described in more detail below, the Departments have made no change to the regulatory text but have indicated whether the particular suggested requirements are indeed already included in the applicable WIOA State Plan ICR, published on February 19, 2016. In future years, the WIOA State Plan ICR may undergo revisions. The level of detail of the plan requirements suggested by the following comments is more appropriately addressed in the WIOA State Plan ICR than in the regulatory text. The Departments have declined to incorporate the following suggested changes in the regulatory text, but the discussion of the following comments points to various provisions of the WIOA State Plan ICR and other places in the regulation that are pertinent to the commenters' concerns.

Some commenters asserted that the regulation should require that States address priority of service for covered veterans, and for those veterans with service connected and non-service-connected (condition not as a result of military service) disabilities.

Departments' Response: The Departments have reviewed these comments. The WIOA State Plan ICR requires that States describe in their Unified or Combined State Plans how they will implement and monitor the priority of service provisions for all veterans in accordance with the requirements of 38 U.S.C. 4215. This provision applies to all employment and training programs funded in whole or in part by DOL. In addition, the WIOA State Plan ICR requires States to explain the referral process for veterans determined to have a significant barrier to employment, including certain disabled veterans, to receive services from the JVSG program.

Comments: One commenter said the Departments should unify the definition of "supportive services" across programs, thereby aligning adult education and literacy activities with other core programs and with one-stop partners. The commenter noted the disparity between the definition of "supportive services" under sec. 3(59) of WIOA and the definition of "other services" under career pathways programs. The commenter concluded that the quality and type of wraparound services offered should not be dependent on the program in which individuals participate, and the Departments should encourage States to develop comprehensive wraparound services that are available to adults, youth, dislocated workers, and adult education students whenever possible.

Departments' Response: WIOA sec. 3(59) provides a definition of "supportive services;" this definition applies to, and remains consistent across, all core programs. The WIOA State Plan ICR, which implements the statutory and regulatory requirements for Unified and Combined State Plans, requires States to describe how the entities carrying out the programs involved in the Unified or Combined State Plan including the core programs, any applicable Combined State Plan partner programs, and any mandatory and optional one-stop partner programs, will coordinate activities and resources to provide comprehensive, high-quality, customer-centered services. This requirement includes the provision of supportive services. However, the determination of need for, and the extent to which there is a need for, supportive services is within the State WDB's discretion, consistent with each of the individual program's authorizing statutes.

Comments: One commenter, in response to § 676.105(d)(1), said the Departments should ensure that consistent data definitions and comparable data are used to assess respective labor market areas.

Departments' Response: The WIOA State Plan ICR emphasizes the use of economic analysis and labor market information throughout and also addresses alignment of labor market information systems. The Departments encourage States to use a variety of accurate, reliable, and timely labor market information on which to base analyses in the State Plan. However, consistent with WIOA, the Departments will not require States to use a particular dataset and will leave the choice of data sources to the States' discretion, thereby allowing each State to meet its own unique needs and circumstances.

Addressing the Needs of Individuals With Barriers to Employment

Comments: A commenter suggested that the Departments require States to provide additional information regarding how they will address the needs of people with disabilities. Another commenter stated that WIOA requires that State and local planning efforts be informed by an analysis of various data, including data that include the education and skill levels of individuals with barriers to employment. A commenter said it would be helpful if the Departments explicitly required that States determine the number of individuals employed under 14(c) special wage certificates as part of the "analysis of the current workforce, employment and unemployment data, labor market trends, and the educational and skill levels of the workforce, including individuals with barriers to employment (including individuals with disabilities), in the State" pursuant to WIOA sec. 102(b)(1)(B). This commenter also stated that the strategic planning elements obligate the State to examine the specific employment related characteristics in their State and that this would be a valuable opportunity to gather information on employment statistics for individuals with disabilities.

Departments' Response: Consistent with WIOA and these final regulations, multiple sections of the WIOA State

Plan ICR require the State to address the needs of individuals with barriers to employment. The term "individual with a barrier to employment," as defined in sec. 3(24) of WIOA, encompasses the following groups of people: Individuals with disabilities, including youth with disabilities; displaced homemakers; low-income individuals; Indians, Alaska Natives, and Native Hawaiians; older individuals; ex-offenders; homeless individuals, or homeless children and youths; youth who are in or have aged out of the foster care system; individuals who are English language learners, individuals who have low levels of literacy, and individuals facing substantial cultural barriers; farmworkers (as defined at sec. 167(i) of WIOA and Training and Employment Guidance Letter No. 35–14); individuals within 2 years of exhausting lifetime eligibility under the TANF program; single parents (including single pregnant women); and long-term unemployed individuals. Therefore, States are required to address the needs of individuals with disabilities in the Unified or Combined State Plan.

Consistent with sec. 102(b)(1)(B) of WIOA and these final regulations, the WIOA State Plan ICR requires that State analysis related to individuals with barriers to employment include employment and unemployment, labor market trends, education, and skill levels of the workforce and any apparent gaps between the skills in demand by employers and the skill levels of the workforce. State and local planning efforts are informed by this analysis. Based on this analysis of workforce and labor market information required under sec. 102(b)(1)(B) of WIOA, § 676.105(d) and the WIOA State Plan ICR require State Plans to describe State's strategic vision and goals for developing its workforce and meeting employer needs in order to support economic growth and economic self-sufficiency. To that end, the State must describe its goals for preparing an educated and skilled workforce, including preparing youth and individuals with barriers to employment and other populations. Further, the WIOA State Plan ICR requires the State to assure that the State obtained input into the development of the Unified or Combined State Plan and provided an opportunity for comment on the plan by primary stakeholders, including organizations that provide services to individuals with barriers to employment and that the Unified or Combined State Plan is available and accessible to the general public.

Additionally, the Departments agree that the number of individuals employed under 14(c) special wage certificates may be helpful as part of the analysis by the State of workforce needs. However, the benefit of requiring the collection of sufficient data elements to satisfy the needs of every program must be balanced with the burden such a requirement would impose on State program operators and participants. For this reason, the Departments are not regulating such a requirement. While the collection of this data element will not be required of States, comparable data is publicly available. When an employer applies for a sec. 14(c) certificate from the Department of Labor's Wage and Hour Division, the employer is required to report on their application the number of workers with disabilities they employed at subminimum wages during their most recently completed fiscal year. The Department of Labor's Wage and Hour Division posts on its Web site (*http://www.dol.gov/whd/workerswithdisabilities/*) lists of all employers who hold sec. 14(c) certificates and certain data elements reported on their applications, including the number of workers with disabilities who were paid subminimum wages.

Finally, the Departments agree that the strategic planning elements requirements present a valuable opportunity to gather information on employment statistics for individuals with disabilities, so long as States are mindful of Federal and State law protecting personally identifiable information (PII).

Comments: A couple of commenters said States should be required to include the following information in their State Plans: (1) Explicit activities focused on how they will work to ensure "low-level learners" and hard-to-serve populations are served by the State Plan, and (2) a report on the diversity of programs funded and the actions taken to ensure broad participation at the local level. A commenter urged the Departments to encourage States and localities to build activities into their State Plans specifically directed at raising awareness about older workers and dispelling stereotypes. This same commenter also urged the Departments to encourage States to create plans that ensure engagement of all players to help employers connect with older workers.

Departments' Response: The Departments have reviewed these comments. As noted above, States must address in their Unified or Combined State Plans the needs of "individuals with barriers to employment," as defined in sec. 3(24) of WIOA, in the State's workforce analysis, goals for the public workforce system and in the State's stakeholder input and public comment assurances. As described above, the term "individual with a barrier to employment" includes individuals who have low levels of literacy and older workers. However, the Governors and State WDBs will determine the explicit activities appropriate for their individual States. For this reason, the Departments are not requiring in these regulations specific activities to satisfy these requirements, though we acknowledge that some states may elect to do so. In developing their Unified or Combined State Plans, States must conduct a thorough analysis of labor market statistics, which will address the needs of specific populations. The Departments do not have authority under WIOA to require a report on the diversity of programs funded and the actions taken to ensure broad participation at the local level, as recommended by commenters.

Comments: A few commenters recommended that the Departments encourage WDBs to establish effective operational partnerships with Continuum of Care bodies and State councils focused on homelessness. A couple of commenters also suggested that the Departments encourage State Plans to include specific strategies for using employment to prevent and end homelessness. One commenter provided examples of specific strategies for using employment to prevent and end homelessness, including HUD support for public housing residents, individuals with housing vouchers, and housing and community development projects. Lastly, this same commenter urged the Departments to work with HUD and other national experts and initiatives to identify and promote promising examples of where and how homeless services systems and workforce systems are working together for the benefit of increasing employment and economic opportunity for job seekers.

Departments' Response: The Departments have reviewed these comments. The Departments encourage State and Local WDBs to partner with appropriate entities to address the needs and concerns of individuals who are homeless or at risk of homelessness, including Continuum of Care bodies, State councils focused on homelessness, and programs administered by HUD. These are appropriate strategies for a State Plan in States with significant issues related to individuals who are homeless or at-risk of homelessness. As noted above, in developing its Unified or Combined State Plan, the State must

address the needs of individuals with barriers to employment in the State's workforce analysis, goals for the public workforce system and in the State's stakeholder input and public comment assurances. An "individual with a barrier to employment" in WIOA sec. 3(24) includes homeless individuals. Because each State's needs and circumstances are unique, the Departments have not imposed the additional planning requirements suggested by commenters in these final regulations. The Departments agree with the commenter about the need for increased collaboration at the Federal level and, to that end, the Departments have collaborated with other Federal agencies, including HUD, in developing the WIOA State Plan ICR and will continue to do so to ensure full implementation of WIOA.

Comments: A few commenters stated that WIOA represents a substantial shift from the WIA because it increases the amount of title I youth funding dedicated to out-of-school youth to 75 percent (up from the prior 30 percent under WIA) and expands the age range to include those between 16 and 24 years old. The commenters said immigrants represent more than 1 in 10 youth in this age range nationwide. The commenters urged the Departments to explore ways to encourage States and Local WDBs to review their program design and recruitment strategies to ensure that they are reaching and effectively serving eligible immigrants and youth in their communities who are English language learners.

Departments' Response: Some guidance has already been released by DOL related to the change in the percentage of youth program (title I) formula dollars that must be spent on out-of-school youth, (see TEGL No. 23–14), and DOL plans to issue further guidance and technical assistance focused on strategies for complying with this requirement. The Departments agree that States should address their strategies for serving out-of-school youth in State Plans. The WIOA State Plan ICR requires States to describe the strategies the State will use to achieve improved outcomes for out-of-school youth as they are defined in WIOA sec. 129(a)(1)(B), including how it will leverage and align the core programs, any Combined State Plan partner programs included in this plan, required and optional one-stop partner programs, and any other resources available. In developing their Unified or Combined State Plans, States must address the needs of individuals with barriers to employment in their workforce analysis, goals for the public workforce system and in stakeholder input and public comment assurances. Under WIOA sec. 3(24), individuals with barriers to employment include youth with disabilities, homeless children and youths, youth who are in or have aged out of the foster care system, individuals who are English language learners, individuals who have low levels of literacy, and individuals facing substantial cultural barriers. In their Unified or Combined State Plan, States also must describe how the one-stop delivery system will ensure that each one-stop center is able to meet the needs of English language learners. The Departments encourage States with eligible immigrants and youth in their communities to revisit their program design and strategies to ensure that they are reaching and effectively serving these populations.

Comments: A couple of commenters recommended that the Departments require that State Plans provide for access for English language learners to all title I-funded services. If any title I-funded programs in a State or locality are not explicitly expected to provide access to English language learners, the commenters continued, the Departments should require that the State or locality demonstrate how it is complying with Federal anti-discrimination provisions and providing equitable access to title I services for English language learners.

Departments' Response: The Departments have reviewed these comments and agree that providing for the needs of English language learners through title I services, as well as other services, should be a component of all Unified and Combined State Plans. Sec. 102(b)(2)(C)(vii) of WIOA requires States to describe how the one-stop delivery system (including one-stop center operators and the one-stop delivery system partners) will comply with sec. 188 of WIOA. In addition, the WIOA State Plan ICR requires States to describe how the one-stop delivery system (including one-stop center operators and the one-stop delivery system partners) will ensure that each one-stop center is able to meet the needs of English language learners, such as through established procedures, staff training, resources, and other materials.

The Departments agree with the importance of ensuring that States address the needs of the specific populations mentioned by the commenters. As noted above, States must address, in developing their Unified or Combined State Plans, the needs of individuals with barriers to employment in their workforce analysis, goals for the public workforce system, and in stakeholder input and public comment assurances. It also should be noted that WIOA grant recipients are subject to all of the requirements of the sec. 188 WIOA Nondiscrimination and Equal Opportunity Regulations (29 CFR part 38).

Suggestions for State Plan Requirements

Section 676.105(d)(3)(i) through (v) lists the operational planning elements that must be included in a Unified or Combined State Plan. Section 676.105(d)(3)(ii) states that operational planning elements must include State operating systems, including data systems, and policies that will support the implementation of the State's strategy.

Comments: In response to these requirements, a commenter requested guidance on where to focus State efforts in technology planning. Specifically the commenter asked whether the State strategic plan can describe a schedule for developing a comprehensive technology plan and how States should prioritize investments in technology as funds become available. Another commenter requested guidance on the Departments' expectations regarding the States' development of a common intake system among one-stop partners.

Departments' Response: The Departments have considered these comments and agree that additional guidance regarding the operational planning elements contained in a State Plan is appropriate. The Departments plan to issue joint planning and operational guidance regarding the technology planning and data systems to be used for reporting and intake systems. Further, States are encouraged to utilize the Departments' available technical assistance.

Comments: A commenter recommended that the Departments require States to include and address the following five topics in their Unified State Plan: (1) Priority of Service, (2) Career Pathways, (3) Criteria for Selecting Employers for Work-based Training, (4) Youth Committees, and (5) Measurable Skill Gains. The commenter went on to detail how States should address each of the enumerated topics in the State Plans. Specifically, with regard to Priority of Service, the commenter recommended requiring that Unified State Plans include a description of how the Governor will ensure priority of service for title I adult career and training services for recipients of public assistance, individuals who are basic skills deficient, and other low-income individuals. Regarding career pathways, the commenter said Unified State Plans should be required to explain: How the

WIOA definition of a career pathway will be applied to the programs in their State that align with industries in the regional economy; how the State will make accessible secondary and postsecondary education; how the State will include individual education and career counseling services; how the State will include integrated education and training; how the State is organized for acceleration; how the State will make available high school equivalency and at least one postsecondary credential; and how the State will promote career advancement. The commenter also recommended that Unified State Plans be required to demonstrate how they will track career pathway participants whose service happens not within one particular Federal program and funding stream, but across these programs through co-enrollment. In addition, this same commenter urged the Departments to require States to list the criteria they will use for selecting employers as an operational element of the Unified State Plan, and to ensure that local plans in their State similarly describe the criteria they will use for selecting employers. Regarding youth committees, the commenter recommended that the Departments require States to explain in their State Plans the State-directed format for local areas youth committee elections. Lastly, to ensure the effective implementation of the measurable skill gains indicator, the commenter recommended that Unified State Plans be required to ensure that local plans include: (1) A process describing how they will use the measurable skill gains indicator based on their service delivery strategies across programs, and (2) a list of the measurable skill gains that they will be utilizing in the coming year.

Departments' Response: The Departments considered this comment but did not revise the regulatory text. Many of the concerns are already addressed by sec. 102 of WIOA, these regulations, and the WIOA State Plan ICR. The WIOA State Plan ICR, consistent with sec. 134(c)(3)(E) of WIOA, requires States to address, in developing their Unified or Combined State Plans, priority in the delivery of career and training services to individuals who are low income, public assistance recipients, or basic skills deficient. With regard to the commenter's concern about career pathways, the WIOA State Plan ICR, consistent with secs. 101(d)(3)(B) and 102(b)(2)(B)(ii) of WIOA, includes requirements for the State to describe both its sector and career pathways strategy. Further comments regarding career pathways are discussed in detail below. With regard to the commenter's concerns about work-based training, the WIOA State Plan ICR requires States to address work-based learning approaches as a part of adult, dislocated worker, and youth activities under title I–B of WIOA. However, the Departments decline to require a specific policy on employer criteria because the description of the State's approach will provide sufficient information to the Departments and stakeholders. Regarding youth committees, WIOA eliminates the requirement for Local WDBs to establish a youth council; however, the Local WDB may choose to establish a standing youth committee, as described at 20 CFR 681.110 (*see* DOL WIOA Final Rule). States with Local WDBs that have chosen to form standing youth committees may describe this as a part of the State's operational planning elements, which are required in the WIOA State Plan ICR. However, the Departments have declined to require that States address standing youth committees because the creation of standing youth committees is determined by Local WDBs and the appropriateness of including such committees in the State Plan will vary from State to State. The DOL has issued guidance on standing youth committees, in TEGL No. 23–14 and in TEGL No. 8–15. Lastly, measurable skill gains is a required performance indicator under WIOA and it is defined in part 677 of this Joint WIOA Final Rule. That part further defines the specific allowable skill gains. The Departments addressed the data collection necessary to sufficiently measure skill gains and identify other indicators in the WIOA Joint Performance ICR. The Departments also provided further guidance on this particular issue. Therefore, the Departments decline to revise the regulatory text in response to the concerns discussed above.

Comments: Some commenters said the Departments should require the States to include in their Unified or Combined State Plans a demonstration of how they will ensure that eligible providers have direct and equitable access to apply and compete for grants or contracts.

Departments' Response: In response to this concern, the Departments direct the commenters to the WIOA State Plan ICR, which requires States to describe, with regard to the distribution of funds for title II programs in particular, how the eligible agency will ensure direct and equitable access to all eligible providers to apply and compete for funds. This provision in the WIOA State Plan ICR is consistent with sec. 231(c) of WIOA requiring direct and equitable access for all eligible providers under title II. Further, the WIOA State Plan ICR requires States to describe how the eligible agency will ensure that it is using the same grant or contract announcement and application procedure for all eligible providers. The guidance sufficiently addresses the commenters' concerns; no changes to the regulatory text were made in response to these comments.

Comments: One commenter remarked that throughout the "Career Services" section of the law, there are references to the "assistance" provided by the one-stop center or its contractor as it relates to financial aid eligibility and filing for unemployment compensation. Due to the significant decline in resources, the commenter requested that State Plans address how statewide resources will be utilized to ensure local areas have enough staff to meet this demand, including how the State will allocate funding and merit staff.

Departments' Response: The Departments have considered this comment and concluded that adopting a requirement such as that would result in substantial burden to the States. The purpose of WIOA is best served if the States retain flexibility to determine the best use of staff resources to deliver workforce services in the State.

Industry and Sector Partnerships

Comments: Several commenters recommended that the Departments require States to describe in the Unified State Plan how they will carry out the requirements under WIOA sec. 101(d)(3)(D) relating to the development of industry or sector partnerships. One of these commenters made several recommendations with regard to industry or sector partnerships. First, require regional plans to clarify the relationship between regional sector initiatives and any industry or sector partnerships in the regional planning area. Second, establish a new subpart H covering Industry or Sector Partnerships that, at a minimum, (a) describes the purposes of industry or sector partnerships, (b) reiterates the required partners for an industry or sector partnership as set forth in WIOA, (c) clarifies the role of Local WDBs in industry and sector partnerships, (d) identifies the ways in which States and local areas can evaluate the effectiveness of industry or sector partnerships, and (e) eliminates the current references to industry or sector partnerships in proposed § 678.435, which generally describes the business services that must be provided through the one-stop delivery system.

Additionally, as noted in the portion of the DOL WIOA NPRM preamble addressing 20 CFR 675.300, commenters recommended that the Departments define the terms "Industry and Sector Partnership" and "Sector Strategy" and suggested specific components to include in such definitions.

Departments' Response: The WIOA State Plan ICR requires States to describe the strategies they will implement, including industry or sector partnerships related to in-demand industry sectors and occupations and career pathways, as required by WIOA sec. 101(d)(3)(B) and (D). It also requires States to address industry sectors and occupations throughout the analyses required in the State Plan. Additionally, WIOA sec. 3(26) defines "industry or sector partnership." Due to the changing needs of the workforce and employers, and in order to maximize States' flexibility to develop strategies to address these changing needs, the Departments decline to change the regulation to be more prescriptive through changing the definition of "industry or sector partnership," defining the term "sector strategy," or adding a new subpart H on industry or sector partnerships. The Departments have provided technical assistance on sector strategies and plan to continue to do so while also issuing further guidance on industry and sector partnerships. Lastly, regional planning requirements are addressed in 20 CFR 679.510 (*see* DOL WIOA Final Rule published elsewhere in this issue of the **Federal Register**).

Comments: One commenter recommended that special emphasis be placed upon highlighting the importance of credentialing within industry and sector partnerships, especially for new high-growth industries. Specifically, the commenter recommended the following: (1) Funds be specifically allocated and used for State and local credentialing efforts within industry or sector partnerships, (2) DOL link credentialing to industry or sector partnerships and amend the proposed State Plan requirements to require States to use explicit language to clarify how they will integrate credentialing into the development of new industry or sector partnerships, where applicable, and (3) States should be required to explain their efforts to find industry-driven credentials as part of their Unified State Plans while providing a list of those credentials to DOL.

Departments' Response: The Departments agree that credentialing as a part of industry or sector partnerships is important. The WIOA State Plan ICR supports the inclusion of credentialing and its role in sector and career pathways strategies. Specifically, the WIOA State Plan ICR, consistent with sec. 102(b)(2)(B)(vi) of WIOA, requires States to describe how their strategies will improve access to activities leading to recognized postsecondary credentials, including registered apprenticeship certificates. The requirement in the WIOA State Plan ICR further includes credentials that are industry-recognized certificates, licenses, or certifications, and that are portable and stackable. The WIOA State Plan ICR also requires States to describe the strategies the State will implement, including industry or sector partnerships related to in-demand industry sectors and occupations and career pathways, as required by WIOA sec. 101(d)(3)(B) and (D). Such strategies may include the use of credentials or industry-recognized certificates. The Departments have concluded that these requirements adequately address the States' use of credentials within industry or sector partnerships. The Departments have declined to require States to use explicit language regarding how they will integrate credentialing and the State's efforts to fund industry-driven credentials, or to require that States provide a list of those credentials to the Departments to reduce planning burdens on States. Lastly, funding allocations for State credentialing efforts are outside the authority of this rule.

Career Pathways

Comments: Several commenters were pleased that WIOA sec. 3(7) codifies a definition of "career pathways" in Federal law, but they expressed concern that the rule includes little guidance on how career pathways are to be implemented. These commenters recommended that the Departments require States to describe how they will carry out the requirements under WIOA relating to the development of career pathways.

Departments' Response: The Departments considered the commenters' support for the WIOA definition of career pathways and the recommendation that States be required to describe how they will carry out the development of career pathways in the State Plan. Career pathways are designed to serve a diverse group of learners, including youth, dislocated workers, veterans, individuals with disabilities, individuals who have low levels of literacy or English proficiency, new immigrants, women, and minorities. Career pathways programs provide opportunities for more flexible education and training, allow people to earn industry-recognized credentials, and support the attainment of marketable skills that transfer into work for all. The Departments are choosing not to regulate further regarding the implementation of career pathways in order to promote maximum flexibility at the State and local level, and the Departments will continue to support career pathways programs locally and regionally through comprehensive technical assistance.

Comments: A number of commenters recommended that the rule clarify the minimum requirements that a Local WDB must satisfy in order to demonstrate successful implementation of career pathways.

A few commenters encouraged the Departments to use a forthcoming Career Pathways and Credentials Toolkit to amplify and build awareness of States' and localities' requirements for career pathways under WIOA.

Another commenter encouraged the Departments to expand the use of career pathways, especially for racial minorities and women, and to provide support to States and localities as they implement plans to improve career pathways available locally and regionally.

One commenter said the Departments should offer more specific guidance for operationalizing career pathways, such as acceptable strategies for braiding funding streams from titles I and II of WIOA and ways to identify and improve career pathways programs, with a particular focus on how to integrate wraparound services successfully into career pathways programs.

One commenter provided the following recommendations:

- Unified State Plans should be required to demonstrate how to track career pathway participants whose service happens across Federal program and funding streams through co-enrollment.
- The required elements for the Unified State Plan should specify the need to identify co-enrolled participants across the WIOA titles and in the CTE and human service partner systems.
- Unified State Plans should illustrate roles for CTE partners in development and implementation of career pathways, including strategies for co-enrollment.
- The Joint WIOA Final Rule should provide guidance to title I and title II providers on working with CTE in the design and implementation of career pathways, and should promote shared decision-making.
- Unified State Plans should be required to address strategies for serving TANF recipients through career pathway programming, as part of the plan's description of how career

pathway services will be provided to adults, youth, and individuals with barriers to employment.

Departments' Response: Consistent with sec. 101(d)(3)(D) of WIOA, the WIOA State Plan ICR includes requirements for the State to describe the career pathways strategies. The WIOA State Plan ICR, consistent with secs. 101(d) and 102(b)(2) of WIOA, also requires States to describe how such activities will be aligned across the core programs and Combined State Plan partner programs included in the State Plan and among the entities administering the programs, including using co-enrollment and other strategies, as appropriate. States have the option of including strategies that address TANF recipients as well as the option of including TANF as a Combined State Plan partner program in a Combined State Plan. Because career pathways, co-enrollment, and TANF recipients already are reflected in guidance, the Departments decline to regulate planning requirements regarding career pathways further. Regarding commenters' suggestions for specific strategies around implementation and requests for guidance, the Departments agree that additional guidance is necessary to describe WIOA requirements for incorporating career pathways into the State's strategies, although the Departments have concluded that additional regulatory text on career pathways is not necessary. The Departments are working in partnership with other Federal agencies to provide additional guidance on the implementation of career pathways in WIOA, and the Departments continue to take steps to incorporate career pathways approaches into a wide range of program investments, evaluation and research activities, and technical assistance efforts.

Combined State Plan Partner Programs

Paragraph (d)(2) of § 676.105 specifically requires that Unified State Plans include strategies for aligning the core programs with Combined State Plan partner programs and other resources to support the State's vision and goals (WIOA sec. 102(b)(1)).

Comments: A few commenters noted that the term "optional programs" is not used in WIOA sec. 102(b)(1), but the commenters also acknowledged that from the context it is apparent that the Departments intended to refer to the programs described at sec. 103(a)(2) and proposed § 676.140(d). The commenters supported this language, but they encouraged the Departments to clarify this intent explicitly by amending proposed § 676.105(d)(2) to include "as described in § 676.140(d)" after the words "optional programs." One commenter stated that while the use of the term "optional programs" for other workforce development programs is understood to be in reference to the fact that they are not required to be part of Unified Plans, there is the danger that the term could inadvertently send a message about the value of these programs. The commenter recommended that guidance should clarify that "optional" only refers to the planning requirements and does not imply that other programs beyond the WIOA "core" programs are any less essential to workforce development.

Departments' Response: The Departments have reviewed these comments and agree that the term "optional program" was unclear. The term "optional," as used in the NPRM, referred to the State's option of including these partner programs in a Combined State Plan. The Departments also agree that Combined State Plan partner programs are a valuable part of the workforce development system and the Departments encourage States to maximize the involvement of these programs in developing the State's strategies, goals, and vision for the one-stop delivery system in each State. The Departments revised § 676.105(d)(2), by replacing the term "optional programs" with "Combined State Plan partner programs" and also applied the suggested edit cross-referencing the term to § 676.140. The sentence now reads as "Strategies for aligning the core programs and Combined State Plan partner programs as described in § 676.140(d), as well as other resources available to the State, to achieve the strategic vision and goals in accordance with sec. 102(b)(1)(E) of WIOA." Throughout this preamble to the Joint WIOA Final Rule, the Departments have generally used the term "Combined State Plan partner program" to refer to what were called "optional programs" in the NPRM.

Coordination in Plan Development

Comments: A number of commenters expressed concern about having an adequate voice and input into the State Plan development process. One commenter requested that the Departments issue a stronger or clearer regulation addressing which entities must be involved in the process.

Departments' Response: The Departments reviewed these comments and agree that the regulation would benefit from a more explicit statement regarding the role of core programs in the planning process. In response to these comments, the Departments have added a new paragraph (d)(3)(v) to § 676.105 to clarify that operational planning elements must include a description of joint planning methods across core programs and required one-stop partner programs and other programs and activities in the Unified Plan. Due to this addition, proposed § 676.105(d)(3)(v) has been redesignated as § 676.105(d)(3)(vi) in this Joint WIOA Final Rule. The Departments also have added a new paragraph (c) to § 676.130 to explain how stakeholder and core program providers should be involved in plan development, as well as the role of the State WDB in plan development. The Departments have made parallel revisions to §§ 676.140 and 676.143 for Combined State Plans, all of which will be discussed in connection with each of these provisions.

Comments: Several commenters supported the unified planning process in general but expressed concern about the lack of oversight and enforcement mechanisms regarding the requirement that the development of the plan is collaborative. The commenters urged the Departments to remind all the core programs that they must truly collaborate if WIOA is to succeed.

Similarly, a commenter said the rule's strategic approach will require constant collaboration between Federal, State, and local governments, as well as other community partners, but the willingness to collaborate among these actors must be present. This commenter said other challenges include resistance to change within the workforce system, procurement requirements in a single State area, and conflicting performance requirements from different funding streams.

Another commenter said research has shown that bundling multiple services leads to more successful outcomes in the workforce development field, and the workforce system provides an ideal platform to integrate financial capability services because they both are focused on ensuring individuals have the tools to participate in, contribute to, and benefit from the mainstream economy.

Departments' Response: The Departments issued this Final Rule jointly to lay the foundation, through coordination and collaboration at the Federal level, for implementing the vision and goals of WIOA. One of WIOA's principal areas of reform is to require States to plan across programs and include this planning process in the Unified or Combined State Plans, which promotes a shared understanding of the workforce needs of a State and a comprehensive strategy for addressing those needs. Unified or combined

planning can support better alignment of resources, increased coordination among programs, and improved efficiency in service delivery. The Departments considered these comments and recognize the challenges mentioned by the commenters. WIOA placed heightened emphasis on coordination and collaboration at the Federal, State, and local levels to ensure a streamlined and coordinated service delivery system for job seekers. The WIOA State Plan ICR, consistent with the statutory and regulatory requirements, reinforces the importance of collaboration in the development of State Plans. However, to further address these comments and others relating to the issue of collaboration and stakeholder involvement, the Departments have added new paragraph (d)(3)(v) to § 676.105 to clarify that operational planning elements must include a description of joint planning methods across core programs and required one-stop partner programs in the Unified Plan. The WIOA statute and the WIOA State Plan ICR require the State to assure that core programs have "reviewed and commented on the appropriate operational planning elements of the Unified State Plan, and approved the elements as serving the needs of the populations served by such programs." The Departments have amended § 676.105(d)(3)(iv) to emphasize this statutorily required assurance.

Lastly, the Departments note that some of the stated challenges, such as procurement requirements, are not relevant to the regulation of State Plans. Regarding the challenges cited by commenters regarding differing reporting requirements, WIOA has addressed this challenge by requiring the six core programs to report performance outcomes against the primary indicators of performance. The core programs will all use the same definitions and data elements. The Departments agree that aligning performance outcomes is a significant step toward aligning programs. WIOA sec. 116's performance requirements are addressed in the WIOA State Plan ICR Appendix 1, as well as the WIOA Joint Performance ICR and part 677 of this Joint WIOA Final Rule.

The Role of State Workforce Development Boards in Plan Development

Comments: Several commenters requested clarification about the role of the State WDB in approval of State Plans. One commenter said the Departments should require the State WDB to review and approve the State Plan before submission. This same commenter asked if core programs were required to sign off on the plan, or if their representation on the State WDB would serve that purpose. A commenter asked about the authority of a State WDB over specific programs' plans, specifically requesting clarification on whether the Board can, in effect, veto a portion of the plan.

Departments' Response: The Departments reviewed these comments and agree that the Joint WIOA Final Rule should provide additional clarification about the role of the State WDB in approval of State Plans. Accordingly, the Departments revised §§ 676.130(c) and 676.143(b) to clarify expected roles during plan development. More detail will be provided in the discussions related to these particular sections below. The Departments expect the States to recognize the importance of an inclusive and collaborative process in developing the State Plan. The Departments also have revised § 676.105(d)(3)(iv), which implements an assurance required by sec. 102(b)(2)(E) of WIOA. Under § 676.105(d)(3)(iv), States are required to assure that the lead State agencies responsible for the administration of the core programs review and comment on the appropriate operational planning sections of the Unified State Plan and approve that each element serves the needs of the population served by such programs.

Comments: A commenter requested clarification on the processes of State, regional, and local planning. Specifically, this commenter wondered how much direct influence local workforce boards will have in their State's respective State Plans. The commenter requested greater assurances that Local WDBs be systematically included in the State planning process. Similarly, a commenter recommended that Governors must have Local WDB and CEO consent before taking actions impacting Local WDBs, stating that most of the best innovations are developed based on local relationships. Another commenter recommended regulatory language that enables local areas to meet the needs of the State WDB in meeting their responsibilities under WIOA for statewide planning, but encourages and allows local areas to provide their own input, feedback, and strategies within the local plan.

Departments' Response: The Departments agree with the commenters that it is important for the Governor to include Local WDBs and CEOs in the State planning process. Section 679.110 of 20 CFR requires that State WDB membership include two or more CEOs (*see* DOL WIOA Final Rule published elsewhere in this issue of the **Federal Register**). The Governor has the flexibility to appoint more local elected officials to the State WDB as he/she sees fit. The Departments encourage the Governor to use this authority, which may include increasing the representation of CEOs, to ensure accurate representation of the interests of job seekers and businesses in the State and also to ensure the involvement of these local representatives in the State planning process. WIOA does not require that Governors must have Local WDB and CEO consent before taking actions impacting Local WDBs. However, the Departments do expect engagement of Local WDBs in the development of the State Plan through public comment and input. This is further discussed below at § 676.130(d). The requirements for local plan development and input are discussed in 20 CFR 679.550 (*see* DOL WIOA Final Rule published elsewhere in this issue of the **Federal Register**).

Section 676.110 What are the program-specific requirements in the Unified State Plan for the adult, dislocated worker, and youth programs authorized under Workforce Innovation and Opportunity Act title I?

Section 676.110 indicates that program-specific requirements for the adult, dislocated worker, and youth workforce investment activities in the Unified State Plan are described in sec. 102(b)(2)(D)(i) of WIOA. Additional planning requirements may be explained in joint planning guidelines issued by the Secretaries of Labor and Education.

Proposed Additional Title I Program-Specific Requirements to State Plans

Comments: One commenter agreed with the proposed program-specific requirements in §§ 676.110 through 676.125. Another commenter stated that this section provides insufficient direction and accountability to ensure that the needs of individuals with a barrier to employment or who have priority of service are adequately included and addressed in a Unified or Combined State Plan. The commenter recommended that the Departments require that State and local planning efforts utilize the most current Census and administrative data available to develop estimates of each priority service population in their planning efforts, and update these data year to year. The commenter said these data should be utilized in Federal reviews of State Plans to ensure that system designs and projected investments are

equitably targeted to service-priority populations. The commenter further stated that the data also should be used to benchmark system performance in actual implementation of the priority of service from year to year.

Departments' Response: The Departments have considered these comments. The WIOA State Plan ICR, consistent with WIOA requirements for title I–B programs, requires States to address priority in the delivery of career and training services to individuals who are low income, public assistance recipients, or basic skills deficient. WIOA sec. 134(c)(3)(E) prioritizes these groups for the receipt of individualized career services and training services. The Departments encourage States to use a variety of accurate, reliable, and timely labor market information on which to base analysis and priority of service. Indeed, priority for use of adult funds can be made using a variety of available data, in addition to the use of Census data. However, to minimize the burden for each individual State, the Departments will not require States to use a particular dataset, leaving it to the discretion of the States to choose the appropriate data sources.

Section 676.115 What are the program-specific requirements in the Unified State Plan for the Adult Education and Family Literacy Act program authorized under Workforce Innovation and Opportunity Act title II?

Section 676.115 explains the additional planning requirements to which the AEFLA program is subject. Section 676.115 contains three specific program requirements. First, § 676.115(a) restates the statutory requirement that the eligible agency must explain in its Unified or Combined State Plan how it will align its adult education content standards with its State-adopted challenging academic content standards under the Elementary and Secondary Education Act by July 1, 2016. Second, § 676.115(b)(1) addresses the requirement that States describe the methods and factors the State will use to award multi-year grants on a competitive basis to eligible providers. Third, § 676.115(b)(2) requires that States describe the methods and factors used to provide direct and equitable access to funds using the same grant or contract announcement or application procedure. Based on comments, and as discussed further below, the Departments have deleted proposed regulatory text at § 676.115(c) concerning a requirement to describe the interoperability of data systems. Deletion of paragraph (c) is the only substantive change made to this regulatory provision from that proposed in the NPRM.

Timing of Plan Acceptance and Open Competitions

Comments: Many commenters expressed concern that States may have to issue requests for proposals (RFPs) for funds before the plans have been approved. Several commenters said that this would result in an RFP process that does not address the objectives of the State Plan. Some commenters asked that the Departments provide an additional transition year in order to allow for the time necessary for States to receive State and local plan approval and begin the implementation of the approved plans, after which the States could run their competitions in alignment with the approved plans.

Departments' Response: The Departments agree with the commenters' concerns and recognize the time that is required for State procurement processes. The ED understands that it would create difficulties to require States to issue RFPs prior to the State Plan being approved when the RFPs are intended to be based on the approved State Plan. Additionally local plans must be in place before the RFP can be issued so applications for subgrants can be aligned with local plans. The ED has issued guidance regarding the process for awarding subgrants to eligible providers authorized under title II, which provides information regarding the timing of competitions and their alignment with State and local plans. It is not necessary to address this concern in the regulation and the regulation is not revised in response to these comments.

Alignment With State Elementary and Secondary Education Act Standards

Comments: Numerous commenters stated that most States have adopted the College and Career Readiness Standards for adult education and will demonstrate in their State Plans how the College and Career Readiness Standards for adult education align with the standards that State established under the Elementary and Secondary Education Act of 1965, as amended (ESEA). These commenters also expressed concern regarding the unavailability of standards for adult education that focus on English Language Acquisition. Additionally, commenters raised concerns about the absence of assessments that measure performance on the College and Career Readiness Standards for adult education and recommended that the Departments provide a 3-year transition period during which States are held accountable based on the available assessments instruments. A commenter also recommended that the Departments integrate the English language descriptors into the current adult education National Reporting System Educational Functioning Levels descriptors. Finally, another commenter recommended that the Departments adjust accountability measurements to reflect separate English Language Acquisition tables in the National Reporting System from the standard adult basic education (ABE) standards.

Departments' Response: The Departments have reviewed the commenters' concerns related to having adequate time to establish English Language Acquisition content standards, as well as the lack of assessment mechanism to measure adult education content standards. The ED recognizes that English Language Acquisition content standards do not yet exist. The ED acknowledges that there are currently no National Reporting System-approved assessment instruments by which to measure student progress and achievement in relation to College and Career Readiness standards. However, based on our review of the comments, it appears that some commenters might have misunderstood the proposed requirement pertaining to content standards. The final regulations require the eligible agency to describe in the Unified State Plan how, by July 1, 2016, it will align its content standards for adult education with State-adopted challenging academic standards under the ESEA. The regulations do not require that the State implement those standards by July 1, 2016, or that the State implement assessments aligned to the standards by July 1, 2016. The ED intends to issue guidance pertaining to the alignment and implementation of standards; the standards for English language acquisition; and the aligned assessments for accountability in adult education. Finally, although the Departments reviewed the comments about the integration of the English Language Acquisition descriptors into the National Reporting System and the separation of the accountability measures in the English Language Acquisition table from the ABE tables, the Departments concluded that they do not have the statutory authority to address these in the final regulations. No changes to the regulatory text were made in response to these comments.

Interoperability of Data Systems

Comments: Numerous commenters sought clarification on the definition of

"interoperability." Several commenters stated that there is a national data integration workgroup at the Federal level; and recommended that, rather than each State expending time and funds to create an interoperable system, the Departments give the States the option to await the results of the national data integration workgroup before creating their State interoperable system.

Commenters stated that, due to the variety in State data systems, regulations that attempt to implement a "one size fits all" approach are impractical. These commenters recommended that the Departments convey expectations for interoperability via non-regulatory guidance (including guidance highlighting existing solutions and offering States options for reporting this data). A commenter recommended that DOL work with other Federal agencies to establish minimum national standards for how integrated data systems should be designed and interface with existing public systems to support the employment needs of adults and youth facing barriers to employment. The commenter also urged DOL to work with other Federal agencies to ensure that integrated data systems align with existing data being collected on employment, education, and training services across Federal programs.

A commenter said the requirement for a description of how the State will ensure interoperability of data systems in the reporting on core indicators of performance and performance reports is listed only under the AEFLA title II specific section (§ 676.115); however, in the law, the requirement for such information is listed under sec. 102(b)(2)(C) State Operating Systems and Policies of WIOA. Therefore, the commenter suggested § 676.115(c) should be moved to § 676.105, General Requirements. Another commenter said the regulations place the responsibility of ensuring interoperability of data systems on the title II adult education programs, which is not feasible because the various data systems are governed under different programs and frequently by different agencies. The commenter also said the rule seems to place the burden of supporting the cost of interoperability on title II adult education programs, which is not equitable because there will likely be a significant cost to creating such interoperability. The commenter recommended that the Departments restate this in regulation as a joint requirement of core programs and any programs included in a Combined State Plan.

Departments' Response: The Departments agree with commenters' concerns regarding the complexity of integration, including the amount of time, planning, and resources necessary to achieve such integration. The Departments agree with the commenters that the integration and interoperability of data systems is not limited to title II of WIOA. The Departments understand that performance and accountability data collection and systems integration is a long-term process that will involve additional costs and resources for all programs. The Departments will review reports from the national data integration workgroup, as well as information from the planning descriptions provided by States in the initial State Plan, to inform possible policy decisions and the development of guidance on this topic. The Departments also will look into similar data collection and system integration across Federal agencies that provide employment, education, and training services.

As a result of these concerns, the Departments have removed the language proposed in § 676.115(c), and instead have included in the WIOA State Plan ICR, consistent with sec. 102(b)(2)(C) of WIOA, a general requirement that States address fiscal and management accountability information system planning across all of the programs included in a Unified or Combined State Plan, as required by sec. 116(i)(1) of WIOA.

Direct and Equitable

Comments: Regarding § 676.115(b)(2), which specifies that all eligible agencies "will provide direct and equitable access to funds," several commenters said that there is no specific mention of this requirement in § 676.140, which governs the Combined State Plan. One commenter sought clarification on whether this was intentional or an oversight.

Departments' Response: The Departments have reviewed these comments and agree that the omission of the requirement related to direct and equitable access of funds in the Combined State Plan was an error. The Departments have revised § 676.140(e)(1) to include this requirement in the regulations that address the Combined State Plan.

Request for Guidance

Comments: Several commenters said States should be required to identify the guidance they will provide to eligible providers for nominating an adult education representative to the Local WDB that would represent all eligible providers in the region as well as communicate board activities.

Departments' Response: The Departments have reviewed the comments supporting a requirement that States issue guidance for adult education representation on the Local WDB. States have the authority to issue such guidance and it is not necessary to revise the regulations to address this specific need.

Section 676.120 What are the program-specific requirements in the Unified State Plan for the Employment Service program authorized under the Wagner-Peyser Act, as amended by Workforce Innovation and Opportunity Act title III?

Section 676.120 states that Wagner-Peyser Act Employment Service programs are subject to the requirements in sec. 102(b) of WIOA, including any additional requirements imposed by the Secretary of Labor under secs. 102(b)(2)(C)(viii) and 102(b)(2)(D)(iv) of WIOA. This section requires States to include any information the Secretary of Labor determines is necessary to administer the Wagner-Peyser Act Employment Services programs. The Departments have provided additional information through jointly issued planning guidance and the WIOA State Plan ICR. Except for the addition of a reference to WIOA sec. 102(b)(2)(D)(iv) and other minor technical edits, this provision remains substantively the same as that proposed in the NPRM. WIOA sec. 102(b)(2)(D)(iv) refers to Wagner-Peyser Act program-specific requirements.

Proposed Additional Wagner-Peyser Act Program-Specific Requirements for State Plans

Comments: A commenter agreed with the proposed requirements specific to Wagner-Peyser Act Employment Services programs. One commenter stated that homeless persons should be a prioritized group for employment services, including those with no income or work history, and those with a criminal background. Also, this commenter recommended that serving higher barrier persons be incentivized.

Departments' Response: The Departments agree with the importance of ensuring that States address the needs of very low income and homeless populations in the State Plan. As discussed under § 676.105, the WIOA State Plan ICR, consistent with WIOA, requires that Unified and Combined State Plans address the needs of individuals with barriers to employment. As defined in sec. 3(24)(G) of WIOA, an "individual with a barrier

to employment" includes homeless individuals or homeless children and youths. However, employment services under the Wagner-Peyser Act are universal and available to all; the Departments do not have the authority to prioritize use of Wagner-Peyser Act funds for specific populations.

Comments: Several commenters said the regulation should require State workforce agencies to include a clearly defined management reporting structure for State merit-based employees as part of the State Plan for each one-stop center to minimize confusion and protect the systemic integrity of Wagner-Peyser Act services.

Departments' Response: While the Departments recognize the importance of adhering to merit staffing requirements for Wagner-Peyser Act services, the Departments decline to require a reporting structure for merit staff in the regulation or in the WIOA State Plan ICR because it imposes an unnecessary burden on States. However, a State may elect to develop such a policy and include it in its State Plan.

Section 676.125 What are the program-specific requirements in the Unified State Plan for the State Vocational Rehabilitation program authorized under title I of the Rehabilitation Act of 1973, as amended by Workforce Innovation and Opportunity Act title IV?

Section 676.125 requires States to submit a VR services portion as part of the Unified State Plan that complies with all State Plan requirements set forth in sec. 101(a) of the Rehabilitation Act of 1973, as amended by title IV of WIOA. All submission requirements of the VR Services portion of the Unified State Plan are in addition to the jointly developed strategic and operational content requirements prescribed by sec. 102(b) of WIOA. Except for minor technical edits, this provision remains substantively the same as that proposed in the NPRM.

Individuals With Disabilities in the VR Program

Comments: A commenter agreed with the requirements specific to the VR program.

Some commenters stated that there should be greater emphasis on the VR program in the State Plans. The commenters encouraged Governor-mandated appointment of disability service providers on State WDBs to ensure proper representation for the development of this section of the plan. Similarly, other commenters urged the Departments to encourage greater inclusion of stakeholders within the disability community in the development, review, and implementation of the plans. One commenter further encouraged the Departments to issue guidance that will ensure that State executives will not ignore or under-represent the workforce development needs of people with disabilities in the strategic and operational planning outline in either the Unified or Combined State Plan.

Departments' Response: In response to the first concern, the Departments refer commenters to the WIOA State Plan ICR where the VR program is addressed at length in Section VI Program-Specific Requirements for Core State Plan Programs. This section overviews the descriptions and estimates that must be included in the VR Services Portion of a State Plan, as required by sec. 101(a) of the Rehabilitation act of 1973, as amended by WIOA, and sec. 102(b)(2)(D)(iii) of WIOA. State WDB membership requirements are addressed in 20 CFR 679.110 (*see* DOL WIOA Final Rule published elsewhere in this issue of the **Federal Register**). The Departments also note that beyond these requirements, the constitution of State WDBs and their membership has been left to the States. Although State Plans must include a State WDB Membership Roster and a list of Board activities as described in sec. III(b)(3)(B) of the WIOA State Plan ICR, the Departments have concluded that it is unnecessary to include additional regulatory text. With regard to greater stakeholder involvement in the review and implementation of State Plans, §§ 676.130(d) and 676.143(c), already require that States provide an opportunity for comment on and input into the development of a State Plan from representatives of Local WDBs and CEOs, businesses, labor organizations, institutions of higher education, other stakeholders with an interest in the services provided by the six core programs, and the general public, including individuals with disabilities. Thus, stakeholders with disabilities are required to have opportunity to engage in the development of State Plans. Finally, sec. 102(b) of WIOA and the WIOA State Plan ICR require the State to address the needs of individuals with barriers to employment within the State Plan's Strategic Vision and Goals and Operational Planning Elements. According to WIOA sec. 3(24), the term "individual with a barrier to employment" includes individuals with disabilities, including youth who are individuals with disabilities.

Interagency Cooperation

Comments: A commenter said the Departments should make explicit the importance of including State developmental disabilities agencies in cooperative agreements regarding individuals eligible for home and community-based waiver programs. Another commenter stated that, in addition to the cooperative agreement between VR and the State developmental disabilities agency, State Plans should be required to contain a cooperative agreement between Medicaid and the State mental health agency in order to promote effective collaboration between State agencies.

Departments' Response: While not stated in the regulation itself, the WIOA State Plan ICR describes how a State will incorporate interagency cooperation between VR and other State agencies providing assistance to or serving individuals with disabilities. In the WIOA State Plan ICR, consistent with sec. 101(a)(11) of the Rehabilitation Act, as amended by title IV of WIOA, the VR agency must describe the collaboration between the responsible State agency administering the State Medicaid plan, the State agency serving individuals with developmental disabilities, and the State agency responsible for providing mental health services. Nothing in this requirement restricts collaboration between agencies, as the goal is to develop opportunities for competitive integrated employment to the greatest extent possible. A more detailed discussion of the collaboration between the VR agency and other agencies serving individuals with disabilities is provided in ED's Final Rule related to the VR program published elsewhere in this issue of the **Federal Register**.

VR Program's Order of Selection

Comments: One commenter referenced a proposal to give State VR agencies operating under an Order of Selection the option to indicate that they will serve eligible individuals with disabilities outside the Order of Selection who have an immediate need for equipment or services to maintain employment. The commenter requested clarification in determining what services or equipment is allowed to be provided if identified as an immediate need if the individual is in jeopardy of losing his or her job.

Departments' Response: Section 101(a)(5)(D) of the Rehabilitation Act of 1973, as amended, indicates that State Plans shall, under an Order of Selection, permit the State, in its discretion, to elect to serve eligible individuals who

require specific services or equipment to maintain employment. The WIOA State Plan ICR allows for the VR program to identify whether it will serve eligible individuals with disabilities outside the Order of Selection who has an immediate need for equipment or services to maintain employment. Services or equipment provided to eligible individuals under these circumstances must be determined on an individual basis according to the employee's need required to maintain employment, consistent with the Individualized Plan for Employment. A much more detailed discussion of this issue is provided in ED's Final Rule covering the VR program published elsewhere in this issue of the **Federal Register**.

Records and Data Collection

Comments: A commenter said the Departments should identify ways to allow State VR agencies to gain ready access to Federal employment data, such as the data that are available through the Federal Employment Data Exchange System funded by DOL.

Departments' Response: The Departments addressed this issue through the WIOA State Plan ICR process. Section III(b)(6)(A) of the WIOA State Plan ICR states that State agencies responsible for the administration of core programs (such as the VR program) shall describe plans to align and integrate available workforce and educational data systems for the core programs, unemployment insurance (UI) programs, and education through postsecondary education. This directive provides sufficient identification of the opportunities available to States to incorporate both State and Federal data into their State programs. For this reason, no changes to the regulatory text were made in response to this comment.

Independent Living for Older Individuals Who Are Blind Program

Comments: A couple of commenters opposed eliminating a requirement in the State Plan for the Independent Living for Older Individuals who are Blind program, stating that this elimination constitutes a great disservice to older persons with vision loss. The commenters recommended that an Independent Living for Older Individuals who are Blind section be added to the VR section of the Unified or Combined State Plans.

Departments' Response: The Independent Living for Older Individuals who are Blind program is covered under title VII of the Rehabilitation Act of 1973, as amended by WIOA, and is not among the six core programs that must submit a Unified State Plan pursuant to sec. 102 of WIOA. The VR services portion of the Unified or Combined State Plan is similar in content to the standalone VR State Plans that were submitted prior to the passage of WIOA and covers only the VR program requirements of title I of the Rehabilitation Act, as amended by WIOA. The Independent Living for Older Individuals who are Blind program requires submission of an application with assurances every 3 years that complies with the requirements for that program as set forth in title VII of the Rehabilitation Act, as amended by WIOA. A detailed discussion of the Independent Living Services for Older Individuals Who are Blind program (34 CFR part 367) is provided in ED's Final Rule of WIOA Miscellaneous Programs published elsewhere in this issue of the **Federal Register**.

Section 676.130 What is the development, submission, and approval process of the Unified State Plan?

In order to facilitate the State strategic planning process, and concurrent review by the relevant Federal program offices, this section requires the Unified State Plan to be submitted to the Secretary of Labor, according to the procedures established in sec. 102(c) of WIOA, which are clarified and explained through joint planning guidelines. Likewise, the Departments, upon receipt of a Unified State Plan, follow procedures established by this section. Section 676.130 also explains requirements for transparency, public comment, and submission, as well as the terms for approval of plans by the Secretaries of Labor and Education.

Section 676.130(a) requires that the Unified State Plan be submitted in accordance with the procedures set out in the joint planning guidelines, issued by the Secretaries of Labor and Education, which explains the submission and approval process described in sec. 102(c) of WIOA.

Sections 676.130(b)(1) and (2) reiterate the requirement at sec. 102(c)(1) of WIOA regarding the deadlines for submitting the initial and subsequent Unified State Plans to the Departments. The Departments developed a process for submission of Unified State Plans to ensure that ED receives the entire Unified State Plan submission concurrently. WIOA secs. 102(c)(1)(A) and 103(b)(1) require States to submit the initial Unified or Combined State Plan no later than 120 days prior to the commencement of the second full program year after the date of enactment (*i.e.*, July 1, 2016), making the statutory submission date for the initial Unified or Combined State Plan March 3, 2016. However, pursuant to the orderly transition authority in sec. 503 of WIOA, the Departments considered the initial Unified or Combined State Plans timely if submitted by April 1, 2016.

Section 102(c)(1)(B) of WIOA requires subsequent Unified State Plans to be submitted not later than 120 days prior to the end of the 4-year period covered by the preceding Unified State Plan. In other words, WIOA Unified State Plans cover 4-year periods, and the subsequent plan must be submitted no later than 120 days before existing plan's 4-year period ends. The Departments have made clarifying edits to the regulatory text in § 676.130(b)(2) to more clearly align it with these statutory requirements. The Departments anticipate that the second Unified State Plans will need to be submitted in the spring of 2020. The official submission dates for the plans will be announced in the joint planning guidelines.

Section 676.130(b)(3) clarifies that, consistent with current practice for many of the core programs, a program year runs from July 1 through June 30 of any year. This clarification is particularly important, in this context, for the VR program since that program operates on a Federal fiscal year basis and will continue to do so, in accordance with title I of the Rehabilitation Act of 1973, despite the fact that the VR services portion of the Unified State Plan will align, for submission and performance purposes, with the other partners on a program year basis.

In order to more accurately reflect the content of § 676.130, the Departments have made a change to the title to include the word "development." Additionally, in response to comments, described below, requesting clarity regarding the role of the State WDB, core program administrators and required one-stop partners, the Departments have added § 676.130(c). This additional paragraph explains the statutory requirement that the Unified State Plan must be developed with the assistance of the State WDB and must be developed in coordination with administrators with optimum policy-making authority for the core programs and required one-stop partners. The term "optimum policy-making authority" is defined in 20 CFR 679.120 as "an individual who can reasonably be expected to speak affirmatively on behalf of the entity he or she represents and to commit that entity to a chosen course of action." *See* DOL WIOA Final

Rule published elsewhere in this issue of the **Federal Register**. Accordingly, § 676.130(c) through (h) have been renumbered at § 676.130(d) through (i). Other than these changes to paragraph (b)(2), the addition of paragraph (c), and the edit to paragraph (h) discussed below, no changes to the regulatory text have been made.

Deadlines

Comments: The Departments received a comment that supported the timeline for developing initial Unified State Plans. Several commenters requested clarification about the definition of program year, specified in § 676.130(b)(3), as it applies to VR, noting that the VR program operates on a Federal fiscal year. A couple commenters said the specified program year may put additional administrative burden and costs, especially in the startup, on State VR agencies. A commenter said the VR agencies should continue to report as they currently do. Due to the difference in fiscal year versus program year, one commenter recommended that the VR program be transferred to DOL to ensure seamless coordination of workforce activity at the Federal and State level and to ensure that the States operate unified, integrated programs. However, other commenters said it is unclear whether the change in program will be a burden for State VR agencies. In fact, one commenter anticipated a benefit for aligning State match, fiscal planning, and managing funds. One of these commenters said that ED should survey State VR agencies to see if this will prove to be a burden or an issue for administration of the State Plan.

A commenter remarked that performance data and plans will be on the program year basis and that Federal awards and reporting will remain on the fiscal year basis. The commenter sought clarification as to how reporting and performance timeframes will be integrated.

Departments' Response: The Departments acknowledge the concerns expressed by commenters. The VR program will utilize a program year, according to the § 676.130(b)(3) definition, for the purposes of reporting performance and identifying its goals and priorities as part of the VR portion of the Unified or Combined State Plan. Since data will be collected quarterly, RSA will have the flexibility to report performance data for each of the VR agencies for both the program year and the fiscal year. The Departments have not concluded that this will cause any additional burden to the VR agencies for the development of the VR portion of the State Plan, in particular, to establish and evaluate the State's performance measures. Further guidance about performance reporting for VR agencies will be provided in the final ICR for the RSA–911 report. Fiscally, the VR agencies will continue to operate on a Federal fiscal year basis as required statutorily pursuant to secs. 110 and 111 of the Rehabilitation Act of 1973, as amended. The WIOA State Plan ICR Appendix 1 clarifies what performance information States must include in the State Plan. The Departments provided further instructions through the WIOA Joint Performance ICR, the WIOA State Plan ICR, and related joint guidance. Finally, WIOA does not authorize the VR program to move to DOL.

Stakeholder Involvement

Comments: Numerous commenters expressed concern about having adequate voice and input into the State Plan development process, and a number of commenters requested stronger or clearer regulation on who must be involved in the State Plan development process. Commenters said the Departments should require a role in the planning process for core programs, one-stop partners, State and Local WDBs, and CEOs, among other entities.

Departments' Response: Although WIOA requires an inclusive planning process, and there are many references to inclusiveness in planning and program implementation throughout the Joint WIOA Final Rule, the Departments considered these comments and agree. The Joint WIOA Final Rule will continue to emphasize inclusiveness in planning and program implementation and will further benefit from a more explicit statement of the entities required to participate in the development of Unified State Plans. In response to the comments, the Departments have added regulatory text in a new paragraph (c) to § 676.130 to clarify that Unified State Plans must be developed with the assistance of the State WDB and in coordination with administrators with optimum policy-making authority for the core programs and required one-stop partners. In addition, to ensure consistency, the Departments have added regulatory text in a new paragraph (d)(3)(v) of § 676.105, discussed above, requiring that the Unified Plans include a "description of joint planning and coordination across core programs, required one-stop partner programs and other programs and activities included in the Unified Plan." The Departments also have revised the title of § 676.130 to include the word "development" to clarify that this section describes the development of the Unified State Plan, as well as submission and approval. These changes are reflected in the WIOA State Plan ICR.

Collaboration and Input Into the Plan Process

Comments: A couple of commenters recommended that States should include title II adult education partners, as well as other immigrant-serving organizations, in their WIOA planning. A few commenters suggested that refugee programs and service providers be included in planning at the State and Local level and that the Departments should emphasize in the regulation's discussion of local governance the importance of providing expertise in serving linguistically and culturally diverse populations. Some commenters noted several organizations should have input into the development of State Plans, including: quality credentialing organizations, immigrant-serving organizations, State and local human service agencies, community and technical colleges, nonprofit community-based and nontraditional service providers, and State Departments of Education.

Departments' Response: The Departments considered these comments and note that collaboration in the planning process for Unified and Combined Plans is required of title II adult education program partners as they are among the core programs included in all plans. The WIOA State Plan ICR enables States to include human services, faith- and community-based organizations, and educational institutions in the State Plan, as well as other Federal programs, particularly as part of a discussion of innovative partnerships with the one-stop delivery system. These types of organizations may include immigrant-serving organizations and refugee programs. No change to the regulatory text was made in response to these comments.

Public Comment and Availability of Information

Comments: One commenter said the rule should reaffirm that, as one of its responsibilities, the State WDB must provide an environment for State Plan development that is conducive to participation and receptive to input. Further, this commenter stated that States should be required to describe how they will make this process accessible to individuals with disabilities.

Departments' Response: The State must provide an opportunity for comment and input into the State Plan. Furthermore, the Departments agree that

the public comment process must be accessible to all concerned organizations and individuals, including individuals with disabilities. As described in § 676.130(d)(1), the State must provide an opportunity for public comment on and input into the development of the Unified State Plan prior to its submission which includes an opportunity for comment by representatives of Local WDBs and CEOs, businesses, representatives of labor organizations, community-based organizations, adult education providers, institutions of higher education, other stakeholders with an interest in the services provided by the six core programs, and the general public, including individuals with disabilities. Further, as discussed earlier, the WIOA State Plan ICR, consistent with WIOA, requires the State to address the needs of individuals with barriers to employment including the needs of English language learners.

Comments: Several commenters stated that the consultation requirement should accommodate Single States that have only a volunteer State WDB and no Local WDB to consult.

Departments' Response: Although single-area States have no Local WDB to consult, they still have stakeholders, including CEOs. In accordance with § 676.130(d)(1), single-area States must provide an opportunity for comment by CEOs and other stakeholders as a part of the opportunity for public comment on State Plans, which includes local officials and local stakeholders.

Comments: A couple commenters recommended a minimum notice period of 90 days for the opportunity for public comment on the development of the Unified State Plan. A commenter urged the Departments to require that States publicly post the plan electronically and that the Departments themselves create an electronic database where States, policy makers, advocates, and the general public can access all of the plans.

Departments' Response: The Departments have reviewed these comments and decline to set a number of days for public comment of Unified State Plans, leaving the decision of schedules for public comment and posting plans electronically to the discretion of the States. Many States' laws require a minimum number of days for public comment, and many States use online posting as a way of making the plans available for public comment. While the Departments are not adding a regulation regarding an electronic database, the Departments provide a centralized online access point for completed State Plans.

Review and Approval of Unified State Plans

Comments: A commenter stated that WIOA indicates that approval of the Unified State Plan will occur within 90 days after submission, but the NPRM stated that it will occur within 90 days of receipt. The commenter recommended a revision to the language making the terminology for establishing the timeframe for review and approval of plans be consistent and that a definition be provided for determining that start date.

Departments' Response: The Departments decline to change the regulatory text and retain the use of the word "receipt" in the renumbered § 676.130(h) in order to allow the Departments to have a full 90 days to review the plan in the event of any delay in transmission of the plan from the State to the Departments. However, the Departments have replaced the words "by the appropriate Secretary" in paragraph (h) with "the Secretary of Labor," to clarify that the 90-day review period begins upon receipt of the plan by the Secretary of Labor. This wording is more closely aligned with the statute, at WIOA sec. 102(c)(1). As stated in paragraph (e) of this section, immediately upon receipt of a Unified State Plan from a State, the Secretary of Labor will ensure that the entire Unified State Plan is submitted to the Secretary of Education pursuant to a process developed by the Secretaries. At that point, the Secretaries will begin their review.

Comments: Several commenters said States whose Unified State Plans are rejected should be given detailed reasons why in writing so those States can focus on areas that need improvement.

Departments' Response: As a part of the approval process, the Departments intend to provide States with detailed reasons in writing if a plan is not approvable.

Comments: A few commenters asserted that there was lack of clarity in the NPRM regarding whether the Unified Plan submission process will change. These commenters recommended that DOL issue a TEGL on the submission process of the Unified Plan. Similarly, a commenter said more guidance is needed to understand how this process will work and differ from previous Unified Plan submissions.

Departments' Response: The Departments considered these comments and agree that additional guidance will assist States in understanding the submission and approval process for Unified State Plans. The Departments issued joint guidance, which describes the submission process in greater detail. This joint guidance included TEGL No. 14–15, "*Workforce Innovation and Opportunity Act (WIOA) Requirements for Unified and Combined State Plans,*" issued to DOL grantees, a Program Memorandum issued to AEFLA grantees, and a Policy Directive issued to VR program grantees, all of which contained identical content.

Rehabilitation Services Administration Approval of Plan

The renumbered § 676.130(g) states that before the Secretary of Labor and the Secretary of Education approve the Unified State Plan, the VR portion of the Unified State Plan must be approved by the Commissioner of the Rehabilitation Services Administration (RSA).

Comments: Several commenters requested clarification on whether the 90-day approval timeframe for the entire plan starts when the VR portion of the Unified State Plan is approved by the RSA Commissioner or when it is subsequently forwarded to the ED and DOL Secretaries for approval. A commenter suggested that the regulation require a timeline for the Commissioner of RSA to approve or disapprove the VR portion of the Unified State Plan.

Departments' Response: The 90-day review timeframe, which begins upon receipt of the State Plan by DOL, includes RSA Commissioner review and approval. The VR program is an ED program, and ED's and DOL's reviews of plan submissions are concurrent. However, the approval of the VR services portion of the plan by the RSA Commissioner must occur first, after which the plan, if it complies with all of the other requirements, will be officially approved by the Secretaries of Labor and Education. The Secretaries of Labor and Education have developed a process to ensure that both Departments receive the entire Unified State Plan submission concurrently to ensure timely review. The Departments have concluded that the existing regulatory text and preamble place adequate emphasis on the timely concurrent reviews of the plans by the Departments and no changes to the regulatory text were made in response to these comments.

Comments: Some commenters asked whether it is the responsibility of the State VR agencies or the Secretaries of Labor and Education to obtain approval from the RSA Commissioner. One of these commenters stated that placing the responsibility on VR agencies to ensure that this review is done

(especially before submission of the plan to the Secretaries by the States) would be an unfair burden to place on VR agencies and States. This commenter further asked when the deadline is for the submittal of the VR portion of the State Plan to the RSA Commissioner, if it is the responsibility of State VR agencies to submit and obtain approval of the VR portion of the plan by the RSA Commissioner prior to submission to the Secretary of Labor.

Departments' Response: It is not the State VR agencies' responsibility to submit and obtain approval of the VR portion of the State Plan prior to submitting the Unified Plan to the Departments. Rather, the entire Unified State Plan, including the VR services portion of that Plan, should be submitted to the Departments, and the review and approval by the RSA commissioner will take place following that submission as a part of the 90-day Federal review of the plan. The ED, including RSA, and DOL will work together to ensure the timely review and approval of all portions of the State Plans, including the VR services portion. The Departments have developed a process for submission of Unified State Plans to ensure that the Departments of Labor and Education, including the RSA Commissioner, receive the entire Unified State Plan submission concurrently. The Departments have concluded that the existing regulatory text and preamble place adequate emphasis on the timely concurrent reviews of the plans by the Departments.

Comments: Some commenters requested clarification on what happens to the full Unified State Plan if the RSA Commissioner does not approve the VR portion of the State Plan.

Departments' Response: Approval of the Unified State Plan requires that the requirements of all core programs are met, including the requirements for the VR portion of the State Plan. No change to the regulatory text was made in response to these comments.

Guidance on Submission and Approval Process

Comments: Several commenters provided suggestions for potential joint guidance from the Departments and how the guidance should influence the submission and approval process for Unified State Plans. Some commenters recommended that the Departments issue guidance that provides recommendations for how States can develop appropriate outreach and engagement strategies for stakeholders. One commenter said the Departments should issue guidance that addresses whether the VR agency should hold separate public meetings on their portion of the State Plan or schedule a unified public meeting for the entire State Plan. One commenter welcomed guidance from the Departments that advises State and local areas on whether to submit workforce plans that cover additional workforce related programs besides the six core programs.

Numerous commenters requested that any guidance from the Departments that provides further details on the submission of the State Plans be released as early as possible. A few commenters said States may be waiting for guidance from the agencies before beginning their planning processes in earnest, which may cause some States to bypass key opportunities for stakeholder engagement or forgo pursuing a Combined State Plan in an effort to meet the statutory deadlines for plan submission.

A commenter said it would be useful if the Departments provided a template for the Unified and Combined State Plans, ideally several months before the plan is due. The commenter also said ensuring that the templates are available at least several months ahead of the submission deadline would make the process of completing the plan much more efficient for States.

Departments' Response: The Departments issued joint planning guidelines that address these and other topics regarding State Plan development, submission, and approval and the requirements of the WIOA State Plan ICR. For example TEGL No. 14–15, "*Workforce Innovation and Opportunity Act (WIOA) Requirements for Unified and Combined State Plans,*" was issued on March 4, 2016. The ED issued identical guidance to its grantees via Program Memorandum OCTAE 16–1 (*http://www2.ed.gov/about/offices/list/ovae/wioa-16-1.pdf*) and RSA–PD–16–03 (*http://www2.ed.gov/policy/speced/guid/rsa/pd/2016/pd-16-03.pdf*) on March 9, 2016. VR agencies must still meet the requirements for public participation prior to the submission or amendment of a State Plan in accordance with 34 CFR 361.20. Although not commonly referred to as a template, the WIOA State Plan ICR is a detailed and comprehensive set of requirements for developing and submitting State Plans. In addition to the written joint guidance, the Departments also have presented multiple webinars on the development and submission of the State Plans. No change to the regulatory text was made in response to these comments.

Section 676.135 What are the requirements for modification of the Unified State Plan?

Given the multi-year life of the Unified State Plan, States must revisit regularly State Plan strategies and recalibrate these strategies to respond to the changing economic conditions and workforce needs of the State. At a minimum, a State is required to submit modifications to its Unified State Plan at the end of the first 2-year period of any 4-year plan and also under other specific circumstances, examples of which have been included in this section. States may choose to submit a State Plan modification at any time during the life of the plan. Section 676.135 further describes the requirements for submission and approval of Unified State Plan modifications, which are subject to the same public review and comment requirements and approval process as the full Unified State Plan submissions.

Except for minor technical edits, such as corrections to cross-references to other sections that have been renumbered and edits to conform with changes to part 677 on the performance accountability system, this section remains substantively the same as that proposed in the NPRM.

Timeframe for Unified Plan Modifications

Comments: One commenter supported the 2-year timeline for modifying initial Unified State Plans specified in § 676.135(a). Another commenter said Federal agencies should use the State Unified Plan timeframe for submitting mandatory modifications to review the regulatory framework and other guidance under which WIOA is initially implemented. The Departments, this commenter continued, should use this time to review how the challenges and opportunities involved in WIOA's implementation have evolved.

Departments' Response: The Departments considered this comment and agree. The Departments intend to update existing and future regulations, ICRs, and guidance as appropriate and as needed for the continued effective implementation of WIOA.

Unified State Plan Modification Requirements

Comments: Regarding proposed § 676.135(b), several commenters stated that modifications to State Plans only should be necessary in the event of significant or substantial changes in labor market and economic conditions or other factors significantly affecting implementation of the plan.

Departments' Response: The Departments recognize the balance between the benefit of periodic modifications of State Plans and the potential burden of submitting State Plan modifications beyond those required at the end of the first 2-year period. The Departments agree that periodic review of State Plans aids in the continual update and improvement of State policies and that State Plan modifications other than those required at the end of the first 2-year period should be required only in the event of substantial changes impacting the plan. Paragraph (b) of § 676.135, which is consistent with WIOA, requires States to submit modifications at the end of the first 2-year period, and these modifications must reflect changes in labor market and economic conditions. Other than this 2-year modification, States are required to submit modifications only when changes in Federal or State law or policy substantially affect the strategies, goals, and priorities upon which the Unified State Plan is based, or when there are changes in the statewide vision, strategies, policies, State negotiated levels of performance (*see* § 677.170(b) of this Joint WIOA Final Rule), the methodology used to determine local allocation of funds, reorganizations which change the working relationship with system employees, changes in organizational responsibilities, changes to the membership structure of the State WDB or alternative entity, and similar substantial changes to the State's workforce investment system.

Public Comment on Unified State Plan Modifications

Comments: Several commenters stated that the VR regulations in 34 CFR part 361 already address when public comments are needed in the State Plan modification process. Specifically, any change to the VR portion of the State Plan that directly affects the provision of services, such as Order of Selection or the imposition of a financial needs test, would require public review and input before such a change is made. These commenters recommended that the Joint WIOA Final Rule here reflect the same high threshold for public comments on State Plan modifications for the other five core programs.

Departments' Response: Paragraph (c) of § 676.135 contains the same public review and comment requirements for all modifications to Unified State Plans as those for the development of initial Unified State Plans specified in § 676.130(d). In addition, States must adhere to any program-specific requirements for the core programs included in the State Plan, such as sec.101(a) of the Rehabilitation Act of 1973, as amended, and its implementing regulations under 34 CFR 361.10 and 361.20. The Departments do not require that the entire plan be subject to the program-specific public comment requirements of the VR rules in 34 CFR part 361. However, the Departments plan to issue further guidance regarding State Plan modifications.

Comments: Some commenters said States should have the flexibility to define what constitutes a major change, as plan modifications necessitated by minor changes are burdensome and expend valuable resources. One commenter stated that there was no definition of "substantial change" provided in the NPRM and suggested that the threshold for "substantive change" in proposed 34 CFR 361.20(a)(2) be used in the Joint WIOA Final Rule. Another commenter said "substantial change" should be defined as a change that involves a substantive change to service delivery or participating partners or substantial fiscal impact.

Departments' Response: The Departments agree that State Plan modifications other than those required after the first 2-year period for State Plans should be limited in order to avoid undue burden. However, the Departments also want to ensure State Plans are up to date and that States periodically review State Plans. Sections 676.135(b)(2) and (3) describe the circumstances where a Unified State Plan modification is required (other than at the first 2-year period). States are required to modify State Plans when changes in Federal or State law or policy substantially affect the strategies, goals, and priorities upon which the Unified State Plan is based; or when there are changes in the statewide vision, strategies, policies, State negotiated levels of performance, the methodology used to determine local allocation of funds, reorganizations which change the working relationship with system employees, changes in organizational responsibilities, changes to the membership structure of the State WDB or alternative entity, and similar substantial changes to the State's workforce development system. The Departments have not defined the term "substantial change" in this regulation and have instead outlined in the regulation the specific situations where modifications of Unified State Plans are required.

Section 676.140 What are the general requirements for submitting a Combined State Plan?

States have the option to submit a Combined State Plan that goes beyond the core programs of a Unified State Plan to include at least one additional Federal workforce, educational, or social service program from the programs identified in sec. 103(a)(2) of WIOA. Generally, the requirements for a Combined State Plan include the requirements for the Unified State Plan as well as the program-specific requirements for any Combined State Plan partner programs that are included in the Combined State Plan. To expand the benefits of cross-program strategic planning, increase alignment among State programs, and improve service integration, the Departments strongly encourage States to submit Combined State Plans.

Section 676.140 specifies the general requirements for submitting a Combined State Plan. Paragraph (a) of § 676.140 states that a State may choose to develop and submit a 4-year Combined State Plan in lieu of the Unified State Plan. The Departments have edited § 676.140(a), as well as § 676.140(e)(1), to correctly cite references to Unified State Plan requirements that must be included in a Combined State Plan. Paragraph (e) of § 676.140 specifies the information that a Combined Plan must contain. Paragraph (e)(2) of § 676.140 has been edited to include the words "and activities," to clarify that the Combined Plan must provide the required information for any programs and activities included in the State Plan. Section 676.140(e)(3), consistent with WIOA, has been revised to expand the required description of joint planning and coordination to include core programs, required one-stop partner programs and other programs and activities included in the State Plan. Section 676.140(i) is a new paragraph that requires States that submit employment and training activities carried out by HUD under a Combined State Plan to submit any other required planning documents for HUD programs directly to HUD, according to the requirements of Federal law and regulations. Except for the changes described here, this section remains unchanged from that proposed in the NPRM.

Comments: One commenter said planning and implementation must be a thoughtful process, and system transformation cannot be rushed. This same commenter also said there should be increased interagency collaboration between the Departments. Specifically,

the commenter stated that there should be more incentives for programs within the two Departments to be included in a Combined State Plan.

Departments' Response: The Departments considered these comments but did not make changes to the regulatory text based on them. The Departments agree that planning and implementation must be thoughtful processes and that system transformation is an ongoing process. WIOA does not authorize incentives for States submitting a Combined State Plan. However, the Departments encourage States to be as inclusive as possible in their State Plans because joint planning across programs, including between those in the two Departments, fosters greater alignment and coordination of services.

Planning Cycles

Section 676.140(a) allows States to choose to develop and submit a 4-year Combined State Plan in lieu of the Unified State Plan. In the NPRM, the Departments note that the Combined Plan's 4-year plan development and implementation cycle, with a 2-year modification deadline, is inconsistent with the planning cycles governing many Combined State Plan partner programs. The Departments sought comment on how to reconcile differing planning cycles across Combined State Plan partner programs that do not align with the 4-year planning required by WIOA. In response, commenters provided various recommendations.

Comments: A few commenters said an approved Combined State Plan should suffice to meet the planning requirements of Combined State Plan partner programs and that Federal agencies should address the issues of differing planning cycles at the Federal level through executive actions. Another commenter said the Departments should require Combined State Plan partner programs to describe their planning cycles for the upcoming 4 years, and to include when during the next 4 years they may need to submit modifications to their part of the Combined State Plan. Similarly, two commenters suggested that the Combined State Plan report on the progress of the mid-cycle plan submitted by the Combined State Plan partner program(s) and include language on how the Combined State Plan partner program's submitted plan includes integration with WIOA programs.

Departments' Response: WIOA does not authorize the Departments to change the planning requirements, including submission deadlines that are under other authorizing legislation. However, WIOA gives the States the ability to apply the 2-year WIOA modification provisions to the Combined State Plan partner programs included in the plan in addition to any modification timeline or interval required by the statute governing the Combined State Plan partner program *as long as they do not overwrite those programs' required timelines.* The Departments have concluded that for any Combined State Plan partner program included in the plan with a different planning cycle from WIOA, States should submit program-specific modifications that align with the natural planning cycles for that specific program, unless the 2-year WIOA modification cycle can accommodate that program's planning and modification cycle. For example, if a State chooses to include CTE programs under the Carl D. Perkins Career and Technical Education Act of 2006 (Perkins Act), as a part of its Combined State Plan, the State would submit plan modifications annually to align with Perkins' annual State Plan cycle. As another example, the TANF authorizing statute requires a State to have submitted a plan within 27 months of the end of the first fiscal quarter in order to receive TANF funds for that fiscal year. Accordingly, adopting the more frequent 2-year WIOA cycle for modifications should accommodate TANF's cycle, allowing a State to make all changes to each portion of the Combined State Plan concurrently. The State must submit such modifications to the relevant Secretary for that program, as well as to the Departments of Labor and Education. Special instructions apply to UI State Quality Service Plan and to JVSG as described below. The Departments have developed a process for submission of Combined State Plans that ensures that all relevant Secretaries receive the plan concurrently and, as part of this system, the Departments anticipate that State Plan modifications will be housed in an accessible format with that State's original State Plan. The State may choose to describe the planning cycles of the Combined State Plan partner programs that are included in the State Plan, and the State also may describe intentions to submit future modifications to comply with those planning cycles; however, in order to minimize burden, the Departments have chosen not to require these descriptions through regulation or through the WIOA State Plan ICR.

States that include, in their Combined State Plan, UI programs (UI Federal-State programs administered under State unemployment compensation laws in accordance with applicable Federal law) carried out under title III, sec. 302, of the Social Security Act including secs. 303(a)(8) and (9) which govern the expenditure of funds, should submit their UI State Quality Service Plan following the cycle, according to UI State Quality Service Plan Planning and Reporting Guidelines.

The JVSG programs, carried out under chapter 41 of title 38 of the U.S. Code, require both a JVSG State Plan and a separate annual application for funding. States that include the JVSG programs in their Combined State Plan must submit the JVSG State Plan information in their Combined State Plan, and submit their funding applications annually as required by current Veterans' Employment and Training Service guidance.

Comments: One commenter said the bifurcated nature of the WIOA State Plans could be adapted to allow non-WIOA programs to participate in the strategic portion of the planning process, even if they cannot fully align their budgets and operational plans with a 2- or 4-year operational plan. A commenter suggested that the Departments issue guidance on how States can incorporate existing and aligned planned activity with WIOA funded programs, as well as other related programs. The commenter concluded that several agencies that administer the Combined State Plan partner programs permitted have plans that align with partners outside of the six core programs, and States and local areas need a method of aligning existing effective plans. A commenter recommended adding Social Security Administration's Ticket to Work as a workforce program in the Combined State Plan. A commenter urged DOL to work closely with the Department of Justice to outline additional recommendations and considerations within guidance for working specifically with the Second Chance Act partners and State Departments of Corrections.

Departments' Response: The Departments received similar comments, in response to § 676.130, regarding the inclusion of program partners beyond the core programs and required one-stop partners in the development of the Unified Plan. As already discussed in the context of Unified Plans in the preamble section that discusses § 676.130, the WIOA State Plan ICR, consistent with secs. 102 and 103 of WIOA, allows States to include programs beyond the core programs, required one-stop partners, and Combined State Plan partner programs in a Combined State Plan. This is particularly true in the context of a discussion of innovative partnerships with the one-stop delivery

system. These partners and programs could include human services, faith- and community-based organizations, educational institutions, and Federal programs not listed among the Combined Plan programs. These programs may be incorporated into the strategic portion of the planning process. As mentioned in the introduction, the Departments issued joint guidance to facilitate the inclusion of innovative partnerships and to foster alignment across partner programs outside of WIOA's core programs. States also are encouraged to utilize technical assistance, as the specific dynamics across program partners within States will vary. Because sec. 103 of WIOA provides an exclusive list of Combined State Plan partner programs, the Departments do not have the authority to expand the statutory list of Combined State Plan partner programs for inclusion in Combined State Plans.

Comments: One commenter said the Departments should keep the approval of the core programs separate from the approval of Combined State Plan partner programs, such that the implementation of what would otherwise be an approved Unified State Plan is not impacted or held up by decisions on Combined State Plan partner program cycles.

Departments' Response: The Departments agree with this comment and have added text to § 676.143(h) to clarify that approval or disapproval of Combined State Plan portions covering Combined State Plan partner programs does not impact approval of the common sections of the plan which cover the core programs. This change will be discussed in more detail in the preamble related to that section. The portions of the Combined State Plan related to the core programs are subject to the same approval requirements applicable to the Unified State Plan (WIOA sec. 102(c)). The Secretaries of Labor and Education's written determination of approval or disapproval of the portion of the plan for the six core programs may be separate from the written determination of approval, disapproval, or completeness of the program-specific requirements of Combined State Plan partner programs and activities described in § 676.140(d) and included the Combined State Plan. For example, if all the common planning elements and program-specific requirements for the core programs are met, approval and funding may proceed regardless of specific issues that may be identified in the program-specific sections for any Combined State Plan partner programs.

Temporary Assistance for Needy Families

Section 676.140(d)(2) specifies that TANF, authorized under part A of title IV of the Social Security Act, is a Combined State Plan partner program that may be included in the Combined State Plan.

Comments: One commenter said it appears that as a Combined State Plan partner program in a Combined State Plan TANF would be subject both to its own current statutory participation rate requirements and to the six performance measures specified in WIOA. The commenter stated that the performance accountability sections in both WIOA and the NPRM consistently refer to the six performance measures in relation to the core programs only and it is the core programs' funding alone that is tied to performance on these measures. The commenter requested that an exception be made such that when a State includes TANF as part of its Combined State Plan, TANF training and employment activities not be subject to WIOA required performance measures. The commenter requested that TANF training and employment activities only be subject to the performance measures under TANF, the same way that performance measures for CSBG employment and training activities are only those under CSBG.

Departments' Response: The Departments have reviewed this comment but did not make a change to the regulatory text. WIOA sec. 103 does not require the Combined State Plan partner programs to report on the WIOA sec. 116 primary indicators of performance. WIOA sec. 103(b)(1) only requires the Combined State Plan partner programs, which include TANF, to include the requirements, if any, applicable to that program or activity under the Federal law authorizing the program or activity. This means those portions of the plans related to training and employment. An explicit exemption for TANF is not required in these regulations. In referring to CSBG and to HUD employment and training activities, WIOA sec. 103(a)(2) does not refer to a specific program within those agencies but to employment and training activities in general. In contrast, WIOA sec. 103(a)(2) refers to TANF as a whole and does not limit this to the employment and training activities under TANF.

Comments: A commenter asked whether a separate TANF State Plan would be required even if the State opts to submit a Combined State Plan. If a separate TANF State Plan is required, the commenter asked what the advantage would be for a TANF entity in combining their State Plan with the WIOA Unified Plan. A commenter said the Departments should explicitly state that the Governor's option to determine that TANF will not be a required one-stop partner in a State is a separate and distinct decision from the option of including TANF in a Combined State Plan.

Departments' Response: If the State opts to submit a Combined State Plan under this rule that includes a TANF State Plan, the State would not be required to submit a separate TANF State Plan to HHS. Instead, HHS will receive the Combined State Plan under this rule. If a State submits a Combined State Plan that is approved, the State is not required to submit any other plan in order to receive the funds to operate the programs covered by that Plan. The Combined State Plan takes the place of the individual State Plans for the Combined State Plan partner programs that are covered by the plan and replaces the Unified State Plan. In this way, the Combined State Plan is meant to promote integrated planning across State programs in addition to the integration among the core programs that would occur under a Unified State Plan. While no additional plan is required, § 676.140(f) stipulates that each Combined State Plan partner program included in the Combined State Plan remains subject to the applicable program-specific requirements of the Federal law and regulations, and any other applicable legal or program requirements, governing the implementation and operation of that program. Finally, a Governor's option to determine that TANF will not be a required one-stop partner in a State is a separate and distinct decision from the option of including TANF in a Combined State Plan.

Perkins/Career and Technical Education Programs

Comments: Several commenters did not support the use of a Combined State Plan because, according to these commenters, the current Federal funding is essential for local CTE programs; the current Unified Plan model is working well by allowing local control of Perkins funds; the workforce board should not dictate course offerings or the curriculum provided; and the reporting/performance requirements for both WIOA and Perkins would conflict.

Another commenter stated that schools should have the ability to develop programs that align with each other and the resources to support

program development. The commenter said Office of Superintendent of Public Instruction should be given the control to direct funds to support CTE program development and oversee the implementation of the Programs of Study.

Departments' Response: The Departments considered these comments. States have the option of including postsecondary programs, including programs of study described in sec. 122 (c) under the Perkins Act, as a part of their Combined State Plan. However, even if Perkins postsecondary programs are included as a part of a State's Combined State Plan, there will be no impact on the amount of Perkins postsecondary funds that are distributed at the local level, unless the State formally amends its Perkins Act State Plan to change its secondary and postsecondary split of funds pursuant to sec. 112(a)(1) of the Perkins Act. In the case where there is a change in the split, the formula established in sec. 132 of the Perkins Act, or the alternative formula established in sec. 133 of the Perkins Act, still applies.

In addition, under WIOA, Local WDBs cannot dictate course offerings or curricula. Local recipients retain the ability to develop programs and align resources to meet students' needs. Finally, as discussed above, WIOA sec. 103 does not require the Combined Plan partner programs to report on the WIOA sec. 116 primary indicators of performance. WIOA sec. 103(b)(1) only requires the Combined State Plan partner programs to include the requirements, if any, applicable to that program or activity under the Federal law authorizing the program or activity.

Comments: One commenter stated that the regulation should account for WIOA's statutory requirement that Combined State Plan partner programs remain subject to their original authorizing statutes. This is particularly important, according to the commenter, in instances where the Perkins eligible agency does not fall under the direct line of authority or control of the Governor. It is imperative to assure the Perkins eligible agency that it has full authority to carry out the responsibilities under sec. 121 of the Perkins Act when part of a WIOA Combined State Plan. The Perkins eligible agency is ultimately subject to the Federal government fiscal and accountability reporting requirements under Perkins regardless of whether the Perkins State Plan is separate or part of a WIOA Combined Plan.

Departments' Response: Reference to the original authorizing statutes and their requirements are made throughout the Joint Rule with respect to Combined State Plan partner programs included in Combined State Plans. There is no intention of removing or minimizing the authority of the Perkins eligible agency to carry out its Perkins' responsibilities under WIOA.

Comments: A commenter made the following remarks about the submission of a Perkins State Plan as part of the Combined State Plan:

- The NPRMs do not address a reconciliation of the two separate and distinct submission requirements (2-year versus annual).
- If a State submits the annual Perkins Plan separate from the Combined State Plan, the rules are not clear if the Perkins Plan must be approved by the State WDB.
- The rules require two agencies to negotiate the level of performance on the core indicators of WIOA but do not indicate if the two agencies must negotiate the level of performance on the Perkins indicators.
- The Perkins State levels of performance are dependent on local negotiations and levels of performance but the NPRMs do not indicate how the integrity, validity, and reliability of the local Perkins negotiations can be retained.

Departments' Response: As discussed previously, WIOA gives the States the ability to apply the 2-year WIOA modification provisions to the Combined State Plan partner programs included in the plan in addition to any modification timeline or interval required by the statute governing the Combined State Plan partner program *as long as they do not overwrite those programs' required timelines.* The Departments have concluded that for any Combined State Plan partner program included in the plan with a different planning cycle from WIOA, States should submit program-specific modifications that align with the natural planning cycles for that specific program. Section 676.140(f) stipulates that each Combined Plan partner program included in the Combined State Plan remains subject to the applicable program-specific requirements of the Federal law and regulations, and any other applicable legal or program requirements, governing the implementation and operation of that program.

If a State chooses to include Perkins as part of its Combined State Plan, the State will submit Perkins State Plan modifications annually, consistent with the Perkins annual State Plan cycle. If the Perkins State Plan modifications affect only the administration of Perkins and have no impact on the Combined State Plan as a whole or the integration and administration of the core and Combined State Plan partner programs, then such modifications may be submitted only to the Secretary of Education consistent with § 676.145(c)(2). Modifications to a Perkins State plan that impact the Combined State Plan as a whole or the integration and administration of the core and Combined State Plan partner programs are subject to the same public review and comment requirements that apply to the development of the original Combined State Plan. Under the Perkins-specific procedures, hearings may or may not be required depending on the specific facts presented.

In response to the commenters who raised concerns regarding performance negotiations, the Departments are clarifying that sec. 103 of WIOA does not require Combined State Plan partner programs to report on the primary indicators of performance in sec. 116 of WIOA. Section 103(b)(1) of WIOA only requires the Combined State Plan partner programs, which include Perkins, to include the requirements, if any, applicable to that program or activity under the Federal law authorizing the program or activity. Perkins program inclusion in a State's Combined State Plan will not impact the annual Perkins performance indicator negotiation process. See sec. 676.143(i). The WIOA State Plan ICR Appendix 1 clarifies what performance information States must include in the State Plan. The Departments provided further instructions through the WIOA Joint Performance ICR, the WIOA State Plan ICR, and related joint guidance. The Departments issued operational guidance on both performance and State Plan submission guidelines following the finalized Performance and WIOA State Plan ICRs.

Inclusion of Combined State Plan Programs Not Under Governor's Authority

Section 676.140(e)(4) requires States to provide assurance that all of the entities responsible for planning or administering an eligible program described in a Combined State Plan have a "meaningful opportunity to review and comment" on all portions of the plan.

Comments: Several commenters recommended strengthening the language in the regulation to ensure that States give assurances that all of the entities responsible for planning or administering a program described in a Combined State Plan have approved the inclusion of the programs in a Combined Plan, especially where such

programs do not fall under the direct control of a Governor. According to these commenters, as the language currently stands, it could be interpreted as leaving this decision of whether to include a Combined State Plan partner program in the Combined State Plan up to the sole discretion of the Governor.

One commenter stated that, based on sec. 121 of the Perkins Act, the Perkins eligible agency should have the authority to determine whether CTE programs authorized under the Perkins Act are included in a State's Combined Plan. Section 121 of the Perkins Act states, in relevant part, that each "eligible agency . . . shall prepare and submit to the Secretary a State plan . . ." As mentioned above, the Perkins eligible agency maintains authority to carry out the responsibilities under sec. 121 of the Perkins Act under a Combined State Plan.

A few commenters said the Joint WIOA Final Rule should state the intent that the TANF program should have a meaningful influence in all stages of plan development and be a voting member of the State WDB.

Departments' Response: The Departments have concluded that no change to the regulatory text at § 676.140(e)(4) is necessary in response to these comments. The Departments have modified § 676.140(e)(3) to require States to describe joint planning methods in the Combined State Plan among the core programs, and with the required one-stop partner programs and other programs and activities included in the State Plan. The Departments acknowledge that not all programs identified in WIOA for potential inclusion in the Combined State Plan fall under the purview of the Governor. For some, the Federal funds go directly to local entities, such as several HUD programs administered by Public Housing Authorities. Others, such as the Reintegration of Ex-Offenders, are competitive grants that may be awarded to community-based organizations. Perkins funds flow directly to a State eligible agency by formula. In some States the Perkins State eligible agency is an independent agency not under the authority of the Governor. The Departments expect the Governor to work in collaboration with any Combined State Plan partner programs included in the plan and with the agencies that administer those programs consistent with these regulations and sec. 103(b)(3) of WIOA. The Departments expect that the State's joint planning methods across these programs ensure that the State has full cooperation from any such programs and agencies included in the Combined State Plan. Finally, in response to the comment that the TANF program should be a voting member of the State WDB, State WDB membership requirements are addressed in 20 CFR 679.110 (*see* DOL WIOA Final Rule).

Other Comments

Comments: Two commenters sought clarification on the primary indicators of performance relative to the inclusion of those partners beyond the core programs. If a State should choose the Combined State Plan option, one commenter asked whether all partners would be held to the standards of performance accountability identified in WIOA.

Departments' Response: WIOA sec. 103 does not require the Combined Plan partner programs to report on the WIOA sec. 116 primary indicators of performance. WIOA sec. 103(b)(1) only requires the Combined State Plan partner programs to include the requirements, if any, applicable to that program or activity under the Federal law authorizing the program or activity. The WIOA State Plan ICR Appendix 1 clarifies what performance information States must include in the State Plan. The Departments provided further instructions through the WIOA Joint Performance ICR, the WIOA State Plan ICR, and related joint guidance.

Comments: A commenter requested that the Departments ensure that partner programs will not have to submit additional or separate standalone plans.

Departments' Response: Partner programs, except for those carrying out employment and training activities carried out under CSBG, HUD programs, and the Food and Nutrition Act of 2008, will not be required to submit additional or separate standalone plans. Paragraph (h) and new paragraph (i) of § 676.140 explain the additional submission requirements for CSBG and HUD programs. Under paragraphs (h) and (i), the regulation explicitly limits the Combined Plan requirements for CSBG and HUD programs to "employment and training activities." However, these activities are only a subset of a broad range of antipoverty activities provided under these two programs. In the case of CSBG programs, under § 676.140(h), the State would submit the remainder of the State Plan for CSBG (*e.g.*, those parts that apply to the other antipoverty activities provided by CSBG that are not "employment and training activities") to the Federal agency that administers the program. New paragraph (i) clarifies that, like the requirements under paragraph (h) for CSBG programs, only the components of the individual plans for HUD programs that pertain to employment and training should be submitted with the Combined State Plan. The State must submit any other required planning documents for HUD to the Federal agency that administers the respective program. The language in this new paragraph creates a consistent approach for the Combined State Plan partner programs that WIOA sec. 103(a) identifies by activities rather than by a specific program name. This change also makes the regulatory text relating to HUD consistent with instructions in the WIOA State Plan ICR for submission requirements for Combined State Plans.

For employment and training programs and work programs authorized under the Food and Nutrition Act of 2008, including those under secs. 6(d)(4) and 6(o), the State would similarly submit to the Departments of Labor and Education only the Supplemental Nutrition Assistance Program Employment and Training programs (SNAP E&T). The Departments declined to regulate an exception for SNAP E&T because State Plans for SNAP E&T, as described under 7 CFR 273.7(c)(8), are generally not comingled with the State Plans for the remaining activities under SNAP.

Comments: A commenter expressed concern that proposed § 676.140 does not require States to identify populations for Priorities of Service, though this is required at the local level. The commenter recommended that the regulation be revised to require that States identify populations for priority of service, and provide explanation of why those populations are named.

Departments' Response: As discussed earlier under § 676.105, in the title I-specific requirements, the WIOA State Plan ICR requires the State to address its policy for ensuring adult program funds provide a priority in the delivery of career and training services to individuals who are low income, public assistance recipients, or basic skills deficient. Otherwise, as with the Unified Plan Requirements, the Departments have chosen not to regulate the specifics of State Plan requirements, as these are explained in comprehensive detail in the WIOA State Plan ICR.

Section 676.143 What is the development, submission, and approval process for the Combined State Plan?

Section 676.143 implements WIOA's statutory requirements for submitting a Combined State Plan. These are similar to the requirements for submitting a Unified State Plan at § 676.130, with added considerations for review and approval by the Federal agencies that oversee the Combined State Plan partner

programs. The heading for § 676.143 has been modified to include the word "development," to more accurately reflect the content of this section. In response to comments, discussed earlier, regarding the role of State WDB, core programs, required one-stop partners, and other stakeholders in the development of the State Plan, the Departments have made several revisions to § 676.143 to mirror the requirements for Unified Plans related to coordination, public comment and input. A new paragraph (b) has been added to include information similar to the newly added § 676.130(c), clarifying that the Combined State Plan, just as the Unified State Plan, must be developed with the assistance of the State WDB and must be developed in coordination with administrators with optimum policy-making authority for the core programs and required one-stop partners. New § 676.143(c)(1) and (2) have been added to include information similar to § 676.130(d)(1) and (2) requiring that the State must provide an opportunity for public comment and input on the development of the Combined State Plan prior to its submission, and that these requirements apply to the portions of the plan that cover the core programs. Finally, § 676.143(c)(3) has been added to further clarify that the portions of the Combined State Plan that cover the Combined State Plan partner programs are subject to any applicable public comment requirements for those programs. Proposed § 676.143(b) has been renumbered to § 676.143(d), and remaining sections have been renumbered accordingly. Renumbered § 676.143(e)(1) has been revised to clarify that, before the Secretaries of Labor and Education approve the Combined State Plan, the VR services portion of the Combined State Plan must be approved by the RSA Commissioner. In response to comments requesting clarity around Combined State Plan approval, new § 676.143(h) states that the Secretaries of Labor and Education's written determination of approval or disapproval of the portion of the plan for the six core programs may be separate from the written determination of approval, disapproval, or completeness for program-specific requirements of Combined State Plan partner programs at § 676.140(d). Except for the changes described here, this section remains unchanged from that proposed in the NPRM.

Submission of Combined State Plan

Section 676.143(d) requires a State to submit to the Secretaries of Labor and Education and, if applicable, to the Secretary of the agency with responsibility for approving the program's plan or for deeming it complete under the law governing the program, as part of its Combined State Plan, any plan, application, form, or any other similar document that is required as a condition for the approval of Federal funding under the applicable program or activity.

Comments: A couple of commenters stated that, to reduce the burden on States, the Secretaries of Labor and Education should be responsible for distributing the plans to other appropriate Federal entities. One of these commenters said the Secretaries of Labor and Education may want to consider taking all of the Combined State Plans and submitting them as a batch to the other appropriate Federal entities.

Departments' Response: The submission process set forth in WIOA sec. 103(a)(1) for Combined State Plans requires that they be submitted to the "appropriate Secretaries," which differs from the submission process for the Unified State Plan set forth in WIOA sec. 102(a). However, similar to what is required by § 676.130(e) for the submission of Unified State Plans, the Departments developed a process for the single electronic submission of Combined State Plans that allows for concurrent review of, and immediate access to, the plans by all the relevant Federal entities. As discussed in the introduction, the Departments issued guidance that explains the submission process for Combined State Plans, which is intended to streamline State submission of plans. No change to the regulatory text was made in response to these comments, but the Departments have issued further guidance regarding State Plan submission.

Timelines for Review and Approval

Section 676.143(e) stipulates the timelines for review and approval by the Secretary of Labor or Secretary of Education, or another appropriate Secretary.

Comments: A couple of commenters requested clarification on the different timelines for the review and approval of the Combined State Plan (90 days for core programs and 120 days for Combined State Plan partner programs).

Departments' Response: The Departments considered these comments and are implementing the regulation to reflect the statutory requirements. As required by WIOA sec. 103(c)(3), Combined State Plan partner programs that fall under an authority other than the Secretary of Labor or Secretary of Education have an approval timeline of 120 days, rather than 90 days. This additional time allows for review and approval of Combined State Plan partner programs that are administered outside the Departments of Education and Labor, such as programs administered by U.S. Department of Agriculture, HHS, and HUD. These are statutory requirements not subject to regulatory change.

Rehabilitation Services Administration Approval of Combined State Plans

Comments: Several commenters requested clarification on whether the VR portion of a Combined State Plan must be approved by the RSA Commissioner prior to the full Combined State Plan being approved by the Secretaries of Labor and Education, as the Unified State Plan process description explicitly states in § 676.130(g).

Departments' Response: The Departments considered these comments and agree that the rule needed to provide additional clarification regarding this requirement. Just as required for Unified State Plans, the RSA Commissioner must approve the VR services portion of the Combined State Plan prior to approval of the full Combined State Plan by the Secretaries of Labor and Education. The Departments have added regulatory text to clarify this requirement at § 676.143(e)(1).

Comments: One commenter said ensuring review by the RSA Commissioner should be the responsibility of the Secretaries, not VR agencies, and asked if this review would be part of the 90-day review timeframe.

Departments' Response: The Departments worked together to ensure the timely review of all State Plans, including the VR services portion of each plan. As discussed under § 676.130 for Unified Plans, it is not the State VR agencies' responsibilities to submit and obtain approval of the VR services portion of the State Plan prior to submitting the Combined State Plan to the Departments. Rather, the entire plan should be submitted to the Departments and review by the RSA commissioner will take place following that submission as a part of the 90-day Federal review of the plan. The Departments developed a process for submission of State Plans to ensure that all Departments, as appropriate, receive the entire submission concurrently. The Departments have concluded that the existing regulatory text and preamble place adequate emphasis on the timely concurrent reviews of the plans by the Departments.

Review, Approval, and Disapproval of Combined State Plans

Section 676.143(f) provides specifics on the approval process for Combined State Plans.

Comments: A few commenters stated that there appears to be little incentive for States to pursue a Combined State Plan. One commenter said States need assurances that the Departments will handle the Combined State Plan review in a manner different from how the Departments handled the Unified State Plan review under WIA, which was largely superficial in nature. The commenter recommended that the review process not only enforce statutory requirements but also consider the plan in a coordinated, cross-agency approach. The commenter said States need additional clarity on how the Federal agencies will manage the review process and make approval determinations, particularly when the statutes provide mixed or conflicting direction.

Departments' Response: Although States only are required, at a minimum, to submit a Unified State Plan that encompasses the six core programs under WIOA, the Departments encourage States to submit a Combined State Plan that includes additional Combined State Plan partner programs as described at § 676.140. Development of a Combined State Plan allows for coordination across multiple Federal programs, cross-program strategic planning, increased alignment among State programs, and improved service integration, which provides a wider range of coordinated and streamlined services to the customer. WIOA offers an expanded opportunity for States to create and implement a shared vision and strategy for the public workforce system within the State. The Departments have added language to § 676.143 in paragraphs (e)(1) and (h) to further clarify the review process for Combined State Plans. Review of Combined State Plans will take into consideration the strategic coordination, program alignment, integration, and cross-agency joint planning that is reflected in the Combined Plan. The Departments worked together to create a robust review process across all partner agencies and consider this review process to be integral to effective joint planning and implementation. The Departments have added regulatory text at § 676.143(h) to clarify that the Secretaries of Labor and Education's written determination of approval or disapproval of the portion of the plan for the six core programs may be separate from the written determination of approval, disapproval, or completeness of the program-specific requirements of Combined State Plan partner programs and activities included in the Combined State Plan.

Comments: One commenter requested guidance (1) that allows States to develop a Combined State Plan without the threat of a loss of funds if elements of the individual programs are not specifically identified, and (2) on how accountability metrics and reporting requirements for those programs included in the plan will not be a disincentive for inclusion. A commenter said it is not clear what benefit exists for the State or local Perkins recipients to attempt to address indicators that are not pertinent to their purpose of operation as outlined in State regulation as well as the "Federal Perkins regulation." The commenter said if the Combined State Plan partner programs are not required to report on the WIOA indicators of performance, the benefit of a Combined State Plan is not clear.

Departments' Response: Regarding concerns about funding, the joint submission, or joint review process of the Combined State Plans will not impact funding because the Departments developed a process to ensure Combined State Plans are reviewed in a coordinated and timely manner across agencies. The Combined State Plan review process is further explained at § 676.143. Combined State Plan partner programs are not subject to the six common indicators for performance under WIOA, although they may be subject to the same or similar indicators under their own authorizing statute or under State law. Regardless of whether required indicators are identical, States will find that public workforce development system customers can benefit from the results of developing a Combined State Plan that fosters program integration and alignment and optimal use of resources. The Departments' worked together to implement a robust review process across all partner agencies and consider this review process to be integral to effective joint planning and implementation. Performance issues have been addressed through the WIOA State Plan ICR, the WIOA Joint Performance ICR, and related joint guidance.

Comments: One commenter said it is unclear how the rejection of one part of a Combined State Plan would affect funding for the other programs. A commenter stated that the regulation implies that disapproval by any Secretary of their respective program will result in disapproval of the Combined State Plan as a whole, which provides incentive to submit a Unified State Plan (instead of a Combined State Plan). Similarly, another commenter said disapproval of a section of the plan pertaining to a program not considered to be a core program should not result in the disapproval of the entire plan. Another commenter requested additional guidance on the process to follow if the RSA Commissioner does not approve the VR portion of the State Plan.

Departments' Response: Per § 676.143(h), disapproval of a section of a Combined State Plan pertaining to a Combined State Plan partner program does not impact the approval for the portions of the Combined State Plan that apply to the core programs. In the process mentioned above, the common planning elements and program-specific elements of Combined State Plans are reviewed concurrently across the Departments of Labor and Education and other relevant agencies, with the approval determination by RSA occurring first, and with additional time allowed for specific Combined State Plan sections that fall within the purview of U.S. Department of Agriculture, HUD, or HHS. A determination regarding approval or disapproval for the common elements and the core programs may be issued separately from the approval determination for program-specific requirements for Combined State Plan partner programs, including those that allow 120 days for review. The Departments have added a new § 676.143(h) to clarify that the Secretaries of Labor and Education's written determination of approval or disapproval of the portion of the plan for the six core programs may be separate from the written determination of approval, disapproval, or completeness for program-specific requirements of Combined State Plan partner programs specified in § 676.140(d) in the Combined State Plan. However, the portions of the Combined State Plans that cover the core programs must be approved by all core program agencies.

Special Rule for Perkins Act Programs

Comments: Several commenters referred to § 676.143(f) in the NPRM, which has been renumbered to § 676.143(i) in the Joint WIOA Final Rule, the special regulation for programs authorized by the Perkins Act, which directs the State to come to an agreement with the Secretary of Education regarding State performance measures. One commenter requested further clarification as to what accountability measures would take

precedence under an agreement between the Secretary of Education and a State. The commenter stated that the Departments should specify that when a State chooses to include Perkins in a Combined State Plan, the State is required to include the totality of the Perkins State Plan in the Combined State Plan and cannot break off the parts relevant only to postsecondary CTE.

Departments' Response: WIOA sec. 103 does not subject the Combined State Plan partner programs to the WIOA sec. 116 primary indicators of performance. WIOA sec. 103(b)(1) only requires the Combined State Plan partner programs, which include Perkins programs, to include the requirements, if any, applicable to that program or activity under the Federal law authorizing the program or activity. The WIOA State Plan ICR Appendix 1 further clarifies what performance information States must include in the State Plan. As discussed in § 676.140 above, if a State chooses to include postsecondary CTE programs under the Perkins Act as a part of its Combined State Plan, the State would submit the entirety of the State Plan, including any annual revisions, pertaining to the CTE programs authorized under the Perkins Act. In addition, the State would submit plan modifications annually to align with Perkins' annual State Plan cycle, consistent with § 676.145.

Section 676.145 What are the requirements for modifications of the Combined State Plan?

Section 676.145 specifies requirements for modifying a Combined State Plan. Sections 676.145(a)(1) through (3) have been added to mirror the core program modification requirements specified for Unified State Plans in § 676.135(b). Section 676.145(a)(1) through (3) outline three instances in which a modification for the core programs is required. These instances include: (1) At the conclusion of the first 2-year period of a 4-year State Plan, (2) when changes in Federal or State law substantially affect the plan's implementation, and (3) when there are substantial changes to the State's workforce investment system. The Departments revised § 676.145(a)(3) to clarify that modifications to the Combined State Plans are required when States modify their negotiated levels of performance. This clarification was made for consistency with the changes to part 677 on the performance accountability system. The Departments have added a clarifying edit to § 676.145(c)(1) to explain that States have discretion to apply the plan modification requirements for core programs to Combined State Plan partner programs so long as it is consistent with any other modification requirements for that program. The Departments have incorporated proposed § 676.145(f) into § 676.145(c)(2) to clarify these provisions to address commenters' confusion in this area, and deleted paragraph (f). The Departments also have made technical edits at § 676.145(d). Except for the changes described here, this section remains substantively the same as that proposed in the NPRM.

Timeframe for Combined State Plan Modifications

Comments: A couple of commenters said the Departments should consider emphasizing the opportunity for States to submit Combined Plan modifications following submission of the initial plan to ensure that Combined Plan partner programs continue to be engaged in the planning and implementation process. Some commenters said the Federal agencies responsible for the Combined Plan partner programs should accept the Combined State Plan on the timeline outlined in WIOA and not prescribe more frequent updates or different timeframes for modifications and renewals. In addition, the commenters said the submission deadlines must align. These commenters also said the Departments should issue final guidance early enough that there is sufficient time to negotiate the levels of performance for State performance accountability measures before submission deadline.

Departments' Response: The Departments agree that modifications following submission of the initial plan are useful to ensure that Combined State Plan partner programs continue to be engaged in the planning and implementation process. Sections 676.135 and 676.145 enable States to continue to modify and improve the planning process of both core and Combined State Plan partner programs through Unified and Combined State Plans. The Departments are not prescribing more frequent updates beyond what is required under WIOA timeframes. However, the Departments have revised § 676.145(a) to clarify the circumstances under which a Combined State Plan must be modified for core programs, which are the same modification requirements that apply under Unified State Plans. The States have the discretion to apply these modification requirements to Combined State Plan partner programs or activities. The Departments have added regulatory text at § 676.145(c)(1) to clarify that a State may apply these modification requirements to Combined State Plan partner programs, as long as this is consistent with any other modification requirements for those specific programs. As discussed under § 676.140, the Departments do not have the authority to change the planning requirements, including submission deadlines, that are not under WIOA's jurisdiction. The Departments have provided additional clarity on the review and approval process through joint planning guidelines.

Combined State Plan Modification Requirements

Unlike § 676.135, which addresses modifications of Unified State Plans, proposed § 676.145, which addressed modifications for Combined State Plans, did not require modification of a plan when there are "substantial changes" to a State's workforce investment system.

Comments: The Departments received comments requesting that language similar to that in § 676.135(b)(2) and (3), requiring States to submit modifications when there are "substantial changes," be added to the section pertaining to Combined State Plan modifications.

Departments' Response: The Departments considered these comments and agree. The Departments have revised proposed § 676.145(a) by adding new paragraphs (a)(2) and (a)(3) that are essentially identical to § 676.135(b)(2) and (3) to clarify that the same modification requirements that apply to the Unified Plan also apply to the portions of the Combined Plan covering the core programs. States are required to submit a modification for the portions of the Combined Plan covering the core programs when (1) changes in Federal or State law or policy substantially affect the strategies, goals, and priorities upon which the Combined State Plan is based, and (2) when there are changes in the statewide vision, strategies, policies, State negotiated levels of performance, the methodology used to determine local allocation of funds, reorganizations which change the working relationship with system employees, changes in organizational responsibilities, changes to the membership structure of the State WDB or alternative entity, and similar substantial changes to the State's workforce investment system. Under WIOA sec. 103(b)(1), it is at the discretion of the State to decide whether to apply these modification requirements to Combined State Plan partner programs or activities, as long as this is consistent with any other modification requirements for those specific programs. The Departments

have added language at § 676.145(c)(1) to clarify this distinction.

Public Comment on Combined Plan Modifications

In the NPRM, the Departments sought comments on how to streamline the public review and comment process for Combined State Plan modifications. The Departments further sought comments in the NPRM on whether it is advisable to limit the requirement for public comment on plan modifications to significant or substantial modifications to the common planning elements and, if so, how the Departments might define "significant" or "substantial changes."

Comments: One commenter indicated that historically, in-person meetings are poorly attended, so comments in relation to § 676.145 should be allowed via other methods, such as surveys, webinars, video conferences, and phone conferences. Another commenter said public review should not exceed 30 days.

Some commenters said the Departments should limit the comment process under § 676.145 to significant or substantial modifications, such as substantive change to service delivery or participating partners, adding or removing a Combined State Plan partner program, or discretionary changes within a program that would directly affect the provision of services and its collaboration with other programs (excluding programmatic changes required due to audit findings or sanctions). One commenter said the Departments should allow public comment on the shared planning elements to streamline this process significantly, particularly for States in which core program agencies have different governance and review processes.

Departments' Response: In the Joint WIOA Final Rule, the Departments have not included requirements related to the timing, method, or other specifics related to public review and comment. The Departments leave much of the process related to public review and comment to the discretion of the State so long as regulatory requirements for public comment are met. If, based on the regulatory categories described in § 676.145, a Combined State Plan modification is required, such a plan modification is subject to the requirements for comment as described in § 676.145(d). As described in § 676.145(d), modifications to the Combined State Plan are subject to the same public review and comment requirements that apply to the development of the original Combined State Plan as described in § 676.143(c) except that, if the modification, amendment, or revision affects the administration of a particular Combined State Plan partner program and has no impact on the Combined State Plan as a whole or the integration and administration of the core and other Combined State Plan partner programs at the State level, a State may comply instead with the procedures and requirements applicable to the particular Combined State Plan partner program. The Departments have made a technical edit to § 676.145(c)(2)(ii) for clarity by adding the word "other" before Combined State Plan partner programs in the phrase "has no impact on the Combined State Plan as a whole or the integration and administration of the core and Combined State Plan partner programs at the State level." The Combined State Plan partner programs being referred to here are those other than the program that is the focus of the modification. States may determine, at their discretion, if these same plan modification requirements apply to Combined State Plan partner programs included in the Combined State Plan. States can further use their own discretion to provide a reasonable period of time for public comment. Many State laws also require a minimum number of days for public comment. Likewise, States may determine the best way to streamline the public comment process while ensuring that regulatory requirements for public comment are met.

In addition to the regulatory text changes discussed above, various non-substantive changes have been made for purposes of correcting typographical errors and improving clarity that have not been necessary to note elsewhere.

B. Performance Accountability Under Title I of the Workforce Innovation and Opportunity Act (20 CFR Part 677; 34 CFR Part 361, Subpart E; 34 CFR Part 463, Subpart I)

1. Introduction

Section 116 of WIOA establishes performance accountability indicators and performance reporting requirements to assess the effectiveness of States and local areas in achieving positive outcomes for individuals served by the workforce development system's six core programs described in sec. 116(b)(3)(A)(ii) of WIOA. These six core programs are the adult, dislocated worker, and youth programs under title I of WIOA; AEFLA program under WIOA title II; Employment Service program authorized under the Wagner-Peyser Act, as amended by WIOA title III (Wagner-Peyser Act Employment Service program); and VR program authorized under title I of the Rehabilitation Act of 1973, as amended by WIOA title IV.

The performance accountability system established in WIOA subtitle A ("System Alignment") in sec. 116 requires that the performance accountability requirements apply across all six core programs with few exceptions. As such, the six core programs have an historic opportunity to align performance-related definitions, streamline performance indicators, integrate reporting, and ensure comparable data collection and reporting across all the core programs, while also implementing program-specific requirements.

Through this Joint WIOA Final Rule, the Departments are laying the foundation for a performance accountability system that serves all core programs and their targeted populations in a manner that is customer-focused and that supports an integrated service design and delivery model. In addition, WIOA requires additional DOL-administered title I programs, specifically Job Corps, Native American programs, the Migrant and Seasonal Farmworker programs, and the YouthBuild program, to comply with the same primary indicators as the core programs (see 20 CFR part 686 and 20 CFR part 684 of the DOL WIOA Final Rule published elsewhere in this issue of the **Federal Register**). The inclusion of these additional DOL-administered programs into the common performance accountability system will better align both the core programs and other education and training programs across the public workforce system. Further, DOL is including other workforce programs under its purview in this performance-related streamlining effort, including the JVSG program as authorized by the Jobs for Veterans Act and other appropriate formula and competitive grant programs.

In the section-by-section discussions of each performance accountability regulatory provision below, the heading references the DOL CFR section number. The ED is establishing in this Joint WIOA Final Rule identical provisions at 34 CFR part 361, subpart E (under its State VR program regulations) and at 34 CFR part 463, subpart I (under a new CFR part for AEFLA regulations). Although for purposes of brevity, the section-by-section discussions for each provision appear only once—in conjunction with the DOL section number—the discussions nevertheless constitute the Departments' collective explanation and rationale for each regulatory provision. When the

regulations are published in the CFR, these joint performance regulations will appear in each of the CFR parts identified above.

2. Definitions (20 CFR 677.150; 34 CFR 361.150; 34 CFR 463.150)

Section 677.150 What definitions apply to Workforce Innovation and Opportunity Act performance accountability provisions?

Section 677.150 defines "participant," "reportable individual," "exit," and "State," which are key performance-related terms applicable to all six core programs for implementation of the performance accountability system under sec. 116 of WIOA and part 677 of these joint regulations. The definition of "participant" has been revised, as explained below, to distinguish clearly between participants and reportable individuals. The definitions of "reportable individual" and "exit" have been revised as explained below. The Departments also have added a definition of "State," which includes the outlying areas for purposes of part 677, other than in regard to sanctions or the statistical adjustment model. These definitions establish the foundation of an integrated performance accountability system and support clarity and alignment of performance metrics and comparability among the programs, States, and outlying areas.

Definition of "Participant" (§ 677.150(a))

Comments: Numerous commenters responded to the Departments' solicitations for input on the joint NPRM regarding the proposed definitions of "participant," "reportable individual," and "exit." While several commenters supported the definition of "participant" generally, many commenters raised multiple concerns regarding the distinction between self-service and staff-assisted service. A common concern was that the proposed definition of "participant" excludes self-service only individuals, which conflicts with WIOA's goal of leveraging technology to improve service delivery. Some commenters expressed concerns about the term "staff-assisted service," stating that the term should either be defined or removed because it is critical to understanding the precise distinction between a "participant" and a "reportable individual." Several commenters asserted that the Departments should remove "staff-assisted service" from the definition of "participant" because it is not defined in WIOA or regulations and can be misleading when providing upfront assessment services to youth. Other commenters encouraged the Departments to define "staff-assisted service" in order to provide clarification. One commenter indicated that the regulatory definition of "participant," for purposes of the title I youth program, should reflect policy positions articulated by the Departments in the Joint WIOA NPRM's preamble.

Commenters also suggested additional terms and concepts that could be defined, including providing definitions for "qualifying services," "facilitated self-service," and "career and training services." One commenter asserted that the Departments should issue timely guidance with additional definitions and clarifications or allow States to continue using definitions contained in WIA.

Departments' Response: The Departments agree that it is critical that these definitions be clear in order to ensure compliant data collection and reporting. Section 677.150(a) provides a definition of "participant" that applies to all six core programs because the primary performance indicators set forth in sec. 116(b)(2)(A)(i) of WIOA specifically base performance calculations on the participants in each of the core programs. The definition of "participant" establishes a common point at which an individual is meaningfully engaged in a core program and thus, it is appropriate for the person to be included in the primary indicators of performance. In the NPRM, the Departments attempted to distinguish "staff-assisted services," which required more meaningful interaction with a core program, from "self-services" and information-only services and activities, where individuals engaged in these activities that require minimal interaction with the programs, by which the Departments mean minimal resources are spent on their behalf in most cases. While individuals who receive only self-service or information-only services and activities do not satisfy the definition of "participant," these individuals are considered "reportable individuals" as defined in § 677.150(b) and discussed in more detail below.

The Departments considered each of the suggested revisions to the proposed definition of "participant" and have modified § 677.150 to clarify the application of this definition to requirements under WIOA. The Departments made the following changes to the definition of "participant" in § 677.150(a).

In § 677.150(a), the Departments replaced the phrase "staff-assisted services" with "services other than those described in § 677.150(a)(3)." In so doing, the Departments eliminate the confusion of what is meant by "staff-assisted services" and make clear that individuals who receive the services described in § 677.150(a)(3) will not be deemed to be "participants" for purposes of the performance accountability system requirements under part 677, but rather will constitute a "reportable individual" under § 677.150(b).

The Departments provided additional clarification in renumbered § 677.150(a)(3) to describe what does and does not constitute self-service and information-only services and activities. In so doing, the Departments have eliminated the confusion noted by commenters. Specifically, the revisions contained in § 677.150(a)(3) clarify that the difference between reportable individual and participant is the point when a reportable individual uses services other than those identified in renumbered § 677.150(a)(3). The Departments clarify what is meant by self-service and information-only services and activities, thereby avoiding use of the term "staff-assisted services" in this regulation, which raised concerns among commenters.

Because the Departments appreciate the concerns raised by commenters and recognize the changing landscape and advances in service delivery and design, the Departments added § 677.150(a)(3)(ii)(A) to describe self-service. The Departments recognize that not all electronic technologies are self-service and that individuals engaged in this type of service could potentially meet the definition of "participant." For example, there may be some services that provide robust levels of assistance in assessing a person's skills and matching that person to a job that are provided using electronic technologies that involve one-on-one interaction with a one-stop center staff member, such as an Internet chat room, or interactive technology, such as video conferencing, that would result in the individual becoming a participant. Additionally, the Departments acknowledge how fast technology evolves and new technology emerges that could be used by States and local areas to maximize available resources and better serve job seekers, workers, and employers. The Departments will continue to assess the field and emerging innovative technologies that may provide more cost-effective services and inform the workforce system of such developments, and their allowable uses, through program guidance.

The Departments are continuing to examine staff-assisted virtual service

delivery in order to determine its potential. Paragraph (a)(3)(ii)(B) of § 677.150 clarifies that virtual services providing support above an individual's independent job- or information-seeking efforts would not qualify as self-service, thus resulting in the individual becoming a ''participant.''.

The Departments have concluded that the following revisions to § 677.150(a)(3), described in more detail below, add the clarity requested by commenters:

Self-service occurs when individuals independently access the workforce development system information and activities with very little to no staff assistance. This can be done in either a physical location, such as a one-stop center resource room or partner agency, or remotely via the use of electronic technologies, with very little to no staff assistance.

Importantly, if a service is virtual service it is not automatically a self-service. As many commenters pointed out, there have been great strides made in the area of virtual service design and delivery allowing for staff to provide support and services through a variety of in-person and virtual platforms. For example, there may be some services that are provided using electronic technologies that involve one-on-one interaction with a one-stop center staff member or interactive technology, such as video conferencing, that would trigger participation. Furthermore, individuals who receive self-service or information-only services and activities can still be participants if they receive services other than self-service or information-only activities.

Information-only services or activities are activities or services that provide readily available information that does not require an assessment by a staff member of the individual's skills, education, or career objectives. In a public workforce development setting, information activities or services may include both self-service basic career services and staff-assisted basic career services. Both are designed to inform and educate an individual about the labor market and to enable an individual to identify his or her employment strengths, weaknesses, and range of appropriate services. However, basic career services that require significant staff involvement are not considered information-only services or activities.

Applying the above guidance to determining when a reportable individual satisfies the definition of a ''participant,'' an individual is a reportable individual, but not a participant, when a staff member provides the individual with readily available information that does not require an assessment of the individual's skills, education, or career objectives, because the individual is a recipient of information-only services or activities. Such information could include labor market trends, the unemployment rate, businesses that are hiring or reducing their workforce, information on high growth industries, occupations that are in demand, and referrals other than referrals to employment. Information-only services or activities also occur when a staff member provides the individual with information and instructions on how to access the variety of other services available in the one-stop center, including tools in the resource room.

Significant staff involvement that would result in an individual qualifying as a participant includes a staff member's assessment of an individual's skills, education, or career objectives in order to achieve any of the following:

- Assist individuals in deciding on appropriate next steps in the search for employment, training, and related services, including job referral;
- Assist individuals in assessing their personal barriers to employment; or
- Assist individuals in accessing other related services necessary to enhance their employability and individual employment related needs.

The Departments also added a new § 677.150(a)(2) to align the regulatory text definition of ''participant,'' for purposes of the title I youth program, with the intent expressed in the NPRM. New § 677.150(a)(2) clarifies the definition of a ''participant'' for purposes of the WIOA title I youth program.

The Departments did not add a definition of ''staff-assisted service,'' as suggested by commenters, because the revisions to § 677.150(a) described above resulted in the removal of the term from the regulatory text. In addition, the Departments declined to add the recommended definitions of ''qualifying services'' or ''facilitated self-services,'' because the modifications made to the definition of ''participant''—particularly at § 677.150(a)(3) regarding clarifications of self-service and information-only services or activities—will address the needs of commenters. In addition, the Departments consider additional recommended definitions to fall within the scope of either the WIOA Joint Performance ICR (which identify performance calculations, definitions, and reporting parameters) or operating and programmatic guidance.

The Departments did not add definitions of ''career services'' and ''training services'' because WIOA sec. 134(c)(2) and (3) define ''career services'' and ''training services,'' respectively, and these terms are further defined at § 678.430 (''What are career services?'') in the Joint WIOA Final Rule and 20 CFR 680.200 (''What are training services for adult and dislocated workers?''), in the DOL WIOA Final Rule, both of which are published in this issue of the **Federal Register**. The WIOA Joint Performance ICR contains further specifications regarding the collection and reporting of career and training services under this section. The Departments intend to issue further clarifying programmatic guidance regarding these and other performance-related definitions in order to assist States and outlying areas in implementing them.

Comments: A commenter acknowledged the problems associated with outcome evaluations of participants who do not go through an intake process but stated that the performance metrics should give credit for the investment of resources and staff required to maintain effective self-service systems. Another commenter asserted that self-service individuals should be included in the definition of ''participant'' to allow States to fully convey the impact and return on investment for this large customer group.

Departments' Response: The Departments recognize commenters' concerns about the resources required to maintain effective self-service systems. Although performance calculations on the primary indicators of performance are limited to individuals who meet the definition of participant and do not include individuals who only use the self-service system, other information that captures resources and costs associated with those individuals served by the public workforce system at the self-service or information-only levels is collected and reported in the State annual performance reports under § 677.160, and additional elements are required through associated ICRs published by the Departments.

The Departments expect that because information about reportable individuals, including those who access self-service and information-only services or activities, will be included in the State annual performance reports and associated WIOA Joint Performance ICR or Department-specific ICRs, such investments by States and local areas will be recognized. The Departments note that the changes in the regulatory text maintain the policy expressed by

the Departments in the NPRM. Individuals who only use the self-service system or who receive information-only services or activities are not defined as "participants." No change to the regulatory text was made in response to these comments.

Comments: A commenter opposed the exclusion of self-service individuals in the definition of "participant," asserting that it creates a bias against rural areas where one-stop centers are less accessible.

Conversely, a number of other commenters stated that individuals receiving self-service and information-only services should not be considered participants for performance purposes, stating that participation should not begin until an individual receives a staff-assisted service. A commenter agreed that self-service individuals should be excluded from the definition of "participant," but suggested that a performance analysis be conducted to assess the impact of exclusion of self-service results on performance.

Departments' Response: The Departments recognize commenters' concerns about the delivery of services in rural areas and recognize the importance of leveraging virtual services technology to improve the delivery of services in such areas. As discussed above, the Departments do not consider all services provided virtually to be "self-service" and reiterate that such activities, even when delivered virtually, can trigger participation and subsequent inclusion in performance calculations. The Departments developed the proposed definitions in order to maintain a level of rigor and accountability that is consistently applied across programs, while also providing a platform that is flexible enough to accommodate changes in service delivery design and advancements in technology. As stated above, no changes to the regulatory text regarding individuals who only use the self-service system were made in response to comments, as these individuals are not considered "participants" for purposes of the performance accountability system.

With regard to the recommendation that a performance analysis be conducted to assess the impact of exclusion of self-service and information-only services or activities, the Departments analyzed a number of factors before proposing the definition of participant, including the relative impact of self-service exclusion and inclusion, and concluded that exclusion of such services had little to no impact on performance outcomes. Therefore, as stated above, the Departments decline to change the regulation's definition of participants based on these comments.

With regard to the recommendation that participation begin only when an individual receives a staff-assisted service, the Departments have concluded that to define such a precise attachment point in regulation would prevent the performance accountability system from being able to adapt and account for all the services that the programs are providing. For example, an individual could receive staff-assisted services in the form of an assessment in the WIOA youth program, or in the form of fewer than 12 contact hours of AEFLA services, yet still appropriately be excluded from the definition of a participant.

Comments: A few commenters suggested that self-service participants should be included in Wagner-Peyser Act employment indicators or measured separately.

Departments' Response: The Departments considered collection and reporting burdens of doing so and did not revise the regulatory text to require additional collection and reporting on reportable individuals beyond the associated counts and information already required under the WIOA Joint Performance ICR. However, States should feel free to conduct additional analysis beyond what is required to be submitted to the Departments, such as an analysis on outcome of Wagner-Peyser Act self-service individuals. No change to the regulatory text was made in response to these comments.

Comments: Several commenters remarked that, under the NPRM, a youth receiving an assessment could be considered as receiving a staff-assisted service and therefore be considered a "participant." These commenters further stated that this proposed regulation would conflict with the discussion in the NPRM, which had proposed that a "participant" for performance calculation purposes of the WIOA youth program, would be a "reportable individual" who was determined eligible, received an assessment, and received a program element. These commenters asserted that an assessment alone should not be considered a staff-assisted service, and that the regulation should be revised to conform to the language in the preamble of the NPRM. Another commenter expressed similar concerns, stating that an assessment alone for any individual in any program should not trigger participation.

Departments' Response: The Departments agree with the numerous commenters who asserted the NPRM text regarding the definition of "participant," as applied to the WIOA title I youth programs, could potentially conflict with the stated intent in the preamble. The Departments, therefore, revised the regulatory text by adding a new § 677.150(a)(2), which reflects the intent stated in the NPRM preamble. In so doing, the Departments have made clear that a WIOA program youth is not considered a "participant," and subsequently included in performance calculations, until the youth has been determined eligible, received an objective assessment, developed an individual service strategy, and received 1 of the 14 youth program elements (as outlined in WIOA sec. 129(c)(2)). The Departments have concluded that this change is consistent with the general definition of a "participant" in § 677.150(a), as well as the application of the definition to all core programs. This differs from the NPRM only by additionally requiring the youth participant to have satisfied the applicable program requirement for provision of services, including eligibility determination, objective assessment, and the development of an individual service strategy, as required under WIOA sec. 129(c)(1)(B).

Comments: A few commenters suggested that co-enrollees be counted as participants in all of the core programs from which they are receiving services. A few commenters discussed the benefits of co-enrollment, particularly for youth populations, and supported the idea that eligible individuals may be co-enrolled in title I youth services and title II adult education programs. One commenter requested clarification regarding how to account for individuals enrolled in multiple core programs. Another commenter remarked that differences among programs and uncertainty about reporting co-enrollees create a disincentive for co-enrollment.

Departments' Response: The Departments recognize the value of co-enrollment across the core programs and greatly encourage efforts by the core programs in States to establish the data infrastructure and partnerships necessary to facilitate seamless enrollment in one or more core programs under WIOA. The Departments encourage co-enrollment between those programs that are required partners under WIOA, such as the Jobs for Veterans State Grant Programs, the Trade Adjustment Assistance (TAA) programs, and others as outlined in sec. 121(b)(1)(B) of WIOA.

However, the Departments have concluded there is no need for revision to the regulations to address these comments since WIOA sec. 116(d)(2)(I)

and § 677.160(a)(1) require core programs to report the number of participants who are enrolled in more than one of the programs described in WIOA sec. 116(b)(3)(A)(ii), disaggregated by each subpopulation of such individuals. Therefore, individuals who are co-enrolled in more than one core program and who meet the definition of participant under each respective program must be included in each respective program's performance calculations.

These calculations, as proposed under the WIOA Joint Performance ICR, would be done independent of the participant's participation in another core program unless a State opted to implement such policies for co-enrollment that allows for a common participation or exit date based on entering any of the core programs. Under WIA title I, some States maintained similar policies. For example, under WIA title I, in those cases where an individual was initially enrolled in the Wagner-Peyser Act program and subsequently received services under another DOL-administered program, the participation date for each program was the same and the receipt of a program's service was recorded as the date of receipt for first service as named. Such practices are allowed to continue under WIOA. Irrespective of the dates for participation and exit, each program would account for the participants in its program, and would be accountable for the outcomes of such participants in their reporting. For example, a title I youth participant who is co-enrolled in a title II AEFLA program and who also meets the definition of participant under title II, would be included in the State performance report for both title I youth and the AEFLA program under title II. No change to the regulatory text was made in response to these comments.

Comments: Several commenters addressed the applicability of the "participant" definition to the VR program. A few of these commenters noted that the proposed definition of "participant" would inflate the number of individuals exiting the VR program without achieving an employment outcome. Of these, one commenter stated it is not clear how the definitions of "participant," "exit," and the calculation of the performance indicators that rely on quarterly wage data are being operationalized in the proposed VR ICR for the RSA–911, particularly as it relates to calculating the denominator, and numerator. Specifically, this commenter said that it appeared that quarterly earnings and Federal Employer Identification Numbers (FEINs) only should be supplied for those participants who achieve competitive integrated employment. As a result, this commenter stated this would mean a significant number of VR participants would be included in the denominator but would be automatically excluded from the numerator for performance calculations if they did not achieve a competitive integrated employment outcome, even though they received significant VR services before exiting the VR program. This commenter was concerned that this approach would not provide a consistent and equitable comparison across all core programs since the definition of "participant" means an individual who received staff-assisted services. For example, this commenter asserted that WIOA title I and title III (Wagner-Peyser Act Employment Service) staff-assisted services may be quite limited compared to the intensive and sustained services provided to VR customers under an individualized plan for employment (IPE), the development of which requires substantial VR counselor investment and is in itself a service that may improve employment prospects. Therefore, this commenter recommended that the denominator be likewise limited to those participants who achieved competitive integrated employment or, in the alternative, require quarterly earnings and FEINs for all participants, not just those who achieved competitive integrated employment. This commenter recommended that RSA provide the specific formula for calculating performance indicators and provide a comment period. A few commenters stated that the proposed definition of "participant" would exclude a potentially large number of students with disabilities who receive pre-employment transition services under the VR program. Another commenter urged the Departments to provide guidance regarding the application of the "participant" definition to the VR program.

Departments' Response: The Departments agree that the definition of "participant," for purposes of the VR program, will include both those individuals who exit the VR program after achieving an employment outcome as well as those individuals who exit without achieving an employment outcome. While the Departments understand that this calculation is a departure from what was done by VR agencies under prior 34 CFR 361.84(c), § 677.150(a)(1) of the Joint WIOA Final Rule is consistent with the use of the term "participant" throughout sec. 116 of WIOA and its application to the primary performance indicators set forth in sec. 116(b)(2)(A)(i) of WIOA. Moreover, the definition of "participant," for purposes of the VR program, at § 677.150(a)(1) is consistent with the definition as applied to all core programs in § 677.150(a). Specifically, the definition of "participant" is broad enough to account for programmatic differences but narrow enough to capture the same type of individual with respect to each of the core programs. As the commenter noted, Wagner-Peyser Act services are often characterized as self-services and information-only activities. In accordance with § 677.150(a)(3), individuals receiving those kinds of services would not meet the definition of "participant" and, thus, there would be no comparison in the performance calculations between these individuals and participants of the VR program. However, individuals receiving Wagner-Peyser Act services that go beyond self-services or information-only activities would meet the definition of "participant" in § 677.150(a). As such, there would be comparability between this participant and a participant of the VR program. The Departments recognize that VR services are provided in a much more intensive manner and for a more extended period of time than those provided by the Wagner-Peyser Act program. Such differences will be reflected in the performance levels established for each of the core programs.

With respect to performance calculations, the three employment-related indicators measure the percentage of participants who are employed in the second and fourth quarters after exit, as well as their median earnings in the second quarter after exit. The Departments provide further guidance regarding the performance calculations in the WIOA Joint Performance ICR.

The Departments also agree that students with disabilities who receive pre-employment transition services without having applied, or been determined eligible, for the VR program would not satisfy the definition of "participant" as set forth in § 677.150(a)(1), but rather would be tracked and reported as "reportable individuals," as defined in § 677.150(b). However, if a student with a disability applies and is determined eligible for the VR program and develops an IPE that includes the provision of pre-employment transition services or any other VR service, such student would satisfy the definition of "participant" as

set forth in § 677.150(a)(1) and would be included in the performance calculations as such. The Departments have provided additional guidance regarding the reporting of "participants" in the WIOA Joint Performance ICR. No change was made to the regulation at § 677.150(a)(1) in response to the comments.

Comments: Several commenters urged the Departments to adopt consistent definitions regarding point of enrollment across titles triggered by engagement in program activity, not just initial assessment. They expressed particular concern for the youth program.

Departments' Response: The definition of "participant" takes into consideration the unique purposes and characteristics of each program and the ways in which an individual may access, and ultimately engage in, services in each of the core programs, thereby focusing on the established common point in service design and delivery that an individual reaches regardless of the program. The Departments concluded that it was sufficient to revise the definition of "participant" for purposes of the WIOA youth program.

Comments: Several commenters sought clarification concerning the distinction between the data collected for reportable individuals and participants, particularly with regard to whether they are included in performance calculations for the primary indicators of performance.

Departments' Response: While the Departments will collect and track information on reportable individuals as well as participants, the Departments currently do not intend to require reporting of outcomes of reportable individuals. The Departments will notify States via the ICR process of any collection and reporting requirements for reportable individuals. No change to the regulatory text was made in response to these comments.

Comments: A commenter asserted that older individuals with barriers to employment may require priority in receiving staff-assisted services, since these individuals are not as likely to use self-service tools.

Departments' Response: The Departments recognize the unique challenges faced by the different populations with barriers to employment that affect both their access to and utilization of services within the public workforce system. WIOA provides for meaningful access to individuals seeking services, including individuals with multiple barriers to employment. The regulation no longer refers to staff-assisted services.

Comments: Several commenters stated that while the definition of "participant" is well suited for WIOA performance accountability purposes, it is not suitable for many education programs and postsecondary students. These commenters stated that postsecondary students may participate in the workforce system in ways that are not captured in the definition. For instance, students may take courses and determine a degree pathway but never officially enroll in a program of study.

Departments' Response: The definition of "participant" establishes a common point at which an individual is meaningfully engaged in a core program. This takes into consideration the unique purposes and characteristics of each program and the ways in which an individual may access, and ultimately engage in, services in each of these programs. For example, an individual who accesses postsecondary education through the VR program, as set forth in title IV of WIOA, would meet the definition of participant at the point at which the eligible individual has an approved and signed IPE. Likewise, an individual accessing a career pathway program funded through title II would meet the definition of participant once the individual has completed at least 12 contact hours. Therefore, because programmatic differences are already accounted for, including differences regarding educational programs, the Departments have made no change to this Joint WIOA Final Rule regarding the definition of "participant" as applied to an educational program. The Departments note that further clarity is provided through the WIOA Joint Performance ICR. No change to the regulatory text was made in response to these comments.

Comments: A few commenters stated that the definition of "participant" is problematic when applied to all individuals in a program of study for the purpose of the eligible training provider performance report.

Departments' Response: The Departments recognize the need for clarity on terms as they apply to the eligible training provider (ETP) performance reports applicable to the adult and dislocated worker programs. There is further discussion on this and associated issues in the preamble of § 677.230 below. The Departments do not consider all individuals in a program of study through an ETP as falling within the definition of participants as defined under § 677.150. No change to the regulatory text was made in response to these comments.

Comments: Although the Departments received no comments specifically on proposed § 677.150(a)(4), which requires that programs must include participants in their performance calculations, the Departments received comments with respect to other areas of performance accountability that highlighted the intersection between WIOA core programs and their partner programs. Some commenters addressed the general applicability of these provisions to the national programs authorized under title I, particularly with regard to those programs identified in WIOA sec. 121(b)(1)(B).

Departments' Response: The Departments reiterate that sec. 116 applies to other programs, including the national programs and the partner programs identified in WIOA sec. 121(b)(1)(B), to the extent provided for by provisions of WIOA pertaining to those programs and their authorizing statutes and implementing regulations. In some instances, these statutes or regulations invoke the performance accountability provisions of WIOA sec. 116. In other instances, a program has its own statutory or regulatory performance provisions that apply to the program. In the case of ETP programs authorized at 20 CFR part 680 and reported through § 677.230 of these joint regulations, the definitions under § 677.150 only apply to those individuals who are WIOA program participants who received training from an ETP. Where § 677.230 outlines required reporting for all individuals in a program of study, these definitions under § 677.150 do not apply. Further direction regarding the terms, calculations, and reporting is provided and discussed in the WIOA Joint Performance ICR. No change to the regulatory text was made in response to these comments.

Because of WIOA sec. 134's unique eligibility requirements, the Departments do not consider individuals who receive incumbent worker training to be participants required for inclusion in the WIOA performance indicator calculations. WIOA sec. 134(d)(4) requires the Local WDB to determine if an employer is eligible to have its employees receive incumbent worker training; there is no separate determination of the eligibility of any particular employee to receive incumbent worker training.

Definition of "Reportable Individual" (§ 677.150(b))

Section 677.150(b) defines "reportable individual" as an individual who has

taken action that demonstrates an intent to use program services and who meets specific program criteria for reporting, which may include the provision of identifying information, the use of a self-service system, or receipt of information-only services or activities. This approach requires counting as a "reportable individual" those who use the self-service system, or who receive only information-only services or activities, as well as those who receive other services that may occur prior to an individual meeting the definition of "participant" in § 677.150(a).

A key difference between "reportable individuals" and "participants" is that reportable individuals are not included in performance calculations for primary indicators of performance. Furthermore, there currently is no requirement for the collection and reporting of outcome data for reportable individuals, but the Departments may propose an amended ICR through an additional PRA notice and comment period, to require such collections and reporting in the future if determined to be appropriate. The Departments intend to issue more detailed guidance on the tracking and reporting of reportable individuals under WIOA through the WIOA Joint Performance ICR, Department-specific ICRs, guidance, and technical assistance.

The Departments revised § 677.150(b) by deleting the word "core" to clarify that the definition of a "reportable individual" is not limited to core programs, as had appeared in proposed § 677.150(b). With this change, a "reportable individual" is one who has taken action that demonstrates intent to use program services and who meets specific reporting criteria of the program. The Departments also revised § 677.150(b) to emphasize that the listed examples of actions taken by a reporting individual (*i.e.*, providing identifying information, using the self-service system, or receiving information-only services or activities) are neither exhaustive nor required. An individual may be properly treated as a reportable individual without having taken all of the actions identified at § 677.150(b). Similarly, an individual may take action demonstrating an intent to use program services by meeting specific program reporting criteria other than those identified at § 677.150(b).

Comments: Of the commenters who remarked on the proposed definition of "reportable individual," most expressed support. Multiple commenters applauded the Departments for establishing a definition that is broad enough to cover students with disabilities who access pre-employment transition services under the VR program but do not subsequently apply for VR services.

Departments' Response: The Departments will continue to consider further clarification that can be provided in program guidance, the WIOA Joint Performance ICR, and Department-specific ICRs that support alignment and consistency of performance definitions across all programs and States. The final regulations for the VR program, which are published elsewhere in this issue of the **Federal Register,** contain specific provisions regarding the application of this definition as applied to students with disabilities receiving pre-employment transition services under the VR program.

Comments: A few commenters asserted that receipt of staff-assisted services should align with the type of activity, not the level of engagement of one-stop center staff.

Departments' Response: As discussed above with regard to the definition of a "participant," the Departments modified § 677.150(a), particularly by adding § 677.150(a)(3), to explain that the point at which a person is a participant is when the person moves beyond self-service or information-only services or activities. In the NPRM, the Departments considered receipt of "staff-assisted services" to be the most common point across the core programs to define the transition to being a participant. However, in response to comments, the Departments modified the definition of participant to eliminate the use of the term "staff-assisted services" thereby aligning the definitions of "participant" and "reportable individual" and clarifying the progression from "reportable individual" to "participant."

Comments: One commenter proposed that the appropriate point of receipt of staff-assisted services should be when initial assessment and eligibility documentation is complete.

Departments' Response: As noted above, the definition of "participant" no longer incorporates a reference to "staff-assisted" services, but the definition continues to require that the individual has received certain services after having satisfied all programmatic requirements for the provision of services, such as eligibility determination. The Departments note that the definition does not explicitly require completion of an initial assessment, but it does require satisfaction of all applicable programmatic requirements—which may include an initial assessment or an eligibility determination. No change to the regulatory text was made in response to these comments.

Comments: One commenter suggested that "reportable individuals," should be those individuals who have a signed and approved IEP.

Departments' Response: The Departments decline to adopt the recommendation because to do so would be inconsistent with the distinctions between the definitions of "participant" and "reportable individual." The Departments plan to provide more detailed guidance on the tracking and reporting of reportable individuals under WIOA through the WIOA Joint Performance ICR, Department-specific ICRs, guidance, and technical assistance.

Comments: Several commenters sought clarification concerning the proposed definition of "reportable individual." Of these, a few commenters requested that the Departments clarify whether a pretest is required for individuals in the AEFLA program in order to be considered reportable.

Departments' Response: A reportable individual is an individual who has taken action that demonstrates an intent to use program services and meets the specific criteria of the program. Further explanation of this definition is available through the WIOA Joint Performance ICR. A pretest has no bearing on the status of an individual being a participant or a reportable individual.

Comments: A few commenters stated that a clearer description of the point at which an individual becomes "reportable" would enhance comparability among States. Multiple commenters suggested that individuals become "reportable" when an individual provides identifying information. A commenter remarked that it is unclear how agencies should track reportable individuals. This commenter stated that an individual should not be considered reportable without providing identifying information to enable tracking.

Departments' Response: The Departments note that the regulations simply require the reporting of reportable individuals. Someone can be considered a reportable individual without providing identifying information. The Departments intend to issue further program guidance to aid States in implementing the requirement to report on "reportable individuals." No change to the regulatory text was made in response to these comments.

Comments: A commenter thought that the term "reportable individual" may not be easily understood by the general

public and suggested "customer" as an alternative.

Departments' Response: The Departments have concluded that "customer" would not be an appropriate term for these purposes as all individuals who are served through a program would be considered customers. The terms in § 677.150 are consistent with the purposes outlined in this section and with the requirements of sec. 116 of WIOA. No change to the regulatory text was made in response to these comments.

Comments: A commenter inquired as to whether an individual could first be tracked as a participant and then tracked as a reportable individual if the person exited the program after receiving services and was subsequently determined to be ineligible.

Departments' Response: To do as the commenter suggests would be inconsistent with the definitions of "participant" and "reportable individual" at § 677.150(a) and (b). To be clear, an individual is a "participant" if he or she is a "reportable individual" who has satisfied programmatic requirements for the receipt of services, such as eligibility determination, and has received services that go beyond self-service or information-only services or activities. Therefore, once an individual crosses the threshold from "reportable individual" to "participant" by receiving such services, this does not change by virtue of the fact that the individual eventually exits the program because he or she is later determined ineligible. Neither the definition of "participant" nor "reportable individual" contain requirements related to the individual's exit from the program. Those requirements are set forth in the definition of "exit" at § 677.150(c), discussed in more detail below. The Departments will provide further guidance regarding the reporting of participants and reportable individuals in the WIOA Joint Performance ICR and Department-specific ICRs, as well as guidance and technical assistance. No change to the regulatory text was made in response to these comments.

Definition of "Exit" (§ 677.150(c))

Section 677.150(c) defines the term "exit" for purposes of the performance accountability system for the core programs under WIOA, as well as applicable non-core programs as described through regulation or guidance. Several of the primary indicators of performance require measuring participants' progress after they have exited from the program.

Generally for core programs, except for the VR program, "exit" is the last date of service. The last date of service means the individual has not received any services for 90 days and no future services are planned. For the purpose of this definition, "services" do not include self-service, information-only services or activities, or follow-up services. Therefore, as set forth in § 677.150(c)(1)(i), in order to determine whether an individual has exited, States will retroactively determine if 90 days have passed with no further services provided and no further services scheduled.

The definition of "exit" at § 677.150(c)(2) for the VR program is similar to that in § 677.150(c)(1) in that it marks the point at which the individual is no longer engaged with the program and there is no ongoing relationship between the individual and the program. However, because of specific programmatic requirements between the VR program and other core programs, it was essential that the definition of "exit" clarify when the individual's relationship with the VR program ends. Under the VR program, an individual is determined to have exited the program on the date the individual's case is closed in accordance with VR program requirements.

Even with this programmatic distinction, the calculations are essentially the same as with the other core programs because in all instances the "exit" count captures all persons who are no longer active participants in any of the core programs. In addition, for purposes of the VR program, the Departments exclude from the definition of "exit" those individuals who have achieved supported employment outcomes at subminimum wages. This provision is necessary to implement WIOA's heightened emphasis on competitive integrated employment. There are no substantive changes to § 677.150(c)(2).

Comments: The Departments received numerous comments, in response to both the NPRM and the proposed WIOA Joint Performance ICR, regarding whether an individual would be counted more than once in a program year if he or she met the definitions of "participant" and "exit" more than once in that same program year. The majority of these commenters opposed the Departments' position, set forth in the proposed WIOA Joint Performance ICR, which was that an individual only would count once in a program year.

Departments' Response: The Departments note that under WIA, DOL counted as an "exit" from its programs for performance accountability purposes each time in a program year a participant exited from a program, regardless of whether the participant exited more than once in that program year. This was referred to as calculating on a "period of participation" basis. Thus, the same individual could be counted as more than one "participant" and as having more than one "exit" in that same program year for the performance accountability calculations. Although States reported individuals similarly for the VR program, States reported an individual only once in a program year under the AEFLA program, regardless of whether the individual would meet the definitions of "participant" and "exit," more than once in a program year.

The NPRM was silent as to whether "participants" and "exits" should count more than once in the same program year. However, the Departments proposed a different approach in the proposed WIOA Joint Performance ICR published on July 22, 2015 at 80 FR 43474. In the proposed WIOA Joint Performance ICR, the Departments proposed counting each individual once per program year regardless of how many times an individual met the definitions of "participant" and "exit" in § 677.150 within that same program year.

After consideration, the Departments agree with the concerns raised by commenters. In response to those comments, the Departments will include in the performance calculations each time a participant exits from a program during a program year, even though this could result in such a person being counted as more than one participant. This calculation method for performance accountability purposes maintains the reporting approach historically used by some programs, as discussed above, and by linking a set of services or interventions to outcomes for each exit during a program year, strengthens accountability.

However, the Departments will require States to provide unique identifiers for each individual "participant" so that the Departments will be able to calculate the number of unique participants in each core program during a program year. The Departments will provide technical assistance and guidance to States, including the WIOA Joint Performance ICR, as they take the necessary steps to modify their systems and processes to comply with these instructions.

Comments: Many commenters provided input regarding the proposed definition of "exit" and responded to the Departments' request for comments

on the costs and benefits of taking either a program exit approach or a common exit approach. A number of commenters expressed support for utilizing a common exit in order to support career pathways and cross-program participation that would benefit participants. One commenter supported the use of a common exit, specifically phased in over a 4-year period. Conversely, other commenters opposed the use of a common exit and stated that the Departments should maintain program exits. Commenters cited numerous reasons for maintaining program exits including that: (1) Program exits are preferable to comply with sec. 504 of WIOA, which requires States to simplify and reduce reporting burdens; (2) States should be permitted to choose whether to use a program exit or a common exit, and indicate their selection in the Unified or Combined State Plan; (3) States should have the option to use integrated periods of participation with common program exit dates for some or all core programs; and (4) a common exit would be problematic if the services provided by multiple programs are sequential.

Departments' Response: Common Measures policies that included the use of common exit as a reporting structure were developed by ETA in 2005 for use in title I programs under WIA as an acknowledgment that integrated reporting was key to integrated case management. The efforts to promote the use of a common exit across WIOA title I and Wagner-Peyser Act Employment Service programs have significantly increased the use of common exit policies across States.

The Departments have concluded that continuing common exit policies would emphasize the importance of an individual receiving and completing all program services necessary to ensure a successful attachment to the labor market. The Departments also recognize that the use of a common exit is dependent on the ability of States to exchange data effectively and efficiently across core programs in order to determine outcomes for each of the programs. The Departments considered each of the commenters' concerns and suggestions with regard to the proposed definition of exit and have revised the definition by adding § 677.150(c)(3) to allow WIOA title I and Wagner-Peyser Act Employment Service (title III) programs to utilize a common exit policy. The decision to allow a common exit date for WIOA title I and Wagner-Peyser Act Employment Service programs—and not for the AEFLA and VR programs under WIOA titles II and IV, respectively—was based on a number of factors. In particular, under WIA and continuing under WIOA, DOL encouraged co-enrollment between the title I and Wagner-Peyser Act Employment Service programs resulting in many states developing a common exit policy or co-enrollment strategies which DOL does not seek to disrupt. The ED will explore the feasibility of the use of a common exit policy for its title II and VR programs.

The concept of integrated case management and common exit has extended beyond WIOA title I core programs and Wagner-Peyser Act Employment Service programs to their DOL partner programs, such as the TAA program and the JVSG program. Paragraph (c)(3)(i) of § 677.150 provides that where a State has implemented a common exit policy, the policy may extend to those required partner programs administered by DOL. As such, DOL encourages States to implement common exit policies consistent with these joint regulations.

Since 2009, co-enrolling TAA participants with WIOA title I and Wagner-Peyser Act Employment Service programs has continued to provide participants supportive services, such as childcare and local transportation costs, that are not available under TAA. Further, due to the variable geography of TAA certified worker groups, WIOA title I program services and Wagner-Peyser Act Employment Service are often essential in providing prompt assessments and follow up services that complement the more substantial training and other services funded under TAA.

Similarly, the Veterans Employment and Training Service worked to align its programs with WIOA as a key partner program. Currently, JVSG and Wagner-Peyser Act Employment Service have a common exit in multiple States. This ensures that program participants who may be co-enrolled exit all programs at the same point, and are measured and tracked for employment outcomes based on the same point. This approach is aligned with the idea that DOL's one-stop center programs offer seamless services to participants and that, despite referral to or from partner programs, employment outcomes are not measured until services are complete. The modifications to the definition of exit in this Joint WIOA Final Rule allow for these practices to continue and also allow States the flexibility to implement and move forward with existing common exit policies for programs administered by DOL.

Comments: A few commenters cited the challenge of matching and exchanging data across agencies. Multiple commenters recommended implementing a research study to examine the use of the common exit, rather than codifying this requirement in regulation. One commenter stated that a common exit would make it very difficult to track and conduct follow up services. A commenter stated that the cost of reporting a common exit is prohibitive for that State. A commenter remarked that a common exit would be the costliest option.

Departments' Response: The Departments recognize the challenges raised by commenters with regard to infrastructure and integration of data systems that would be required under a common exit policy. Under the current regulation, the States have the discretion to choose to adopt a common exit policy for DOL-administered programs. The Departments acknowledge that certain States are at different stages and may vary in their approaches and ability to adopt a common exit across multiple programs. The Departments also note, however, that common exit supports a customer-centric design that allows programs to leverage co-enrollment for individuals who are eligible for, and need, multiple services that cross program lines without penalizing programs that may have to delay outcomes for those individuals referred to or co-enrolled in a partner program. Further, common exit policies have allowed smaller pilot, discretionary, or partner programs to access data and outcomes at a level that would not be available through their grant or program alone.

With WIOA's focus on integration, common exit is a natural progression where appropriate infrastructure, and integrated data systems exist across programs. The DOL envisions full implementation of a common exit across the States for the DOL core programs. The DOL understands this is a long-term goal and intends to support States from where they are at in terms of capacity and structure towards achieving this goal. With this in mind, the Departments will require the States to develop a plan for implementing a common exit policy and will require States to share that plan with the Departments. The Departments anticipate modifying the requirements for State Plans through the information collection request process and will require the States to share their plans for implementing a common exit policy through the State Plan and will also require the States to conduct an examination and analysis of their capacity and structures that would support a common exit policy for the DOL core programs under title I and the

Wagner-Peyser Act Employment Service program. This will allow DOL to support the States as they move towards implementing a common exit policy.

The Departments will continue to work with State and Local WDBs, one-stop center operators, and partners to achieve an integrated data system for the core programs and other programs to ensure interoperability and standardized collection of program and participant information, particularly for those States that have a common exit policy. Paragraph (c)(3) of § 677.150 allows for the use and implementation of common exit policies for DOL administered-programs. The Departments encourage the use of common exit for DOL-administered programs, but do not currently require its immediate implementation, due partially to the commenters' concerns about potential difficulties and costs in implementing common exit. The Departments have concluded that this approach is responsive to both commenters who supported common exit as well as to commenters who supported program exits and appropriately allows States flexibility to choose to continue their use of common exit or to plan for the full implementation of common exit as a policy for WIOA title I and Wagner-Peyser Act Employment Service programs. Additionally the Departments will seek to collect information through the appropriate information collection vehicles on existing common exit policies, the programs included in those common exit policies, and their impacts on program design and outcomes.

Comments: Many commenters supported the use of common exit in theory, but expressed reservations about the implementation of a common exit to title I youth programs, asserting that the use of a common exit would delay reporting of multiple performance indicators, harming the performance of the youth programs. These commenters suggested that the Departments encourage co-enrollment without a common exit, provide instruction for the identification in the participant record of individuals who are co-enrolled, and afford local programs the flexibility to use a program-specific exit or a common exit.

Departments' Response: In response to the concerns raised about common exit and its effect on the performance of WIOA youth programs, predominately concerning the short-term or self-service nature of some programs as opposed to other programs providing longer-term or more intensive services, the Departments have clarified that the definition of "participant" at § 677.150(a)(3)(ii) and (iii) excludes individuals who receive only "self-service" or "information-only services or activities." As noted above, States—not individual programs within a State—are afforded the flexibility to use program-specific exit or common exit. It does not appear feasible or preferable for individual programs within a State to choose the type of exit to implement.

Comments: A number of commenters made additional suggestions specific to youth programs. One commenter stated that title I youth programs should have a defined end date, at which point participants should be considered to have exited, rather than waiting 90 days. Another commenter stated that local programs currently believe that no title I youth funds may be spent on youth once they exit, and requested clarification concerning follow-up services for youth conducted after an individual has exited. In addition, several commenters suggested that a hold status be maintained for youth who are not receiving services due to documented hardships. These commenters stated that a hold status would avoid counting these individuals as having exited if they reengage after the 90-day window.

Departments' Response: While the Departments understand the concerns raised by commenters, the Departments decline to modify the definition of "exit" at § 677.150(c) with regard to the 90-day period of no services. This definition maintains consistency with the definition of exit applied across other programs. Paragraph (c)(1)(i) of § 677.150 requires that 90 days of no services (except for self-service, information-only services or activities, and follow-up services) must have elapsed, and no future services, other than follow-up services, may be planned in order for a participant to satisfy the definition of "exit."

Conversely, § 677.150(c)(3) adds flexibility for States that have or are pursuing common exit policies and strategies for their programs under WIOA titles I and III (Wagner-Peyser Act Employment Service) as well as other required partner programs that are administered by DOL. The clarification in this Final Rule that self-service and follow-up services do not delay exit should allay the commenters' concerns regarding delayed reporting. By definition, follow-up services are provided to youth following exit and as a result, title I youth funds may be spent on participants once they exit in order to provide such follow-up services.

For the sake of clarification, such expenditures of title I youth funds on participants for follow up services after exit do not result in delaying an individual's exit from the program. Section 681.580 (*see* DOL WIOA Final Rule published elsewhere in this issue of the **Federal Register**) clarifies which youth formula program elements may be provided during follow-up. Additionally, DOL will issue guidance on providing effective follow-up services for the programs it administers. Although the Departments are not implementing a "hold status" as suggested by the commenters, DOL will clarify through guidance the circumstances under which a "gap in service" may be appropriate in order to delay exit for those States that implement a common exit strategy for DOL-administered programs.

Comments: Numerous commenters responded to the Departments' solicitation for comments regarding the effect of self-service activities on a participant's exit date. Most of the commenters asserted that self-service should not be used to delay the date of exit or count as re-enrollment in a program. However, other commenters asserted that individuals who access self-service activities should continue to qualify as participants because the use of these services indicates that participants have not completed their search for employment. One commenter suggested that self-service participants should continue to be tracked as reportable individuals.

Departments' Response: The Departments acknowledge commenters' recommendation that self-service not be used to delay the exit date or qualify as re-enrollment. With regard to individuals who continue to use self-service, the Departments note that individuals access self-service tools for a variety of reasons, but the decision to retain an exclusion of self-service from the definition of "participant" at § 677.150(a)(3)(ii) is consistent with the decision in the NPRM to establish a uniform program attachment point in service delivery and design from which to compare programs. See the extensive discussion regarding the definition of "participant" and § 677.150(a), above.

Comments: Commenters raised a number of questions regarding various aspects of the proposed definition of "exit," including requests for clarification regarding whether exit means exiting a core program or exiting all WIOA services.

Departments' Response: Whether "exit" means from a specific program or a common exit from multiple programs depends on whether a State has implemented a common exit policy for DOL-administered programs. As discussed in more detail above, the

Departments have modified the definition of exit at § 677.150(c)(3) to allow WIOA title I and Wagner-Peyser Act Employment Service programs to apply a common exit policy. States that lack a common exit policy across title I and Wagner-Peyser Act Employment Service programs will be required to conduct an assessment and develop a plan towards implementing a common exit policy. Additionally, States that retain or develop a common exit policy across title I and Wagner-Peyser Act Employment Service programs may extend such a policy to DOL-administered required partner programs identified in WIOA sec. 121(b)(1)(B). Further, States with common exit policies that include WIOA title I core programs and Wagner-Peyser Act Employment Service programs should ensure those policies align with the criteria in § 677.150(c).

Comments: Several commenters expressed concerns regarding the definition of "exit" for purposes of the VR program since individuals served by VR typically require lengthier service delivery and follow-up activities than the other core programs. A few commenters also stated that a common exit would better protect individuals in the VR program from exiting the program before receiving the services they need.

Departments' Response: As other commenters have noted, the VR program typically requires lengthier period of service delivery than the other core programs. While not common, it is possible for a single VR participant to receive services for 10 years, and service durations of 3 to 5 years are not unusual. If there were a single exit, it would mean that other programs would not be able to exit these co-enrollees until the VR case was closed. The VR program is not included under the common exit provision at this time, because if they were incorporated into the common exit provision, programs under other WIOA titles would not be able to report exit achievements until the time of the VR closure, no matter how much time had elapsed since participation in those programs. With the VR program having a separate closure process, individuals are shielded from the entreaties of other programs that may wish to close the case. The ED will explore the feasibility of the use of a common exit policy for its title II and VR programs. No change to the regulatory text was made in response to these comments.

Comments: Some commenters expressed support for expanding the proposed definition of "exit" to reference the termination of staff-assisted services.

Departments' Response: The definition of "participant" at § 677.150(a) no longer references the term "staff-assisted" services due to concerns raised by many commenters about the confusion such term raises. Section 677.150(a) now describes the services as being those other than self-service and information-only services or activities, which are described further in § 677.150(a)(3). See the response to comments related to the definition of "participant" above regarding the Departments' elimination of the term "staff-assisted" services from the definition; therefore, it is not necessary to expand the use of that term with regard to the definition of "exit" as the commenters suggest.

Comments: Several commenters remarked on the application of the definition of "exit" to education programs, noting that the definition does not account for a transfer between institutions or participants not taking a class during the summer term that could exceed the 90-day timeframe.

Departments' Response: Section 677.150(c)(1)(i) makes clear that a participant "exits" a program only if 90 days of no services have elapsed *and* there are no future services planned. Please see the analysis of comments regarding § 677.230, below, for further discussion of these and other terms as they apply to eligible training providers.

Comments: Some commenters suggested the Departments revise the definition of "exit" at § 677.150(c) to lengthen the proposed 90-day period of no services to 120 days, citing the challenges of sporadic engagement in services in which youth cycle in and out of services. In such cases, service delays can extend an exit beyond the 90 days. One commenter suggested doubling the 90-day window to 180 days. Other commenters suggested shortening the 90-day period.

Departments' Response: Although the Departments recognize that out-of-school youth, among other examples, may be a population that is difficult to engage in continuous services, the Departments have concluded that it is important to maintain consistency across all core programs regarding the definition of exit. The 90-day period has a basis in historical application. Under WIA, the DOL-administered programs and the AEFLA program under title II used 90 days of no service as a benchmark for determining when services had ended. Similarly, prior to WIOA the VR program closed an individual's service record after services had ended and the individual had maintained employment for 90 days.

The Departments have not revised the definition of "exit" at § 677.150(c) since lengthening the timeframe would delay outcomes for indicators that are already lagged behind the actual time period of exit, such as employment-related primary indicators that measure a participant's employment at the second and fourth quarters after exit and the median earnings of a participant in the second quarter after exit. The Departments have concluded that the 90-day period of no service strikes the appropriate balance for knowing how the programs are performing while providing enough time to account for sporadic participation. No change to the regulatory text was made in response to these comments.

Comments: Some commenters expressed support for retaining the current "neutral" exits. Other commenters urged the Departments to adopt a more flexible exit policy that would allow participants who were "negative" exits due to loss of contact with the program, to reengage and positively exit if performance outcomes are achieved.

Departments' Response: There are a number of reasons why individuals exit from the programs in which they are enrolled. The current definition of "exit" allows for performance accountability that can uniformly translate across programs, while also retaining critical programmatic differences and the policy-based flexibility for States in their program engagement and design. The Departments have concluded that the definitions in § 677.150, including that for "exit" at § 677.150(c), are consistent with their applicability to the performance accountability system set forth in sec. 116 of WIOA.

A "neutral" exit, as it relates to the performance accountability provisions, allows the State to exclude certain participants from the calculation of the primary indicators. The Departments have concluded that there is sufficient statutory authority to permit certain exclusions, as appropriate, from the performance calculations for the primary indicators of performance. The Departments have implemented these exclusions through the WIOA Joint Performance ICR. The Departments have concluded that it is important to account for premature exits from the program and that modifying the definition of "exit" to allow neutral exits would undermine program accountability intended by WIOA. The Departments intend to provide guidance on how to calculate the primary

indicators of performance and provide guidance on other performance-related requirements through the WIOA Joint Performance ICR, programmatic guidance, and technical assistance. No change to the regulatory text was made in response to these comments.

Comments: A commenter emphasized the need for guidance regarding the transition from active programming to follow-up services, particularly as it relates to the definition of "exit."

Departments' Response: The Departments will provide further guidance regarding the transition from active programming to follow-up services as it relates to the definition of "exit."

Definition of "State" (§ 677.150(d))

The Departments have added a definition of "State" as § 677.150(d) to specify that the outlying areas are subject to the performance accountability provisions of part 677. This provides that, for purposes of part 677 other than in regard to sanctions or the statistical adjustment model, "State" includes the outlying areas of American Samoa, Guam, Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, and, as applicable, the Republic of Palau. In so doing, as discussed in detail immediately below regarding outlying areas, the Departments ensure that the performance accountability requirements apply to the outlying areas as well. This regulatory change is essential to ensuring consistency with the Departments' decision to require outlying areas to submit Unified or Combined State Plans which, pursuant to sec. 102 of WIOA must include expected levels of performance, thereby making the performance accountability system applicable to the outlying areas.

In the NPRM, the Departments specifically requested comments about the applicability of WIOA sec. 116 performance accountability system requirements to the core programs administered by the outlying areas, namely American Samoa, Guam, Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, and, as applicable, the Republic of Palau (80 FR 20574, 20583–20584 (April 16, 2015)). The Departments explained the ambiguity that was created by differing terms and definitions for outlying areas and States, for purposes of the title I core programs, but made clear that titles II and IV specifically subject adult education and VR grantees, including outlying areas, to the common performance accountability system set forth in sec. 116 of WIOA.

Sections 189(a) and (c) of WIOA provide the authority to impose planning and performance reporting requirements on outlying areas, which is being accomplished through this definition. The decision to treat outlying areas as States for purposes of the common performance accountability system dovetails, and is consistent with, the Departments' decision to treat outlying areas the same as States for purposes of the Unified and Combined State Plan requirements, as discussed elsewhere in this preamble with respect to part 676 of this Joint WIOA Final Rule.

Although the Departments will hold the outlying areas accountable for complying with the performance accountability system requirements of sec. 116 of WIOA and part 677, the Departments will not impose monetary sanctions against the outlying areas pursuant to sec. 116(f)(1)(B) of WIOA for two reasons. First, the sanctions are imposed against the Governor's Reserve under sec. 128(a) of WIOA, which the outlying areas do not receive. Second, the sanctions are imposed when a State fails to satisfy the adjusted levels of performance or fails to report. The adjusted performance level is based on several required factors set forth in sec. 116(b)(3)(A)(v) of WIOA, including, among other things, the use of a statistical adjustment model. The performance output data provided by the core programs in the outlying areas yield too small a sample size; thus, applying an adjustment model to the outlying areas will not yield a valid result. In addition, there are cases in the outlying areas where required data are not available to run the statistical adjustment model. Despite the fact that the Departments will not impose monetary sanctions against the outlying areas in accordance with sec. 116(f)(1)(B) of WIOA, the Departments want to make clear that the Departments will hold outlying areas accountable for poor performance or failure to report through technical assistance and the development of performance improvement plans in accordance with sec. 116(f)(1)(A) of WIOA.

3. State Indicators of Performance for Core Programs (20 CFR Part 677, Subpart A; 34 CFR 361.155 Through 361.175; 34 CFR 463.155 Through 463.175)

Section 677.155 What are the primary indicators of performance under the Workforce Innovation and Opportunity Act?

Section 677.155 implements the primary indicators of performance as set forth in WIOA sec. 116(b)(2)(A)(i). These primary performance indicators apply to the core programs described in sec. 116(b)(3)(A)(ii) of WIOA, and administered by ED's OCTAE and RSA, and DOL's ETA. These primary indicators of performance create a common language shared across the programs' performance metrics, which the Departments anticipate will support system alignment, enhance programmatic decision-making, and facilitate consumer choice. The Departments implement the requirements of sec. 116 of WIOA through this Joint WIOA Final Rule, as revised and described in this preamble.

Comments: A commenter expressed concern about the cost and time it would take to establish and operate a fiscal and management accountability information system.

Departments' Response: The Departments recognize the concerns raised with regard to the infrastructure, and resulting cost, required to implement the performance, fiscal, and management accountability information systems. No changes to the regulatory text were made in response to this comment because the performance accountability provisions outlined within sec. 116 of WIOA clearly mandate States and local areas to collect and report on the information contained in part 677. The Departments want to make clear that all core programs were required, even prior to the enactment of WIOA, to operate fiscal and management systems pursuant to WIA, former OMB Circular A–87, OMB's Uniform Guidance (2 CFR part 200), and programmatic requirements. It is important to note that WIOA's requirements for States to operate such systems are very similar to those required under WIA, which is why the Departments do not consider these to be new requirements. However, the Departments acknowledge an integration of such systems would be a departure from that required under WIA and recognize that time and resources combined with guidance and technical assistance will be necessary before an integration of fiscal and management systems could occur.

The Departments have concluded that system integration will, in the long-term, reduce administrative and reporting burden while supporting alignment and comprehensive accountability across all of the core programs. The Departments will work with State and Local WDBs, one-stop center operators, and partners to achieve an integrated data system for the programs covered by WIOA to ensure interoperability and the accurate and

standardized collection of program and participant information. Integrated data systems will allow for unified and streamlined intake, case management and service delivery, minimize the duplication of data, ensure consistently defined and applied data elements, facilitate compliance with performance reporting and evaluation requirements, and provide meaningful information about core program participation to inform operations. Data integration may be accomplished through a variety of methodologies including data sharing, linking systems, or use of data warehouses.

Comments: A commenter urged State and local planning efforts to use the most current Census and administrative data available to develop estimates of each priority service population.

Departments' Response: The Departments note that the WIOA State Plan ICR provides guidance as to what information should be included in the analysis and the State Plan requirements. No change to the regulatory text is being made in response to this comment.

Comments: A commenter recommended creating data systems to separate participants by program and local area and allowing the progress measures to be skills based using goal setting rather than time intervals. A commenter recommended adding self-sufficiency as an indicator of performance. Commenters supported workforce system performance that addresses the needs of veterans with disabilities.

Departments' Response: Changing the primary indicators of performance to a skills-based measurement system, rather than one based on time intervals, would not be consistent with the primary indicators of performance set forth in sec. 116(b)(2)(A)(i) of WIOA, which require the measurement of employment in the second and fourth quarters after exit, the attainment of a credential during participation in the program and up to 1 year post exit, and the attainment of measurable skill gains during the program year. WIOA clearly establishes timeframes for each of these primary indicators of performance.

However, sec. 116(b)(1)(A)(ii) of WIOA and § 677.165 permit States to develop additional indicators of performance. If a State were to do so, the State could implement skills-based indicators or indicators that measure self-sufficiency or services to veterans with disabilities as suggested by commenters. The Departments encourage State and Local WDBs to work in collaboration to identify and implement additional indicators of performance that aid in the management of workforce programs in their State. No change to the regulatory text is being made in response to this comment.

Comments: In the preamble to the NPRM, the Departments requested comments on using the performance indicators identified in § 677.155 for additional programs beyond the core programs. The Departments postulated that this broader use of the six primary indicators of performance could streamline reporting on other DOL-administered programs, such as the JVSG program and other discretionary grant programs. Commenters supported the use of common metrics across education and workforce programs wherever appropriate. Commenters also raised questions about alignment with various specific programs, such as Migrant and Seasonal Farmworkers, Job Corps, Indian and Native American, Family Literacy, Integrated English Literacy and Civics Education, Wagner-Peyser Act Employment Service, Adult Education, and JVSG.

Departments' Response: The Departments acknowledge that WIOA has introduced unprecedented opportunities for alignment and as such, envision integration across workforce programs to the maximum extent feasible. The core programs, described in sec. 116(b)(3)(A)(ii) of WIOA, are covered under this Joint WIOA Final Rule and the WIOA Joint Performance ICR. National programs such as Job Corps, the National Farmworker Jobs Program, and the Indian and Native American adult and youth programs that are authorized under title I of WIOA are also aligned under this regulation, as well as their respective program regulations at 20 CFR parts 686 (Job Corps), 685 (National Farmworker Jobs Program), and 684 (Indian and Native American Program). Additionally, the Departments intend that DOL-administered partner programs authorized by statutes other than WIOA and not covered under these joint regulations, such as the JVSG programs and the TAA programs, will be aligned with the performance accountability system under WIOA through both legislative and policy guidance. The Departments recognize the variety of interactions among programs under WIOA and programs authorized by other statutes. The Departments understand the need for further guidance and clarification, which will be issued throughout the workforce development system and which will include information on how and where to report.

Comments: A commenter noted that many programs for out-of-school youth, including Job Corps, often use accredited online high school programs to provide education to youth participants. The commenter requested that any measure intended to capture progress on achieving or attaining a high school diploma or recognized equivalency degree should reflect any State-accredited standard.

Departments' Response: Details regarding accreditation are beyond the scope of this Joint WIOA Final Rule and will be addressed in guidance or in the WIOA Joint Performance ICR or DOL Performance ICR. No change to the regulatory text is being made in response to this comment.

Comments: Commenters requested guidance and examples on several subjects, such as: Measuring and reporting registered apprenticeship performance; how wages for successful and unsuccessful closures are used and measured; performance data for industry-driven credentials; students with degrees from another country; areas where net income can apply as a performance indicator; incorporating self-employment as a successful outcome; performance metrics; when enrollment occurs; operational definitions; determination of competitive wage; cross program impacts; individualized measurements of the six primary indicators as relates to VR consumers; and individual skills measurement. A few commenters asked that States be allowed flexibility in developing data sharing agreements and additional performance measures.

Departments' Response: The Departments acknowledge the need for clarification and examples to illustrate the methods that each of the core programs will use to determine performance on the primary indicators, including details regarding data collection for self-employment outcomes, as well as educational attainment and measurable skill gains. The Departments will address these issues in guidance and in the instructions for program-specific reporting requirements contained in the WIOA Joint Performance ICR.

With regard to requests for State flexibility in developing data sharing agreements and additional performance measures, sec. 116(b)(1)(A)(ii) of WIOA and § 677.165 permit States to implement, through their State Plans, additional indicators of performance and encourage States to also leverage their program collection and reporting to analyze and manage performance of their programs. With regard to data sharing agreements States have the flexibility to enter into data sharing agreements, ensuring that such

agreements meet all applicable Federal and State statutory and regulatory confidentiality requirements. No change to the regulatory text is being made in response to this comment.

Section 677.155(a)(1) identifies the six primary indicators of performance that will be applied to the core programs identified in sec. 116(b)(3)(A)(ii) of WIOA. Where practicable, DOL intends to leverage these indicators to streamline reporting for other DOL-administered programs, such as the JVSG program, TAA and other discretionary grant programs.

Section 677.155(a)(1)(i) implements the first primary indicator as described in sec. 116(b)(2)(A)(i)(I) of WIOA. This primary indicator is a measure of the percentage of program participants who are in unsubsidized employment during the second quarter after exit from the program. There are no changes to § 677.155(a)(1)(i) from that proposed in the NPRM, which mirrors the statutory requirement of WIOA sec. 116(b)(2)(A)(i)(I).

Comments: A commenter recommended that calculated employment percentages should not include individuals who never received core program services.

Departments' Response: The issue raised by the commenter is more closely related to the definitions of "participant" and "reportable individual," as set forth in § 677.150 and which are discussed in detail above. The Departments have concluded that these definitions are clear in setting the standards under which participants are included in performance calculations for purposes of the primary indicators of performance. Specifically, the definition of "participant" at § 677.150(a) ensures that an individual is receiving services of a substantive nature from any of the core programs before the individual is considered a "participant" and, thus, included in performance calculations. Because § 677.155(a)(1)(i) is consistent with sec. 116(b)(2)(A)(i)(I) of WIOA, no change to the regulatory text is being made in response to this comment.

Comments: A number of commenters expressed support for the WIOA requirements as proposed in § 677.155(a)(1)(i) and (ii). However, many commenters recommended that this section of the regulation and the section related to calculating performance should include the option for excluding participants who report that they are not working and not looking for work. These commenters cited data showing that 29 percent of AEFLA participants were "not in the labor force." A commenter suggested adding the words "who are in the labor force at enrollment" after the word "participants" in § 677.155(a)(1)(i) through (iii). Another commenter stated that it would seem practical to include participants who are not looking for employment in the calculation of the employment performance outcome.

Departments' Response: The Departments acknowledge the concerns raised by commenters about being held accountable for those participants who enter the program and are not seeking employment, and about how participants not in the labor force might affect performance outcomes. However, WIOA secs. 116(b)(2)(A)(i)(I) through (b)(2)(A)(i)(III) measure the percentage of program participants in employment during the second and fourth quarters after exit and the median earnings of participants in the second quarter after exit. Therefore, the Departments disagree with commenters who believe that individuals who are not looking for work should not be included in the performance calculation. Having said this, the Departments recognize that there are very limited circumstances where certain individuals, such as those who are incarcerated and receiving services under sec. 225 of WIOA, should not be included in the performance calculations for this indicator. The Departments have decided to exclude incarcerated individuals served under sec. 225 of WIOA because they do not have the opportunity to obtain employment or participate in education or training programs in the same manner as other participants who are in the general population. The Departments consider additional determinations regarding the need for exclusions from performance calculations to be more appropriately made through the ICR process and, therefore, have added § 677.155(a)(2) to the regulatory text. This matter will be discussed in more detail with respect to that provision below.

Comments: Another commenter asked whether the State can use AEFLA funds to serve individuals who are not looking for employment.

Departments' Response: Section 203(4) of WIOA defines an eligible individual for the purposes of AEFLA. Eligibility does not include employment status. Whether or not an individual is seeking employment does not affect that person's eligibility status under title II. Further matters concerning AEFLA program implementation are in the program-specific final regulations published elsewhere in this issue of the **Federal Register**.

Comments: Several commenters opposed the suggestion in the preamble to the NPRM that the Departments plan to calculate an "entered employment rate" for participants who were not employed at the time of program entry, in addition to an employment rate for all program participants regardless of employment status at entry.

Departments' Response: Upon consideration of the various issues, the Departments have not made changes to these joint regulations to require the collection and reporting of an entered employment rate. Instead, the Departments intend to utilize the individual records available for the WIOA title I, Wagner-Peyser Act Employment Service, and VR programs (*i.e.*, the disaggregated data submitted by the States) to calculate such a measure for comparative purposes. The Departments can calculate this entered employment rate from the information that is required to be collected under sec. 116 of WIOA. Therefore, no additional reporting burden will be imposed on the States for these programs for this additional calculation at the Federal level.

However, such entered employment rate calculations will not be possible at the Federal level for the AEFLA program under title II, because States report AEFLA program data only in an aggregate manner. Therefore, for the Departments to receive the data necessary to perform the entered employment rate calculation for the AEFLA program—and to produce such outcome data—would place an undue burden on title II programs.

Comments: Most commenters opposed including the entered employment rate as a performance indicator. A number of commenters recommended that only the employment rate should be counted for those employed during the second quarter after exit because less document retrieval would be required, and there are other indicators that can show whether program participants are better off after enrollment. Other commenters suggested that the employment rate should include job seekers who were both employed and not employed at the time of participation because this will help determine how effective the system is at helping both the unemployed and those looking for career progression. A commenter added that it is difficult to capture information about employees in part-time or multiple-employer jobs.

Several other commenters, however, supported calculation of an entered employment rate, particularly for youth programs.

The Departments also received numerous comments in reference to calculating the second quarter after exit employment indicator as an "entered

employment measure," as defined in WIA. A commenter only would support an entered employment calculation if the Departments modified the regulation to require submission of individual records under title II.

Departments' Response: The Departments have concluded that that the entered employment rate will provide a useful comparison of the public workforce system as it exists under WIA and WIOA. As stated above, the Departments will calculate an entered employment rate for the WIOA title I, Wagner-Peyser Act Employment Service, and VR programs using information collected through the WIOA Joint Performance ICR. This entered employment rate will not be a primary indicator of performance and, thus, it will not be a basis for sanctions. It is nonetheless useful information in evaluating the impact and efficacy of programs under WIOA. No change to the regulatory text is being made in response to this comment.

Comments: A commenter opposed measuring the employment rate in the second quarter after exit instead of the first quarter, as done under WIA, because the commenter suggested that 2 quarters after exit is too late to determine unsubsidized employment. Another commenter agreed that it is simpler to locate and re-engage a customer after the first quarter performance measure rather than waiting an additional 3 months. A commenter added that the time frame of 6 months for an individual working in an integrated setting to achieve a competitive integrated employment outcome is too fixed and arbitrary, and the time period should be increased to 18 months if needed by the individual. Another commenter warned that using the second and fourth quarters after exit for performance measures will negatively impact States with a highly seasonal workforce.

Departments' Response: The Departments acknowledge the concerns raised, but sec. 116(b)(2)(A)(i)(I) and (II) of WIOA specifically require that employment be measured at the 6- and 12-month mark (second and fourth quarters respectively). Given the specificity of the quarters to be measured for purposes of the performance accountability system, the Departments do not have the authority to implement a regulation inconsistent with the statutory requirement. No change to the regulatory text is being made in response to this comment.

Comments: A commenter opposed the provisions in §§ 677.155(a)(1)(i) and 677.175(a) because of a concern that these provisions would ask educators to store personal data, such as social security numbers (SSNs), that the students may be unwilling or unable to share.

Departments' Response: The Departments acknowledge the concerns about the retention of SSNs. The Departments concluded that, where available and possible, the use of wage records to fulfill reporting requirements is required in accordance with sec. 116(i)(2) of WIOA. Matching participant SSNs against quarterly wage record information is the most effective means by which timely and accurate data can be made available to the system. However, consistent with the Privacy Act, program services cannot be withheld if an individual is unwilling or unable to disclose a SSN. More specifically, program eligibility is not contingent on the provision of a SSN for any of the core programs.

Nevertheless, the use of quarterly wage records is essential to achieve full accountability under the WIOA performance accountability system to identify high performing States and localities, and, if necessary, to provide technical assistance to help improve performance or sanction low performing States and localities. Matching participant SSNs against quarterly wage record information is the most cost-effective means by which timely and accurate data can be made available to the system.

In consideration of the circumstances articulated by commenters in responses to both the Joint WIOA NPRM and the proposed WIOA Joint Performance ICR, the Departments will allow the collection and verification of non-UI wage data in the absence of available UI wage data obtained through wage record matching, as discussed more fully in the preamble to § 677.175 below. The Departments also intend to issue guidance and technical assistance regarding the collection and reporting of both quarterly wage record data and supplemental information. No change to the regulatory text is being made in response to this comment.

Comments: A commenter remarked that the indicators in § 677.155(a)(1)(i) through (iii) would require an unprecedented degree of interdependency between VR and other State and Federal repositories of employment data. Another commenter recommended that, given that several of the primary performance indicators for the core programs, including VR, require reporting on the percent of exiters who are in "unsubsidized employment," the Departments should clearly define "unsubsidized employment." In particular, the commenter requested clarity regarding whether individuals in competitive integrated employment who receive supported employment services following VR case closure are considered to be in "unsubsidized employment."

Departments' Response: The Departments acknowledge that the use of wage record data for the employment and median earnings indicators will require a greater level of cooperation between the State VR and UI agencies. The Departments are developing guidance to facilitate this process and also are developing a new State wage record interchange system data sharing agreement to aid in the exchange of wage record data to enable all core programs to meet the performance reporting requirements outlined in these regulations and sec. 116 of WIOA.

The Departments have considered the comments regarding the VR program and "unsubsidized employment." Section 116 of WIOA describes the primary performance indicators for all core programs, including the VR program. Three of the performance indicators pertain to the employment status or median earnings of participants who exit a program in unsubsidized employment. In response to the commenter regarding supported employment and unsubsidized employment, the Departments want to clarify that supported employment means, in general for purposes of the VR program, employment in competitive integrated employment or in an integrated setting in which the individual is working towards competitive integrated employment on a short-term basis. Once an individual achieves supported employment as an employment outcome under the VR program and exits that program (in other words, his or her VR record of service is closed), the individual typically receives extended services from another provider. Receipt of extended services after the VR record of service is closed does not affect the nature of the employment. Supported employment is considered unsubsidized employment because the wages are not subsidized by another entity. Individuals in supported employment at subminimum wage who are working on a short-term basis toward competitive integrated employment would not satisfy the definition of "exit" for performance accountability purposes.

Comments: A commenter recommended that adult education providers receive student-level disaggregated wage or UI data for compliance and input into the Student Information System tracking and

monitoring application and that MOUs and guidance from the Departments must authorize access. Commenters concluded that States may need to use alternative methods for tracking employment outcomes for participants and need to be provided with options for databases and data sharing.

Departments' Response: As mentioned above, the Departments are aware of the necessity for pathways to match wage record data to exit data in order to have complete outcome information on a program. The Departments reiterate their intent to issue guidance and facilitate a new data sharing agreement in order to facilitate wage record data matching required for all core programs in meeting their performance reporting requirements under WIOA. These agreements will be executed under the authority of WIOA sec. 116(i)(2) and consistent with all applicable Federal and State privacy and confidentiality laws and regulations. The Departments cannot require the sharing of individual level PII from wage records with entities that do not meet the requirements of 20 CFR part 603. It should be noted that the Departments are aware of and recognize that a variety of structures exist within States affecting levels of access to certain types of information required to comply with WIOA and efforts are underway to issue joint guidance on data access and how to obtain what is necessary to comply with WIOA reporting requirements.

Comments: An individual expressed concern that the performance indicators in § 677.155(a)(1)(i) and (ii) may act as a disincentive to making progress in further education and training after exit. A commenter asked for clarification about the calculations for employment in the second and fourth quarters after exit, inquiring as to the time period for measurement and the individuals to be included in the measure.

Departments' Response: The Departments have considered commenters' concerns regarding the disincentive the employment performance indicators may create for furthering education and training after exit. However, sec. 116(b)(2)(A)(i)(I) of WIOA establishes a statutory requirement for a performance indicator measuring the percentage of program participants who are in unsubsidized employment during the second quarter after exit from the program. Subsequent guidance providing the time periods for measurement and other operational parameters pertaining to calculations will be issued by the Departments.

Comments: In the preamble to the Joint WIOA NPRM, the Departments asked for public comment on whether and how to collect information on the quality of employment. A commenter suggested that while the Departments are proposing some metrics that attempt to assess the quality of employment, specifically mentioning median wage, retention, and training-related outcomes, the Departments should consider looking at quality of employment once the current performance indicators are implemented. Other commenters asserted that information on the quality of employment should not be collected because it is redundant, costly, and too subjective. Another commenter described several factors contributing to the quality of employment: Fair, attractive, and competitive compensation and benefits; opportunities for development, learning, and advancement; wellness, health, and safety protections; availability of flexible work options; opportunities for meaningful work; promotion of constructive relationships in the workplace; culture of respect, inclusion, and equity; and provisions for employment security and predictabilities. Other commenters added the importance of wages sufficient to sustain the worker and dependents, work-based training, changes in net income, worker input into schedules, and employment outcomes consistent with the consumer's education and employment goal. One of the commenters discouraged making inappropriate comparisons across programs.

Departments' Response: The majority of commenters did not support collecting information on the quality of employment because it would be too subjective to collect consistently, overly burdensome, and costly. At this time, the Departments have decided not to include such a measure because it would be too burdensome to implement a measure that would have to be developed in the absence of an existing metric. The Departments will consider in the future whether there is a suitable mechanism to measure the quality of employment. No change to the regulatory text is being made in response to this comment.

Section 677.155(a)(1)(ii) implements the second statutory indicator as described in sec. 116(b)(2)(A)(i)(II) of WIOA. This indicator is a measure of the percentage of program participants who are in unsubsidized employment during the fourth quarter after exit from the program. This section, which mirrors WIOA sec. 116(b)(2)(A)(i)(II), remains unchanged from what was proposed in the NPRM.

Under WIA, the common measures included a retention measure based on individuals who were employed in the first quarter after exiting from WIA services, and who were also employed in the second and third quarters. WIOA does not have an equivalent to the WIA retention measure. Instead, WIOA requires a second—separate and distinct—employment indicator for the fourth quarter after exit, which measures the employment rate in that quarter, regardless of whether those participants also were employed in the second quarter after exit from the program. In other words, a participant would be counted as a positive outcome for this indicator if he or she was employed in the fourth quarter after exit regardless of whether he or she was also employed in the second quarter after exit.

Comments: In the preamble to the NPRM, the Departments sought comment on the advantages and disadvantages of collecting or reporting the employment retention rate. A commenter expressed support for a retention rate because it would be an important measure to know, for example, when comparing Job Corps to other youth programs. A few commenters reasoned that a retention rate would represent the quality of the initial job placement. Many commenters supported using a retention rate as long as programs would not be held accountable to negotiated goals for employment retention and States would not be required to capture, report, or calculate additional values. Some commenters opposed highlighting measures of employment retention because they would be confusing for the system and impede the transition from the measures in WIA to the indicators in WIOA. A commenter stated that there was no benefit to calculating this measure for WIOA title I programs; however, another commenter supported the proposed provision to calculate a retained employment rate in the fourth quarter after exit. An individual commented that if fourth quarter employment is not used as a retention measure, then the growth or reduction of the employment rate of the cohort can be used to evaluate occupational skills training, particularly for those who are underemployed.

There were a few commenters who articulated a preference for the requirement under WIA. Commenters stated that employee retention is based on market conditions and dependent on factors such as company working conditions. Commenters also asserted that a retention measure should take into account a change or advancement

in occupation and quality or levels of work. A commenter remarked that by collecting or reporting the retention rate, the Departments could compare performance under WIOA with performance under WIA, but the commenter also suggested this was not necessary. A few commenters asked whether the individual had to be working with the same employer or at the same job between the second and fourth quarters. Other commenters recommended that employment retention should be measured regardless of whether the employer or job title has changed.

Departments' Response: As stated above, retained employment rate would not be counted for the purpose of performance calculations and, thus, would not form the basis for sanctions because it is not among the primary performance indicators set forth in sec. 116(b)(2)(A)(i) of WIOA. The Departments have concluded that calculating a retained employment rate would provide useful information about the effectiveness of services that lead to sustained attachment to employment. The Departments will calculate a retained employment rate for participants who were employed at the second quarter after exit for informational purposes at the Federal level for those programs for which the Federal offices collect individual (*i.e.*, disaggregated data) records (*i.e.*, for the WIOA title I, Wagner-Peyser Act Employment Service, and VR programs). For the AEFLA program, for which ED does not collect individual (*i.e.*, disaggregated) records, the Departments will not require States to calculate and report a retained employment rate in addition to an employment rate at the fourth quarter after exit.

Comments: With regard to this indicator and partner program metrics, one commenter remarked that in States where TANF is a required one-stop partner, a performance metric that is limited to 1 year after exit from the program may not align with outcomes that are significant for TANF customers, resulting in positive outcomes of TANF employment services that will not be captured. Another commenter suggested that the fourth quarter employment information could be obtained more easily by the local DOL office rather than the State VR administration and as such, State VR agencies should not be required to report this data.

Departments' Response: The Departments acknowledge the commenters' concerns regarding the capture of outcomes for TANF employment services and the difficulty some programs will face in the collection of the data necessary to calculate this indicator. However, if an individual is a participant in a WIOA core program as described in sec. 116(b)(3)(A)(ii) of WIOA, sec. 116(b)(2)(A)(i)(II) of WIOA explicitly requires the Departments to measure the employment rate for that participant in the fourth quarter after exit, regardless of whether that individual is also a participant in TANF or any other required partner program. With regard to comments that maintain that VR agencies should not have to report data on the fourth quarter after exit due to issues of data access and availability, the Departments reiterate the intent to renegotiate the wage record data sharing agreements and issue joint guidance on accessing such data in order to meet the requirements laid out in WIOA sec. 116. The Departments strongly encourage the development, enrichment, and enhancement of partnerships at the State and local levels to leverage such connections in obtaining relevant performance information. No change to the regulatory text is being made in response to this comment.

Section 677.155(a)(1)(iii) implements the third statutory indicator as described in sec. 116(b)(2)(A)(i)(III) of WIOA. This indicator is a measure of the median earnings of those program participants who are in unsubsidized employment in the second quarter after exit. This section remains unchanged from that proposed in the NPRM.

Comments: Several commenters requested guidance on how to match wage records or collect employment-related data without the use of SSNs, because some States cannot collect SSNs and some students do not have them. A commenter suggested that the regulation should provide States with the authority to require SSNs as a condition of program participation. Another commenter asserted that WIOA only should require SSNs when customers are directly receiving some form of financial assistance. A commenter discussed the challenge of tracking the progress of individuals without SSNs. A commenter urged the Departments to provide ways for agencies to share long-term wage and employment information to enable the commenter to report on the indicators.

Departments' Response: The Departments considered the concerns raised by commenters in light of the statutory provisions at WIOA sec. 116(b)(2)(a)(1)(iii) and concluded that, where available and possible, the use of wage records to fulfill reporting requirements is required in accordance with sec. 116(i)(2) of WIOA. Matching participant SSNs against quarterly wage record information is the most effective means by which timely and accurate data can be made available to the system.

Nevertheless, the Departments want to make clear that neither WIOA nor this Joint WIOA Final Rule allows or requires States to request or require SSNs as a condition of program participation or for receipt of any form of financial assistance. As such, program eligibility under WIOA is not contingent on the provision of a SSN. Additionally, depriving such an individual of service would be in violation of the Privacy Act of 1974, which establishes a code of fair information practices that govern the collection, use, dissemination, and maintenance of information about individuals contained in systems of Federal records. Specifically, sec. 7(a)(1) of the Privacy Act (5 U.S.C. 552a Note, Disclosure of Social Security Number) provides that unless the disclosure is required by Federal statute, "It shall be unlawful for any Federal, State, or Local government agency to deny to any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his social security account number." In consideration of the circumstances articulated by the commenters in public comments received on both the Joint WIOA NPRM and the WIOA Joint Performance ICR, the Departments are allowing the use of supplemental information to augment the performance information obtained through wage record matching when necessary because critical information (such as a SSN) is not available. More information can be found in the preamble to § 677.175 discussed in more detail below. The WIOA Joint Performance ICR also will provide for the collection of such supplemental wage information in those circumstances where quarterly wage records are not available or may not apply. The Departments also intend to issue guidance and technical assistance regarding the collection and reporting of both quarterly wage record data and supplemental information on employment-based outcomes.

Comments: Some commenters supported the use of median earnings rather than average (mean) earnings, used under WIA, noting that averages can be skewed by a few numbers. One commenter stated that the indicator data should be collected at both the second and fourth quarters. Commenters suggested that the median earnings indicator should be based on all earnings and not just earnings related to the employment goals on the IPE for customers of VR services. With the

change from an average earnings calculation under WIA to a median earnings calculation under WIOA, one commenter asked how to arrive at a baseline for determining performance numbers. A few commenters said they would prefer reporting both average and median wages and highlight the high-income employment outcomes they have historically achieved. The commenters also asked how to best verify and include incomes for self-employment outcomes in this indicator.

Departments' Response: WIOA sec. 116(b)(2)(A)(i)(III), which forms the basis for § 677.155(a)(1)(iii), requires States to collect data regarding median earnings of participants who are in unsubsidized employment during the second quarter after exit from a core program. The Departments have the authority to collect additional information that provides context for the primary indicators of performance. Such information is important to understand and manage public workforce programs. The Departments note that the primary indicators identified in § 677.155 are the only indicators subject to the performance accountability sanctions. Additionally, pursuant to sec. 116(b)(1)(A)(ii) of WIOA and § 677.165, States may develop additional performance indicators which could include median earnings in the fourth quarter, as the commenter suggests.

With regard to inclusion of all earnings and not just those earnings related to employment goals on the IPE for customers of VR services, the individual records collected under the RSA–911 can be used to determine median wages at exit. The Departments acknowledge that wages may vary over time and that median earnings at exit may not reflect median wages in the second and fourth quarters after exit. With regard to baseline data for median earnings, the Departments recognize that some programs may not have the historical data necessary to establish a baseline for median earnings while other programs can review the data collected under WIA to establish an approximate baseline for this indicator. The Departments acknowledge the concerns raised regarding such employment outcomes that would not be captured through a pure match against State UI wage records, such as self-employment. The Departments will promulgate guidance regarding the collection and verification of supplemental employment information, as noted in the preamble to § 677.155(a)(1)(iii) and more fully discussed in the preamble to § 677.175. The Departments recognize there is a need to further clarify and provide guidance regarding transitioning to the WIOA performance indicators and intend to provide further clarification and guidance on the establishment of baseline data. No change to the regulatory text is being made in response to these comments.

Comments: A few commenters recommended that the value of benefits received should be included in the participants' median earnings indicator. Commenters urged reporting of wages expressed as dollars per hour to reflect outcomes for part-time workers accurately.

Departments' Response: Since the value of benefits clearly does not constitute earnings, adopting this recommendation would be inconsistent with the statutory provision calling for measuring earnings. Further information and clarification regarding the operational parameters of each indicator will be provided through both the WIOA Joint Performance ICR and program guidance. No change to the regulatory text is being made in response to these comments.

Comments: A few commenters stated that individuals participating in an education or training program should be excluded from the calculation of this indicator. Commenters especially expressed support for not including youth who were enrolled in postsecondary education in the median earnings indicator because such youth would not necessarily have an income. Some commenters warned that as many individuals are simultaneously enrolled and employed part time, they tend to work fewer hours at lower hourly wage rates. In these instances, the earnings measure serves as a disincentive for programs to provide further education and training. One of the commenters added that exiting applicants with entrepreneurship training may not reflect well on the earnings measures because a new business often takes time to become profitable.

Departments' Response: In response to the comments regarding exclusions from the median earnings indicator, sec. 116(b)(2)(A)(i)(III) of WIOA requires the collection of data regarding the median earnings for all participants who exit the program and are employed during the second quarter after exit, regardless of whether the participants are simultaneously enrolled in an educational or training program. The Departments understand the commenters' concerns regarding the decreased likelihood of full-time employment while enrolled in an education or training programs, but the Departments expect the levels of performance for different programs will vary based on the results of the statistical adjustment of the performance levels for those programs. Furthermore, States will have the ability to disaggregate performance data in order to gain an understanding of the effect of including youth in performance outcomes. No change to the regulatory text is being made in response to these comments.

Comments: Other individuals requested guidance on how to treat missing earnings information for particular participants and whether the participant may be excluded from the dataset used to determine the median earnings.

Departments' Response: In State wage record systems, a missing wage means that no wages for an individual were reported by any firm residing in that State. The missing wage only indicates that the individual is not in employment covered by the quarterly wage records for performance accountability purposes. The Departments have determined that collection and verification of supplemental employment data is allowed for the performance indicators where a wage is not present in quarterly wage data. Supplemental information that is used to establish employment must include earnings information and be counted in the employment indicators and the median earnings indicator. This calculation is meant to represent the median quarterly wage of all individuals who are employed in the second quarter after exit, therefore, "missing earnings information" will not be included in the median earnings calculation. Further, the Departments have elected to permit non-wage record matches (supplemental information) in the performance calculations. More information about this is in the preamble to § 677.175 discussed in more detail below. The Departments note that the use of supplemental information must be uniform across performance indicators. In other words, if a participant is included in the employment in second quarter after exit indicator based on information obtained through supplemental information, wage information must be collected and that data must also be used for the median earnings indicator. Likewise, if the collection and verification of employment and wages cannot be obtained for such a participant through either wage record matching or through supplemental wage information, then the participant cannot be included as being in unsubsidized employment during the second quarter and fourth quarters after exit, as measured by the

first and second performance indicators. The Departments will issue guidance regarding the collection and verification of supplemental employment information, as noted in the preamble to §§ 677.155(a)(1)(iii) and 677.175.

Section 677.155(a)(1)(iv) implements the fourth statutory indicator as described in sec. 116(b)(2)(A)(i)(IV) of WIOA, subject to sec. 116(b)(2)(A)(iii). This indicator is the percentage of program participants who obtain a recognized postsecondary credential or a secondary school diploma or its recognized equivalent, during participation in or within 1 year after exit from the program. The Departments are implementing § 677.155(a)(1)(iv) as revised and described here. The regulation, consistent with the statutory requirements, limits inclusion of participants who obtain a secondary school diploma or its equivalent in the percentage counted as meeting the criterion by only including those participants who are employed or are enrolled in an education or training program leading to a recognized credential within 1 year after exit from the program. The Departments specifically sought comment on clarifications necessary to implement this indicator.

Comments: Many commenters expressed concerns about including all program participants in the indicator and asked whether the indicator is limited to those in an education or training program.

Departments' Response: The Departments revised § 677.155(a)(1)(iv) to clarify that this indicator only applies to those participants who are or were enrolled in an education or training program. The purpose of the indicator is to measure performance related to attainment of a recognized postsecondary credential or a secondary school diploma or its recognized equivalent. As such, it would not fulfill the purpose of this indicator to measure a State's performance on the credential attainment indicator against a universe of participants that includes individuals who are not in an education or training program through which they can obtain one of these credentials. The Departments decided that it is appropriate to include, for purposes of this indicator, only those participants enrolled in an education or training program. The Departments have excluded participants enrolled in work-based on-the-job training or customized training from this indicator because such training does not typically lead to a credential. This exclusion avoids creating a disincentive to enroll in work-based training. This section has been revised to clarify that only those participants in an education or training program are included in the performance calculations for this performance indicator, with the exception of those in on-the-job or customized training. The WIOA Joint Performance ICR also will explain that participants, for purposes of the credential rate performance indicator, are only those who are in an education or training program (excluding those in on-the-job training or customized training).

During the review period leading to this Joint WIOA Final Rule, the Departments noted an error in the NPRM related to the statutory requirement that participants receiving a secondary school diploma or its equivalent be included in the percentage of participants meeting the performance indicator only if the participant is employed or enrolled in an education or training program leading to a recognized postsecondary credential within 1 year of exit from the program. The NPRM incorrectly stated that a participant who has *obtained a high school diploma or its equivalent* only is included in the indicator if the participant is employed or is enrolled in an education or training program leading to a recognized credential within 1 year of exit from the program. The Departments have corrected § 677.155(a)(1)(iv) to make it consistent with WIOA's requirement so that a participant who *obtains a secondary school diploma or its recognized equivalent* only counts as having met the performance indicator if the participant is also employed or is enrolled in an education or training program leading to a recognized postsecondary credential within 1 year after exit from the program.

Comments: A few commenters stated that they fully supported the proposed provision. Some commenters remarked that WIOA presents a great opportunity to learn more about the credentials being earned by participants in the workforce system. The commenters suggested that regulations on the reporting of credential attainment should strike a balance between incentivizing the collection of better data and unfairly penalizing States that do not have the ability to measure attainment of all types of credentials, and that the Departments should consider a phased approach for making licenses and certifications part of performance levels.

Departments' Response: The Departments are not planning a phased implementation of the credential attainment indicator because such data generally were collected and reported under WIA. With regard to the full performance accountability provisions under WIOA sec. 116, which include the application of an objective statistical adjustment model and the implementation of sanctions, the Departments did modify § 677.190 to allow for a phased-in approach for assessing performance success or failure for the purposes of sanctions in order to provide programs time to collect and report at least 2 full years of data required to develop and run a statistical adjustment model on those indicators. More information can be found on this in the preamble to § 677.190 below.

Comments: In the preamble to the NPRM, the Departments sought comments on clarifications that would be necessary to implement the credential attainment indicator. Many commenters requested clarification about accepted credentials; how to collect and track credentials; the definitions of enrollment and postsecondary credential; the determination of "within 1 year after exit" from the program; the achievement of a secondary degree or General Education Diploma (GED); and whether the indicator applies to the VR program. A commenter recommended consideration of apprenticeships as postsecondary credentials, but other commenters suggested that employer-based work activities generally do not result in industry-recognized credentials but often result in permanent employment.

Departments' Response: The definition of "recognized postsecondary credential" is found in sec. 3(52) of WIOA, stating "a credential consisting of an industry-recognized certificate or certification, a certificate of completion of an apprenticeship, a license recognized by the State involved or Federal Government, or an associate or baccalaureate degree."

With respect to one comment, the Departments note that this definition includes completion of an apprenticeship. In addition, the statutory language of the credential attainment indicator in WIOA sec. 116(b)(2)(A)(i)(IV) includes participants' attainment of a secondary school diploma or its recognized equivalent in performance calculations, subject to the requirement that those participants also are employed or in an education or training program leading to a recognized postsecondary credential within 1 year after exit from the program. The credential attainment indicator applies to all core programs, including the VR program, except for the Wagner-Peyser Act Employment Service program, as

specified in sec. 116(b)(2)(A)(i) of WIOA. To be counted as having met the indicator, a participant must have obtained a credential at any point during participation in the program or up to 1 year after exit from the program.

The Departments will issue joint guidance that further illustrates what constitutes a recognized postsecondary credential for the credential rate indicator, including definitions for each type of credential. The Departments recognize burden concerns for tracking credential attainment. However, as noted, WIOA requires the collection of data for purposes of reporting on the credential attainment indicator for all core programs, except for the Wagner-Peyser Act Employment Service program. The Departments also will provide joint guidance and technical assistance for tracking and reporting with respect to this performance indicator.

Comments: A few commenters expressed concern that the value of a secondary diploma would be reduced. One commenter suggested the regulations should clarify that employment is at any time during the year after exit. Commenters recommended including alternative, standards-based certificates of high school completion for students with disabilities among the credentials recognized for achievement of the credential attainment indicator. Commenters cautioned that this indicator may not be appropriate for students in English language acquisition programs, and one of these commenters requested that postsecondary credentials include completion of Career and Technical Education programs. A commenter encouraged the reporting of credential type in addition to the attainment of a credential.

Departments' Response: The Departments do not agree that a secondary school diploma would be devalued because a participant's attainment of a secondary school diploma can be included in performance calculations for purposes of the credential attainment indicator. For those who obtain a secondary school diploma or its recognized equivalent, such participants must also be employed or in an education or training program leading to a postsecondary credential within 1 year after exit from the program. Such employment or enrollment in an education or training program only needs to be for some period during the 4 quarters after exit, not for the entire 1-year period after exit. The types of secondary school diplomas and alternate diplomas that would satisfy this performance indicator are those recognized by a State and that are included for accountability purposes under the ESEA, as amended by the Every Student Succeeds Act. The types of recognized equivalents, for those not covered under ESEA, that would satisfy this performance indicator are those recognized by a State. No change to the regulatory text is being made in response to these comments.

Comments: Several commenters also expressed concern that State VR and other programs do not track whether a participant is enrolled in postsecondary education after program exit and that to do so would represent a significant burden. One of the commenters recommended that educational attainment data could be reported as it occurs by the appropriate State educational authorities and matched to participant data. A commenter suggested that sharing information should be mandatory between workforce agencies and secondary and postsecondary educational and other training institutions. One commenter stated that national access to postsecondary records and earnings not covered by UI wage records are needed for implementation of the provision.

Departments' Response: The Departments recognize that, in cases where information was not previously collected or reported on, there is an initial burden associated with establishing such collections for reporting. However, the Departments have concluded that WIOA sec. 116(b)(2)(A)(i)(IV), read in conjunction with sec. 116(b)(2)(A)(iii), requires that the indicator applies to all core programs and necessitates tracking enrollment and employment up to 1 year after exit. With regard to the comments raised concerning real-time tracking and matching of educational attainment, the Departments note that tracking and reporting on participants is an obligation of the program. A State educational authority would not necessarily have information on all participants enrolled in education programs, public or private, non-profit or for-profit. The Departments do not currently have the authority to mandate sharing of information between workforce agencies and secondary and postsecondary educational and other training institutions in the manner proposed. In regards to the comment about national access to postsecondary records and earnings, the Departments do not think that implementation requires national access because States have the authority to implement appropriate mechanisms, including data sharing agreements, at the State level to fulfill these reporting requirements. The Departments are developing guidance to help the States meet their obligations. No change to the regulatory text is being made in response to this comment.

Comments: One commenter stated that participants who were in occupational training designed to lead to employment in a specific occupation and who do not achieve the credential because they have become employed in the occupation should be removed from the indicator. Some commenters suggested that the credential attainment indicator should not be calculated as the percentage of all participants who earn a credential, but the indicator only should calculate the percentage of participants receiving education or training services who earn a credential. A commenter recommended that the indicator only should apply to participants who were enrolled in a program leading to a postsecondary credential or secondary diploma. One commenter cautioned that many students are currently unavailable to the job market. Another commenter reasoned that cross-enrollment may lead to participants furthering their training in one program after leaving another, and this may not be completed within 1 year.

Departments' Response: With respect to the comment that the credential attainment indicator should calculate only the percentage of participants receiving education or training services who earn a credential, the Departments reiterate, as noted above, that § 677.155(a)(1)(iv) has been revised, as contained in these final regulations, to address this concern. With respect to the comment that those who do not earn a credential because they become employed should not be included in the calculation for the credential attainment indicator, the Departments note that the reason that a participant fails to attain a credential, including participating in further training, is not a basis for excluding that participant from the performance calculations for the credential attainment indicator. No change to the regulatory text is being made in response to these comments.

Comments: Commenters also suggested that the indicator would result in a strong disincentive to enroll participants in title I programs that would not result in an industry-recognized credential. An individual mentioned that the indicator may discourage participation in training programs that take several years to complete. Commenters also suggested that prospective workers enrolled in TANF and other hard-to-serve populations may require more than 1

year to achieve positive outcomes and that States have varying requirements for attaining credentials.

Departments' Response: The Departments note that because the credential attainment indicator is an exit-based indicator, there is no requirement for a participant to attain a credential within 1 year of enrollment in the program. There is no time limit on how long participants are in the program, and the measurement point for credential attainment is not until 1 year following exit from the program. If participants are in a program multiple years before attaining a credential they are still counted as a success in the indicator if the credential is attained during participation in the program or within 1 year of program exit. Thus, the Departments do not think that this indicator will discourage participation in training programs that take several years to complete. It should be noted that in instances where participants are enrolled in an education or training program that is not intended to result in a credential, the measurable skill gains indicator can capture progress made by participants.

Section 677.155(a)(1)(v) implements the fifth statutory indicator as described in sec. 116(b)(2)(A)(i)(V) of WIOA. This indicator is a measure of the percentage of participants who, during a program year, are in education or training programs that lead to a recognized postsecondary credential or employment, and who are achieving measureable skill gains toward such a credential or employment. The Departments are defining measurable skill gains as documented academic, technical, occupational, or other forms of progress toward the credential or employment. After seeking and considering all comments on the measurable skill gains indicator proposed at § 677.155(a)(1)(v), the Departments added five measures of documented progress that specify how to show a measurable skill gain.

Comments: The preamble of the NPRM identified six examples of standardized ways States could measure documented progress during participation in an education or training program, and sought public comment on these and other ways progress may be measured. Some commenters generally supported the examples as well as the preamble language that stated, "Documented progress could include such measures as . . ." because it provided the State with flexibility. Another commenter recommended a menu system similar to the proposed but recommended the progress measure be attached to participant characteristics rather than a funding stream. Other commenters asserted that it would be difficult to standardize measures and documentation across all core programs as proposed by the Departments, and there would be little benefit for the VR program where individuals often seek to maintain their current occupation. Another commenter recommended that Local WDBs should be required to write into their local plans an exhaustive list of the documented progress measures they will use.

Departments' Response: The Departments noted the suggested ways in which the States could measure documented progress. The Departments disagree with commenters that recommend against standardized methods, across States and core programs, to measure documented progress for purposes of the measurable skill gains indicator. Section 116(b)(4)(A) of WIOA requires the Secretaries to issue definitions of the primary performance indicators in order to ensure national comparability of performance data. Defining the measurable skill gains indicator to include standardized methods to measure documented progress across programs helps to ensure this comparability. With regard to the VR program, although a State VR agency may provide services to individuals with disabilities that enable them to maintain their current occupation, the Departments note that the majority of individuals served by the VR program receive assistance in obtaining or advancing in employment. With regard to local plan content and the recommendation that it include "an exhaustive" list of the documented progress measures, the Departments encourage States and local areas to consider the service provisions and applicable progress measures in the development of their plans but have determined that it is beyond the scope of part 677 to regulate concerning such requirements. State and local plans are discussed more fully in 20 CFR part 679 (*see* DOL WIOA Final Rule, published elsewhere in this issue of the **Federal Register**). The Departments reiterate that States will be required to report on the measurable skill gains indicator as set forth in § 677.155(a)(1)(v), consistent with program guidance. No change to the regulatory text is being made in response to these comments.

Comments: Many commenters strongly supported the fact that the proposed regulations recognize the intent of Congress to "encourage local adult education programs to serve all low-skilled adults," and stated that the measurable skill gains indicator will help to achieve that goal. One commenter suggested that measurable skill gains should be the only indicator of performance required for students functioning below the ninth grade level.

Departments' Response: The Departments do not agree with the suggestion that the measurable skill gains indicator be the only indicator of performance for students functioning below the ninth grade level since WIOA requires that the indicators of performance apply across all core programs in order to assess the effectiveness of States and local areas in achieving positive outcomes for participants served by those programs.

There is no basis for a blanket exclusion from all performance indicators except the measurable skill gains indicator for participants functioning below the ninth grade level. Such participants have the potential to receive services under a program, be included in performance calculations, and be counted as having met one of the other indicators. Therefore, unless a student functioning below the ninth grade level is otherwise appropriately excluded from participants included in the performance calculations for a particular indicator under § 677.155(a)(2), the Departments will not categorically exclude such students functioning below the ninth grade level from the other five indicators of performance. No change to the regulatory text is being made in response to these comments.

Comments: The majority of commenters endorsed continued use of educational functioning levels (EFLs) and encouraged eventual refinement of EFLs or the development of other potential measures that can document participants' progress toward educational goals. Other commenters expressed concern because in high intensity programs, students may advance two or more EFLs; therefore, the proposed language would not capture the full impact of adult education instruction. The commenters recommended that the requirement should be "the achievement of the EFLs of the participant."

Departments' Response: As set forth in the preamble of the NPRM, the first standardized way States could measure and document participants' measurable skill gains is the documented achievement of at least one EFL of a participant in an education program that provides instruction below the postsecondary level. The Departments agree with comments that supported the continued use of EFLs to measure progress towards the measurable skill gains indicator. The Departments also

recognize that in some cases, students may advance more than one EFL during a program year. However, for purposes of the performance calculations, programs will be permitted to report only one EFL measureable skill gain per a participant's exit from the program through the WIOA Joint Performance ICR. This means that if a participant exits a program more than once in a program year and attains an EFL measureable skill gain prior to exiting each time, then the program will be able to report, for performance calculation purposes, more than one EFL measureable skill gain for the participant in a program year. In so doing, participants, for purposes of performance calculation purposes with respect to the measureable skill gains indicator, will be treated the same as for any other performance indicator. Having said this, through the WIOA Joint Performance ICR, the Departments will require States to provide unique identifiers for participants. Thus, there will be a unique count of participants under the core programs regardless of how many times the participant exits the program (see discussion in this preamble regarding the definition of "exit" in § 677.150(c) above). The Departments have added § 677.155(a)(1)(v)(A) to include "documented achievement of at least one educational functioning level of a participant receiving instruction below the postsecondary education level," as one way of measuring documented progress under the measurable skill gains indicator. Options for measuring educational functioning level gain are described in the WIOA Joint Performance ICR.

Comments: A commenter recommended that attainment of a high school diploma not be included as one of the measures of documented progress for purposes of the measurable skill gains indicator.

Departments' Response: The Departments disagree with the assertion and consider attainment of a secondary school diploma a valuable measure of progress and have therefore revised § 677.155(a)(1)(v)(B) to include "documented attainment of a secondary school diploma or its recognized equivalent."

Comments: Commenters stated that a lower requirement of six credit hours per semester better reflects the capability of adults who must work to provide for their families. Another commenter suggested that the measure should be expanded to include a demonstration of semester-to-semester retention, which is a key indicator of academic success.

Departments' Response: As proposed in the preamble of the NPRM, the third standardized way States could measure and document participants' measurable skill gains is through a transcript or report card for either secondary or postsecondary education. The Departments had proposed a measure requiring a transcript or report card for 1 academic year or for 24 credit hours. The Departments agree with the concern that a transcript for 1 academic year or 24 credit hours is too onerous for part-time students and have changed this measure to require that the transcript or report card reflect a sufficient number of credit hours to show a participant is achieving the State's academic standards. The Departments' current standard for a sufficient number of credit hours is at least 12 hours per semester or, for part-time students, a total of at least 12 hours over the course of 2 completed consecutive semesters during the program year that shows a participant is achieving the State unit's academic standards. The Departments have added § 677.155(a)(1)(v)(C) to read "secondary or postsecondary transcript or report card for a sufficient number of credit hours that shows a participant is meeting the State unit's academic standards." Clarification regarding the progress measures and the specific requirements for collection and reporting will be provided through the Departments' WIOA Joint Performance ICR, Department-specific ICRs, and programmatic guidance.

Comments: A commenter suggested that the Joint WIOA Final Rule identify progress reports from training providers as an acceptable measure of documented progress for purposes of the measurable skill gains indicator.

Departments' Response: As proposed in the NPRM, the fourth standardized way States could measure and document participants' measurable skill gains is through a satisfactory or better progress report towards established milestones from an employer who is providing training. Such milestones to be achieved could include completion of on-the-job training (OJT) or completion of 1 year of an apprenticeship program. The Departments agree with the commenter that progress reports from training providers as to achievement of established milestones also could be acceptable and note that when participants are enrolled in training programs, the training providers are in the best position to report on participants' progress toward established milestones. The Departments emphasize that rigor is expected in determining whether a progress report is satisfactory, whether from an employer or a training provider. The Departments have added § 677.155(a)(1)(v)(D) to include "satisfactory or better progress report, towards established milestones, such as completion of OJT or completion of 1 year of an apprenticeship program or similar milestones, from an employer or training provider who is providing training."

Comments: Several commenters requested information on how progress shall be measured under the VR program.

Departments' Response: With regard to the VR program, there may be several methods for obtaining documentation related to measuring progress. For example, documentation such as standardized reports of progress from training providers, provided to the State VR agency, may be used to substantiate progress. To adequately document progress, programs should identify appropriate methodologies based upon the nature of the service being provided. For example, VR agencies frequently use grade reports from postsecondary educational institutions to document a student's progress toward achieving a degree. For OJT, where the individual is being trained on site by either the employer or by a vendor, VR Counselors receive regular training reports that include the OJT milestones completed as the individual masters the job skills required. More broadly, for apprenticeship programs, the milestones are already incorporated into the process. The steps required to complete the apprenticeship and the increases in pay that occur can be used to document progress.

Comments: Some commenters recommended that successful completion of an exam, as recommended in the preamble of the NPRM as a way of measuring documented progress, be understood as achieving a passing score on the exam.

Departments' Response: As proposed in the preamble of the NPRM, the fifth standardized way States could measure and document participants' measurable skill gains is through successful completion of an exam that is required for a particular occupation, or through progress in attaining technical or occupational skills as evidenced by trade-related benchmarks such as knowledge-based exams. The Departments agree with the commenters that this measure documenting a measurable skill gain should require that a participant achieve a passing score on an exam and thus have added § 677.155(a)(1)(v)(E), which requires "successful passage of an exam that is

required for a particular occupation, or progress in attaining technical or occupational skills as evidenced by trade-related benchmarks such as knowledge-based exams." Joint guidance will be issued about what qualifies as a trade-related benchmark to show documented progress for purposes of the measurable skill gain indicator.

Comments: Commenters expressed concern about another measure of documented progress proposed in the preamble to the NPRM—measurable observable performance based on industry standards. Commenters indicated that it would be very challenging to identify a way to document this type of gain.

Departments' Response: The Departments agree with the commenters' concerns that it would be difficult to articulate a method for documenting progress using measurable, observable performance based on industry standards. The Departments did not include this measure in § 677.155(a)(1)(v).

Comments: Commenters recommended using other measures of progress including achievement of passing grades, completion of high school equivalency (HSE) subtests, receipt of postsecondary education or training, completing some adult diploma requirements, and obtaining U.S. citizenship to document measurable skill gains. A commenter suggested that employment-related indicators of skill gains, such as employment in the participant's program of study, advancement in job titles, and performance-based wage increases, recognize that skills attainment correlates with career progression. One commenter recommended that a high school credential from another country should be treated as sufficient in meeting the requirement. Some commenters suggested that the metric should measure completion of something easily definable such as a degree, certification, or entrance into a program. A commenter asked the Departments to measure interim progress, including documented gains in achieving "soft skills," such as program attendance, timely arrival, gains in proper behavior, and creating an IPE. Another commenter asked whether proceeding through a prescribed program toward a secondary degree would be considered "achieving measurable skill gains." One commenter cautioned about subjectivity in deciding positive gains. One commenter stated that the measurement should be simply "making progress—yes or no."

Departments' Response: The Departments reviewed all of the additional suggestions for measurement of documented progress under the measurable skill gains indicator and concluded that none of the additional suggestions would be included in the Joint WIOA Final Rule or WIOA Joint Performance ICR. The Departments concluded that subjectivity should not be a part of determining skill gains and have included five objective progress measures that States may use in implementing the measurable skill gains indicator of performance. These indicators are sufficiently broad as to provide flexibility that addresses some of the commenters' concerns, while maintaining rigor. Several of the measures suggested by commenters (*e.g.,* achieving soft skills) do not share the same level of rigor or objectivity. The Departments will provide further clarification, definition, and specification in the WIOA Joint Performance ICR.

Comments: Another commenter suggested the Departments empanel expert working groups to assist in developing measures of skill gains. A commenter suggested that regional or local workforce boards be allowed to assign the WIOA defined skill gains indicator to particular education or training programs based on program curriculum and goals. One commenter recommended allowing the Local WDB to define industry-related credentials or eliminating work-based learning from the measurable skill gains indicator. Another commenter agreed that work-based training activities, such as on-the-job training, should be exempt from this indicator.

Departments' Response: The Departments acknowledge the various points raised with regard to objective measures that are implemented in a rigorous manner. The Departments have, through the WIOA Joint Performance ICR, jointly coordinated the development of the underlying calculations, specifications, and operational definitions of the documented progress measures under this indicator. This will ensure measures uniformly are implemented in a rigorous and objective way. In addition to the WIOA Joint Performance ICR, each core program will define through guidance, the types of skill gains that are appropriate for the services provided and whether the program is an education or training program that leads to a recognized postsecondary credential or employment. For example, work experience in the WIOA title I youth program may not be considered an education or training program and, therefore, the measurable skill gains indicator may not apply to those participants engaged only in work experience under the WIOA title I youth program. More guidance regarding education and training programs is provided in 20 CFR part 680 (*see* DOL WIOA Final Rule published elsewhere in this issue of the **Federal Register**). No change to the regulatory text is being made in response to these comments.

Comments: Commenters asked for specificity and guidance about the "comparator group/cohort;" how to most efficiently collect documentation (such as confirmation by phone or email); industry-specific recognized credentials; how time intervals would be used for skill gains; how the measure applies to shorter-term training programs that are completed within 1 year; how different measures could be used for different trainings; whether Indian and Native American youth are included in this indicator; and definitions and timing regarding when a measurable skill gain must have occurred in order to be counted.

Departments' Response: The Departments recognize that the regulation poses broad parameters for these indicators. Many concerns and requests for clarity by commenters were identified and will be explained within the WIOA Joint Performance ICR or Department-specific ICRs, which are designed to operationalize such aspects of collection and reporting as time periods, specific calculations, details regarding who is included, and where to record positive outcomes. In addition to the WIOA Joint Performance ICR, the Departments will provide further guidance on acceptable source documentation, and the definitions recommended by commenters. In addition, the Departments will provide program-specific guidance for programs, such as the Indian and Native American youth program, on the application of performance indicators in their respective regulations and in guidance.

Comments: In the preamble to the NPRM, the Departments sought comments on whether time intervals should be required when implementing the measurable skill gains indicator and if so, what time intervals might be. One commenter suggested that specific time intervals should not be required because of variation in services across and within core programs and because individuals at different levels take different amounts of time to show gain. Other commenters agreed that a time requirement should not be used for determining measurable skill gains. Certain commenters, however, recommended that time intervals be established in a manner that is flexible

enough to meet the varying durations of service across core programs, from 1 month to an academic year, but those time intervals should not adversely affect the provision of services based on the particular needs of a customer. One commenter stated that, for youth under WIA, the skill gains and literacy/numeracy gains are effective for a participation year. However, if a customer enrolls in education or training toward the end of a program year, it will result in a negative outcome due to the customer not having enough time to obtain the skill gain before June 30. This commenter recommended that any participants, adult or youth, who were enrolled less than 90 days prior to the program year end, and are continuing services into the next program year be allowed to continue as an active participant, and considered enrolled in Year 1, and in progress in Year 2, with expected completion in Year 2. Another commenter supported a minimum program duration threshold, and suggested that measurable skill gains generally should not be available to programs that are shorter than sixteen weeks. Another commenter suggested a time period of measurement set at the first anniversary of enrollment and each year thereafter.

Departments' Response: The Departments considered whether a minimum time threshold should be incorporated into the measurable skill gains indicator. The Departments have concluded that, given the diversity of participant needs and program services, imposing a time period by which progress is to be documented would be somewhat arbitrary and difficult. Such practice could result in excluding a number of participants from performance accountability reporting requirements, even if those participants would achieve a gain under one of the measures of progress. The Departments recognize that participants enrolling late in the program year may not have enough time to achieve a measurable skill gain prior to the end of the first program year, and the Departments recognize this could be perceived as negatively impacting performance. However, the negotiation process can and should take into account enrollment patterns and lower baseline data when setting targets for the measurable skill gains indicator. The Departments are concerned about incentivizing behavior that discourages service providers from enrolling disconnected youth in particular when they first approach programs, or that purposefully attempts to focus service on individuals who are more likely to obtain a positive outcome. The Departments emphasize that programs must not delay enrollment or prohibit participants from entering a program late in the program year. All participant outcomes, regardless if achieved at the end of the reporting period in which they enrolled or in the next reporting period, count as positive outcomes for the program. No change to the regulatory text was made in response to these comments.

The Departments will define, through program guidance, the types of services and trainings that constitute "an education or training program that leads to a recognized postsecondary credential or employment," applicable for each of the core programs. All participants who enrolled during a program year in an education or training program that leads to a recognized postsecondary credential or employment are counted each time the participant exits the program during a program year.

Comments: In the preamble of the NPRM, the Departments also asked for comments on whether the negotiated levels of performance for this indicator should be set at the indicator level or the discrete documented progress measure (*e.g.*, attainment of high school diploma) level. Setting the negotiated levels of performance at the indicator level would aggregate results for all documented progress measures (*i.e.*, achieving any or several of measurable skill gains would be recorded as a success). Setting the negotiated levels of performance based on discrete documented progress measures would separately set targets for each indicator and each measurable skill gains. The vast majority of these commenters preferred that the performance targets for this indicator be set at the indicator level rather than at the documented progress level. Other commenters, however, suggested that standardization is more easily achieved by linking the target to a documented progress measure level, stating that targets based on documented progress, versus an indicator, may be easier to collect. Another commenter suggested that performance targets should include both indicator and documented progress measures.

Departments' Response: After considering the comments received, the Departments agree with the majority of commenters that supported setting the target (or the adjusted level of performance) at the indicator level. The Departments have concluded this will provide a more streamlined and user-friendly approach to using progress measures and will result in a more uniform application of the measurable skill gains indicator. Guidance on negotiating adjusted levels of performance that contains specific information about setting targets for Measurable Skill Gains will be issued by the Departments. No change to the regulatory text is being made in response to these comments.

Section 677.155(a)(1)(vi) implements the sixth statutory indicator as described in sec. 116(b)(2)(A)(i)(VI) of WIOA, subject to sec. 116(b)(2)(A)(iv). This indicator measures program effectiveness in serving employers. Under WIOA, the Departments must consult with stakeholders and receive public comment on proposed approaches to defining the indicator. As part of this requirement, in addition to seeking public comment through the NPRM and the WIOA Joint Performance ICR, the Departments previously sought public input on performance indicators generally and on the business indicators specifically through several avenues, including a town-hall meeting that addressed all of the primary indicators, a town-hall meeting convened with employers, and additional town-halls and webinars on WIOA across the country as well as consultations with State Administrators for AEFLA programs and VR stakeholders. As described more fully below, the Departments received many comments regarding the three proposed definitions of this indicator. After considering the responses received through all venues, the Departments are initially implementing this indicator in the form of a pilot program to test the rigor and feasibility of the three proposed approaches, and to develop a standardized indicator. The performance indicator for effectiveness in serving employers will not be included in sanctions determinations until the standardized indicator is developed.

Proposed Approaches to Measuring Employer Satisfaction

Comments: The preamble to the NPRM described three approaches to measure employer satisfaction (*i.e.*, effectiveness in serving employers). In the first approach, States would use wage records to identify whether or not a participant matched the same FEIN in the second and fourth quarters. Many commenters opposed this approach because participants may have relocated, joined the military, or found a better job, although these circumstances do not mean the employer was not satisfied. They also opposed this approach because the mere fact that an individual is employed with the same employer does not mean that

the employer is satisfied. Many other commenters, however, favored the approach because it would be the least disruptive to employers. A commenter agreed that employee retention can be measured, but that measure does not take into account the quality of the placement. Commenters suggested piloting a limited demonstration using existing data to determine if the variability in the types of occupations in a particular local area has a more profound impact on retention than the value added by the services provided under a WIOA program, and to determine whether there is a correlation between retention and effectiveness.

The second approach to define this indicator would measure the repeated use rate for employers' use of the core programs. Many commenters did not support this approach because some employers may not have many hiring needs during a program year, or an employer may have a need but the program has no students who are ready to graduate and go to work. Also, this approach would encourage programs to protect their individual employer relationships rather than working collaboratively through sector partnerships. Several commenters recommended use of this measure along with the number of workers employed by businesses participating in sector partnerships. Other commenters supported the approach because it represents increased use, retention, or growth of business engagement, although some commenters would use the number of workers employed, not the number of businesses served. The preamble to the NPRM specifically sought comments on how States could capture this data, the feasibility of capturing and reporting this data, and queried whether this indicator would measure the efficacy of services provided to employers. The Departments received both positive and negative comments regarding this approach.

The third approach would use the number or percent of employers that are using the core program services out of all employers represented in an area or State served by the system (*i.e.*, employers served). A large proportion of commenters opposed this approach and warned that this saturation method only would work if all participants come from the local market area; for a number of programs, it is usually not the case that most of the participants come from the local market area. Also, the commenters asserted that this option would focus too much on the breadth of employer involvement, rather than the depth or quality. Some commenters supported this approach when used with another approach. The preamble to the NPRM specifically sought comments on how States could capture this data, the feasibility of capturing and reporting this data, and queried whether this indicator would measure the efficacy of services provided to employers. The Departments received both positive and negative comments regarding this approach.

Departments' Response: After further review, analysis, and consideration of public response, the Departments have concluded that too little is known with regard to the validity and reliability of each of the proposed approaches. In concurrence with multiple commenters, the Departments have concluded that the retention method, using wage record FEIN matches to be the least burdensome method to employers for measuring the quality of service provided to employers given that the outcome is concluded solely by the use of wage-match data, which prevents outside factors from influencing the way success is measured within the reporting system. The Departments concluded, however, that there was not enough evidence that this point of measurement would encompass the intent of this indicator. Therefore, the Departments have proposed a pilot allowing all three approaches, and any additional measure that the Governor may establish relating to services for employers, with the intent of assessing each approach for its efficacy in measuring the effectiveness in serving employers.

The Departments have included these approaches in the WIOA Joint Performance ICR and will require each State to choose two of the three approaches set out in the NPRM as well as any additional measure that the Governor may establish related to services to employers, with results to be included in the first WIOA annual report due in October 2017. This approach provides States flexibility in selecting the measures that best suit their needs, while providing partner Agencies the opportunity to evaluate States' experiences in using these measures during PY 2016 and PY 2017, and additionally allows the Departments to obtain employer feedback regarding the extent to which these indicators measure effectiveness in serving employers. The Departments will evaluate State experiences with the various indicator approaches and plan to use the results of that evaluation to identify a standardized indicator that we anticipate will be implemented no later than the beginning of PY 2019. In this process, the Departments intend to engage the National Association of State Workforce Agencies (NASWA) and the States to inform the evaluation design; communicate how States fare in operationalizing the measures; and contribute to the development of technical assistance activities and tools.

The Departments acknowledge the dissatisfaction expressed by commenters with using each of the NPRM proposed measures as a sole indicator of successful service to employers and agree with comments discussing the utility of piloting multiple alternative measures to ensure that States are being required to report on employer satisfaction in the most effective manner. As such, the Departments will work to implement a pilot program, the details of which will be further delineated in joint Departmental guidance. The Departments have opted to implement a pilot program using all of the approaches in order to assess the States' experiences with these and evaluate the efficacy of such approaches in measuring this construct. Further guidance regarding the pilot program will be provided.

Effectiveness in Serving Employers across Programs

Comments: The NPRM also sought comment on using effectiveness in serving employers as a shared indicator across programs, as many employers are served by multiple programs. Many commenters supported using effectiveness in serving employers as a shared indicator across programs because it would foster collaboration rather than competition among the core programs. One commenter stated that using effectiveness in serving employers as a shared indicator would mitigate concerns regarding measuring effectiveness in serving employers for the Wagner-Peyser Act program. Commenters stated that there are too many indicators already and a single metric should suffice. Commenters also suggested that the Departments should engage the employer community, such as using a short survey or task force, to discover methods of measuring effectiveness. One commenter, however, opposed employer surveys and burdensome employer contacts. A group of commenters recommended that agency directors conduct a study on how effectively workforce development aligns with business needs. Others favored having States create and submit for approval an indicator that meets the State's current needs, including targeted sectors and partner collaboration. A commenter suggested that the workforce system offer one point of contact or

"account executive" to each employer. However, one commenter opposed the use of a shared indicator, and recommended measuring at an individual program level in order to measure the impact on each core program.

One commenter developed a novel approach for measuring effectiveness and provided details in a concept paper, which was expressly supported by some commenters. The approach includes a customizable point-menu system that would award varying levels of points to WDBs based on the degree of intensity and the value of services provided. Services earning high points would clearly reflect deeper relationships with employers and activities that are the result of longer-term relationships. The Departments will consider this approach in the course of the pilot program. A separate commenter suggested using tiers to measure employer engagement with concrete examples. The Departments also will further consider this suggestion of a tiered approach.

The preamble to the NPRM also requested feedback regarding whether a single metric for this indicator would sufficiently capture effectiveness in serving employers or if this indicator should encompass a combination of metrics, as well as how these metrics could most effectively be combined. A number of commenters expressed concern or disinterest with using a single metric to measure effectiveness in serving employers.

A few other commenters who expressed support for using multiple metrics for this indicator recommended a list of core functions to indicate the effectiveness in serving employers, with the list of core functions including strategic planning with business to identify business needs; outreach and recruitment; hiring; retention; training, consultation services, and other customized services; and business customer satisfaction with services provided. One commenter added preparing workers for in-demand industries and occupations and the percentage of participants who earn an industry credential. Some commenters also mentioned fill rate—the number of job seekers placed against the number of open job orders in the system—and employer referrals. A few commenters stated that there is insufficient clarity on the employer satisfaction indicator and the meaning of effectiveness.

Departments' Response: The Departments have concluded that implementing the effectiveness in serving employers indicator as a shared indicator across all core programs to be the most useful approach based on the collaborative nature of this method and the overwhelming majority of commenters who were in favor of this option. In doing so, States and local areas are better positioned to provide a single point of contact to each employer, making it easier for the differences between specific core programs to become invisible and enable the programs to serve together as a unified front. Measurement at the program level would be contrary to WIOA's efforts to streamline reporting across programs, reduce burden on employers, and decrease the likelihood of duplicated employer counts. In keeping with such efforts, the Departments have opted not to require employers to fill out any additional surveys. The Departments had, however, prior to the publication of the NPRM, engaged in multiple meaningful exchanges with the employer community to receive feedback on the most appropriate ways to assess the utility of the public workforce system for businesses.

In addition, through the implementation of the previously mentioned pilot program, the Departments will seek to discover the best methods for assessing how well workforce development aligns with business needs. There were a number of noteworthy measures suggested by State workforce agencies and nonprofit organizations, some of which will be included in the pilot, giving the Departments an opportunity to review some of the alternative methods that would help States to improve current relationships and establish strong future relationships with local employers, such as using the fill rate, employer referrals, the level of employer engagement, allowing any additional measure that the Governor may establish relating to services for employers, participation in targeted sector partnerships, the inclusion of recruitment, training, and other pre-hire services as part of the performance metric, using tiers to measure employer engagement, and the use of already existing electronic, or wage record data along with a myriad of other valuable recommendations. The Departments acknowledge the value of using a combination of metrics as pointed out by a number of commenters and will seek to delve further into the benefits of such an option through the use of the upcoming pilot program. No change to the regulatory text is being made in response to these comments.

Comments: One commenter stated that the provision is not applicable to the INA program because it is not a core program. Another commenter requested that the measurement of effectiveness of serving employers be eliminated as a measure for Adult Education and Literacy because the program already works closely with Career and Technical Education, the workforce system, and industry to ensure that it is providing programs and services to meet the needs of employers. A commenter recommended that any finalized measure not allow a program to be penalized because of factors beyond its control. Another commenter requested information about feedback obtained at the stakeholder meetings that involved employer partners.

Departments' Response: The Departments recognize that the INA program is not a core program. However, WIOA sec. 116(e)(5) requires that the performance accountability indicators (which include effectiveness in serving employers) be used to assess performance, and WIOA sec. 116(h)(2) requires agreement on the adjusted levels of performance for all of the primary indicators be reached between the Secretary of Labor and the entity carrying out activities under this section.

In response to the comment requesting that the measurement of effectiveness of serving employers be eliminated as an indicator for the AEFLA program, the Departments have no authority to exempt AEFLA programs from the indicator regarding effectiveness in serving employers. WIOA sec. 116(b)(2)(A) explicitly requires that the State primary indicators of performance for the AEFLA activities authorized under title II, as well as for other specified programs and activities, shall include indicators of effectiveness in serving employers. In response to concerns about programs being required to account for factors beyond their control, the Departments refer to § 677.170 and the associated discussions regarding factors to be considered when coming to agreement on negotiated levels of performance, including the objective statistical model. The Departments have provided a summary of comments raised at stakeholder meetings and during the regulatory process above. No change to the regulatory text is being made in response to these comments.

Comments: Commenters expressed a great deal of concern regarding the implementation of an indicator that would likely cause undue penalty.

Departments' Response: The Departments note that this concern weighed heavily in the decision to allow employee retention to serve as a means of measuring employer satisfaction. The Departments also note that concerns regarding penalties are an issue that will

be greatly ameliorated with the use of benchmark target setting via the statistical adjustment model. The statistical adjustment model also will address issues such as size discrepancies across States and local areas, labor shortages, and other external factors and provide objective, realistic goals for improvement. Application of the statistical model to both set targets and apply sanctions is most effective when assessing quantitative metrics, with the use of qualitative metrics making both efforts exponentially more complex. It is for this reason that, although the Departments understand the significance of using such methods to evaluate quality service to employers, more qualitative metrics were not included as part of the effectiveness in serving employers indicator.

As previously stated, a great deal of discussion regarding these and other proposed methods for measuring this indicator took place during previous webinars and town halls with State workforce agencies, members of the employer community, and other stakeholders. The outcome of these discussions was the three options listed within the NPRM. Understanding the importance of receiving extensive feedback on this issue, the Departments requested further input via the NPRM and the proposed WIOA Joint Performance ICR, the responses for which can be found on regulations.gov. No change to the regulatory text is being made in response to these comments.

Section 677.155(a)(2). The Departments added a new paragraph § 677.155(a)(2) after considering public comments received in response to the proposed WIOA Joint Performance ICR, particularly with regard to discrete populations that would be excluded from performance calculations. As noted in both the preamble to the NPRM and the supporting statement to the proposed WIOA Joint Performance ICR, because of the close relationship between the two documents, the Departments informed the public that comments on either the NPRM or the proposed WIOA Joint Performance ICR would be used to form the basis for necessary changes in both the Joint WIOA Final Rule and the finalized WIOA Joint Performance ICR. After reviewing WIOA sec. 116, the Departments have concluded that the purpose of the performance accountability system is to measure a program's performance with respect to the populations served and the services provided. A program's performance should be measured in terms of populations it is designed to serve or services it is designed to provide. In so doing, the performance accountability system will measure a program's performance more precisely. Given that sec. 116(f) of WIOA imposes sanctions for poor performance, it is critical that the Departments receive data that accurately reflect a program's performance. Explicitly defining which participants will be included in performance indicator calculations will allow a program's performance to be assessed appropriately. It is for this reason that the Departments proposed certain "exclusions" in the proposed WIOA Joint Performance ICR.

The Departments have added language in the Joint WIOA Final Rule at § 677.150(a)(2)(i) to exclude individuals receiving services under sec. 225 of WIOA from all primary performance indicators for purposes of performance accountability, except the measurable skill gains indicator (§ 677.155(a)(1)(v)). This is because the measurable skill gains indicator is the only performance indicator applicable to this population. In so doing, the Departments ensure programs serving these individuals will not be inadvertently subject to low performance levels with regard to those indicators not applicable to sec. 225 participants.

Section 677.150(a)(2)(ii) allows the Secretaries of Labor and Education to make further decisions as to the participants to be included in calculating program performance levels for other purposes that are necessary with regard to any of the primary performance indicators. Further information about those exclusions is provided through the WIOA Joint Performance ICR and related guidance.

Section 677.155(b)—Indicators for the Employment Service Programs

Paragraph (b) of § 677.155 remains unchanged from that proposed in the NPRM. The Departments did not receive any comments regarding this provision.

Section 677.155(c)—Indicators for the Youth Program

Paragraph (c) of § 677.155 implements the primary indicators for the WIOA title I youth program, as described in sec. 116(b)(2)(A)(ii) of WIOA. No change to the regulatory text is being made in response to public comments.

Comments: A few commenters supported the fact that the common performance indicators for youth programs apply only to WIOA title I youth programs. Some commenters remarked that employment rate measures are different for youth and adults because the youth measure allows enrollment in education and training to be included in the indicator, that this difference is likely to work against co-enrollment. These commenters suggested that 18 to 24 year old individuals co-enrolled in the WIOA title I youth program and other WIOA programs only be included in the youth indicators.

Departments' Response: Although the Departments recognize that subjecting such youth to adult and youth employment rate indicators could serve as a barrier to co-enrollment, WIOA only authorizes the youth indicators for the WIOA title I youth program and does not authorize these indicators for any other WIOA core program.

Comments: One commenter suggested that the following outcomes count toward the first two youth statutory indicators as successful outcomes: (1) Unsubsidized employment, (2) military employment, (3) education (secondary or postsecondary), (4) advanced training (long-term licensed or credentialed, for example, registered nurse training), and (5) occupational skills training.

Departments' Response: The Departments agree that these suggested outcomes, and additionally registered apprenticeships, are among the successful outcomes for the first two statutory indicators, but do not think that any change to the regulatory text is necessary to accommodate such outcomes as successful. Specific references to particular successful outcomes will be included in the WIOA Joint Performance ICR.

Comments: One commenter suggested that supplemental data be allowed to measure employment in the second and fourth quarters after exit because UI wage record data alone do not capture the full spectrum of employment options.

Departments' Response: The Departments agree and have chosen to permit the States to use non-wage record matches (supplemental information) in calculating the performance indicators, subject to use consistent with the Departments' guidance on this issue. More information can be read about this in the preamble to § 677.175 below. That guidance regarding the use of supplemental wage data will be relevant to the use of supplemental data to determine employment status.

Comments: One commenter recommended consideration of planned short-term employment by youth as a positive outcome, such as internships. Another commenter requested that service programs such as AmeriCorps, NCCC, and Public Allies be counted as "unsubsidized employment." A

commenter recommended that placement in unsubsidized employment or postsecondary education count as a success regardless of the quarter in which it occurs, rather than focusing only on the second and fourth quarters after exit. Similarly, one commenter asked that attainment of initial employment count as a successful outcome (*i.e.,* a placement rate).

Departments' Response: As required by sec. 116(b)(2)(A)(ii)(I) and (II) of WIOA, only unsubsidized employment will count as a positive outcome for employment in the first and second indicators. Internships that are subsidized would not count as a positive employment outcome, but they are an important service in preparing youth for unsubsidized employment. However, service programs, such as AmeriCorps, would count as a positive outcome in the first and second primary youth indicators because these service programs are considered training for the purposes of those youth indicators. The Departments will clarify the categorization of service programs in the WIOA Joint Performance ICR. The first and second primary youth indicators measure the percentage of participants in unsubsidized employment, or in education or training activities, during the second and fourth quarters after exit. The Departments do not have the authority to deviate from the WIOA statute by counting participants' status in the first and third quarters after exit, or by counting participants as successful simply upon attainment of initial employment.

Comments: A few commenters expressed concern that the requirement to track educational attainment up to a year after exit may prove infeasible. One commenter favored alignment of reporting that is required on post-school outcomes.

Departments' Response: Although the Departments recognize that tracking attainment up to a year after exit is difficult for an often-transient youth population, the WIOA title I youth program includes a follow-up services program element that is required to last not less than 12 months after completion of participation. The requirement to capture program outcomes 1 year after exit is consistent with the follow-up services program element. In addition, follow-up services help ensure youth receive the support they need as they transition to the world of work or postsecondary education. Regarding alignment of reporting on post-school outcomes, WIOA requires the specific indicators for youth programs identified in WIOA sec. 116(b)(2)(A)(ii). No change to the regulatory text is being made in response to these comments.

Comments: A number of commenters stated that the Departments only should measure status of employment or education in the second quarter after exit, rather than an entered employment or education rate that includes only those not employed or not in education prior to program enrollment. This commenter also asked for a clarification of the definition of education and training activities related to the two youth indicators that measure the percentage of participants in unsubsidized employment or in education or training activities. One commenter suggested that any type of education should count in the two youth indicators related to employment or education or training.

Departments' Response: The Departments agree that the first two indicators only should measure status of employment or education in the second and fourth quarter after exit, respectively, regardless of employment or education status at enrollment. The definition of education and training activities related to the two youth indicators will be included in the WIOA Joint Performance ICR. Both secondary and postsecondary education will count as successful outcomes for the two youth indicators related to employment or education or training. No change to the regulatory text is being made in response to these comments.

Comments: Many commenters addressed the third primary performance indicator, which measures median earnings in the second quarter after exit. The commenters reasoned that areas that are highly successful in exiting youth to postsecondary education and training should not be penalized; therefore, youth who are working part-time and are also in education or training activities should be excluded from the calculation of median earnings. In addition, a commenter suggested that the focus of services to youth is education and training and, therefore, a measure of median earnings does not seem appropriate.

Departments' Response: WIOA requires all participants with earnings in the second quarter after exit to be included in the earnings indicator, including participants engaged in education or training programs. Therefore, youth who are working part time while in education or training activities will be included in the calculation of median earnings. Those engaged in both employment and education and training will be taken into account in both the statistical adjustment model and through target setting. No change to the regulatory text is being made in response to these comments.

The fourth primary indicator for youth measures attainment of a recognized postsecondary credential, or secondary school diploma or its recognized equivalent, by participants who are enrolled in an education or training program (excluding those in on-the-job training or incumbent worker training), subject to the caveat that such participants only are measured as successes if the participant is also employed or enrolled in an education or training program leading to a recognized postsecondary credential within 1 year from program exit. The language of this indicator is the same as the indicator in § 677.155(a)(1)(iv). The Departments have provided an in-depth explanation of this in the preamble for § 677.155(a)(1)(iv) above and refer readers to this section for more information on this indicator. No particular comments were received regarding the implementation of the fourth primary youth indicator, other than discussed above. The Departments are implementing § 677.155(c)(4) as revised.

The fifth primary indicator documents measurable skill gains. The language of this indicator is the same as the indicator in § 677.155(a)(1)(v). The Departments have provided an in-depth explanation of these changes in the preamble for § 677.155(a)(1)(v) above. No particular comments were received regarding the implementation of the fifth primary youth indicator, other than discussed above. The Departments are implementing § 677.155(c)(5) as revised and discussed in more detail above with respect to § 677.155(a)(1)(v).

The sixth primary indicator measures effectiveness in serving employers. The Departments' approach for measuring this indicator and the resulting changes to the regulatory text are discussed in significant detail in the preamble discussion for § 677.155(a)(1)(vi) above and that approach is applicable for this indicator for purposes of calculating performance under the title I youth program.

Comments: A commenter suggested that the proposed youth indicators in § 677.155(d)(1) and (2) sufficiently measure employer satisfaction and that, to the extent that those measures do not sufficiently measure employer satisfaction, a brief survey could be developed and administered to measure employer satisfaction.

Departments' Response: The Departments have concluded that the effectiveness in serving employers

indicator is statutorily required as a separate indicator from percentage of participants in education or training activities, or in unsubsidized employment, during the second and fourth quarters after exit from the program. The Departments will be implementing a pilot program, as discussed above, to assess measures of effectiveness in serving employers.

Comments: One commenter stated that the introductory description provided under this proposed section is confusing regarding the primary indicators, particularly when distinguishing between the adult and youth indicators. The commenter suggested that the indicators of performance for adults and youth be separately described so there is no confusion in the field as to which indicators apply to each population group.

Departments' Response: As suggested, the Joint WIOA Final Rule separates adult and youth indicators to avoid confusion.

Comments: One commenter suggested that the VR program report youth performance separately just as title I youth programs.

Departments' Response: Section § 677.155(d) of the NPRM contained the performance indicators set forth in sec. 116(b)(2)(A)(ii) of WIOA, which applies only to the title I youth program. These youth performance indicators are now found in the final regulatory text at § 677.155(c). WIOA sec. 116(b)(2)(A)(i) requires all other core programs, including the VR program, to comply with the primary performance indicators set forth in sec. 116(b)(2)(A)(i) of WIOA and § 677.155(a)(1). Therefore, there is no statutory authority for the Departments to do as the commenter suggests.

The Departments understand that the VR program pays for training and education needed for individuals, including youth, to obtain employment. Because the youth indicators in § 677.155(c) are not applicable to the VR program, State VR programs are not required to report outcomes under the youth indicators. Adult and youth performance outcomes can be differentiated in the RSA–911 data, as has always been the case, with no need for additional reporting burden.

Section 677.160 What information is required for State performance reports?

Section 677.160, which implements sec. 116(d)(2) of WIOA, identifies the information States are statutorily required to report in the State performance report, including levels achieved for the primary indicators of performance. No substantive changes have been made to this section.

Comments: Some commenters expressed concern that in many States and tribal nations it will be time-consuming and costly to collect the data and produce a report for all core programs.

Departments' Response: The Departments understand the concerns expressed by some of the commenters regarding the collection of data needed to produce the annual reports and have made every effort to minimize the burden and cost to States by incorporating only necessary data elements in the Departments' data collection instrument provided through the WIOA Joint Performance ICR. Prior to amending each Department's data collection instrument, considerable time was taken to ensure the required data elements collected would be consistent across all core programs and that the only elements added would be necessary to meet the requirements under sec. 116 of WIOA, thereby minimizing the burden as much as possible. Each core program will be responsible for submitting performance reports to their respective Federal agency, just as has been done prior to WIOA. Further, the Departments clarify in this response that there is no requirement in WIOA or the Joint WIOA Final Rule that data reporting be integrated among all core programs. As discussed in more detail with respect to the issue of "common exit" in the preamble for § 677.150(c) above, DOL intends to work towards developing an integrated reporting mechanism for the core programs it administers. The Departments are open to States wishing to submit integrated performance reports, but a single report submission across core programs is not required. If a State were to do this, it must ensure that it reports on all required reporting elements—both for the common performance accountability system under sec. 116 of WIOA and for each of the program-specific reporting elements.

Comments: Commenters recommended that the Departments develop guidance, technical assistance, or an integrated set of reporting specifications that will allow States to submit customer data in the same format for each of the six core programs.

Departments' Response: The Departments recognize the need for, and will develop and disseminate, guidance and associated technical assistance related to the preparation and submission of joint and WIOA title-specific performance reporting, and the WIOA Joint Performance ICR.

Comments: One commenter suggested that the Departments, working with State and local systems, should consider how core programs can collect and provide information on the amount of training provided to program participants.

Departments' Response: The Departments acknowledge the comment and have concluded that data that will be collected through the WIOA Joint Performance ICR associated with this Joint WIOA Final Rule are sufficient to meet the requirements of sec. 116(d)(2) of WIOA. Prior to imposing additional information collection requirements, the Departments must consider them in the context of associated burden and cost. The Departments have concluded that the final information collections meet the statutory requirement while minimizing reporting burden to the extent possible.

Comments: Commenters urged the Departments to allow the State and local agencies that administer the core programs to have access to the data they need, such as UI wage record data. A commenter added that in some States, a release of information form must be signed by the participant. Another commenter recommended that States should be given the option to await the results of the national data integration workgroup before creating their State interoperable system.

Departments' Response: With regard to the commenters' concerns about the availability of quarterly wage record information and the need for, in some cases, informed consent for the disclosures required under applicable privacy and confidentiality laws and regulations for all programs, the Departments did not modify this regulation. The Departments are developing, and will disseminate, guidance that covers the allowable disclosures and processes through which disclosures can be made under 20 CFR part 603, 20 U.S.C. 1232g and 34 CFR part 99 and 34 CFR 361.38. Additionally, work is underway to re-negotiate the Wage Record Interchange System Data Sharing Agreements to establish pathways to the wage record matching required for all core programs to meet their performance reporting requirements.

Paragraph (a)(1) of § 677.160 requires the total number of participants served and total number of participants exited, disaggregated by the number of individuals with barriers to employment and by numbers of participants co-enrolled in core programs. No change to the regulatory text is being made in response to these comments.

Comments: Commenters supported the provision in § 677.160(a)(1)(i) that would require reporting to be disaggregated by categories for individuals with barriers to employment. Commenters also urged that the requirement apply to "reportable individuals" as well as "participants." Those commenters generally suggested that the information in the reporting requirements should be disaggregated based on each disability subset and not the entire group.

Departments' Response: The Departments acknowledge the identified potential benefits for State reporting of disaggregated data for "reportable individuals" in addition to "participants." For the purpose of § 677.160, the Departments are addressing only the requirements for States' annual performance report as required under sec. 116(d)(2) of WIOA, which requires reports on only participants. It should be noted that the different core programs already collect and report information pertaining to "reportable individuals" through their separate individual reporting vehicles.

With regard to the discrete disability categories, RSA currently collects a number of data elements, including the primary and secondary disability type, for individuals who have been determined eligible for VR services and would be considered a "reportable individual." The data can be disaggregated in different categories, including by disability type. The final RSA–911, which is published concurrently with this Joint WIOA Final Rule, has been revised to align with the additional WIOA requirements. No change to the regulatory text is being made in response to these comments.

Comments: A commenter recommended that the requirement to collect information on barriers to employment be tied to the point at which the initial IPE is signed.

Departments' Response: The Departments recognize that different State programs have a number of questions regarding how each of the core programs will collect the required data elements, including at what point required demographic information will be collected to produce the most reliable information and how the current consumer information will be updated to meet the new WIOA requirements. These issues will be addressed through guidance related to the WIOA Joint Performance ICR or the Department-specific ICRs. The Departments also note that § 677.150(a)(1) defines participants for the VR program as an individual who has an approved and signed IPE, and who has begun to receive services. Therefore, data elements required on "participants" must comply with the definition applicable to that term for the VR program. No change to the regulatory text is being made in response to these comments.

Comments: Commenters inquired about implementing a count of total participants and total exiters, disaggregated by co-enrollment in any of the core programs. A commenter expressed concern about being able to obtain the information. For disaggregated counts for those who participated by co-enrollment as required by § 677.160(a)(1)(ii), commenters warned that integrated case management and reporting systems would need to be in place, and the commenters requested technical assistance regarding how core programs housed in different agencies can share and compare participant data to meet reporting requirements. One commenter, however, supported the requirement to report data disaggregated for co-enrollment in any of the core programs.

Departments' Response: The Departments acknowledge that the absence of integrated case management or integrated reporting systems poses challenges to ensuring uniform and easy access to data across programs. The Departments have concluded that integrated data systems would allow for unified and streamlined intake, and case management and service delivery, and would overcome many such challenges. The Departments also note that such systems are not widely used or in place currently at the State level, and encourage States to examine ways in which this may be developed or implemented across core programs. The Departments note that data system integration ranges from data sharing between existing systems to employing consolidated systems. However, in the absence of such systems, the Departments encourage all programs to ensure strong partnerships and collaborative workspaces in which to ensure all programs can meet their reporting requirements. In addition to planning and conducting training and technical assistance on data sharing, the Departments will issue joint guidance for matching education and wage records in order to assist States in providing performance information required under WIOA. Additionally, the Departments will work with State and Local WDBs, one-stop center operators, and partners to achieve an integrated data system for the core programs and other programs to ensure interoperability and the accurate and standardized collection of program and participant information. No change to the regulatory text is being made in response to these comments.

Paragraph (a)(2) of § 677.160 requires disaggregated performance levels based on barriers to employment, age, sex, race, and ethnicity. Certain commenters favored this provision. No substantive change was made to this section.

Paragraphs (a)(3) through (a)(7) of § 677.160 require information on participants who received career services and training services. The Departments have revised § 677.160(a)(3), (4), (6) and (7) to specify that career services and training services are two different services, not one type of service. No change was made to § 677.160(a)(5).

Comments: Several commenters stated that tracking these detailed costs would be overly burdensome and exceed the value of the information gained.

Departments' Response: The Departments recognize the concerns identified by the commenters about the States' ability to collect data pertaining to career services and training services, including expenditures. However, the data elements contained in the State performance report, including the data elements on career services and training services, are required by statute. No change to the regulatory text is being made in response to these comments.

Comments: A few commenters recommended that reporting begin with a 1 year period and work up to 3 years.

Departments' Response: The Departments have concluded that these provisions are prospective provisions that do not require retroactive collection of information. Reporting begins in PY 2016, and by PY 2018 States will have reported 3 years of data. No change to the regulatory text is being made in response to this comment.

Comments: Commenters asked for a definition of "career and training service" and the relationship to "vocational and training services" in the VR program regulations.

Departments' Response: WIOA defines both career services and training services in sec. 134(c)(2) and (c)(3)(D), respectively. Additionally, further information is provided in § 678.430 of this Joint WIOA Final Rule about career services in the one-stop delivery system. Although the definitions are contained in statutory provisions relevant only to the title I core programs, sec. 121 of WIOA (which applies to all core programs) requires each of the core programs to provide career services and training services, as applicable to the program, thereby making those

definitions relevant to all core programs, including the VR program. Furthermore, these services are consistent with the types of services provided by the VR program and with the data collected through the VR program's RSA–911 collection instrument.

With respect to § 677.160(a)(3) (4), (6), and (7), the Departments have revised the regulatory text to address commenter requests for clarity. The previous language at § 677.160(a)(3) referred to "the total number of participants and exiters who received career and training services for the most recent program year and the 3 preceding program years, as applicable to the program." This has been revised to refer to "the total number of participants who received career services and the total number of participants who exited from career services for the most recent program year and the 3 preceding program years, and the total number of participants who received training services and the total number of participants who exited from training services for the most recent program year and the 3 preceding program years as applicable to the program." In so doing, the Departments make clear that career services and training services are two different types of services, not one type of service. The revised language is also more consistent with the statutory provision by referring to "participants who exited" rather than "exiters" since these final regulations define "exit," not "exiter." A similar revision was made to § 677.160(a)(4). Likewise, proposed § 677.160(a)(6) previously referred to "the amount of funds spent on each type of career and training service for the most recent program year and the 3 preceding program years." This language has been revised to refer to "the amount of funds spent on career services and the amount of funds spent on training services for the most recent program year and the 3 preceding program years, as applicable to the program." A similar revision was made to § 677.160(a)(7). These changes clarify that the Departments interpret sec. 116(d)(2)(D) to require the collection and reporting on participants who receive career services and participants who receive training services, as well as participants who exited from career services and training services, as a single point of collection and thus does not require an itemized collection and reporting on each of the various career services or each of the various training services that a program provides. Instead, the amount to be reported is the total amount spent on career services and the total amount spent on training services.

Comments: Paragraph (a)(3) of § 677.160 requires reporting on the number of participants and exiters who received career services and training services. A number of comments were received regarding the difficulty of tracking costs associated with expenditures of funds on such services, as required in paragraph (a)(6).

Departments' Response: The Departments will provide technical assistance or guidance in regard to tracking costs associated with expenditures of funds on career and training services.

No particular comments were received in regard to § 677.160(a)(4).

Paragraph (a)(5) of § 677.160 requires reporting on the percentage of participants who obtained training-related employment through WIOA title I, subtitle B programs.

Comments: Some commenters warned that determining what constitutes training-related employment under paragraph (a)(5) is highly subjective and requires clarification.

Departments' Response: The Departments will provide more information regarding what constitutes training-related employment services through the WIOA Joint Performance ICR and through guidance. No change to the regulatory text is being made in response to these comments.

Paragraphs (a)(6) and (a)(7) of § 677.160 require reporting on the amount of funds spent on career services and training services, and the average cost per participant for participants receiving career services and training services.

Comments: Commenters requested guidance on whether the average cost per participant for career and training services refers to the cost to serve the individual or the costs of the career and training services, and whether administrative costs are included. Separately, one of these commenters also asked for the meaning of "type" of service needed for disaggregation in reporting under paragraph (a)(6).

Departments' Response: The Departments will provide guidance regarding calculations of costs in the WIOA Joint Performance ICR. The Departments have revised § 677.160(a)(6) to reflect the statutory language, as WIOA did not require reports on the amount of funds spent on career services and training services to be disaggregated by the type of career service or training service. The language of the regulation no longer refers to the "type" of service.

Paragraph (a)(8) of § 677.160 requires that States report on the percent of the State's annual WIOA allotment expended on administrative costs.

Comments: A commenter sought clarification on whether this means the percentage of each core program's annual allotment spent on administrative cost, or the State as a whole.

Departments' Response: The Departments want to clarify that § 677.160(a)(8) applies only with respect to the allotment under WIOA sec. 132(b) and not with respect to allotments under other core programs. No change to the regulatory text is being made in response to this comment.

Paragraph (a)(9) of § 677.160 requires information that facilitates comparisons with programs in other States.

Comments: Some commenters opposed a requirement for additional data collection and preferred, for example, development of shared tools/surveys for measuring the quality of services to one-stop center customers.

Departments' Response: The Departments note that WIOA allows consideration of information that is necessary to facilitate comparison of programs across States, which could potentially include the development of shared tools or surveys. No change to the regulatory text is being made in response to these comments. Further, the Departments note that implementation of this provision would be accomplished through the information collection request process.

Comments: The Departments also sought comments on the potential inclusion of a supplemental customer service measure, including suggestions on how to structure such a measure and whether the inclusion of such a measure would be valuable. Commenters did not favor developing a universal access point for customer feedback to be provided with regard to the one-stop centers, though other commenters expressed support for State or local measures of customer satisfaction. One commenter asserted that such information would serve as a foundation for substantive strategic planning, continuous improvement, program research and evaluation, and the dissemination of best practices nationwide.

Departments' Response: The Departments are considering various mechanisms available to produce a national measure of customer satisfaction, with particular interest in a measure akin to the net promoter score used commonly in business and industry. Additionally, the Departments intend to collect information on

customer satisfaction efforts used by the State and local areas through the WIOA Joint Performance ICR as well as information on what States are doing to leverage such information in the management of their programs. The Departments continue to welcome input and participation from States and local areas on how to capture customer satisfaction as it pertains to usage of the public workforce system.

Comments: Other commenters also supported the provision and suggested customer service measures to assess the quality of services, but warned that guidance is needed. A few commenters reasoned that a customer service measure is valuable only if the local area receives the information and has a mechanism to reach out to the customer and make the experience better.

A few commenters warned that obtaining the data would be difficult and suggested that the measure should be left to the discretion of the State or local government. Commenters recommended that the provision should be part of the continuous improvement process at the local level. In addition to the approach described above, the Departments also are interested in the work that has been developed and used at the State and local levels with regard to customer satisfaction, as well as what actions States and Local areas have and will take in response to such feedback.

Departments' Response: At this time, the Departments are not modifying the regulatory text to regulate such activities. As discussed above, the Departments recognize that, a national, State or local customer satisfaction measure would require guidance and technical assistance that will be provided through the mechanisms available such as the information collection request process, which allows for notice and public comment, program guidance, and technical assistance. The Departments reiterate their intent to implement a uniform, national customer satisfaction survey, applicable to both participants and reportable individuals. While this customer satisfaction survey will not be tied to accountability provisions, and the survey results will not be factored into determinations of sanctions, customer satisfaction will be a factor considered in the certification of one-stop centers. The Departments anticipate the survey will encompass two elements: A national net-promoter score-type indicator will be issued through the amended WIOA Joint Performance ICR with a standard methodology; and a State-based methodology that States will develop and States and Local WDBs will use for one-stop center accountability and customer service improvement. A focus from the Federal level will be on understanding what States and local WDBs did with the results, which is critical to using the data and information gathered towards the betterment of service delivery and design. When the Departments collect information on these activities, such actions and instructions will be conveyed through the information collection process that is also subject to notice and public comment.

Comments: Paragraph (a)(10) of § 677.160 requires a State narrative report regarding pay-for-performance contracting. A local government recommended that the Departments provide a clear definition of pay-for-performance contracts.

Departments' Response: The Departments did not introduce a definition of pay-for-performance contracts under this section of the regulation. The Departments refer to 20 CFR part 683, subpart E, where the allowance and guidelines for pay-for-performance activities is more fully described (*see* DOL WIOA Final Rule, published in this issue of the **Federal Register**). Paragraph (a)(10) of § 677.160 remains unchanged from that proposed in the NPRM.

Paragraph (b) of § 677.160 prohibits the disaggregation of data for a category in the State performance report if the number of participants in that category is insufficient to yield statistically reliable information.

Comments: Commenters suggested that States are likely to have several "cell sizes" that do not meet the standard of statistical reliability; therefore, reporting requirements should include alternative methods for summarizing data into larger aggregates. A commenter requested guidance on an acceptable level of disaggregation of data.

Departments' Response: The Departments recognize that disaggregation can produce certain cell sizes that fall below the aggregation levels that are allowed in order to protect the data from yielding PII.

The Departments did not impose a minimum disaggregation level in this section of the NPRM or this Joint WIOA Final Rule and will provide additional clarity through guidance regarding aggregation that is statistically significant and reliable yet protects the identity of individuals served through the programs. In developing such guidelines and guidance, the Departments have considered industry standards such as those established by the National Institute of Standards and Technology (NIST), the Family Educational Rights and Privacy Act (FERPA), the confidentiality regulations for the VR program at 34 CFR 361.38, the UC confidentiality regulations found at 20 CFR part 603, the Social Security Act sec. 1137(a)(5) as well as State laws that govern aggregation levels and factors that can be used to affect the level of suppression required to maintain the privacy and confidentiality of participant data. No change to the regulatory text is being made in response to these comments. Furthermore, the Departments reiterate their interpretation of this statutory provision of WIOA, as noted in the NPRM at 80 FR 20474, 20589 (April. 16, 2015). As written, WIOA sec. 116(d)(2) requires the performance report to be subject to WIOA sec. 116(d)(5)(C). However, this section refers to Data Validation, and the Departments interpret this reference to requires States to comply with sec. 116(d)(6)(C), which ensures the Departments receive statistically reliable information and protects participants' privacy. The Departments are implementing this regulation as proposed.

Paragraph (c) of § 677.160 requires that the State performance report include a mechanism of electronic access to the State's local area and ETP performance reports. This provision does not require a State to submit the actual local area and ETP performance reports with its State report. Failure to provide a mechanism of electronic access to the State's local area and ETP performance reports will constitute an incomplete State performance report submission, and thus trigger sanctions. No comments were received regarding this electronic access reporting requirement. This section remains unchanged from that proposed in the NPRM.

Paragraph (d) of § 677.160 states that States and local areas must comply with the requirements in sec. 116 of WIOA as explained through joint guidance that the Departments will promulgate. This section remains unchanged from that proposed in the NPRM.

Section 677.165 May a State establish additional indicators of performance?

Section 677.165 reflects the WIOA provisions in sec. 116(b)(2)(B) that a State may identify in the Unified or Combined State Plan additional performance accountability indicators. For example, a State could add an indicator for attaining U.S. citizenship, work readiness, completion of work-based learning, or any other indicator of State significance. This provision of additional performance indicators proposed by the State remains

unchanged from WIA. There were no comments on proposed § 677.165. There were no substantive changes made to this section.

Section 677.170 How are State levels of performance for primary indicators established?

Section 677.170 outlines the process that will be followed and the factors that will be considered in determining adjusted levels of performance. WIOA uses the term "adjusted levels" to refer to both the levels agreed to prior to the start of a program year, as well as the adjustment done using the objective statistical model at the close of the program year. In order to distinguish between the two adjustment processes described in statute, this section was revised to use two different terms for each process, specifically "negotiated levels of performance" and "adjusted levels of performance." Section 677.170 was revised to provide specific distinctions among expected levels, negotiated levels, and adjusted levels of performance. The section explains the process under which levels of performance are negotiated, adjusted, and then calculated.

Section 677.170(a)(1) implements the requirement in sec. 116(b)(3)(A)(iii) that States provide expected levels of performance in the initial submission of the Unified or Combined State Plan for the first 2 years of the plan. In addition, the Departments are requiring in § 677.170(a)(2) that the States submit expected levels of performance for the third and fourth years before the start of the third program year covered by the Unified or Combined State Plan consistent with §§ 676.135 and 676.145, as part of the State Plan modifications under sec. 102(c)(3)(A) of WIOA.

Comments: One commenter questioned whether performance levels required in the State Plans are the proposed standards or the negotiated standards since the term "expected" is used. The commenter also recommended that the State WDB coordinate and participate in performance negotiations for each partner and that the negotiations be completed with States at least 45 days before the statutory deadlines for submission of the 4-year plans and the 2-year plan modifications.

Departments' Response: Section 116(b)(3)(A)(iii) of WIOA requires that each State identify expected levels of performance for each of the corresponding primary indicators of performance for each of the core programs for the first 2 program years covered by the Unified or Combined State Plan. The expected levels of performance are those submitted by the State in the initial submission of the State Plan prior to negotiation. The expected levels of performance will be used to reach agreement with the Departments on State negotiated levels of performance. Therefore, the expected performance levels are similar to proposed goals, reflecting the State's expectations for its performance. These expected levels, however, will be adjusted through negotiations between the State and the Departments in accordance with sec. 116(b)(3)(A)(iv) of WIOA. Once the negotiated levels of performance are agreed upon, these levels will be incorporated into the approved Unified or Combined State Plan. Section 677.170(a) reflects this statutory requirement. The Departments did not modify the regulation to require coordination across core programs with regard to the negotiations process, as recommended by the commenter. The Departments agree that the commenter's suggestions are important for the purposes and priorities of WIOA and strongly encourage coordination across the core programs and other partner programs with respect to negotiating performance levels for all programs operating in a State. This section is consistent with the statutory requirements; the timing of the negotiation is connected to the approval of the State Plan. The Departments will provide guidance about the negotiation process.

Section 677.170(b) requires that the State reach agreement with the Secretaries on negotiated levels of performance based on the factors in WIOA sec. 116(b)(3)(A)(v). The Departments reiterate that WIOA uses the term "adjusted levels" to refer to both the levels agreed to prior to the start of a program year, as well as the adjustment done using the objective statistical model at the close of the program year. This paragraph was revised to use the term "negotiated levels" as appropriate, to distinguish between the two processes.

The Departments sought comments on whether any additional factors, beyond those identified in the proposed regulation, should be considered in developing the statistical adjustment model, and the best approach to updating the model as necessary.

Comments: Several commenters requested clarification of the requirement for promoting continuous improvement, as set forth in paragraph (b)(3) of § 677.170. One commenter recommended that the Departments consider embracing the full concept of continuous improvement or eliminate the term from the regulations because a true continuous improvement measure may have nothing to do with increasing a performance measure and may seek to improve a process. Another commented that continuous improvement can be defined in a variety of ways, including as improvements in efficiency. Commenters also requested that continuous improvement be defined in the regulation.

Departments' Response: The Departments want to make clear that sec. 116(b)(3)(A)(v) of WIOA requires the negotiated levels of performance take into account four factors, including, among other things, how the levels of performance promote continuous improvement. The Departments recognize the complexities involved in using a continuous improvement factor in performance negotiations. However, the Departments are unable to remove the continuous improvement factor from the regulation because it is a statutory requirement. The Departments will issue guidance on the performance negotiations process that will provide additional information regarding how the factor will be applied. No change to the regulatory text is being made in response to these comments.

Section 677.170(c) provides that the Secretaries will disseminate an objective statistical adjustment model that will be used both to reach agreement on the State negotiated levels of performance and to revise the negotiated levels at the end of a program year, to establish the adjusted levels of performance. The objective statistical adjustment model will account for actual economic conditions and characteristics of participants, including the factors required by WIOA sec. 116(b)(3)(A)(v)(II). The Departments will consider identified statutory factors and other factors, which through empirical support are established to have an effect on employment or skill outcomes and are consistent with the factors identified in WIOA. The Departments also will publish guidance that includes how the model was developed, what factors were considered, and how the results are interpreted.

The regulation reflects the statutory requirement that the objective statistical model consider certain factors. The differences among States in actual economic conditions, as set forth in § 677.170(c)(1) for required inclusion in the statistical adjustment model, include the same economic conditions identified in WIOA sec. 116(b)(3)(A)(v)(II)(aa). The characteristics of participants, as set forth in § 677.170(c)(2) for required inclusion in the statistical adjustment

model, include the factors identified in WIOA sec. 116(b)(3)(A)(v)(II)(bb).

Comments: One commenter expressed concern that including participants' disability status as a factor in the objective statistical model could unintentionally undermine the goal of increasing the number of participants with disabilities in integrated and competitive employment settings.

Departments' Response: The Departments note that disability status is a statutorily required factor for the objective statistical model. The Departments also note that continuous improvement is a factor in establishing the negotiated levels of performance.

Comments: In the preamble to the NPRM, the Departments requested comments specifically concerning additional factors to consider in developing the statistical adjustment model. Many commenters supported the commitment to use a statistical model and offered additional factors, including race, Hispanic ethnicity, age, gender, veterans in the area, severity of disability (*e.g.*, receiving Social Security disability benefits), seasonal employment, self-employment, minimum wage and other economic data applicable to the local area, nature of predominant employers in the area, quality of educational and training facilities in the area, crime rate in the area, public transportation and geographic barriers in the area, unemployment rate applicable to young people, lack of a high school diploma, individuals not in the workforce, and ratio of earnings at program entry to child support arrearages.

Departments' Response: Upon consideration of comments regarding additional factors to be included in the model, the Departments concluded additional regulation is not required to include additional factors. The Departments intend, in accordance with the statutory requirements for the use of an objective statistical model, to consider those identified statutory factors along with any other factors either established within WIOA or through empirical support (and which are consistent with the factors in the statute) to have an effect on employment or skill outcomes as measured by the primary indicators of performance established in § 677.155. Factors that are included in the model will be based on the application of empirically supported statistical analyses used to determine the effect of a particular factor on participant outcomes. The statistical adjustment model will be reviewed periodically and may be revised with appropriate consultation to ensure its accuracy and utility.

Comments: A commenter asserted that adjusted performance levels should include a factor for small States, single-area States, and areas of generally lower population.

Departments' Response: The Departments are considering all potential factors in an effort to establish a model that is evidence-based and supported by the literature. Having conducted a review of the existing literature, the Departments have concluded that small States and single-area State structures would be accounted for by those variables that capture industrial structures, unemployment rates, and shares of the population represented by race and educational levels. No change to the regulatory text is being made in response to these comments.

Comments: One commenter suggested that the Departments be mindful of the potential burden that requiring additional data collection would create and urged reducing reporting burdens and simplifying reporting requirements.

Departments' Response: The Departments are mindful of the reporting burden that would result from requiring additional information on participants. In this case, the Departments aim to work with States as well as other agencies that may have administrative data that could be used to populate the model based on established, empirical evidence that such information is shown to have an effect on the outcomes being measured.

Comments: A few of the commenters suggested that the Secretaries may need to establish separate statistical models for different programs, such as those for youth and for adults, and suggested that the models should be tested over a trial period and re-examined. Commenters also recommended regular updates to the models.

Departments' Response: Section 116(b)(3)(A)(v)(II) of WIOA requires that adjustments be made using "the objective statistical model," which the Departments will build on a common framework for all core programs to allow for programmatic differences between programs. The model will be examined and revised as necessary. No change to the regulatory text is being made in response to these comments.

Comments: One commenter raised concerns about the title II program not collecting individual records at the Federal level and stated that such records are absolutely necessary to develop and operate statistical models. The commenter urged the Departments to develop a common reporting mechanism. Other commenters noted that title II programs lack experience using adjustment models and requested additional guidance and technical assistance.

Departments' Response: The Departments acknowledge that the use of aggregate data for the title II AEFLA program creates shortcomings for developing an adjustment model because, among other things, the results only can be used to adjust performance at the aggregate level (*i.e.*, State) and results from these models cannot be applied to any sub-level (*e.g.*, city, county). However, the Departments disagree that individual data are absolutely necessary to develop a statistical adjustment model for State-level adjustments. Aggregate data may be used in statistical adjustment models when individual records are not available. The Departments have already developed statistical models for other program purposes that produce accurate results using aggregated data and show that results are comparable for State level adjustments, regardless of whether individual data (*i.e.*, disaggregated data) or aggregate data are used. The Departments note that for the AEFLA program under title II, ED will provide technical assistance to States in applying the statistical adjustment model. The Departments will develop procedures to minimize burden to States when using the model to generate adjusted levels of performance. No change to the regulatory text is being made in response to these comments.

Comments: A few commenters warned that there is limited or no statistical tribal data available that captures economic circumstances for the various Indian and Native American geographic service areas. One of these commenters added that a regression model that factors in local economic conditions will need to be developed for the INA program.

Departments' Response: In response to the commenter's concern about developing an accurate regression model to establish levels of performance for INA program grantees, the Departments recognize that labor market information (LMI) for American Indian geographic service areas may not be as reliable as that for other areas. However, the regression model also factors in the characteristics of participants served by the grantee and is, therefore, not totally dependent on LMI. Despite the potential for inaccurate LMI data for American Indian geographic service areas, the Departments are confident a regression model can be developed that establishes fair and attainable levels of performance for each INA program grantee's service area. The Departments envision developing further guidance regarding

INA adult performance indicators. No change to the regulatory text is being made in response to these comments.

Comments: Some commenters did not support the use of an adjustment model, or express concerns about the design of the State performance accountability systems, because of the temptation to serve those individuals who are more likely to achieve positive outcomes. This commenter also noted that the fact that the State has sufficient tools to evaluate current and projected performance to identify intervening occurrences that would trigger re-evaluation of performance.

Departments' Response: While the Departments understand the concerns expressed, sec. 116(b)(3)(A)(v)(II) of WIOA requires the use of an objective statistical model to adjust the State levels of performance based on actual economic conditions and characteristics of participants. The Departments caution that any service provider tempted to utilize the tactics described by the commenter should consider the impact on future performance levels, which may be affected because of relatively lower numbers or percentages of hard-to-serve populations and other populations with barriers to employment. No change to the regulatory text is being made in response to this comment.

Comments: Commenters added that the model will need to account for varying levels of impact of a particular demographic or local economic condition in different parts of the country, in particular race and ethnicity, offender status, dependence on public assistance, local minimum wage, and the local unemployment rates for young adults. Some commenters recommended these factors be explicitly mentioned in the regulation. One such commenter suggested that select CEOs participate in the selection of factors in different parts of the country.

Departments' Response: The Departments are considering a State fixed effect variable. Such a variable would account, in essence, for the quality of the programs and their services. The Departments, after consulting with various stakeholders and particularly in consultation with expert reviewers, identified that the most important piece of information that is not directly included within the statistical adjustment model for the purposes of the performance accountability system, is the quality of the programs and services. The model is being developed with consideration of all participant and student variables required by WIOA and the potential State specific factors that could be accounted for through a State fixed effect variable. This variable ultimately could serve the same purpose statistically as including additional individual characteristics and any other State characteristic not included in the model. With regard to participation of select CEOs in the selection of factors to be included within the statistical adjustment model, the Departments note that the methodology, including the factors in the model, will be available for public comment and review. Moreover, WIOA sec. 116(b)(3)(A)(viii) requires the Departments to develop an objective statistical model in consultation with a variety of stakeholders identified in sec. 116(b)(4)(B), who would include CEOs. No change to the regulatory text is being made in response to these comments.

Comments: Some commenters also suggested that States should be allowed to provide additional information specific to the State that may not be fully accounted for in the national statistical models when setting performance targets. Some commenters suggested that State and local areas should be able to document this information and use it in performance negotiations. Others stated that additional State information is critical because it is not feasible to develop a single statistical model with one set of demographic and economic variables that is equally accurate for all States and all boards.

Departments' Response: The Departments note that States are permitted to provide additional information concerning factors listed in sec. 116(b)(3)(A)(v) of WIOA during the negotiations process. The States may provide relevant documentation and research concerning these factors during the negotiation process. The Departments will ensure that each programs' data, its availability, and its specificity will be considered in developing the methodology and framework for the application of the model to each program. The Departments intend to continue to assess the quality and robustness of the statistical adjustment model since it plays such a key part in the adjusted levels of performance under this section. No change to the regulatory text is being made in response to these comments.

Section 677.170(d) requires the statistical adjustment model to be used before the beginning of a program year as a consideration in establishing levels of performance, and then used to adjust levels of performance at the end of a program year. The Departments reiterate that WIOA uses the term "adjusted levels" to refer to both the levels agreed to prior to the start of a program year, as well as the adjustment done using the objective statistical model at the close of the program year. This paragraph was revised to use the term "negotiated levels" as appropriate to the process.

Comments: Several commenters opposed having the goals adjusted twice a year, because it would make building strategic plans difficult, add additional burden, and create a moving target. Another commenter requested that the margin of error be published with the statistical models. A few commenters asserted that applying the formula at the end of the year creates the possibility of targets higher than planned outcomes, which could lead to local areas failing performance. The commenters stated that this approach does not lend itself to a strategic planning process. An individual suggested that the year-end adjustment process needs to allow room for additional factors that were not anticipated to be significant at the start of the year, and another commenter asked whether States will be able or required to negotiate the final targets or if the results of the model will be applied without discussion.

Departments' Response: Section 677.170(d) implements sec. 116(b)(3)(A)(iv) and (vii) of WIOA and requires the objective statistical model to be applied before the beginning of the program year as a consideration in establishing State levels of performance for the upcoming program year and be used again at the end of the program year based on actual circumstances. Therefore, there is no statutory authority to delete the requirement to use the objective statistical model at the end of the program year. The concern about margin of error is important in evaluating the results from the model. Consequently, the Departments will provide confidence intervals along with the adjusted performance measures for each State. The Departments also recognize that the effects of variables used in the adjustment model may change over time. No change to the regulatory text is being made in response to these comments.

Comments: Commenters requested that the model be made available for the States to install within their own information systems so that it can be made available to the local areas.

Departments' Response: The Departments acknowledge the commenters' interest in incorporating the model within their own systems. As required by WIOA, the Departments intend to make the statistical adjustment model available to States, local areas, and the public. No change to the

regulatory text is being made in response to these comments.

Comments: Commenters sought guidance and technical assistance, including guidance on how to ensure that disadvantaged populations receive comparable services throughout the program with expectations that they will achieve outcomes leading to successful exits similar to all participants in the program. A commenter favored development of a common reporting mechanism, so that model development would not be delayed by claims that the necessary data are not available.

Departments' Response: The Departments intend to publish guidance that includes how the model was developed, what factors were considered, and how the results are interpreted. The Departments also share the commenters' concerns regarding comparable service for disadvantaged participants and commit to providing technical assistance and guidance on how to ensure an equal distribution of services. No change to the regulatory text is being made in response to these comments.

Comments: Many commenters suggested that, because data are lacking to set benchmarks for the new outcome measures, FY2017 should be a benchmarking year, or implementation should be lagged for 2 to 4 years to establish accurate levels of performance. A commenter expressed concern about the comparability of data across core programs and across States. Another commenter asked for clarification on whether there will be sanctions for low performance prior to the establishment of benchmarks and baselines.

Departments' Response: The Departments have revised § 677.190(c) in response to these comments; more information about the Departments' approach is set out below in the preamble to that section.

Section 677.170(e). The Departments added a new paragraph (e) to § 677.170, and renumbered the previous paragraph (e) as § 677.170(f). The new paragraph (e) specifies that the previously discussed negotiated levels, after being revised at the end of the program year based on the statistical adjustment model, are the adjusted levels of performance.

Section 677.170(f) requires States to comply with the requirements in sec. 116 of WIOA. The Departments intend to issue guidance, which may include information on reportable individuals as established by the Secretaries. No comments were received regarding this reporting requirement and no changes have been made to this section.

Section 677.175 What responsibility do States have to use quarterly wage record information for performance accountability?

Section 677.175 implements the requirement that States must, consistent with State laws, use quarterly wage record information to measure progress on State and local performance accountability measures, as required by sec. 116(i)(2) of WIOA. Such information includes the intrastate and interstate wages paid to an individual, the individual's SSN, and information about the employer paying the wages to the individual.

After further review of this provision, the Departments recognize that some participants may not be included in quarterly wage records held by the State, such as those participants who refuse to provide a SSN to the program or who may be self-employed. In light of this fact, the Departments have revised § 677.175(a) to make clear that States must use quarterly wage records to the extent they are available; however, States may use other information when such records are not available. In so doing, the Departments ensure that programs may track the participants for performance accountability purposes even if their information is not contained in the State's quarterly wage record system.

The Departments have revised § 677.175(c) to provide that the State agency or appropriate State entity designated to assist in carrying out the performance requirements is responsible for preventing disaggregation that would violate applicable privacy standards. The Departments added the words "applicable" and "standards" to § 677.175(c)(3) to require that the States must consider the privacy standards that apply to them.

Comments: A significant number of commenters raised concerns about the difficulty in matching wage records, citing concerns over FERPA privacy rules, that students often refuse to provide SSNs (for reasons such as concern about consumer fraud and uncertain residency status), some students do not have SSNs, and several States do not allow programs to collect SSNs. Some of these commenters asserted that there are other data matching mechanisms by which to track employee outcomes. Other commenters suggested not including participants without SSNs in the measure for computing the percentage for the performance target. Many commenters also urged the Departments to provide guidance on how to collect employment-related data without use of SSNs, acceptable forms of SSN validation, and on alternatives to using wage records. Many commenters added that data from the UI wage record system often do not present a complete picture of employment because it excludes the self-employed, those outside of an individual State, and risks over-representing Limited English Proficient individuals in the non-matching group. Some of these commenters recommended that States be given supplemental options such as follow-up calls or emails to verify employment status.

Departments' Response: The Departments considered the commenters' concerns about the obstacles to using wage record information and agree there are limited circumstances in which such information may not be available. The Departments want to make clear that sec. 116(i)(2) of WIOA requires that States use quarterly wage records when determining performance under the primary performance indicators that measure employment status and median earnings. Using its authority under sec. 189 of WIOA, the Secretaries are allowing States to use other information to verify performance of those individuals for whom quarterly wage records are not available, such as those who are self-employed. This flexibility is necessary to carry out the requirements of WIOA and its performance accountability system. To do otherwise would potentially result in programs not able to report on participants as required under WIOA. Therefore, where available and possible, States must use wage records to fulfill reporting requirements. Furthermore, the Departments understand that wage record information may not provide a complete representation of the employment outcomes. For all the reasons discussed here, the Departments will allow the collection and verification of supplemental wage information to demonstrate employment outcomes in the second and fourth quarters after exit in those instances where wage records are not available. However, if a State uses supplemental information to report on the employment rate indicators, the State also must use supplemental information to report on the median earnings indicators. The Departments will provide guidance on acceptable supplemental information to verify performance outcomes. Section 677.175(a) has been revised to reflect the changes described here.

With regard to acceptable forms of SSN validation, the Departments note

that WIOA sec. 116(d)(5) requires the Departments to issue data validation guidelines, which the States must use to ensure that the information in the reports is valid and reliable. See the preamble to § 677.240 below for further discussion on this requirement.

In the NPRM, the Departments expressed the intent to engage in a renegotiation of the WRIS data sharing agreements with States, which will allow States to conduct interstate wage matches for all WIOA core programs. Like WIA, WIOA similarly provides authority for the Departments to facilitate data matching between the States.

Comments: Several commenters approved of this commitment and encouraged the Departments to clarify that all the core programs may use the Federal Employment Data Exchange System (FEDES) for WIOA performance reporting.

Departments' Response: Under WIA, DOL's Employment and Training Administration aided in the establishment and management of a system through which participating, signed States could access Federal employment records from the participating government agencies. The Departments have concluded that the authorities established in WIOA allow for the continuation of such an agreement to facilitate wage matching for Federal employment for States that become signatories to the established data sharing agreement. The Departments have concluded that such agreements should be entered into and conducted at the State level based on the language of WIOA sec. 116(i)(2), which requires that the use of wage records must be consistent with State law. Moreover, WIOA sec. 116(i)(2) requires the Secretary of Labor to facilitate such arrangements between States. Therefore, the Departments continue in their commitment to review and renegotiate the appropriate agreements with State government entities that provide the necessary wage data for complete and robust performance reporting across all core programs under WIOA.

Comments: One commenter recommended that, for private training providers who cannot access wage record information, regulations should provide that the data these entities submitted for training participants not found in the UI wage records be returned to the provider, indicating that the records do not match UI records.

Departments' Response: ETP access to wage records is governed by the UC Confidentiality and Disclosure regulations at 20 CFR part 603. Therefore, training providers seeking access to wage records must comply with these provisions. Because ETP access is governed by 20 CFR part 603, the Departments have not changed § 677.175 in response to this comment. However, the Departments will issue guidance regarding the process of matching wage records. No change to the regulatory text is being made in response to this comment.

Comments: Another commenter favored allowing performance to be reported disaggregated by industry.

Departments' Response: The Departments consider additional disaggregation, when it is not required by statute, to pose an additional and unnecessary burden on the States. Moreover, many States do not require the inclusion of the North American Industry Classification System codes within wage records. Therefore, its inconsistent availability makes requiring this kind of reporting infeasible. No change to the regulatory text is being made in response to this comment.

Comments: One commenter suggested that WDBs and AEFLA providers are entitled to know whether a participant they served was employed in a given quarter.

Departments' Response: The Departments reiterate that an entity's ability to obtain this information depends on their compliance with the confidentiality requirements of 20 CFR part 603 (covering UC records), 34 CFR part 99 (covering educational records protected by FERPA), and 34 CFR 361.38 (covering VR records), as well as any applicable State laws. However, the Departments want to make clear that States are responsible for ensuring the appropriate entities have access to the information required for reporting purposes under WIOA sec. 116 and these regulations.

Comments: The Departments received several comments related to the use of wage record information and the VR program. Another commenter asked whether the wage record provision will be tracked in the VR program differently than in the other core programs. A commenter requested that additional guidance on VR access to WRIS be issued so that States may plan any necessary changes to their IT systems.

Departments' Response: The Departments recognize the unique disclosure requirements that have to be navigated by various entities. Because of the importance of protecting PII while also obtaining the necessary information needed for States to comply with the performance accountability system requirements, the Departments will issue guidance to assist States in regard to accessing wage record information.

The Departments also refer these commenters to the UC Confidentiality and Disclosure regulations at 20 CFR part 603, which govern the confidentiality and disclosure of, wage record information. It should be noted that the confidentiality provisions apply to PII contained within a wage record and this extends to the absence of data for an individual level as well. The tracking of employment outcomes through wage record matching is subject to 20 CFR part 603 and any applicable Federal and State laws; therefore, there may be some variation in the mechanisms for matching wage record data via the State UC agencies and the process through which any core program enters into and engages under those agreements. Furthermore, regulating access to wage record information is beyond the scope of this part. No change to the regulatory text is being made in response to these comments.

Comments: A commenter asserted that if the VR program is to track progress on wages, then it would need ready access to longer-range employment data.

Departments' Response: The VR program is subject to the same outcome reporting requirements as the other core programs under WIOA. Thus the Departments have concluded that access to a different duration of employment data is not necessary. No change to the regulatory text is being made in response to this comment.

Comments: Another commenter requested clarification on how participants who are seeking to better themselves without entering the workforce or postsecondary education should be treated in the performance accountability system. This population includes retirees, the non-working disabled, and English language learners who are seeking to improve their language skills but are not in the labor force.

Departments' Response: The Departments interpret WIOA sec. 116(b)(2)(A)(i) to require all participants to be included in the primary performance indicators, with very limited exceptions, regardless of their employment status at program entry. No change to the regulatory text is being made in response to this comment.

Comments: A commenter requested clarification about whether the wage record information refers to wages paid or wages earned.

Departments' Response: The Departments clarify that the wage record information held by State UC agencies, from which wage record information is drawn, only contain the wages paid to an individual. See 20 CFR 603.2(k)(1). Moreover, sec. 1137(a)(3) of the Social Security Act, which creates the requirement that States provide quarterly wage reports, only requires that employers report wage information. Similarly, sec. 3306(b) of the Federal Unemployment Tax Act defines wages as all remuneration for employment. Because the records only include wages paid, the Departments interpret WIOA sec. 116(i)(2)'s requirement to use State UI wage records to mean that the States only are required to report on wages paid. No change to the regulatory text is being made in response to this comment.

Comments: Some commenters favored data sharing and record matching across departments and programs. Another commenter said that the Indian and Native American programs (INAP) do not have a mechanism to match participant SSNs with UI wage records. One commenter recommended that the Departments, in renegotiating the Wage Record Interchange System (WRIS) agreements, make it possible for States to access readily both intra- and interstate UI data beyond the fourth quarter after exit for longer-term program impact evaluations.

Departments' Response: The Departments recognize the variety of structures that exist for programs under WIOA; some programs are run through the States and others are run through sub-State level grantees. The Departments recognize the challenges faced by the INA programs in complying with WIOA performance reporting requirements and will be issuing guidance for and providing technical assistance to those programs. Under WIA the Secretary of Labor, working with States, established the WRIS to facilitate access to interstate wage data for State workforce agencies to fulfill their performance reporting requirements. In addition, DOL established the Common Reporting Information System (CRIS) in order to provide access to the aggregate wage data necessary for performance reporting, to those workforce programs that were not operated by State workforce agencies. These programs included the WIA national programs, such as INAP and NFJP, as well as competitive and discretionary grant programs operated under the jurisdiction of DOL.

Under WIOA, the WRIS, WRIS2, and CRIS are being reviewed and renegotiated to establish the mechanisms for programs, including those under the jurisdiction of ED, where applicable, to access the quarterly wage data necessary for grantees to fulfill their WIOA performance reporting requirements.

The Departments considered these comments and made no changes to the regulatory text. First, WIOA sec. 116(i)(2) already requires that the wage records of any State receiving program funds are available to any other State to the extent that such wage records are required by the other State in carrying out performance accountability for its State Plan. While the Departments are working to facilitate applicable programs' access to intra- and interstate UI data, the Departments have determined that the conditions and availability of the records outlined within these agreements are not appropriately included in this regulation.

Comments: A commenter suggested that DOL look at wage record pilots to research gaps in wage record use.

Departments' Response: The Departments will continue to give consideration to activities that identify gaps and improve on the usage of wage record information for the purposes of performance reporting. No change to the regulatory text is being made in response to this comment.

Comments: Several commenters suggested that Local WDBs have access to data that is timely and pertinent, citing surveys in which participants say that their job is unrelated to the training received.

Departments' Response: The Departments recognize the need for local areas to gain access to timely and accurate data and the Departments strongly urge States to provide the sub-State level local area reporting outcomes to their local areas along with the reporting that they submit to the Departments. No change to the regulatory has been made in response to these comments.

Comments: Commenters suggested that the wages should include all program participant wages, pre- and post-exit.

Departments' Response: The Departments have concluded that it is not necessary to include this level of specificity in the regulatory text. Such information and its required collection are handled through the WIOA Joint Performance ICR. No change to the regulatory text is being made in response to these comments.

4. Sanctions for State Performance and the Provision of Technical Assistance (20 CFR part 677, subpart B; 34 CFR 361.180 through 361.200; 34 CFR 463.180 through 463.200)

Section 677.180 When is a State subject to a financial sanction under the Workforce Innovation and Opportunity Act?

Section 677.180 outlines performance and reporting requirements that are subject to sanctions under sec. 116(f) of WIOA. Section 677.180 provides that the failure to submit the State annual performance report required under sec. 116(d)(2) of WIOA is sanctionable, and that sanctions for performance failure are based on the primary indicators of performance. The Departments have revised § 677.180 to correct a statutory citation error in the introductory paragraph (to change WIOA sec. 116(d) to sec. 116(f)). WIOA sec. 116(d) outlines the requirements for performance reports. The correct reference should be to sec. 116(f), which governs sanctions for State failure to meet State performance accountability indicators. No other substantive changes were made to this section.

Comments: Commenters expressed support for the imposition of sanctions for failure to report as well as for failure to meet a performance standard.

A few commenters stated that funding and sanctions should be tied to individual programs to ensure that a core program's poor performance does not negatively impact the funding of other core programs.

Departments' Response: The Departments recognize the commenters' concerns regarding funding and sanctions being tied to individual programs; however, WIOA sec. 116(f)(1)(B) makes clear that the sanctions are imposed against the Governor's Reserve for statewide activities under the title I adult, dislocated worker, and youth formula programs regardless of which of the six core program's performance constitutes a failure giving rise to the sanction. Therefore, given the explicit statutory requirement, the Departments do not have the authority to do as these commenters suggested. No change to the regulatory text was made in response to these comments.

Comments: Another commenter requested clarification regarding how individual core programs will be held accountable if they reside in different agencies.

Departments' Response: The Departments note that accountability for the State's performance rests with the Governor and State WDB, through

which all core programs are represented. Therefore, even if the core programs are located in different agencies, there is no difference in how the States and core programs are treated. The Departments encourage and expect the core programs to work closely together regardless of the State agency in which they are located. No change to the regulatory text was made in response to this comment.

Comments: A commenter sought clarification concerning the process for submitting the State annual performance report and the manner in which sanctions will be enforced.

Departments' Response: The Departments consider the process of submitting State annual performance reports to fall under the purview of sub-regulatory guidance as it is implementation of the regulatory requirements. Therefore, the Departments will issue guidance clearly explaining how to carry out the annual reporting process. The Departments will impose financial sanctions consistent with WIOA sec. 116(f)(1)(B), which provides for a five percent reduction of the State Governor's Reserve for Statewide Activities from the amount allocated in the immediately succeeding program year. The Departments consider the logistics of how the financial sanction will work to fall under the purview of sub-regulatory guidance as it is implementation of the statutory and regulatory requirement. Moreover, the financial sanctions will be carried out consistent with financial management and rules already in place. Therefore, the Departments will issue further guidance on how this process will be conducted. No change to the regulatory text is being made in response to this comment.

Comments: One commenter requested clarification about whether WIOA or Perkins indicators of performance would take precedence in a Combined State Plan.

Departments' Response: The Departments clarify here that the Perkins program is subject to its authorizing statute's requirements on performance measurement. Should a grantee receive both Perkins and WIOA funds, it must report on both programs accordingly.

Section 677.185 When are sanctions applied for a State's failure to submit an annual performance report?

Section 677.185 outlines the circumstances under which a State may be sanctioned for failure to report under sec. 116(f)(1)(B) of WIOA. No substantive changes were made to this section.

Comments: A commenter stated that the 30-day deadline to request an extension should be removed as it does not allow for exceptional circumstances, such as a natural disaster, that may occur closer to the deadline.

Departments' Response: The Departments refer the commenter to § 677.185(c)(2) which allows for unexpected events within the 30-day period and provides a process by which exceptional circumstances may be addressed in less than 30 days. No change to the regulatory text was made in response to this comment.

Comments: A few commenters supported the enforcement of sanctions for failure to report.

A few other commenters requested clarification regarding what the Departments consider exceptional circumstances under which a State would be exempt from sanctions for failure to report.

Departments' Response: In response to the comments on enforcement of sanctions for failure to report, the Departments note that a State annual performance report is considered complete only when it provides a mechanism of electronic access to local area and ETP performance reports. Thus, the submission of a State annual performance report that does not provide a mechanism of electronic access to local area and ETP performance reports is a sanctionable offense. Section 677.185(b) provides a non-exhaustive list of examples that may qualify as an exceptional circumstance. The listed exceptional circumstances include natural disasters, unexpected personnel transitions, and unexpected technology related impacts. These are not the only circumstances that may be justified, but rather are examples of the types of circumstances the Departments would consider exceptional. The Departments expect that any request for delay or any failure to report timely information would not be based on a routine or predictable situation. The Departments interpret § 677.185(c) to require these exceptional circumstances to be fully documented by the States, supported by clear rationale, and include an estimation of when the performance reports will be made available. The Departments will determine the merits of each request based on exceptional circumstances in consultations with the States, and their respective regional offices. The Departments plan to issue guidance to provide further clarity with regard to exceptional circumstances. No change to the regulatory text is being made in response to these comments.

Comments: A commenter expressed concern that the guidance regarding exceptional circumstances is to be issued without public comment and at a point at which States may already incur sanctions.

Departments' Response: Any guidance issued by the Departments regarding exceptional circumstances would be interpretive and thus, is exempt from the notice and comment rulemaking requirements under the Administrative Procedure Act. *See* 5 U.S.C. 553(b)(A). The Departments intend to issue guidance prior to applying sanctions. No change to the regulatory text has been made in response to this comment.

Comments: A commenter requested the Departments focus on incentivizing timely submission of State annual performance reports rather than sanctions.

Departments' Response: WIOA sec. 116(f) requires that financial sanctions apply with regard to the timely submission of performance reports and does not provide for incentives within this context. No change to the regulatory text was made in response to this comment.

Section 677.190 When are sanctions applied for failure to achieve adjusted levels of performance?

Section 677.190 governs how States will be assessed for performance failure and when such failure will result in a financial sanction. Although the Departments have referenced other non-core programs in previous sections of this preamble for part 677, consistent with WIOA sec. 116(b)(2) and 116(f)(1)(B), performance success or failure will be based solely on the performance of the six core programs of WIOA—not other partner programs in the public workforce development system. The Departments have added two new provisions to § 677.190(c) to reflect a phased-in approach for applying sanctions for failure to achieve adjusted levels of performance. In addition, the Departments reiterate that WIOA uses the term "adjusted levels" to refer to both the levels agreed to prior to the start of a program year, as well as the adjustment done using the objective statistical model at the close of the program year. Paragraph (c) was revised to make clear that performance accountability will be based on a comparison of the State's performance with that determined to be the "adjusted levels of performance," as appropriate. These revisions resulted in renumbering the subsequent paragraphs. Section 677.190(c)(2) provides that, until at least 2 years of complete data are available

for each of the indicators, the Departments will assess the State's performance on the overall program score based on the indicators for which there are at least 2 years of data available. Section 677.190(c)(4) similarly provides that until at least 2 years of complete data are available for each of the indicators, the Departments will assess the States' performance on the overall indicator score, based on the indicators for which there are at least 2 years of data available. The Departments consider complete data to consist of, at a minimum, 2 full program years of performance data.

Comments: Many commenters discussed the timeline for implementing the full accountability system, with the majority of commenters supporting a 2-year benchmarking period to allow for the collection of baseline data to be used to assess performance moving forward. Other suggestions included a 1-year baseline period, a 3-year baseline period, and a 4-year baseline period. Still, other commenters supported a baseline period, but did not provide a specific timeline for implementing the full performance accountability system. Commenters supported using the PY 2016, PY 2017, and PY 2018 annual report as the first years to report on State adjusted levels of performance. A commenter suggested the PY 2016 annual report be the first used for all of the performance indicators except credential attainment and measurable skill gains. Some commenters asserted that a 2-year delay in the implementation of sanctions would allow for further calibration of the statistical adjustment model. Some commenters requested a 2-year transition period that would allow States to adapt to the new performance standards before sanctions are implemented.

Departments' Response: Section 677.190(c)(1) and (3) govern how performance on the overall State indicator score and the overall State program score will be assessed. As explained above, the Departments have revised the regulatory text in § 677.190(c) to reflect a phased-in approach for applying sanctions for failure to achieve adjusted levels of performance. Paragraphs (c)(2) and (4) of § 677.190 govern how performance on the overall State indicator score and the overall State program score will be assessed. Section 677.190(c)(2) provides that, until at least 2 years of complete data are available for each of the indicators, the Departments will assess the State's performance on the overall program score based on the indicators for which there are at least 2 years of data available. Section 677.190(c)(4) similarly provides that until at least 2 years of complete data are available for each of the indicators, the Departments will assess the States' performance on the overall indicator score, based on the indicators for which there are at least 2 years of data available. Pursuant to these provisions, the Departments consider complete data to consist of, at a minimum, 2 full program years of performance data.

The Departments acknowledge that, given the lag in reporting data and the amount of time needed for each indicator to be measured, 2 program years' worth of data for each of the indicators will occur at different times. However, the Departments consider it vital that performance accountability take effect as soon as possible to align with the vision and requirements of WIOA. These revisions provide for an assessment of the overall State program and indicator score when the States have reported at least 2 years of complete data for the indicators. For performance accountability determinations, including the determination of failure to achieve adjusted levels of performance, the Departments will not use data reported prior to July 1, 2016. The Departments note that where historical data that were reported under WIA provide a proxy for the new indicators (at least 2 years of data), it is possible to establish a statistical adjustment model for negotiation of those indicators. Such indicators will be included in the overall State program or overall State indicator score for performance assessment when States have reported 2 years of outcomes under WIOA. The States are still subject to a performance risk plan under § 677.200(b).

Comments: Several commenters urged the Departments to delay implementation of the full performance accountability system for reasons other than the collection of baseline data, including that the first annual State report should be coordinated with the development of data systems.

Departments' Response: The Departments recognize the challenges in unified reporting across the core programs. For this reason the Departments are exercising the transition authority in sec. 503 of WIOA to implement the requirements in a manner that allows for an orderly transition from the requirements of WIA to the requirements of WIOA. To the extent that data are available, States must comply by submitting the requisite data. Moreover, the Departments recognize that some States have the capability to currently report all of the data in one system and upload reports to the Departments, whereas other States may not have that capability. The Departments plan to provide guidance on the submission process for WIOA State annual reports through the WIOA Joint Performance ICR.

Comments: Several commenters stated that sanctions should not be implemented until the third consecutive year of performance failure, rather than the second, in order to allow improvement measures to be effective.

Departments' Response: Section 116(f)(1)(B) of WIOA provides that performance is assessed and sanctions are applied in the second consecutive year of failure. Therefore, the Departments cannot implement the commenters' suggestion.

Comments: Several commenters remarked that a definition of second year failure should be added to the regulatory text in order to prevent a State from incurring sanctions without adequate time to improve performance. Another commenter stated that sanctions should not be applied until a State has demonstrated that it is able to implement their performance improvement plan. While acknowledging the existing statutory constraints, a commenter expressed concern about the lack of time to intervene and allow program adjustments to demonstrate improvement.

Departments' Response: Section 116(f)(1)(B) of WIOA is clear that sanctions apply after 2 program years of consecutive performance failure; the statutory language does not permit the Departments to delay sanctions because the State has not been able to implement its performance improvement plan. The Departments encourage States to use their quarterly data to monitor progress on their performance improvement plan benchmarks without waiting until they submit their annual performance report. No change to the regulatory text was made in response to these comments.

Comments: Concerning the timing of performance outcome reporting, several commenters stated that performance outcomes for core programs should be reported by December 31 of each year.

Departments' Response: The Departments have concluded that the timing of reporting performance outcomes will be announced through joint guidance clarifying when and how States should provide their respective program performance reports. No change to the regulatory text was made in response to these comments.

Comments: A commenter asserted that to evaluate performance effectively,

indicators should be reported on a quarterly basis.

Departments' Response: The Departments note that § 677.235 requires quarterly reporting for the WIOA title I, Wagner-Peyser Act Employment Service, and VR programs. No change to the regulatory text was made in response to these comments.

Comments: Commenters also addressed the limited availability of and timely access to data, which can significantly hinder a State's ability to identify areas of improvement and make the necessary program adjustments to avoid failing.

Departments' Response: The Departments acknowledge the commenters' concern regarding the limited availability of timely data that may assist in identifying areas of program improvement. The Departments have clarified the regulations regarding data availability and sanctions in § 677.190(c), above. Additionally, the Departments note that all States have access to their program data and can use it to assess at intervals of their own choosing to best manage their performance, without the Departments having to require such action.

Comments: Some commenters suggested using only the State average measure of the performance indicators rather than the average program scores for each State in order to incentivize partnerships among programs.

Departments' Response: Under these regulations, failure is determined by both individual program performance as well as overall State performance in the overall State indicator score. The Departments' approach is premised on ensuring accountability for the individual core programs while incentivizing the partnerships that the Departments have concluded are critical to WIOA's long-term success. No change to the regulatory text was made in response to these comments.

Comments: Several commenters suggested that the Departments award monetary incentives and public recognition in order to emphasize the importance of performance success, rather than setting unrealistic goals.

Departments' Response: The Departments note that WIOA, unlike WIA, does not authorize the use of incentives for successful performance. However, States may continue to utilize incentives to recognize successful local performance under WIOA sec. 134(a)(3)(A)(xi). Finally, requests for guidance concerning performance metrics were made in order to allow for proper administration of programs. The Departments intend to issue further details on performance accountability through the WIOA Joint Performance ICR, guidance, and technical assistance.

Comments: In addition to soliciting public comments on the NPRM text, the Departments posed several questions regarding the application of sanctions for failure to achieve adjusted levels of performance. Many commenters responded to the question about using a weighted average or a straight average for calculating State overall indicator scores. Some commenters supported the use of an unweighted average in order to support the goal of shared accountability among core programs. A commenter stated that performance measures should not be weighted until it is clear how weighted averages would be determined. Other commenters stated that a weighted average would take into account differences among programs and would prevent the misrepresentation of particular programs. Citing the enhanced accuracy of the system of performance, a commenter suggested that program performance be weighted by the number of participants served to avoid giving unequal weight to smaller core programs. Other commenters urged the Departments to weight the indicators in order to maintain the emphasis on job placement and employer partnerships as established in WIOA. A few commenters suggested that local areas be weighted less due to their lesser impact on wages paid within the area. A commenter supported the use of a weighted average if performance is to be determined regionally, in order to take into account the relative size of regional WDBs. In addition, several commenters stated that if a weighted average is pursued, a draft weighted average should be published for public comment. Similarly, a commenter suggested that the weights assigned to each program should be determined or agreed to by all partners. A few commenters suggested that, in addition to a public comment period, the weights should be reviewed at the end of each program year and adjusted as needed.

Departments' Response: The Departments considered the comments regarding the use of a weighted or unweighted average for the determination of performance outcomes across programs and individual indicators. The Departments have decided that using unweighted measures across the programs and indicators still ensures performance accountability across all core programs and individual indicators. The Departments conclude this, in part, because an average performance number weighted by the number of participants would essentially cause each State's performance under Wagner-Peyser Act Employment Service programs to have a disproportionate impact. The Wagner-Peyser Act Employment Service program served more than 14 million participants in PY 2014, which surpasses the number of participants served in all other core programs combined. Using a weighted formula would mean that the Wagner-Peyser Act Employment Service program's outcomes would be determinative of a State's failure to achieve performance requirements. The Departments do not consider this to be consistent with the performance accountability goal of WIOA, which provides for shared accountability across the core programs. The Departments have concluded that using unweighted outcomes across the programs and indicators properly implements WIOA in recognizing the importance of both employment-related and education outcomes of the participants. No change to the regulatory text was made in response to these comments.

Comments: Additionally, some commenters suggested the Departments weight the employment indicators more heavily than the credential and measureable skill gains indicators.

Departments' Response: The Departments considered these comments, but decided not to alter the regulation as the three employment-related indicators make up half of all of the WIOA performance indicators. The three employment related indicators are the second and fourth quarter employment rate and the second quarter median earnings indicator. Because these measures make up half of all WIOA performance indicators, the Departments concluded they already have a sufficient impact on a State's performance.

Comments: Many commenters addressed the proposed thresholds for performance failure of 90 percent for each of the State overall program scores and the overall State indicator scores, and 50 percent of the individual indicator scores. Numerous commenters opposed the 90 percent threshold, citing the current lack of core program performance data, the unrealistic nature of a 90 percent threshold, and the seemingly arbitrary assignment of the threshold. A few commenters stated that the 90 and 50 percent threshold for performance failure should not be established without the required statistical adjustment models. Many other commenters responded to the Departments' solicitation regarding the potential increase of the 90 percent threshold to emphasize the importance

of performance success stating that the 90 percent threshold should not be increased. Other commenters urged the Departments to adopt alternate thresholds, ranging from 70 to 80 percent, with the majority supporting an 80 percent threshold. A number of commenters urged the Departments to establish thresholds in guidance rather than regulation so that they could be more easily adjusted in the future, as necessary. Many commenters stated that the Departments should establish a lower threshold than 90 percent to allow for a phased-in approach that gradually increases the threshold for performance failure over time. One commenter supported a tiered approach in order to promote continuous improvement. Although the vast majority of commenters supported maintaining or decreasing the proposed thresholds, one commenter stated that the 50 percent threshold for individual performance indicators should be increased because, as proposed, it would weaken the requirements of States and was not Congress's intent in WIOA.

Departments' Response: The Departments considered the comments regarding the overall 90 percent threshold and the 50 percent threshold for individual indicators for a program year. The Departments considered the various commenter-proposed threshold levels in light of historical performance data and historical thresholds for each of the core programs and have decided to maintain the thresholds as proposed. The new thresholds are an increase from the 80 percent threshold familiar to the title I programs and a decrease from the 100 percent threshold for title II programs under WIA. The Departments consider these thresholds to be reasonable due to the use and application of an objective statistical model to account for actual conditions experienced by a program. Previously, the title I and title II thresholds were applied to a negotiated performance level and performance was assessed in the absence of weighting for actual economic conditions or participant characteristics. With the structure of the performance accountability system in sec. 116 of WIOA, the Departments consider a 90 percent overall threshold to strike the appropriate balance between maintaining flexibility for unknown mitigating variables and the newer precision introduced by utilizing an objective statistical model. The 50 percent performance threshold ensures that significant performance failure on a single indicator cannot be compensated for by successful performance in any other indicator or set of indicators. The introduction of an overall State score across programs and indicators ensures that the performance accountability system as articulated in sec. 116 of WIOA maintains alignment and integration across all of the core programs. This overall score paradigm, which is set at the 90 percent threshold, and balanced with a 50 percent threshold on any single indicator, allows a State to account for mitigating factors that prevent it from achieving 100 percent of its adjusted levels of performance. It also provides that a State has not failed to achieve its negotiated levels of performance unless its average performance across all programs for one indicator or its performance for all indicators in one program falls below 90 percent of the State's adjusted targets. No change to the regulatory text was made in response to these comments.

Comments: One commenter expressed concern that a program could potentially pass the threshold for all of the individual indicators, but not meet the overall program or overall indicator threshold, which would send a mixed message to a program.

Departments' Response: In order to "pass" the threshold, each State must meet or exceed the 90 percent threshold for the overall State program score for each program and the overall State indicator score for each indicator. Furthermore, under § 677.190(d)(2), the State must not fall below 50 percent on any individual indicator. This is an additional safeguard against egregious failure by one indicator being outweighed by high scores elsewhere. Thus, there is no possibility of what the commenter suggested occurring. No change to the regulatory text was made in response to this comment.

Comments: Some commenters raised potential alternative metrics for evaluating success including: the use of statistical variation metrics instead of the proposed threshold framework; standard deviation units or variation against regression predictions; and confidence intervals rather than a point estimate.

Departments' Response: The Departments considered utilizing these methods, but concluded that a consistent threshold, which does not change from year to year based on the size of the dataset, is the most appropriate way to account for variations in the core programs or the indicators and the varying availability of data. By creating a consistent threshold, expected levels of performance will be easier for program staff to understand and allows for comparisons across program years. No change to the regulatory text was made in response to these comments.

Section 677.195 What should States expect when a sanction is applied to the Governor's Reserve Allotment?

Section 677.195 governs what will occur when a sanction is applied to the Governor's Reserve for failure to report or failure to meet adjusted levels of performance. It clarifies that the sanction will be five percent of the amount that could otherwise be reserved by the Governor.

Section 677.195(a)(3) was added so that this section contains the causes of failure as defined in § 677.190(e) by noting that States also are subject to a 5 percent reduction of the Governor's Reserve Allotment for the immediately succeeding program year if the State's score for the same indicator in the same program falls below 50 percent for the second consecutive year. A conforming edit was made to § 677.195(b).

Comments: Several commenters expressed general support for the Departments' interpretation of WIOA sec. 116(f) and the approach proposed. However, numerous commenters opposed this approach and requested clarification regarding the implementation of financial sanctions only on WIOA title I programs funded by the Governor's Reserve allotment. A commenter suggested that the burden of financial sanctions be applied to the specific programs not meeting the performance requirements. A few commenters requested clarification from the Departments concerning allocation of funding lost via sanctions. A number of commenters urged the Departments to permit the restoration of funds once the State meets its reporting responsibilities. Commenters also remarked that sanctioned funds should be spent on the Technical Assistance and Performance Improvement Plan.

Departments' Response: Section 116(f)(1)(B) of WIOA does not provide authority for the Departments to use, for other purposes, funds that are reduced as a sanction from the Governor's Reserve. Therefore, the funds may not be used for technical assistance, performance improvement plans, the restoration of the Governor's Reserve funding, or any other activity. In contrast, WIA provided that funds reduced due to sanctions were to be used by the Secretary for performance incentive grants to the States under sec. 503 of WIA, which was not carried over to WIOA.

The Departments considered the comments regarding the sanctions to WIOA title I programs being based on

any program's failure. WIOA sec. 116(f)(1)(B) clearly requires that any performance sanction must apply to the Governor's Reserve allotment under title I for any core program or indicator failure. Therefore, the Departments do not have the authority to sanction the specific program not meeting its adjusted levels of performance. The Departments strongly encourage high levels of alignment and coordination to ensure all core partners are engaged at all levels. The Departments emphasize the role of State and local planning to ensure alignment and common goals in attaining integration and service delivery. Regarding the commenters' request for clarification concerning the allocation of funding lost via sanctions, the Governor's Reserve for the next program year will be reduced by five percentage points and money lost via sanction will not be reallocated. No change to the regulatory text was made in response to these comments.

Comments: Commenters also supported the elimination of proposed § 677.195(b) because a State could fail to meet 2 different indicators for 2 consecutive years and receive a 5 percent sanction, but if the State fails to meet one indicator for 2 consecutive years and fails to report one time, the State would receive a 10 percent sanction. These commenters stated that the latter scenario is a less significant infraction and should not prompt the imposition of a 10 percent sanction.

Departments' Response: The Departments considered the comments on imposing sanctions when in the same year the State fails to submit a performance report and is in its second year of failure to meet adjusted levels of performance. The Departments are maintaining the language in § 677.195(b) because the Departments conclude that failure to submit a State annual performance report is a serious compliance issue and should result in sanctions. Because the regulations provide for a 10 percent sanction on States that fail to submit performance reports as well as fail to meet the adjusted levels of performance for 2 consecutive years (5 percent for failure to submit report plus 5 percent for failure to meet adjusted levels of performance), States will have an incentive to report to the Departments even if they fail the adjusted levels of performance for 2 consecutive years because by doing so, they would receive only a 5 percent sanction for failure to meet adjusted levels of performance rather than the 10 percent sanction. No change to the regulatory text was made in response to these comments.

Comments: Several commenters addressed concerns regarding the insufficient funding of the Governor's Reserve allotment and stated that sanctions should be lessened or not implemented until the allotment is fully funded, as is statutorily required. One commenter suggested that the Departments scale sanctions according to the funding available in the Governor's Reserve allotment.

Departments' Response: The Departments considered the comments regarding the funding of the Governor's Reserve allotment and the use of sanctions. Statutorily, the Governor's Reserve is set at 15 percent of the WIOA adult, dislocated worker, and youth formula allocations to the States. For several years, the Governor's Reserve levels were restricted below 15 percent through the congressional appropriation, but were restored in the FY 2016 Consolidated Appropriations Act. The Departments support the full funding of the Governor's Reserve at 15 percent as envisioned in WIOA. The Departments note that if the Governor's Reserve amount is not fully funded, the amount of funds subject to sanctions will be proportionately less because the sanction is either 5 or 10 percent of the Reserve amount no matter how much the Reserve amount is. No change to the regulatory text was made in response to these comments.

Comments: A commenter stated that the sanctions for failure to report and failure to meet a State's adjusted levels of performance should be separated. Another commenter requested that the Departments provide guidelines for a process allowing for minor corrections to annual reports without incurring sanctions for failure to report.

Departments' Response: The Departments considered the comments regarding the separation of sanctions for failure to report and for failure to achieve performance. The Departments note that these two sanctions are applied separately. When a State fails to meet 90 percent of its adjusted levels of performance or fails to submit a report in the same year, the State would incur 2 separate 5 percent sanctions totaling 10 percent. Otherwise, a State may receive a sanction for failure to report based on the criteria described in § 677.185 or a State may receive a sanction for failure to achieve adjusted levels of performance per § 677.190. Regarding a process to allow for minor corrections to annual reports, the Departments will provide a process for this and details on the process in guidance. No change to the regulatory text was made in response to these comments.

Comments: A commenter urged the Departments to allow States flexibility in imposing sanctions on the State agencies responsible for the late submission.

Departments' Response: The Departments note that ultimately the Governor and State Workforce Board, which consists of representatives from all core programs, are responsible for the submission of the annual report. The Departments expect the State agencies to work together to ensure timely reporting and, if there are expected delays due to exceptional circumstances, that the State provides timely communication to the Departments. The Departments note the flexibility provided to States under § 677.185(b) and will work with States that are struggling to submit timely reports through guidance and technical assistance. No change to the regulatory text was made in response to these comments.

Section 677.200 What other administrative actions will be applied to States' performance requirements?

Section 677.200 outlines the circumstances under which a State will be subject to additional administrative actions when determined to be at risk due to low performance on an individual primary indicator, the overall State indicator score, and the overall State program score. No substantive change was made to this section.

Comments: A few commenters remarked that language in the NPRM indicated that the Departments would each issue their own guidance regarding performance risk or performance improvement plans. These commenters were concerned that the development of separate guidance documents signals a lack of long-term coordination between the Departments regarding performance accountability and reporting. A commenter urged DOL and WDBs to become familiar with setting measurable objectives, defining activities to meet the objectives, and determining if the objectives were achieved.

Departments' Response: WIOA provides a unique opportunity for the core programs to work together in new ways, and to the extent practical the Departments will use joint guidance so that all core programs are provided a clear and consistent message.

Regarding comments about DOL and WDBs setting measurable objectives, defining activities to meet objectives, and determining if objectives were achieved for purposes of the DOL-administered core programs, this will be communicated generally. WIOA articulates certain performance

requirements, the Joint WIOA Final Rule operationalizes the provisions of WIOA, and the Departments will provide guidance and technical assistance to assist States and Local WDBs in achieving their performance goals.

5. Local Performance Accountability for Workforce Innovation and Opportunity Act Title I Programs (20 CFR Part 677, Subpart C; 34 CFR 361.205 Through 361.210; 34 CFR 463.205 Through 463.210)

Section 677.205 What performance indicators apply to local areas and what information must be included in local area performance reports?

This section governs which performance indicators apply to local areas and the information that must be included in the local area performance reports. While the arrangement of this section was revised no substantive changes were made to the regulatory text.

Comments: One commenter noted that the title did not fully convey what was contained within this section of the regulation.

Departments' Response: The Departments concur and modified the title of this section to clarify that this section also governs what information the local area must include in its local area performance reports.

Proposed § 677.205(a), (b), and (c) are implemented as proposed.

Comments: One commenter recommended removing section § 677.205(d) of the NPRM as unnecessary and duplicative of the requirements of § 677.175.

Departments' Response: The Departments agree that this section is duplicative, and is removing it. As a result, the Departments are renumbering subsequent sections to conform to this deletion.

Comments: One commenter recommended revising proposed § 677.205(e)(2) to clarify that in addition to reporting on the performance indicators, the local area report must also include the other program information required in the State annual performance report, such as average cost information.

Departments' Response: The Departments agree that further clarification would assist States and local areas in complying with their reporting requirements. The Departments note that as finalized, this has been renumbered as § 677.205(d)(1). Since § 677.205(d)(1) includes all of the information previously in § 677.205(e)(1) and (2), the Departments removed proposed § 677.205(e)(2) from this Final Rule and have renumbered the remainder of § 677.205(d).

Comments: One commenter encouraged adding a parallel provision to the one that is included in § 677.160(b) to clarify that the disaggregation of data in the local area performance report is also subject to WIOA sec. 116(d)(6)(C).

Departments' Response: The Departments have added a parallel provision at § 677.205(e).

The Departments made a technical edit to proposed § 677.205(f) to state that States must comply with any requirements from sec. 116(d)(3) of WIOA as explained in guidance. The Departments made this revision to clarify our expectations that, to the extent that either Department's guidance merely explains in plain terms the requirements that stem directly from WIOA, the Departments expect States to comply with those statutory requirements.

Comments: Several commenters from various stakeholder entities questioned the applicability of local performance indicators to core programs outside of WIOA title I. Many of these commenters specifically requested clarification on whether other core programs were exempt from local reporting requirements. One commenter also acknowledged some confusion regarding local-level requirements and offered several suggestions on reorganizing this subpart to enhance clarity. Additionally, the Departments received a number of comments pertaining to additional indicators of performance, with commenters suggesting that language be added to the Final Rule requiring States to develop any additional indicators of performance only in consultation with Local WDBs and CEOs.

Departments' Response: The Departments acknowledge that there may be some confusion across the core programs regarding local-level performance-related requirements and are taking this opportunity to specify that local-level accountability requirements contained in WIOA sec. 116 pertain solely to title I adult, dislocated worker, and youth programs. As provided by WIOA sec. 116(b)(2)(B) and § 677.165 of this regulation, the Governor has discretion to add additional indicators of performance.

The Departments recognize that Local WDBs and CEOs are critical partners in the establishment of additional indicators of performance and strongly encourage States to engage and consult with Local WDBs and CEOs in their development. No change to the regulatory text was made in response to these comments.

Section 677.210 How are local performance levels established?

Section 677.210 explains how the local performance levels are established. This section has been revised and renumbered in accordance with the distinctions among expected, negotiated, and adjusted levels of performance as described in the preamble to § 677.170. This has resulted in the introduction of the terms "negotiated levels" and "adjusted levels" as it applies appropriately within the process. Additionally, the Departments have added language to mirror provisions in § 677.190 that require 2 years of complete data for any local core program before applying the objective statistical model and establishing adjusted levels of performance.

Comments: Several comments pertained to the negotiations process in response to proposed § 677.210(b). A few commenters were unclear why Local WDBs are included in the negotiations process described in sec. 116(c) of WIOA but are not included in the negotiations process described in sec. 116(b). Many commenters also expressed a desire that the negotiations process be meaningful, with one commenter noting that the negotiations process under WIA was often subjective with performance standards dictated on a take it or leave it basis. Similarly, a commenter emphasized that the process should not simply be a matter of setting a target independently and passing it down to Local WDBs. Another commenter also suggested that the overall negotiations process would be enhanced if local areas were allowed to provide additional information not accounted for in the statistical models. One commenter suggested that the regulations contain an appeal mechanism for Local WDBs in cases where the State does not negotiate performance with the Local WDB and CEO as required by WIOA.

Departments' Response: The Departments note that local areas are permitted to provide additional information during the negotiations process. This allows the negotiations process to take into account other information that local areas consider important when establishing the negotiated levels of performance. The Departments also note that under WIOA sec. 116(g)(2)(B), the local areas may appeal the Governor's decision to impose a reorganization plan under WIOA sec. 116(g)(2)(B)(i). Therefore, if the Governor fails to negotiate with the

Local WDBs, the Local WDB fails to meet its local performance accountability indicators as described in WIOA sec. 116(g), and the Governor imposes a reorganization plan, then the Local WDB may exercise its right to appeal under WIOA sec. 116(g)(2)(B). For further discussion, the Departments refer readers to the preamble to 20 CFR 679.130 on the functions of the State WDB (*see* DOL WIOA Final Rule published elsewhere in this issue of the **Federal Register**).

WIOA sec. 116(c)(2) requires the Local WDB, CEO, and the Governor to negotiate and reach agreement on local levels of performance. The Local WDBs are not included in the process outlined in sec. 116(b) because that process pertains to State accountability, with negotiations occurring between the State and the cognizant Federal agency for the core program. The Departments agree that WIOA requires a meaningful negotiation. The Departments encourage the parties to negotiate which the Departments interpret as requiring open-communication between the parties for the purpose of reaching an agreement on the local performance targets. The Departments emphasize that the purpose of the statistical adjustment model required under sec. 116(b)(3)(A)(viii) is to enhance objectivity in the development of performance targets as part of the negotiations process. However, because the Departments have concluded that the requirement to negotiate is already conveyed through WIOA and the regulation, the Departments do not consider additional regulatory text necessary to ensure States comply with the requirements contained in sec. 116(c) that pertain to inclusion in the negotiations process. Therefore, no change to the regulatory text has been made in response to this comment.

The Departments also agree that the statistical adjustment model may not adequately account for all of the economic and demographic variables that may affect a local area's performance. Section 677.210(c) requires the negotiations between the Governor, Local WDB, and CEO to include a discussion of the circumstances not accounted for in the model. Because this is already required by the regulation, the Departments did not make a change to the regulatory text in response to this comment.

Comments: Another commenter recommended that local areas have access to the models in order to run local targets.

Departments' Response: The Departments note that it will publish the methodology of the statistical adjustment model, and the Departments invite the public, including local areas, to review, and access the model, as appropriate.

Comments: The Departments received a number of comments on the statistical adjustment model. Some commenters expressed concern that using the model as proposed at the end of the program year would result in targets being applied retroactively. Similarly, commenters expressed concern that targets set through the model may not reflect service to hard-to-serve populations, such as foreign-born participants often served by title II programs or other populations with barriers to employment. Some commenters suggested that the model needed to be updated on a regular basis in order to reflect the barriers of enrolled participants and the participants actually served.

Departments' Response: With respect to the utilization of the model at the end of program year in order to account for actual circumstances, this would not be a retroactive application of a performance target, but rather an adjustment to an already established target based on what actually transpired during the program year. This would take into account, as a commenter suggested, service to hard-to-serve populations, such as those with barriers to employment. In other words, the model will increase the performance levels required if a State or local area were to serve lower-than-anticipated percentages of hard-to-serve populations with barriers to employment because it would presumably be easier to serve these individuals. Similarly, performance levels (or targets) would be decreased if a State or local area were to serve a higher-than-anticipated percentage of individuals with barriers, because these individuals are harder to serve. Given the importance both Departments place on consistent understanding, application, and implementation of these complex yet critical requirements, the Departments are committed to providing joint and substantive technical assistance in addition to detailed policy guidance. Furthermore, commenters' expressed need to update the model to reflect the participants who are actually being served is one of the hallmarks of the statistical adjustment models as envisioned. Because the model addresses the commenters' concerns, no changes to the regulatory text were made in response to these comments.

Comments: One commenter recommended a national workgroup with broad participation across core programs and other WIOA stakeholders in order to address the statistical model, as well as other aspects of WIOA performance accountability because of the significance and impact of this Joint WIOA Final Rule. One commenter recommended that local areas be given an opportunity to review any detailed methodology utilized for setting performance targets prior to implementation.

Departments' Response: The Departments understand the significance of these joint regulations on performance accountability that implement sec. 116 of WIOA. It is for this reason that the Departments have convened multiple stakeholder dialogues to address the intricacies of the statistical adjustment models as they are developed, consistent with, and as required by WIOA sec. 116(b)(3)(A)(viii). In addition, once the statistical adjustment methodology has been approved, there will be a comment period to ensure broad stakeholder input into its finalization.

Comments: Another commenter remarked that CEOs of each local area in a planning region should be permitted to choose to develop, rather than be required to develop, regional performance measures in addition to local area measures and recommended a revision to 20 CFR 679.510 to reflect this suggested flexibility, remarking that Local WDBs and CEOs already have a significant responsibility regarding their own local area performance targets; requiring regional targets in addition to local area targets would be unduly burdensome.

Departments' Response: WIOA sec. 108(b)(1) requires the CEOs to develop the regional performance indicators and the Departments' regulations are consistent with this statutory requirement. Therefore, the regulatory text has not been changed in response to this comment.

Comments: A commenter requested that the Departments provide additional information regarding the requirement to promote continuous improvement through performance target setting, adding that neither the Preamble nor the NPRM text discuss the requirement beyond the fact that it exists. The commenter opined that the Departments seemed to interpret continuous improvement under WIA as requiring improvement on every measure, every year, and offered their own interpretation of continuous improvement, which could be defined as achieving the same results with fewer resources or serving a population with more barriers (or simply a larger population) with the same resources (*i.e.,* increased efficiency). A commenter

recommended, based on the context of an optimal return on investment in Federal funds, that setting targets focusing on improvement of measures with lower performance, while setting targets consistent with existing performance levels on measures with higher performance, is consistent with the requirement to set targets that promote continuous improvement and an optimal return on investment of Federal funds.

Departments' Response: The Departments agree that continuous improvement can be defined in multiple ways based on the circumstances and context. Because the meaning of this term varies significantly based on the circumstances and context in which it is used, the Departments do not think it is appropriate for inclusion in the regulation and will be providing additional information on continuous improvement during guidance development. Therefore, no change was made to the regulatory text in response to this comment.

6. Incentives and Sanctions for Local Performance for Workforce Innovation and Opportunity Act Title I Programs (20 CFR Part 677, Subpart D; 34 CFR 361.215 Through 361.225; 34 CFR 463.215 Through 463.225)

Section 677.215 Under what circumstances are local areas eligible for State Incentive Grants?

This section of the regulation governs when local areas are eligible for incentive grants.

Comments: The Departments received a comment asking under what circumstances local areas are eligible for State incentive grants. Another commenter remarked that the question posed by the rule regarding possible circumstances for eligibility is not actually answered by the rule, which instead goes on to discuss pay-for-performance strategies.

Departments' Response: The Departments agree that the regulatory text in this paragraph should be revised to ensure understanding and consistent application. Therefore, paragraph (a) has been revised to specify that Governors are not required to award incentive funds based on local performance on the primary indicators, although they have the flexibility to do so using State set-aside funds based on WIOA at sec. 134(a)(3)(A)(xi). Paragraph (b) has been revised to clarify that Governors also have the flexibility to create incentives for the Local WDBs to implement pay-for-performance contract strategies to provide training services as described in sec. 134(c)(3) or youth activities as described in sec. 129(c)(2). However, these incentives must be paid for with non-Federal funds.

The Departments have chosen not to regulate under what specific circumstances a local area be eligible for incentive grants using WIOA funds given that this is at the discretion of the Governor. However, the Departments are considering providing guidance on this topic. No change to the regulatory text was made in response to this comment.

Comments: Other commenters remarked that separate funds should be made available for States as an incentive for meeting or exceeding statewide performance targets as was the case under WIA, with commenters expressing concern that the dedicated incentive grants to States were utilized to leverage other funds and programs and the lack of this provision in WIOA presents a funding gap. These commenters requested further clarity on the issue and recommended that funds be made available to target system development needs.

Departments' Response: The requirement under WIA that high-performing States be rewarded with State incentive grants within specified Federal parameters no longer exists under WIOA. Rather, sec. 134(a)(3)(A)(xi) provides States with the flexibility to utilize Governor's Reserve funds to provide incentive grants to local areas for performance by the local areas on local performance accountability indicators. Further, the Departments would like to emphasize that, in addition to the statewide capacity building efforts that are a required use of the funds allotted to States, both Departments are committed to providing substantive technical assistance on a national, regional, and statewide basis in order to target specific development needs, including needs around performance accountability. No change to the regulatory text is being made in response to this comment.

Comments: One commenter expressed confusion about the programs included in pay-for-performance contract strategies and inquired as to whether the provision applies to title II providers, which the commenter recommended.

Departments' Response: The Departments interpret the statutory provision for pay-for-performance contract strategy incentives at WIOA sec. 116(h) as only permitted for WIOA title I programs because of the specific reference to title I training services for adults and dislocated workers as well as the reference to title I youth services. Moreover, WIOA references Local WDBs, which are responsible for title I programs and providers, as the other programs do not have Local WDBs. However, there is nothing prohibiting the adoption of pay-for-performance contract strategies by other programs that is consistent with other Federal, State, and local policies. No change to the regulatory text has been made in response to this comment.

Section 677.220 Under what circumstances may a corrective action or sanction be applied to local areas for poor performance?

This section explains when a corrective action plan or sanction may be applied to a local area. This section has been revised and renumbered in accordance with the distinctions among expected, negotiated, and adjusted levels of performance as described in the preamble to § 677.170. This has resulted in the introduction of the terms "negotiated levels" and "adjusted levels" as it applies appropriately within the process. Additionally, the Departments have added language to mirror provisions in § 677.190 that require 2 years of complete data for any local core program before applying the objective statistical model and establishing adjusted levels of performance. The Departments also have revised § 677.220(b) to specify that failure occurs when a local area fails to meet the adjusted levels of performance for the same indicator for the same core program authorized under WIOA title I for the third consecutive program year.

Comments: Several commenters indicated that more clarity is needed regarding how sanctions would apply locally to other programs and funding streams besides WIOA title I. One commenter remarked that the impact of local sanctions should be spread across the other core programs. Another commenter noted that all potential sanctions would be placed squarely on the shoulders of the Local WDB regardless of fault, creating a situation it viewed as inequitable.

Departments' Response: Any financial sanction applied to the Governor's Reserve Allotment is based on *State* performance across the core programs, and not local performance. This is governed by WIOA sec. 116(f) and subpart B of this part. Specifically, §§ 677.180 through 677.200 govern when the Departments will sanction a State. The Departments note that the local area provisions under WIOA sec. 116(c) only apply to WIOA title I programs. The other core programs may participate, partner, and provide services in a local area, but, there is no local area performance accountability

provision for those programs. However, local areas are held accountable for performance on the primary performance indicators for title I programs. Local-level accountability and any sanctions imposed are determined by the State, consistent with WIOA sec. 116(g) and subpart D of this part. Therefore, the Departments are not changing the regulatory text in response to these comments.

Comments: Several commenters responded to the Departments' request for feedback regarding what other actions in addition to those already in statute should be considered by the Governor for local areas that continue to fail to meet performance for 3 consecutive years. Many commenters offered suggestions but stated the need for clarification first on what is meant by "failure to meet adjusted levels of performance on required indicators for a third consecutive year," recommending that local area failure for a third consecutive year be based on the same indicator and not any indicator.

Departments' Response: The Departments have defined "failure to meet" adjusted levels of performance at the State level across the core programs based on the primary indicators of performance and criteria delineated in § 677.190 of these regulations. Determining what is meant by "failure to meet adjusted levels of performance on required indicators for a third consecutive year" *at the local level* is within the Governor's discretion per § 677.220(a)(1), which is similar to the historical requirements that existed under WIA. Because defining these terms is within the Governor's discretion, the Departments think this is not appropriate to be addressed in these regulations. No change to the regulatory text was made in response to these comments.

Comments: One commenter proposed another reason for the Departments to define "failure to meet adjusted levels of performance" arguing that a local area could be making significant progress towards improving performance but could potentially miss the required level by a fraction of a point. The commenter added that the lagged performance data complicates matters further and that some systemic performance issues may take more than 3 years to correct. For these reasons, this commenter suggested changing the regulatory language of "fails to meet" to "fails to make satisfactory progress."

Departments' Response: The Departments' requirement to determine when a corrective action or sanction can be applied to a local area is based on statutory language and the Departments will not modify this requirement. Therefore, no change to the regulatory text was made in response to this comment.

Comments: Several commenters offered suggestions for additional actions that might be taken by the Governor in addition to those already specified in regulatory text. Some commenters suggested that the Governor should be authorized to apply a financial sanction, with one commenter adding that the Governor should be authorized to dissolve a local area for continued failure, and other commenters recommended that the Governor also be authorized to consolidate local areas. Another commenter supported the Governor's flexibility, noting that redesignation of a local area is an inequitable penalty when compared to the penalties WIOA prescribes for State workforce agencies that fail to meet required performance levels. Other commenters, including a number of Local WDBs, expressed concern that the language in the regulatory text allowing Governors to take significant actions as deemed appropriate was too broad in scope and could be used to redesignate or eliminate local areas, suggesting at a minimum that parameters be specified at the Federal level. These commenters also stated that any additional actions taken by the Governor should be required to include consultation with the local elected official, although one commenter suggested the mandatory consultation with local elected officials should extend to any actions related to technical assistance. One commenter also inquired about the absence of any reference to failing performance for 2 consecutive years, stating it was clear that technical assistance was required after the first year, and it was clear a reorganization plan was needed after the third consecutive year, but the regulations were silent on what would take place after the second consecutive year of failure.

Departments' Response: The Departments considered the comments regarding additional significant actions that might be taken by a Governor for continued local performance failure and concluded that there is nothing prohibiting a State from considering financial sanctions as a potential "significant action" as part of the reorganization plan. Therefore, no Federal action is needed to permit this. The Departments also agree that significant actions taken by the Governor pursuant to § 677.220(b)(3) would be most effective if they included a consultation with the local elected official and other local stakeholders, and therefore, recommend the Governor do so. However, the Departments do not think a change in regulatory text is necessary as WIOA and regulation do not preclude the Governor from doing this. The Departments do not agree that regulatory text is necessary requiring consultation with local elected officials occur prior to the provision of any technical assistance as this is not required by WIOA and the process for providing technical assistance is at the Governor's discretion. Therefore, the Departments have chosen not to regulate this. Regarding the comment pertaining to failure for a second consecutive year, WIOA sec. 116(g)(1) makes clear that failure "for any program year" will trigger the provision of technical assistance; therefore, if failure occurs in the second consecutive year, the Governor is obligated to provide technical assistance, or request the Secretary of Labor to do so. In response to comments that the Governor could consolidate, redesignate, or dissolve a local area through the reorganization plan, the Departments note that WIOA sec. 116(g)(2) leaves what actions are most appropriate to take when a local area fails to meet its local performance accountability indicators, to the Governor's discretion. Therefore, the Departments will not change regulatory text in response to these comments.

Comments: One commenter requested clarification on § 677.220(b)(2), which allows the Governor to prohibit the use of eligible providers and one-stop partners that have been identified as achieving poor levels of performance as an action that may be taken as part of a reorganization plan. The commenter pointed out that neither WIOA nor proposed regulations addressed poor performance levels of one-stop partners, such as TANF, and suggested that the NPRM was referring to a competitively procured contractor or one-stop center operator.

Departments' Response: The language in the regulation is statutory language from WIOA sec. 116(g)(2)(A)(ii), and the Departments do not have authority to change the requirements of WIOA. No change to the regulatory text was made in response to this comment.

Comments: The Departments also received a number of general comments pertaining to this paragraph. One commenter wanted to ensure that any technical assistance for youth programs be developed by experienced youth experts that also could include youth who have successfully navigated the system and who are now employed. This commenter also cautioned against assumptions that a particular youth program may be causing the

performance failure. Another commenter strongly recommended that the Departments delay enforcement of the sanctions provisions for at least 2 years to further calibrate the statistical adjustment model, during which time States could approach implementation in a methodical manner that allowed for the application of lessons learned without strict penalties. Other commenters offered a similar suggestion, recommending that an additional 2 years was needed to implement these requirements, during which time the Departments should launch an intensive and nationwide technical assistance effort. Another commenter recommended transitional implementation in conjunction with the development of a national workgroup of broad stakeholders and experts to tackle each aspect of performance accountability, including the imposition of sanctions.

Departments' Response: The Departments expect the technical assistance the Governor provides pursuant to § 677.220(a) will be well-informed and developed with input from subject matter experts and agrees that former youth participants can offer a valuable perspective on technical assistance needs based on their own experience. In response to comments requesting delayed implementation of performance at the local level, the Departments received similar comments on the State-level performance accountability. In response to those comments, the Departments have revised § 677.190(c) to provide that the Departments expect full implementation of the performance accountability requirements to take some years, given the complexity of WIOA's requirements and the timing of the availability of data necessary to populate the statistical adjustment models, for instance. At the local level, the decisions on performance implementation are at the Governor's discretion and subject to the requirements of 20 CFR part 679 (*see* DOL WIOA Final Rule, published elsewhere in this issue of the **Federal Register**). Therefore, no change to the regulatory text is being made in this part in response to this comment. Additional information on implementation will be provided by the Departments in guidance.

Section 677.225 Under what circumstances may local areas appeal a reorganization plan?

This section of the regulation governs the process for an appeal if the local area wishes to appeal a reorganization plan. The Departments received few comments on the proposed text for this paragraph of the regulations. The Departments are implementing this regulation as proposed, except for a revision to § 677.225(d) which is described below.

The Departments revised paragraph (d) of § 677.225, replacing "to impose a reorganization plan" with "on the appeal" for consistency with the relevant WIOA provision. WIOA sec. 116(g) governs the consequences for a local area's failure to meet local performance accountability indicators for the youth, adult, or dislocated worker programs. WIOA sec. 116(g)(2) requires the Governor to develop a corrective action plan if the local area's failure continues for a third consecutive year. The local area and CEO of the local area may appeal this decision to the Governor. The Local WDB and CEO may appeal the Governor's decision on the appeal to the Secretary of Labor. The proposed version of this paragraph stated that the Governor's decision to impose a reorganization plan becomes effective at the time it is issued. However, WIOA sec. 116(g)(2)(C) provides that it is the Governor's decision on the appeal, not the reorganization plan, that becomes effective unless the Secretary of Labor rescinds or revises the plan.

Comments: One commenter recommended a revision to the regulatory text to clarify that if the Secretary of Labor does not respond to a joint appeal pursuant to § 677.225(c) within 30 days, then the Governor's decision to impose a reorganization plan automatically results in the reorganization plan becoming effective.

Departments' Response: Section 677.225(c) clearly requires the Departments to respond within the specified timeframe. The statutory text does not provide for automatic effectiveness of the plan if the Secretary of Labor does not respond within the 30-day timeframe. No change to the regulatory text was made in response to these comments.

7. Eligible Training Provider Performance for Workforce Innovation and Opportunity Act Title I Programs (20 CFR Part 677, Subpart E; 34 CFR 361.230; 34 CFR 463.230)

Section 677.230 What information is required for the eligible training provider performance reports?

Section 677.230 implements the requirements of sec. 116(d)(4) of WIOA, which requires annual ETP performance reports. The ETP performance reports provide critical information, including the employment, earnings, and credentials obtained by individuals in the program of study eligible to receive funding under the adult and dislocated worker formula programs under title I of WIOA. This information will be of significant benefit in assisting WIOA participants and members of the general public in identifying effective training programs and providers. The information will also benefit providers by widely disseminating information about their programs increasing awareness of the program and potentially as a tool to enhance their programs.

Section 677.230(b) has been revised to specify that the registered apprenticeships programs referred to are those registered under the National Apprenticeship Act. This section, in conjunction with 20 CFR 680.400 through 680.530, establishes the minimum requirements for performance information to be provided in the ETP performance reports. Additional information on these requirements and the data to be collected is provided through the WIOA Joint Performance ICR. The Departments inserted "mechanism of" into § 677.230(c) to clarify that the State must provide a mechanism of electronic access to the public ETP performance report in its annual State performance report. This edit was made for consistency with § 677.160(c).

Comments: The Departments sought specific input on how the Departments could best support ETPs in meeting the requirements of this section as well as on how to make the ETP reports a useful tool for WIOA participants, ETPs, interested stakeholders, and the general public. Multiple commenters suggested the Departments could support ETPs in meeting the requirements of subpart E by providing reporting formats and instructions in order to establish the basis for data collection. A commenter remarked that guidance to States would help streamline performance reporting for training providers and minimize the associated burden.

However, other comments suggested the Departments avoid being too prescriptive in order to maximize the accessibility of the reported data. A few commenters suggested that the increased volume of data collection necessitates technical assistance and funding support from DOL.

Departments' Response: The Departments recognize that in many cases the ETP reporting provisions will be different from what was standard under WIA. In recognition of this, the Departments are issuing definitions on the elements required under this provision through the WIOA Joint Performance ICR in accordance with the

PRA. The Departments crafted the definitions as they pertain to ETP reporting with consideration of commenter suggestions, industry standards, and statutory requirements while balancing the need for clarity and flexibility. Although the Departments agree these definitions are needed, they are appropriately handled through the aforementioned WIOA Joint Performance ICR.

Comments: Several commenters asserted that the Departments must permit an alternate definition of "participant" and/or "exit" for use in ETP reporting. These commenters noted that they would require considerable local flexibility in the application of these definitions. Commenters further articulated a need for technical assistance around the data collections associated with these definitions.

Departments' Response: As mentioned above, through the WIOA Joint Performance ICR, the Departments are issuing definitions of how these terms are used in ETP reporting. These definitions balance the needs for consistency and flexibility. No change to the regulatory text was made in response to these comments.

Comments: A few commenters suggested that the performance metrics, which are required to be reported for all individuals in a program of study, be waived for non-WIOA participants for the first 2 years to provide sufficient time to establish the required data systems to collect and report on these elements.

Departments' Response: The Departments have given consideration to the systems readiness to implement these provisions and understand that implementation will require guidance and technical assistance in order to assist States in this implementation. No change to the regulatory text was made in response to these comments.

Comments: A commenter stated that data collected should align with existing data collected on educational programs from other sources in order to maximize its usefulness to consumers.

Departments' Response: The Departments considered this concern, however, the data being collected are required by WIOA sec. 116(d)(4). Therefore no change to the regulatory text has been made in response to this comment.

Comments: A few commenters stated that since many training providers serve small populations, the data they report would not be statistically reliable indicators of performance. Similarly, a commenter requested clarification regarding the application of the disaggregation requirements to individual ETPs.

Departments' Response: The Departments recognize the contribution of ETPs that may serve smaller populations. The Departments note that the data disaggregation requirement in WIOA sec. 116(d)(6)(C) also applies to the ETP performance reports. The Departments will provide additional information on the parameters of the collection and reporting of this information through the WIOA Joint Performance ICR and program-specific guidance. This information is required to be collected under WIOA sec. 116(d)(4); therefore, no change to the regulatory text has been made in response to these comments.

Comments: A commenter urged the Departments to provide States maximum flexibility in displaying provider performance data in order to allow for State experimentation and to ensure compatibility with technology platforms. Another commenter suggested that the "scorecards" already developed by Local WDBs should be considered as a model.

Departments' Response: WIOA sec. 116(d)(1) and (4) require the use of 'a template' developed by the Departments to report on outcomes for eligible training providers and this template must be used consistent with the requirements of WIOA sec. 116 and this regulation. However, the use of this template does not preclude the States from additionally displaying performance data in a manner of their choosing and the Departments welcome innovative approaches to displaying this information in a user-friendly manner. No change to the regulatory text was made in response to these comments.

Comments: A commenter stated that if this data were a Federal requirement collected through ED, there would be a more consistent national approach.

Departments' Response: WIOA sec. 116(d)(4) requires the collection and reporting of this information on eligible training providers therefore no change to the regulatory text has been made in response to this comment.

Comments: A few commenters suggested that the possible barriers to employment be standardized for the purpose of the ETP performance report.

Departments' Response: The Departments recognize the importance of standardized and uniform definitions to provide data that are comparable across programs and States. The Departments note that specific calculations, definitions, and reporting parameters will be provided through the WIOA Joint Performance ICR; therefore, no change has been made with respect to defining barriers to employment in this section. No change to the regulatory text was made in response to these comments.

Comments: A commenter identified the most important data to be reported as training program completion rates, wage rates, and job placement rates.

Departments' Response: The Departments acknowledge the suggestions raised regarding information that is valuable to understanding the outcomes of training programs. WIOA provides specific collection requirements at sec. 116(d)(4), which includes much of the data suggested by the commenter, and further information as it pertains to the reporting requirements for these programs can be found in the WIOA Joint Performance ICR. No changes to the regulatory text were made in response to this comment.

Comments: A commenter stated that the performance outcomes only should be collected on those participants receiving services under WIOA title I, subtitle B.

Departments' Response: WIOA sec. 116(d)(4)(a) requires reporting on the primary indicators of performance for all students in the program of study, therefore no change has been made in response to this suggestion. No change to the regulatory text was made in response to this comment.

Comments: A commenter asserted that the ETP reporting requirements should be kept flexible to provide local providers the greatest choice in training providers. Commenters urged the Departments to allow ETP eligibility to last more than 1 year in order to generate enough participants and exits to provide a useful outcome measurement. A commenter remarked that WIOA authorizes Governors to establish a transition period for ETPs under WIA to remain on the list through 2015. A commenter suggested that the Departments require States to list credentialing programs on ETP lists (ETPLs) in order to provide the most comprehensive information.

Departments' Response: WIOA sec. 122 governs this process; therefore, the Departments refer readers to the discussion of 20 CFR part 680 in the DOL WIOA Final Rule (published in this issue of the **Federal Register**) for responses to these comments and more information regarding these issues. No change to the regulatory text was made in response to these comments.

Comments: The Departments received numerous comments requesting clarity and further information on the interaction between the provisions in WIOA sec. 116(d)(4) Eligible Training Provider performance report and the

performance reporting required for training provider eligibility under WIOA sec. 122 (20 CFR part 680, *see* DOL WIOA Final Rule).

Departments' Response: WIOA sec. 116(d)(4) requires that the ETP performance report must be prepared annually and the States must provide electronic access to this report in their State annual performance report pursuant to § 677.160(c). WIOA sec. 122 governs the process for determining training provider eligibility; this process requires calculation of certain performance information. As many commenters noted, there is significant overlap in what must be included in the WIOA sec. 116(d)(4) report and the information providers must provide for the eligibility determination under WIOA sec. 122. The Departments recognize this overlap may provide opportunities for States to collect this information for both purposes. Further information concerning ETP reporting requirements and performance reporting requirements is available through the WIOA Joint Performance ICR. The Departments will also be providing technical assistance in regard to these reporting requirements. No change to the regulatory text was made in response to these comments.

Under 20 CFR 681.550, DOL allows the use of individual training accounts (ITAs) for out-of-school youth ages 16 to 24. The parameters for this allowance are discussed in the preamble to that section. The Departments clarify here how youth are reported on in the WIOA sec. 116(d)(4) eligible training provider performance reports. The Departments clarify that such out-of-school youth are reported on in both the eligible training provider performance report as well as in the State and Local annual reports. Because WIOA sec. 116(d)(4) does not describe such youth, the Departments are clarifying here as well as in the WIOA Joint Performance ICR how these youth program participants are reported on in these reports. When such youth are reported on in the eligible training provider performance reports, their performance is reported using the same performance indicators as prescribed for WIOA adult and dislocated worker participants. Using the same metrics minimizes the burden on ETPs. The Departments note that such youth are excluded from the required reporting identified at § 677.230(a)(1)(i) through (iii) but are included in the counts required by § 677.230(a)(2) through (a)(4). The Departments further note that such youth are additionally reported on in the State and Local annual reports in accordance with §§ 677.155(d), 677.160, and 677.205, as described in those sections. The Departments will provide additional guidance on the treatment of these individuals through the WIOA Joint Performance ICR and in guidance.

Comments: A number of commenters responded to the Departments' request for comments regarding support for registered apprenticeship programs interested in providing performance information. A few commenters suggested that registered apprenticeship programs should report on the same performance outcomes as other training programs. Another commenter urged the Departments to require registered apprenticeships to publish performance data. Other commenters suggested there is value in having a comprehensive list of registered apprenticeship providers, but opposed additional reporting requirements for these programs. A commenter stated that if pre-apprenticeship programs are to be included in the ETP system, they will likely require separate criteria. Another commenter stated that performance information for registered apprenticeship programs should be clearly described.

Departments' Response: The Departments have concluded that WIOA sec. 116(d)(4) does not require registered apprenticeship programs to provide performance information for the ETP report. However, the Departments note that including information for a registered apprenticeship in these reports would provide a benefit to those individual seeking training through registered apprenticeships in that they will gain visibility and access to a broader applicant pool by voluntarily participating in this reporting. Therefore, the Departments are implementing § 677.230(b) as proposed to allow for the voluntary submission of performance information from registered apprenticeship program sponsors and their providers of related technical instruction. Any such information must be published in the State's annual ETP performance reports. With regard to the creation of a comprehensive list of registered apprenticeships the Departments note that such a requirement is beyond the scope of this regulation. No change to the regulatory text was made in response to these comments.

Comments: A commenter supported the creation of incentives for registered apprenticeship programs to submit performance information.

Departments' Response: The Departments are not creating additional incentives but notes that incentive for reporting already exists as explained above. No change to the regulatory text was made in response to this comment.

Comments: A commenter encouraged the Departments to account for positive outcomes from registered apprenticeship programs, even if the outcome is not necessarily completion of the program because programs could be several years in length.

Departments' Response: To the extent that the registered apprenticeship is actively reporting the information required under these provisions includes such information as measureable skill gains, which accounts for progress made during participation of a registered apprenticeship. No change to the regulatory text was made in response to this comment.

Comments: The Departments received multiple comments on how to calculate the average cost per participant for those who received training services for the most recent program year and the 3 preceding program years as required by WIOA sec. 116(d)(4)(E) and § 677.230(a)(3). One commenter noted that this metric is not currently collected. Such suggestions included: Calculating at the education or training program level, rather than the participant level; aligning calculations with existing national reporting standards, such as the Integrated Postsecondary Education Data System; calculating based on the tuition plus any support services (*e.g.*, books, supplies, transportation) necessary to succeed in the training; calculating based on actual training costs for a student, including portions paid for with government subsidies; and calculating based on the direct cost paid under WIOA title I funding.

Departments' Response: The Departments considered these proposals; however, the Departments have concluded that the cost per participant is more appropriately addressed in the WIOA Joint Performance ICR, which provides more specificity around what underlying data are necessary and how such data will be used in calculating this information. The Departments will provide additional information on how this metric is calculated through the WIOA Joint Performance ICR, guidance, and technical assistance. No change to the regulatory text was made in response to these comments.

Comments: Commenters expressed concern that the ETP performance report does not provide sufficient cost information because it does not take into account other factors such as, textbooks, supplies, transportation, etc.

Departments' Response: WIOA sec. 116(d)(4) and § 677.230 mandate the collection of specific information for each program of study for each eligible

provider of training services under title I as outlined in § 677.230(a). The Departments are cognizant of the reporting burden the ETP performance report places on ETPs and do not want to place additional burden on these entities. However, WIOA sec. 122 and 20 CFR part 680 require States to develop procedures for determining the eligibility of training providers and programs and to make information about the provider and program available to participants and members of the public. The WIOA sec. 116(d)(4) ETP performance report is only one component of an overall consumer product. States are not precluded from developing additional resources for consumers and the Departments encourage States to identify additional information that would be most helpful for students to have as they are evaluating a program or provider. No change to the regulatory text was made in response to these comments.

Comments: Numerous commenters raised issues on the burden posed for training providers. Such as:

- A commenter asserted that many small training providers, particularly those in rural areas, would be unable to comply with ETP performance reporting requirements, which would limit available trainings.
- A commenter expressed concern regarding the burden associated with collecting data reliant on SSNs, stating that many community colleges do not collect student SSNs.
- A commenter described the increased data collection burden associated with obtaining the SSNs for all enrolled students, and, if deemed necessary, establishing data sharing agreements with each of the individual ETPs.
- A commenter asserted that the costs associated with collecting, maintaining, and reporting out data are unknown and will vary depending on the entity responsible for these processes.
- This commenter also suggested that entities applying for inclusion on the State ETPL may not capture the required demographic and programmatic data that would allow for the production of the performance report.
- A few commenters suggested that many of the reporting elements would not be valuable and would impose a significant burden at the State and local level.

Multiple commenters suggested that many training providers do not have the capability or desire to report the proposed level of data on a regular basis, and this will lead to a decrease in training provider participation.

Departments' Response: The information required to be reported is required by WIOA sec. 116(d)(4). The Departments reiterate that the ETP performance reports provide critical information, including the employment, earnings, and credentials obtained by individuals in the program of study eligible to receive funding under the adult and dislocated worker formula programs under title I of WIOA. This information will be of significant benefit in assisting WIOA participants and members of the general public in identifying effective training programs and providers. The information will also benefit providers by widely disseminating information about their programs and potentially as a tool to enhance their programs. No change to the regulatory text was made in response to these comments.

Comments: Many commenters addressed § 677.230(e)(3) which contains the provisions allowing the Governor to designate one or more State agencies such as a State Education Agency or State Educational Authority to assist in overseeing the eligible training provider performance. Several commenters suggested designating the State as responsible for ETP data collection, coordination, and dissemination. These commenters suggested that their proposed approach would ensure local staff time is spent serving participants and that the data are consistently collected and reported across the State. A few commenters also stated that the burden on training providers would be minimized by not requiring collection of any data the State already has. A few commenters suggested aligning the ETP eligibility determination process with the data reporting process in order to minimize burden. A commenter sought clarification regarding the role of training providers in generating ETP performance reports and collecting data on participants.

Departments' Response: The Departments note that § 677.230(e) allows many such actions as recommended by the commenters. Additionally, the Departments reiterate that to the extent that there is overlap between data collected to meet requirements under WIOA sec. 122 and WIOA sec. 116 this overlap may provide opportunities for efficiency in collection and reporting of this information for both purposes. No change to the regulatory text was made in response to these comments.

Comments: Commenters expressed concern regarding the level of burden to eligible training providers for collecting the required data.

Departments' Response: The Departments acknowledge the need to identify the most effective data collection strategies and have reviewed the comments received through the WIOA Joint Performance ICR. Based on comments received, the Departments have concluded that State grantees are best situated to make the ETP performance reports available to ETA given their existing familiarity with the reporting structure. Grantees are required to establish a process to collect the data from the eligible training providers. The Departments will provide additional guidance on the ETP performance report.

Comments: In order to facilitate the reporting process, a commenter suggested that all training providers should report outcomes in the same format to facilitate cross-program comparisons and identify underperforming vendors.

Departments' Response: The Departments agree that reporting data in the same format would facilitate cross-program comparisons and WIOA sec. 116(d)(1) requires the Departments to develop a template for the annual ETP performance report. This section of WIOA requires the ETPs to use this report; therefore, all annual ETP performance reports will have outcomes listed in the same report to facilitate cross-program comparisons. Because this is already accomplished through WIOA and the regulation, the Departments did not make any changes to the regulatory text based on this comment.

Comments: Another commenter suggested that each program of study that a provider wants to be eligible to serve WIOA-funded students should be required to report.

Departments' Response: Under WIOA sec. 116(d)(4), the required reporting on a program of study only applies to those eligible training providers who are already on the State list of Eligible training providers and programs. Additional information on eligibility requirements is found in 20 CFR part 680, subpart D. The Departments also note, however, there is nothing in WIOA that precludes a State or an Eligible Training provider from providing or publishing similar information. No change to the regulatory text was made in response to this comment.

Comments: A commenter pointed out that entrepreneurship training would not score well on the performance indicators unless a recognized credential is developed.

Departments' Response: The Departments acknowledge concerns raised with regard to training that is

targeted at self-employment and recognizes that individuals who are self-employed would not be accounted for in State UI wage records. However, the Departments note that WIOA sec. 116(d)(4) identifies more than just employment or credential based outcomes. Such indicators as measurable skill gains combined with the allowance to collect and verify employment information through supplemental means as described more fully in the preamble to § 677.175 provides alternative points of information on outcomes associated with such trainings. The Departments have not made any revisions to this section with regard to this comment. Further clarification on the allowed sources of data and calculations for these provisions will be provided through the WIOA Joint Performance ICR. No change to the regulatory text was made in response to this comment.

8. Performance Reporting Administrative Requirements (20 CFR Part 677, Subpart F; 34 CFR 361.235 Through 361.240; 34 CFR 463.235 Through 463.240)

Section 677.235 What are the reporting requirements for individual records for core Workforce Innovation and Opportunity Act (WIOA) title I programs; the Wagner-Peyser Act Employment Service program, as amended by WIOA title III; and the Vocational Rehabilitation program authorized under title I of the Rehabilitation Act of 1973, as amended by WIOA title IV?

This section of the regulations requires all of the core programs—except for the title II program—to report using individual records, as opposed to aggregate data. While the NPRM would have required that records submitted to DOL must be submitted in one record that is integrated across all core DOL-administered programs, the regulatory text has been revised to read that such records "may" be submitted in an integrated format.

Comments: Many commenters expressed a range of concerns regarding the proposed reporting requirements that appear to be based on incorrect or incomplete information. For instance, one commenter asserted that WIA required an SSN for program participation, whereas the Wagner-Peyser Act Employment Service program did not, thereby resulting in data deficiencies regarding the matching of wage records, which should be addressed under WIOA.

Departments' Response: The provision of a SSN is strongly encouraged to facilitate objective performance measurement through the use of wage records; however, requiring an SSN as a condition of program participation has been and remains a violation of the Privacy Act of 1974, 5 U.S.C. 552a Note, which DOL has previously clarified in policy guidance. See TEGL No. 5–08, "*Policy for Collection and Use of Workforce System Participants' Social Security Numbers.*" No change to the regulatory text was made in response to these comments.

Comments: Another commenter suggested that, because one integrated record was required for each participant across all core programs, sufficient time should be provided to implement this paragraph, and it should be implemented no earlier than July 1, 2018. One commenter noted that State VR agencies are not part of the Workforce Investment Streamlined Performance Reporting (WISPR) system and suggested that States should be allowed to file separate reports for the VR program.

Departments' Response: While the Departments want to make clear that there is no requirement that performance reporting for the Departments of Labor and Education be integrated, the Departments encourage moving in that direction. For States that have integrated reporting of WIOA title I core programs and Wagner-Peyser Act Employment Service programs, DOL strongly encourages those States to submit an integrated report. This provision regarding the submission of integrated reports does not extend to the AEFLA and VR programs administered by ED. However, the Departments note that as previously discussed, DOL intends to work towards developing an integrated reporting mechanism. No change to the regulatory text was made in response to this comment.

Comments: Another commenter disagreed with the Departments' intention to have States integrate and submit their performance reporting as a single, comprehensive, aggregate report because it would incur an undue and unrealistic burden.

Departments' Response: As explained above, this is not a current requirement. The Departments understand that there would be a burden with submitting a single, aggregate report to be submitted by one State agency when the different programs may currently be housed in different departments or agencies.

Comments: Several commenters were also under the impression that all of the core programs currently utilize individual records, with one commenter asserting that the comment had been validated by WIOA staff across multiple States.

Departments' Response: The Departments also would like to clarify that five of the six core programs currently transmit individual records to their respective Departments. The ED's OCTAE, which administers title II programs, does not receive individual records from State Adult Education Agencies. It is noted that for title II, State eligible agencies are required to collect individual records on a quarterly basis and submit annually aggregated data using individual records. The Departments acknowledge the need for guidance on program reporting as well as technical assistance needed to ensure consistent understanding for implementation. No change to the regulatory text was made in response to these comments.

Comments: Many commenters expressed opposition to the exclusion of title II programs from the individual records reporting requirements. Several articulated that the expectations for system alignment through integrated reporting discussed in the NPRM would be undercut by the proposal to exclude title II from the same quarterly reporting requirements as the other five core programs. One commenter remarked that title II programs should be included in these reporting requirements in the spirit of true integration. And, and as previously noted, some commenters were under the impression that all of the core programs already use individual records, thereby making the exclusion of title II unwarranted.

Departments' Response: Although ED's Office of Career, Technical, and Adult Education does not collect individual records at the Federal level, States are required to maintain individual record systems that meet strict standards. States are required to collect such data quarterly and aggregate the data to meet performance requirements in an annual submission. No change to the regulatory text was made in response to these comments.

Comments: Several commenters suggested that the burden for the proposed reporting requirements was considerably underestimated and should reside at the Federal level, with some suggesting the additional requirements constitute an unfunded mandate, particularly for the VR program, which must incur the significant cost and staff training needed to transition from annual reporting of the RSA 911 to the proposed quarterly reporting of the RSA 911. Many of these commenters recommended that a currently available tool be utilized to validate RSA 911 data on a quarterly

basis without the requirement for full quarterly report submission. Additionally, there were concerns raised regarding data that are collected through the VR program, which falls under the confidentiality requirements under 34 CFR 361.38 that may prohibit the release of social security information.

Departments' Response: The ED's RSA acknowledges that additional time and resources as well as staff training will be needed to accomplish statutory requirement while ensuring consistent understanding and nationwide implementation. There is no provision in 34 CFR 361.38 that prohibits the release of SSNs for reporting purposes since the reporting requirements are necessary for the administration of the VR program. Therefore 34 CFR 361.38(b) does not require informed written consent for the release of PII for this purpose. However, there may be other Federal or State laws that would govern such releases. Further, the Departments refer to the VR Performance ICR for the RSA–911 form where burden for collection and reporting this information in the RSA 911 are further addressed. No change to the regulatory text was made in response to these comments.

Comments: The Departments received comments on aspects of this part related to calculations for indicators and performance information, structure and compilation of individual records, and formatting for the collection of underlying data for the reports.

Departments' Response: Because of the level of detail these comments sought on the more specific technical aspects of this part, the Departments, as discussed throughout this regulation, reiterate that such information will be provided through the WIOA Joint Performance ICR or Department-specific ICRs, as well as associated program guidance. No change to the regulatory text was made in response to these comments.

Section 677.240 What are the requirements for data validation of State annual performance reports?

Section 677.240 provides the requirements for data validation of State annual performance reports. It has been revised to specify that performance reports should be consistent with the requirement for data validation in WIOA sec. 116(d)(5).

Comments: Several commenters requested guidance for conducting data validation across core programs. Commenters specifically asked for guidance concerning where the responsibility for data validation lies when participants are co-enrolled in two or more partner programs. Commenters also asked for clarification regarding the distinction between State and local roles in annual reporting. Multiple commenters supported either the postponement of the effective date for data validation requirements until July 2017 or the gradual implementation of data validation requirements, particularly if the validation pertains to new data that are required to be collected. Some of these commenters expressed concern regarding potentially retroactive data validation requirements whereby States would have to go back in order to capture newly required data elements on periods of participation that began before the new requirements were implemented. Several commenters also suggested that the starting point for data validation guidance be based on existing data validation methods and procedures used under WIA, with one commenter specifically suggesting that a comprehensive review of the data elements currently included in WIA data validation be undertaken to ensure the appropriate data are being validated, eliminating those elements that are either duplicative or no longer necessary.

Departments' Response: The Departments concur that joint guidance for conducting data validation across the core programs is necessary in order to provide the level of detail and specificity required to implement these provisions. As noted above, § 677.240(a) has been revised to specify that reporting should be consistent with guidance issued pursuant to WIOA sec. 116(d)(5) concerning data validation. The guidance to be developed will be based on a comprehensive review of the methodology, data elements, and source documentation that have been utilized under WIA. It will clarify State and local roles in annual reporting and the associated validation process, and the co-enrollment of participants across two or more core programs will be addressed. The Departments do not expect to issue guidance that includes the need for retroactive data collection. In terms of implementation timeframes, the Departments anticipate a phased-in approach, which is particularly important for those programs that have not conducted data validation under WIA. Expectations will be articulated through the Departments' joint policy guidance, and technical assistance will be provided to ensure consistency in understanding and implementation. No change to the regulatory text has been made in response to these comments.

Comments: Commenters shared specific suggestions for source documentation to be used to validate personal identity, with one commenter arguing that applicant and counselor statements should be acceptable for SSN validation to eliminate the need to copy social security cards, thereby minimizing the risk of file breach. Another commenter requested clarification on accuracy standards, inquiring as to whether the Departments will follow the "five percent rule" used for WIA data validation.

Departments' Response: Source documentation requirements will be clarified in policy guidance to be issued jointly by the Departments, including documentation to validate personal identity. The Departments agree with one commenter who suggested that allowing staff verification is not consistent with data quality standards. The Departments acknowledge the proposed suggestions by commenters and will further clarify such procedures through the guidelines. No change to the regulatory text was made in response to these comments.

The "five percent rule" referenced in the comment pertains to an accuracy standard utilized under WIA by DOL for its programs whereby critical data elements with an error rate exceeding five percent were flagged as potentially symptomatic of larger reporting and data quality issues. This will be addressed in guidance.

In addition to the regulatory text changes discussed above, various non-substantive changes have been made for purposes of correcting typographical errors and improving clarity that have not been necessary to note elsewhere.

C. Description of the One-Stop System Under Title I of the Workforce Innovation and Opportunity Act (20 CFR Part 678; 34 CFR Part 361, Subpart F; 34 CFR Part 463, Subpart J)

1. Introduction

In the section-by-section discussions of each one-stop system provision below, the heading references the DOL CFR part and section number. However, ED has identical provisions at 34 CFR part 361, subpart F (under its State VR program regulations) and at 34 CFR part 463, subpart J (under a new CFR part for AEFLA regulations). For purposes of brevity, the section-by-section discussions for each Department's provisions appear only once—in conjunction with the DOL section number—and constitute the Departments' collective explanation and rationale for each provision. When the regulations are published in the CFR, these joint one-stop regulations will

appear in each of the CFR parts identified above.

2. General Description of the One-Stop Delivery System (20 CFR Part 678, Subpart A; 34 CFR 361.300 Through 361.320; 34 CFR 463.300 Through 463.320)

WIOA reaffirms the role of the one-stop delivery system, a cornerstone of the public workforce development system, and subpart A describes the one-stop delivery system. Although there are many similarities to the system established under WIA, there are also significant changes under WIOA. This subpart, therefore, restates WIA requirements governing one-stop centers, to the extent they are still applicable under WIOA, and embodies a set of reforms that, when implemented effectively, are intended to make significant improvements to the public workforce delivery system. These regulations set forth requirements of the one-stop delivery system as established under WIOA, requiring partners to collaborate to support a seamless customer-focused service delivery network. The regulations require that programs and providers colocate, coordinate, and integrate activities and information, so that the system as a whole is cohesive and accessible for individuals and employers alike. These regulations provide a detailed framework for implementation; however, the Departments acknowledge additional written guidance and technical assistance to the public workforce system is needed to implement the provisions and intentions of WIOA fully. Such guidance and technical assistance was provided during PY 2015 and will continue to be provided and updated with the future development of policies regarding the one-stop delivery system. The ultimate goal is to increase the long-term employment outcomes for individuals seeking services, especially those with significant barriers to employment, and to improve services to employers.

Subpart A describes the one-stop delivery system. It establishes the different types of one-stop centers allowable in each local area, the need for both physical and programmatic accessibility in the one-stop delivery system, and also addresses the use of technology to provide services through the one-stop delivery system. As discussed in §§ 678.305 and 678.310, a local area's one-stop delivery system may be made up of a combination of a comprehensive one-stop center and a network of affiliated sites. When designing the one-stop delivery system, States and Local WDBs must ensure that information on the availability of career services is available at all one-stop center physical locations and access points, including electronic access points, regardless of where individuals initially enter the local one-stop delivery system. The Departments acknowledge that some comments of support were included among comments in this subpart. No changes to the regulatory text were made in response to these comments.

The Departments made several changes to regulatory text in response to comments on subpart A. Most notably, changes were made to § 678.305(d) that clarify what it means to make available a "direct linkage" through technology to provide access to program services and information for those partner programs not physically located in a comprehensive one-stop center.

Section 678.300 What is the one-stop delivery system?

This section provides that there are responsibilities at the local, State, and Federal levels relative to the establishment and maintenance of the one-stop delivery system.

Comments: Several commenters addressed the accessibility provisions in this subpart. A few commenters stated that VR agencies must work closely with workforce systems to ensure accessibility for individuals with disabilities. Another commenter said that each local area must have at least one comprehensive one-stop center that is accessible. A few commenters said that there are one-stop centers located in buildings that are not fully accessible, and the regulations should emphasize in this section that full accessibility is required.

Departments' Response: The Departments agree with commenters that accessibility to one-stop centers and the program and services provided at those centers is of the utmost importance. Section 188 of WIOA, the corresponding regulations at 29 CFR part 38, and the regulations in this part at §§ 678.305, 678.310, and 678.800 require that all one-stop centers and affiliated sites be physically and programmatically accessible to disabled individuals. The Departments have concluded that the numerous instances of directly addressing this or cross-referencing another section of regulation or WIOA throughout part 678 is sufficient emphasis on this point. No change to the regulatory text was made in response to these comments.

Comments: One commenter asked which entity is responsible for ensuring one-stop center accessibility.

Departments' Response: The decision as to which entity will be responsible for ensuring accessibility at a one-stop center is ultimately the Local WDB's to make, appropriately specified in the MOU.

Comments: Another commenter said this subpart should describe the procedure for when a one-stop center is found not to be physically and programmatically accessible.

Departments' Response: The procedures that must be followed when a one-stop center is found not to be physically or programmatically accessible are described in 29 CFR part 38. The Departments have added cross references to those regulations in §§ 678.305 and 678.310 to clarify that these are the controlling regulations in such instances, replacing references to § 678.800.

Comments: A commenter asked, given the long-standing separation between one-stop centers and adult education programs, how soon the Departments expect these entities to fulfill the requirement to provide a "seamless customer-facing service delivery network."

Departments' Response: While the Departments understand that adapting to the new one-stop delivery system structure will take time for all partners involved, partner programs are expected to work as expeditiously as possible to reach the goal of providing a "seamless customer-facing service delivery network."

Comments: A few commenters requested guidance on how certain partners, like libraries, are expected to measure enrollment.

Departments' Response: A WIOA program carries the responsibility for reporting and ensuring such data are available to fulfill their reporting requirements. In the case where a partner program is receiving WIOA funds to provide services for any program, a mechanism for tracking and reporting such services and individuals will need to be established between the local one-stop partner and the program responsible for making such reports. Where a local one-stop partner is providing services beyond those funded under WIOA, reporting requirements would not extend to such services. In the case of a local one-stop partner, such as a local library, who may only be providing space for a program or programs to operate within, or providing access to public computers by which participants access programs, reporting is the responsibility of the program operator.

Comments: A few commenters said that this section will require the UI program to change its business model.

Departments' Response: The Departments do not agree that the UI program will require a change to its business model, and see the program as completely adaptable to the new regulations' plan and vision for the one-stop delivery system. New requirements, such as the requirement to provide "meaningful assistance" to claimants who need help filing a claim, do not translate into a move away from primarily on-line or phone claims filing. They simply assure that claimants who need assistance accessing the program receive it.

Section 678.305 What is a comprehensive one-stop center and what must be provided there?

Access and Direct Linkage

Providing one-stop center participants with access to program activities and services is the keystone of the one-stop delivery system. "Access" is defined in § 678.305(d), which provides three ways each partner program may meet this requirement: (1) Having a program staff member physically present at the one-stop center; (2) having a staff member from a different partner program physically present at the one-stop center appropriately trained to provide information to customers about the programs, services, and activities available through partner programs; or (3) making available a direct linkage through technology to program staff who can provide meaningful information or services. Options two and three offer a wide range of possibilities to partners. Option two could require varying levels of assistance depending on the program's needs, but this could be as simple as providing a hardcopy TANF benefit application to a participant or directing them to an online form. Direct linkage can take many forms as well, and the Departments received many comments on the definition of this term, as discussed below.

Comments: A few commenters disagreed with the definition of "direct linkage," specifically because it does not include providing a phone number or Web site that individuals can use at home. These commenters said this is an unnecessary restraint on how States can serve customers and does not take into account the usage of mobile apps and other technology. The commenters also said that the definition of "direct linkage" exceeds what is required in WIOA. Further, the commenters stated that proposed technologies, such as live Web chat systems, are expensive.

Departments' Response: Maintaining the option of connecting to a well-trained program staff member at the one-stop center is extremely important to the success of the one-stop delivery system. The Departments recognize that the language defining "access" and "direct linkage" may have been too restrictive and also could make it appear that every interaction required a human component, not just the availability of the option to speak with a person. Many one-stop customers may only require services provided electronically or may not be ready for a direct interaction with a staff member. For these reasons, the Departments have changed the regulatory text in paragraph (d)(3) of this section, replacing "providing direct linkage . . ." with "making available a direct linkage . . .," in order to reflect that communicating with an individual must remain an option, but is not required for every one-stop customer interaction.

Comments: Several of the previously mentioned commenters joined other commenters who said that it is not realistic to expect that every customer can receive services at the time of arrival at the one-stop center, and suggested that the regulation should not prohibit arranging for customers to receive services at a later time.

Departments' Response: The Departments agree that the proposed regulation was not intended to prohibit arrangements to serve customers at a later time. Accordingly, the Departments have deleted the language prohibiting arranging for customers to receive services at a later time, thereby providing what the Departments see as more flexible service delivery options. Specifically, paragraph (d)(2) was changed by striking the phrase "or making arrangements for the customer to receive services at a later time or on a different day."

Comments: A few commenters commented that the definition of "direct linkage" implies that all customers entering a one-stop center have a computer with Internet access at home. The commenters recommended revising this section to indicate that providing a computer with access to enrollment or eligibility services does qualify as a direct linkage.

Departments' Response: While providing such a service is of value and should be encouraged, a "direct linkage," pursuant to these final regulations, must be the availability of a direct connection to a program staff member by phone or through real-time Web-based communication, an element seen by the Departments as critical to the service. As mentioned above, however, not all one-stop customer interactions require the use of a "direct linkage;" rather, the regulations require only that a "direct linkage" remains available to the customer. The language of paragraph (d)(2) was changed from "[a] 'direct linkage' does not include providing a phone number or computer Web site that can be used at an individual's home . . ." to "[a] 'direct linkage' cannot exclusively be providing a phone number or computer Web site . . . ." This means that providing a phone number or Web site, as mentioned by the commenters, would still be considered serving an individual, as long as more involved access was available to that customer if desired.

Comments: Another commenter also disagreed with the NPRM, saying that States should have flexibility to determine how and when to deliver virtual services.

Departments' Response: The Departments have concluded that, with the above-mentioned changes to the definitions of "accessibility" and "direct linkage," States and local areas are provided a reasonable amount of flexibility to determine how and when to deliver virtual services, as long as the option of a "direct linkage" remains open to customers if another form of "access" is not available. The Departments have not made further changes to the regulatory text in response to this comment.

Comments: A few commenters requested clarification on the definition of "timely manner" and "within a reasonable time."

Departments' Response: The Departments decline to define "within a reasonable time" in this section. The Departments consider what is "reasonable" will fluctuate based on demand and resources in a specific local area. However, to ensure quality customer service, the Departments encourage States and local areas to minimize the time during which an individual must await a direct linkage to services and to coordinate direct services effectively.

One-Stop Center Partner Staffing

Comments: A commenter asked whether the title I program staff person needs to be present full-time or may be present on a part-time basis. Another commenter asked whether there must also be at least a part-time title II staff presence. Additionally, one commenter said that electronic linkage should be permissible instead of requiring a physical staff presence.

Departments' Response: At least one title I staff person must be present when the one-stop center is open for operations, although this requirement does not have to be met by a full-time staff person and can be met by the physical presence of different staff trading off throughout the one-stop center's times of operation.

No such requirement exists for the physical presence of a title II staff person at the one-stop center. However, such physical presence may be appropriate as a means to provide access to the title II program, depending upon the particular local area's needs.

Lastly, as long as there is a physical presence of at least one title I program staff member at all times of operation, all other programs have the option to provide "access" through a "direct linkage" that leverages available technologies according to the definitions provided in this section. The Departments, however, encourage partners to strive for a physical presence at one-stop centers to serve customers' needs better.

Comments: A few commenters asked if it is the intent of the regulations to have all required partners colocated in the one-stop centers.

Departments' Response: As stated in § 678.305(a), "[a] comprehensive one-stop center is a physical location where job seeker and employer customers can access the programs, services, and activities of all required one-stop partners." As providing services through "direct linkage" is an allowable form of "access," as defined in § 678.305(d), not all required partners must be physically present at a comprehensive one-stop center as long as "access" to their services, programs, and activities is provided. However, the Departments encourage as much physical presence of partner staff persons that is feasible.

Comments: Another commenter said that it will be logistically difficult to ensure that 50 percent of required partners are located in the one-stop centers, particularly with regard to adult education programs and the volume of customers that they serve.

Departments' Response: This comment seems to stem from a misunderstanding of the colocation requirements. While all required one-stop partners must provide "access" to their programs and activities through a comprehensive one-stop center, at least one title I program staff person must be physically present. However, the Departments encourage as much physical presence of other one-stop partners' program staff persons as is feasible. States and local areas should be aware of the requirement in § 678.315 that, if Wagner-Peyser Act services are provided at an affiliated site, at least one or more other one-stop partner programs must be located in the affiliated site, and there must be a physical presence of combined staff from the other program(s) over 50 percent of the time that the site is open.

Comments: Another commenter said that the ability of the VR program to participate through technology instead of through a physical presence will greatly expand the VR program's participation in the one-stop delivery system.

Departments' Response: As stated above, as long as this technology meets the definition of "direct linkage" as stated in § 678.305(d), the VR agencies are able to substitute this for a physical presence at a comprehensive one-stop center.

Comments: One commenter asked if it is the intent of the regulations to require NFJP grantees to be located in the same one-stop center as other entities that provide one-stop services. The commenter said that colocating these grantees would be logistically very difficult. A couple of commenters stated that the decision to colocate services can be beneficial but should consider financial viability. If it is more beneficial to locate NFJP programs outside of a one-stop center, these commenters reasoned that grantees should be given the flexibility to do so, and commented that the grantee can still develop a close partnership with the one-stop delivery system without necessarily being colocated.

Departments' Response: Because NFJP is an entity that administers a program authorized by title I of WIOA, sec. 121(b)(1)(B) and § 678.400(b)(1) require NFJP to be a comprehensive one-stop center partner. This does not necessarily mean, however, that NFJP staff must be physically present at the one-stop center. There are multiple examples in the regulations for providing access to a program and its services through the one-stop center (such as providing a "direct linkage"), as discussed in paragraph (d) of this section. It should be noted, however, that an NFJP staff member placed at the local area's comprehensive one-stop center could serve as the required title I staff member when present.

Comments: Another commenter remarked that, traditionally, there has been a cost increase associated with operating NFJP services in conjunction with a one-stop delivery system that leaves less funding available for training programs and participant services. This commenter said that the increase in operating costs would be due to high rent, assignment of personnel to other duties in the one-stop delivery system, and cooperative spending.

Departments' Response: The Departments determined that while there may be cost increases in some areas, there may be savings in others due to the infrastructure cost contribution plan laid out in the local area's MOU in accordance with §§ 678.700 through 678.755.

Comments: One commenter suggested that one-stop centers should receive guidance about how to calculate co-occupancy rates so that partners are aware if there is inadequate space to provide colocated services.

Departments' Response: The Departments recognize the importance of quality facilities, including adequate physical space, to deliver services across one-stop partner programs. However, the Departments do not consider this level of detail necessary in regulations and have not made changes to the regulatory text in response to this comment. The Departments encourage the use of State and local administrative data to guide negotiations regarding colocation and shared infrastructure costs.

Comments: Some commenters said that the regulation implies that operating one-stop centers beyond normal business hours will lead to a higher evaluation during the certification process. These commenters expressed concern about the fairness of this practice, stating that some one-stop centers many not be able to stay open past normal business hours due to lease agreements or security concerns (*e.g.*, needing to hire an additional security guard).

Departments' Response: Providing nontraditional hours of operation, such as on Saturdays or after 5 p.m. on weekdays, is seen as a critical element in servicing difficult to reach populations, such as low-wage, low-skill, and other employed workers, and homeless individuals. Therefore, this will remain one of the required elements to be taken into account when evaluating the effectiveness of one-stop centers. The Departments have revised the regulatory text at § 678.800(b) to reflect that such hours should be provided where there is such a need by the workforce population, as identified by the Local WDB. It should be noted that this is only one factor to take into consideration when evaluating a one-stop center for certification, and while operating a one-stop center beyond normal business hours will count positively toward a center's evaluation, this will in no way negatively affect the

evaluations of other one-stop centers in the State that may not be able to offer such services.

Comments: Another commenter asserted that the regulation's emphasis on expanding operating hours would require additional staff and relocations to larger facilities to accommodate these staff.

Departments' Response: In some instances, this may be true, but the Departments encourage creative ways of implementing these nontraditional hours with the resources the one-stop centers and Local WDBs have available to them. Innovation is one of the driving principles behind WIOA, including in how services are delivered to difficult to reach populations and individuals with barriers to employment.

Other Comments

Comments: Another commenter said that States should determine standards for one-stop centers with input from Local WDBs.

Departments' Response: Under sec. 101(d)(6) of WIOA, State WDBs are responsible for assisting the Governor in developing statewide policies affecting the coordinated provision of services through the one-stop delivery system, including developing objective criteria and procedures that Local WDBs will use to assess the effectiveness and continuous improvement of one-stop centers. In addition, one-stop centers must adhere to the requirements in sec. 121 of WIOA and these implementing regulations.

Comments: A commenter suggested amending this section to encourage States to develop technology-based strategies to ensure that wraparound, or comprehensive, services are available outside of normal business hours.

Departments' Response: The Departments encourage the development of technology-based strategies to deliver services to customers in innovative and comprehensive ways, both during normal business hours and nontraditional hours, and the Departments have concluded that the regulations support such activity as written. No changes to the regulatory text were made in response to this comment.

Comments: Another commenter said that the NPRM does not provide enough guidance on how to decide the number and location of comprehensive one-stop centers, explaining that these decisions require significant collaboration among several stakeholders.

Departments' Response: While sec. 121(e) of WIOA and § 678.300(c) require that at least one comprehensive one-stop center be established in a local area, many local areas will require the establishment of multiple centers to serve their populations properly. This is highly dependent on individualized factors in each local area. This determination is best carried out at the State and local planning level. WIOA sec. 121(a) requires the establishment of the one-stop delivery system, consistent with the approved Unified or Combined State Plan, through the Local WDB for a local area and with the agreement of CEO for the local area. It is these entities that should determine the proper number and location of one-stop centers, by drawing on their knowledge of the area's needs. The Departments made no change to the regulatory text in response to the comment.

Section 678.310 What is an affiliated site and what must be provided there?

In addition to the requirement for a physical center in each local area where all required one-stop partners must provide access to their programs, services and activities, consistent with sec. 121(e)(2)(B) of WIOA,,§§ 678.310 and 678.320 provide that the one-stop delivery system may also provide partner programs, services, and activities through affiliated sites or through a network of eligible one-stop partners that provide at least one or more of the programs, services, and activities at a physical location or through an electronically or technologically linked access point, such as a library. The Departments added a reference to 29 CFR part 38, the implementing regulations of WIOA sec. 188.

Comments: A commenter recommended that affiliated sites not be required to have operators; however, the commenter also said that the entities delivering services at these sites should be signatories to the MOU.

Departments' Response: As required by sec. 121(c) of WIOA, an MOU is an agreement among the one-stop partner programs and the Local WDB; therefore, the entities delivering services—*i.e.*, the partner programs—will be signatories to the MOU. A local area's one-stop operator may be in charge of running affiliated sites as well as the comprehensive one-stop center. In other cases, other arrangements for operations of the affiliate sites may be specified in the MOU. The operator may be assigned different responsibilities, which are dependent on the terms of the selection process and the operator agreement(s) reached between the operator(s) and the Local WDB.

Comments: One commenter suggested that affiliated sites should not have to provide access to all required partners, since physical staffing is determined locally.

Departments' Response: Since affiliated sites are not required to provide access to all partner programs, as stated in § 678.310(a), no change to the regulatory text is necessary.

Comments: Another commenter asked whether VR agencies are required to participate in affiliated sites.

Departments' Response: To clarify, neither the VR program, nor any other partner program, is required to participate in affiliated sites by these regulations or by statute; partner programs are required only to participate in the operation of the one-stop delivery system and must provide access to their programs through the comprehensive one-stop centers. The Departments encourage the use of affiliated sites to serve a local area's population better, but decisions concerning this implementation are ultimately made by the local areas. These affiliated sites should, first and foremost, supplement and enhance customer access to services, and should be seen as access points that are in addition to the local area's comprehensive one-stop centers.

Comments: One commenter asked whether an adult education provider in a CBO is considered an affiliated site.

Departments' Response: Yes, an adult education provider, or any other partner program, located in a CBO, may be considered an affiliated site. If any partner program in a CBO is considered an affiliated site, that program must follow all of the requirements of this section.

Section 678.315 Can a stand-alone Wagner-Peyser Act Employment Service office be designated as an affiliated one-stop site?

This section sets forth the prohibition against standalone Wagner-Peyser Act Employment Services offices. WIOA requires that the Wagner-Peyser Act Employment Service program be colocated with one-stop centers. A Wagner-Peyser Act Employment Service office cannot, by itself, constitute an affiliated site. In those cases where the Wagner-Peyser Act Employment Service program is located in an affiliated site, there must be staff of at least one other partner in that affiliated site that is physically present more than 50 percent of the time the center is open.

Comments: A commenter asked whether one partner agency that administers multiple partner programs can satisfy the 50 percent presence requirement. This commenter reasoned that multiple partners should be able to

meet the 50 percent requirement collectively.

Departments' Response: In light of the comments and upon considering the requirement for physical presence of non-Wagner Peyser program staff more than 50 percent of the time, the Departments have concluded that it is appropriate to allow a combination of partner program staff members to meet this requirement, and the Departments have revised the regulatory text to reflect this.

If there is only one qualifying partner program (*i.e.*, partner programs other than local veterans' employment representatives, disabled veterans' outreach program specialists, or UC programs) in addition to the Wagner-Peyser Act program at an affiliated site, then that partner program alone must meet the more than 50 percent threshold. If there is more than one qualifying partner program in the affiliated site, such programs together must have staff present to provide coverage more than 50 percent of the time the site is open.

Comments: A commenter also recommended that electronic access should be included to meet the more than 50 percent requirement. Another commenter agreed, and also added that it may not be financially feasible to have staff in affiliated sites more than 50 percent of the time.

Departments' Response: While the Departments appreciate and encourage partners' use of technology to better, and more comprehensively, serve customers of the one-stop delivery system, the Departments have not revised the regulatory text to permit such activities in order to meet the more than 50 percent physical presence requirement for non-Wagner-Peyser Act partner programs. Doing so would defeat the purpose of this requirement, which is to have staff other than Wagner-Peyser Act staff physically present for a majority of the time that an affiliated site is open.

Comments: A few commenters requested flexibility in determining staffing at affiliated sites to meet local needs best, stating that the 50 percent threshold may result in some programs being overstaffed while Wagner-Peyser Act services are understaffed. Another commenter agreed that this requirement is burdensome and does not take into account existing long-term lease agreements.

Departments' Response: In determining the number and placement of affiliated sites, Local WDBs should consider how their one-stop delivery system could deliver services most effectively across the local area with the resources that are available. In making these adjustments, Local WDBs should consider the services that are needed in each location, how services are delivered in the comprehensive one-stop center, where the one-stop center is located, and where current affiliated sites are located. This may require the opening of new affiliated sites, or the consolidation of existing offices that would be considered affiliated sites under WIOA. The Departments recognize that such adjustments take time, but the Departments expect this process to begin as soon as possible.

Comments: Another commenter asked how this requirement would affect existing standalone Wagner-Peyser Act offices.

Departments' Response: This requirement will mean that either a non-Wagner-Peyser Act partner program will need to colocate at the formerly standalone Wagner-Peyser Act office; the Wagner-Peyser Act program will need to move to another space that can support colocation with a non-Wagner-Peyser Act partner program; or the Wagner-Peyser Act program will need to shift operations to a comprehensive one-stop center, of which the program is a required member, or to another affiliated site. As stated in § 678.315, Wagner-Peyser Act programs may no longer exist in standalone offices.

Comments: One commenter recommended strengthening the language about how required partners are to operate in integrated partnerships with Wagner-Peyser Act services. The commenter stated that many local areas have flexibility to determine whether to colocate with Wagner-Peyser Act services.

Departments' Response: The Departments are not altering the regulatory text to address the language concerning how required partners are to operate in partnership with Wagner-Peyser Act services. WIOA recognizes the Wagner-Peyser Act program's role in the one-stop delivery system and has made Wagner-Peyser Act one of the core programs. The Departments have determined that Wagner-Peyser Act services are vital to the successful operation of one-stop centers, and have, through administrative guidance, strongly encouraged access to these services throughout the public workforce system.

Comments: A few commenters expressed concern about the lack of specific instructions for how State workforce agencies are supposed to fund the colocation of Wagner-Peyser Act services. The commenters recommended that States do not need to use their Wagner-Peyser Act program allocations for this action.

Departments' Response: Given the diversity in how States have structured their Wagner-Peyser Act employment services, the regulation provides States with discretion in developing an appropriate plan for relocation. Any plan, including the identification of funding to be used to carry out relocation, must comply with applicable Federal cost principles. The Departments did not make changes to the regulatory text in response to this comment.

Comments: One commenter recommended that States be required to have a conflict-resolution process in place for on-site staff disputes, which may help alleviate one of the major challenges of program colocation.

Departments' Response: While the Departments recognize the utility of such a process and may recommend the implementation of such a process in many instances, the Departments have decided it is best to provide Local WDBs with flexibility in determining how to operationalize the colocation of programs, as well as integrated service delivery. For this reason, the Departments will not require a conflict-resolution process for on-site staff disputes, and have made no changes to the regulatory text.

Section 678.320 Are there any requirements for networks of eligible one-stop partners or specialized centers?

The Departments received no comments for this section and made no substantive changes to the regulatory text. However, the Departments have rephrased the first sentence of the paragraph to improve clarity and readability. The phrase "such as having in place processes to make referrals to" was stricken from its original position; "one-stop center" was added after "comprehensive;" and the phrase "for example, by having processes in place to make referrals to these centers and the partner programs located in them" was inserted at the end of the first sentence. The new sentence reads as follows: "Any network of one-stop partner or specialized centers must be connected to the comprehensive one-stop center and any appropriate affiliate one-stop centers, for example, by having processes in place to make referrals to these centers and the partner programs located in them." The Departments have made these changes to make this sentence more understandable than originally phrased and do not intend to change the meaning of the sentence or paragraph.

3. One-Stop Partners and the Responsibilities of Partners (20 CFR Part 678, Subpart B; 34 CFR 361.400 Through 361.440; 34 CFR 463.400 Through 463.440)

The public workforce system envisioned by WIOA seeks to provide all participants with access to high-quality one-stop centers that connect them with the full range of services available in their communities, whether they are looking to find jobs, build educational or occupational skills, earn a postsecondary certificate or degree, obtain guidance on how to chart careers, or are employers seeking skilled workers. A genuinely seamless, one-stop experience requires strong partnerships across programs that are able to streamline service delivery and align program requirements. In this subpart of the regulation, the Departments describe requirements relating to such one-stop partnerships. Specifically, this subpart identifies the programs that are required partners and their roles and responsibilities, the other entities that may serve as partners, and the types of services provided.

The Departments changed several sections of this subpart in response to comments. While small changes to the regulatory text were made in § 678.410, much more significant changes were made to § 678.415(e), which changed the default one-stop partner under the Perkins Act from the State agency administering that program to a local postsecondary recipient of Perkins funds. Changes to the requirements for local TANF partners have also been made in § 678.430(a)(2) and (d). Two additions were also made to the human services that may be provided as business services in § 678.435(b)(4).

Section 678.400 Who are the required one-stop partners?

This section lists the one-stop partners required under sec. 121(b)(1)(B) of WIOA. Beyond the partners previously required under WIA, WIOA adds the TANF program, administered by HHS, and the Ex-Offender program, administered by DOL under sec. 212 of the Second Chance Act of 2007, to the list of required partners.

Comments: A commenter requested clarification on participation for career and technical education programs and also a clearer definition of employment and training programs. The commenter expressed concern that without a clear definition of these terms, nearly any entity can claim to be an employment and training program. Further, the commenter requested that States be able to define these terms.

Departments' Response: Within the context of these regulations, these terms are used in reference to programs authorized under specific Federal statutes. The "career and technical education programs" referred to in § 678.400(b)(6) are those authorized by the Perkins Act at the postsecondary level. The "employment and training activities" listed in this section are either those carried out under the CSBG or those carried out by HUD, as provided in § 678.400(b)(9) and (10), respectively. Under these categorical restrictions, the Departments are not concerned that nearly any entity could claim to be an employment and training program. Section 121(b)(1)(B) of WIOA, as implemented by § 678.400, lists intentionally broad categories of required partners so as to bring more local partner programs into the comprehensive one-stop center and the broader one-stop delivery system to provide more comprehensive services for the one-stop centers' customers. For this reason, the Departments are not changing the regulatory text concerning these terms. The Departments have determined that it is within the best interests of the one-stop delivery system and its customers for States to adhere to these broad categorical definitions. Furthermore, narrowing these definitions would exclude some programs explicitly included by Congress as the regulatory language mirrors the statutory text in WIOA secs. 121(b)(1)(B)(vi), (ix), and (x).

Comments: A commenter asked whether CSBG programs have to be physically located at the one-stop center.

Departments' Response: If a CSBG program carries out employment and training activities, then these activities must be accessible at the comprehensive one-stop center, either through a physical presence or through another means of "access" as defined by the regulations in § 678.305(d), because these programs are required one-stop partners under sec. 121(b)(1)(B) of WIOA. Section 678.305(c) specifically requires customers to have access to one-stop partner programs in a comprehensive one-stop center, including employment and training activities carried out under the CSBG program. Furthermore, § 678.305(d) defines "access" as including, but not limited to, having partner program staff physically present at the one-stop center. That is, one-stop partner programs do not need to be physically present in a comprehensive one-stop center, but they must provide access to their services in the ways described in § 678.305(d).

Comments: One commenter said that the Perkins program needs to determine who the Perkins one-stop partner will be. Another commenter stated that § 678.400 needs to be reconciled with the Perkins Act and asserted that career and technical education programs do not have authority to enter into an MOU, although a postsecondary entity does have such authority.

Departments' Response: The NPRM specified that the State Eligible Agency serves as the one-stop partner for the Perkins program. As discussed below in this preamble, the Departments have determined that an eligible recipient at the postsecondary level, or a consortium of eligible recipients at the postsecondary level in the local area is the most appropriate entity to serve as the one-stop partner in a local area. This change is reflected in § 678.415(e) and is discussed in the corresponding preamble section below.

Comments: Another commenter recommended that all Federal grantees that have employment and training components in their grant should be required one-stop partners.

Departments' Response: While the Departments encourage the inclusion of such entities as additional one-stop partners, the list of required partners in § 678.400(b) is the statutorily mandated list of required partners. The Departments do not have authority to require additional programs to be one-stop partners. However, several entities such as those mentioned by the commenter are explicitly listed in sec. 121(b)(2)(B) of WIOA and § 678.410 as acceptable additional one-stop partners, subject to approval of the Local WDB and CEO.

Section 678.405 Is temporary assistance for needy families a required one-stop partner?

This section provides further clarification that the Governor may determine that TANF will not be a required one-stop partner in a local area(s), but must notify the Secretaries of Labor and HHS in writing of this determination. This implements sec. 121(b)(1)(C) of WIOA. It should be noted that the Governor's decision to exclude TANF from being a required one-stop partner is distinct and separate from the decision to include or not to include TANF in a Combined State Plan. TANF remains one of the many options of programs to be included in a Combined State Plan. Its status as a required one-stop partner does not mean it is required to be included in a Combined State Plan. For all sections regarding TANF, the HHS, which administers the program, was consulted extensively.

Comments: A few commenters expressed support for TANF being a required one-stop partner. Other commenters remarked that adding TANF as a one-stop partner will lead to improved services for job seekers. However, one commenter recommended that the Departments include stronger language about including TANF as a required one-stop partner. This commenter said that if TANF is such an important partner, it should not be so easy for Governors to opt out.

Departments' Response: While the Departments agree that TANF is an important partner in the one-stop delivery system, WIOA requires—at sec. 121(b)(1)(C)—that Governors be able to determine that TANF will not be a required one-stop partner through written notice to both the Secretary of Labor and the Secretary of HHS. It should be noted, however, that even if the Governor decides not to require TANF to be a one-stop partner, local TANF programs may still work in collaboration or partnership with the local one-stop centers to deliver employment and training services to the TANF population, unless inconsistent with the Governor's direction. Additionally, the local TANF program also may find other avenues of providing TANF services to one-stop customers that may not reach ''partner'' status.

Comments: One commenter recommended that the regulations should clarify that TANF employment and training activities must be offered at one-stop centers, with other TANF-funded activities included at the discretion of the local TANF agency and Local WDB. This commenter reasoned that requiring all TANF activities at one-stop centers would be a substantial cost and administrative burden.

Departments' Response: Access through the one-stop delivery system is required only for TANF activities related to work, education or training, the initiation of an application, and career services as specified in § 678.430(a)(2). TANF is a required one-stop partner unless the Governor opts not to require TANF participation in either a specific local area or the entire State. The cost of the various activities associated with the one-stop operators should be one of the factors considered by the Governor in making this decision.

Comments: A commenter stated that even if the Governor opts out, local TANF programs might still be required to be one-stop partners. Other commenters expressed support for local TANF programs to be permitted to opt in as one-stop partners, even if the Governor opts out. Another commenter expressed concern that the proposed regulations would permit a local TANF agency official to defy a Governor's decision not to include TANF as a required one-stop partner. The commenter recommended that this clause should be deleted, stating that a Governor's decision regarding TANF as a required one-stop partner must be respected.

Departments' Response: While local TANF programs are allowed to be one-stop partners, they cannot be required to do so if the Governor has determined that TANF is not required to be a partner. However, the Departments agree that local TANF programs should be permitted to work in collaboration and partnership with the local one-stop centers and have determined that allowing local TANF programs to make this decision, in conjunction with Local WDBs, is in the best interest of serving one-stop customers to the fullest extent possible, unless doing so is inconsistent with the Governor's direction. The Departments recognize the importance of increasing access to TANF programs, and have determined that allowing these programs' voluntary inclusion, when not required by a Governor and when not prohibited by the Governor's direction, is consistent with the spirit of WIOA. The Departments have modified the regulatory text to indicate that local TANF programs may become partners at the local one-stop centers unless the Governor directs or orders otherwise. While a Governor may choose not to require TANF programs to be one-stop partners, the Departments do not want to create barriers to local TANF programs becoming partners in the local one-stop center when there is a mutual desire to do so. The Departments have concluded that the availability of TANF services to one-stop customers is an important element of the one-stop vision. Furthermore, the Departments have interpreted WIOA sec. 121(b) as providing separate authority to local areas to include additional one-stop partners, including TANF, which is not overridden by a Governor electing to exclude TANF from being a required partner. However, as administrator of the State TANF program, the Governor is empowered under the Social Security Administration (SSA) to direct the actions of local TANF programs and may choose to limit a local program's ability to opt in. It should be noted here that any additional partners not required by sec. 121(b)(1)(B) of WIOA, but permitted by sec. 121(b)(2)(B), can participate as a one-stop partner only with the agreement of the CEO and Local WDB.

Comments: A commenter urged the Departments to ensure that a decision regarding whether TANF is a required one-stop partner should be separate from the decision regarding including TANF in a Combined State Plan.

Departments' Response: The Governor's decision to exclude TANF as a required one-stop partner must be made through direct written notification of such a decision from the State's Governor to the Secretaries of Labor and HHS. By contrast, at any time, a Governor can opt to include or not include TANF in a Combined State Plan, whether or not TANF is a required one-stop partner in the State.

Comments: Another commenter asked how TANF being a required partner instead of a core partner translates into level of service delivery for clients.

Departments' Response: The regulations do not differentiate between core programs and required one-stop partners with respect to level of service delivery. All required one-stop partners are expected to provide comparable levels of service delivery to one-stop customers, regardless of whether they are core programs under WIOA. No changes to the regulatory text were made in response to this comment.

Comments: One commenter stated that this is an opportunity for the TANF program to partner with schools.

Departments' Response: While the TANF program's inclusion in a State's one-stop delivery system may, in fact, provide an opportunity for TANF programs to partner with schools, this is a decision that should be made at the local level and will not be required by the Departments. As such, no changes to the regulatory text were made in response to this comment.

Section 678.410 What other entities may serve as one-stop partners?

Partnerships across programs are critical to supporting the one-stop vision for service delivery. Section 678.410 reinforces sec. 121(b)(2)(B)(vii) of WIOA, which states that other Federal, State, local, or private sector entities that carry out workforce development programs may serve as additional one-stop partners if the Local WDB and CEOs approve.

Comments: A few commenters recommended that the regulations should strongly encourage partnerships with disability service providers, as increasing the employment of persons with disabilities is a key goal of WIOA. Another commenter stated that SNAP employment and training programs would include the Basic Food

Employment and Training (BFET) and Able-Bodied Adults Without Dependents (ABAWD) programs. The commenter also asked whether § 678.410(b)(6) includes programs funded by the Office of Refugee Resettlement (ORR). Another commenter urged one-stop centers that have youth services to partner with Runaway and Homeless Youth (RHY) providers. The commenter explained that RHY providers have best practices for dealing with traumatized youth. One commenter looked forward to working with refugee English language training organizations and other organizations as potential one-stop partners.

Departments' Response: Each one of the comments above suggests including programs as one-stop center partners. Local partners representing any one of these programs that provides services or serves participants who are in need of the career development or job placement services of the one-stop delivery system would be appropriate additions to the one-stop delivery system in a given local area and could be added as additional partners under § 678.410(b)(6). Inclusion in the one-stop center of these and other programs is outlined in the local area strategic plan, and in the specifications for the selection of one-stop operators and service providers in the local areas. In response to these and other comments, which are addressed below, wording has been added to this section to clarify that the list of optional one-stop partners is not exhaustive. The Departments have determined that no additional specific regulatory language is needed.

Comments: A commenter recommended that the Departments add a reference to local or regional labor market information, which should be used to drive strategic planning and one-stop partner decisions regarding the appropriate mix of services required in local areas.

Departments' Response: Many factors, including labor market information, can inform what local partners should include in a one-stop center. The Departments have not changed the examples of optional one-stop partners in the regulation, but have clarified that the list in § 678.410 is not exhaustive, by changing "including" to "including, but not limited to" in the catch-all provision of paragraph (b)(6). It should be noted that the term "including" is, by definition, nonexclusive, and that this addition is made for the sake of emphasis and should not to be interpreted as suggesting that any other use of the term "including" in these or any other regulations denotes exclusivity. The Departments agree that partners suggested by commenters can be appropriate and useful one-stop partners but have concluded that it is easier to communicate this flexibility by clarifying that the list is not exhaustive, rather than trying to list every potential partner.

Section 678.415 What entity serves as the one-stop partner for a particular program in the local area?

This section provides a general definition of the entities that carry out the programs identified in §§ 678.400 and 678.410 and serve as the one-stop partners. The regulation defines an entity as the grant recipient, administrative entity, or other organization responsible for administering the funds of the specified program in the local area. The term "entity" does not include service providers that contract with, or are subrecipients of, the local administrative entity. The regulation notes that for programs that do not have local administrative entities, the responsible State agency should be the one-stop partner.

Section 678.410(d) lists the entity that acts as the WIOA title I one-stop partner for national programs in any particular local area. While YouthBuild was listed in the NPRM as one of these national programs, the paragraph failed to list which entity would serve as the one-stop partner. Just as for the Indian and Native American and Migrant and Seasonal Farmworker programs, the grantee of the YouthBuild program is the entity that will serve as the one-stop partner in a local area. The regulatory text has been amended to convey this and correct the omission in the NPRM.

Comments: A commenter asserted that proposed § 678.415(e), which designates the Perkins State eligible agency as the local one-stop partner for purposes of negotiating the MOU, "lacks any support in the text of the law and would make an already complicated negotiation process that much more complex." Several commenters recommended revising the paragraph to state that the entity that carries out the program is the local area's Perkins eligible institution, rather than the State eligible agency. Further, this commenter recommended that the Departments remove the clause about the State eligible agency delegating its responsibilities.

Departments' Response: In response to these comments, the Departments agree that the local eligible recipient is a more appropriate one-stop partner for the Perkins program and have changed the regulatory text in § 678.415(e) to provide that the Perkins one-stop partner is the eligible recipient at the postsecondary level, or a consortium of eligible recipients at the postsecondary level in the local area. This change is aligned to the statutory text in WIOA sec. 121(b)(1)(B)(vi). The regulatory text also has been revised to state that the Perkins one-stop partner may request assistance from the State eligible agency in completing its responsibilities as a one-stop partner.

Comments: A few commenters interpreted proposed § 678.415(c) to mean that if the State's VR program is under an umbrella agency that is not primarily concerned with vocational rehabilitation, the designated VR partner will be the director of the designated State unit.

Departments' Response: Under § 678.415(c), if the designated State agency—which these commenters refer to as an "umbrella agency"—is not primarily concerned with VR, then the designated State unit for the VR program would be the local partner.

Comments: One commenter stated that it is unclear from this section whether the Local WDB or its chosen title I provider is the entity that serves as the one-stop partner and recommended that the Local WDB not be considered the one-stop partner in this case.

Departments' Response: The Departments agree with the commenter that the Local WDB is not a one-stop partner, unless it is a specific program provider as well. The Departments have concluded that the proposed regulatory text is clear on this issue and have made no changes to the regulatory text.

Comments: Another commenter agreed with the Job Corps center being the one-stop partner, but suggested also including the providers who conduct recruitment for the Job Corps program.

Departments' Response: Determination of such an inclusion in the local one-stop delivery system is best left to the Local WDB. These providers will remain permissible one-stop partners but will not be required, and the Departments decline to change the regulatory text in response to this comment.

Comments: One commenter suggested allowing the State TANF agency to delegate its responsibilities under § 678.415(a), as other mandatory partners are permitted to do.

Departments' Response: The Departments' interpretation of WIOA is that the local TANF program is the required one-stop partner that, therefore, holds the responsibilities mentioned by this commenter. Matters concerning the roles of entities in

carrying out TANF must be addressed under the TANF authorizing statute.

Comments: Some commenters expressed support for not requiring the one-stop partner to have responsibilities in local areas where that program or activity is not carried out.

Departments' Response: The final regulation continues to reflect this policy.

Section 678.420 What are the roles and responsibilities of the required one-stop partners?

This section describes and elaborates upon the statutory responsibilities of the one-stop partners. These responsibilities and corresponding WIOA provisions are identified and summarized in paragraphs (a) through (e) of § 678.420. Jointly funding services is a necessary foundation for an integrated service delivery system. All partner contributions to the costs of operating and providing services within the one-stop delivery system must be proportionate to the benefits received and also must adhere to the partner program's Federal authorizing statute and to Federal cost principles requiring that costs are reasonable, necessary, and allocable. The requirement in § 678.420(e), to provide representation on State and Local WDBs, is new in WIOA and is required only of core programs; WIA only required one-stop partner representation on Local WDBs, and required it for all one-stop partner programs. The Departments have begun issuing guidance and providing the system with technical assistance on matters related to this section and will continue to do so.

Responsibilities Related to Infrastructure Cost Contributions

Comments: A commenter asked whether the statement in this section that references Federal laws on administrative costs refers to the established ceilings on the infrastructure contributions that can be expected from certain programs, such as VR.

Departments' Response: This is the intent of the rule and, as such, the Departments have made no changes to the regulatory text in response to this comment.

Comments: A commenter stated that partner programs would be more likely to contribute to infrastructure costs if the individual programs' authorization were amended to include that expectation.

Departments' Response: Revisions to the authorizing statutes and regulations of individual programs are beyond the scope of this regulation.

Comments: Another commenter stated that it would be very challenging to establish equitable funding to support a one-stop delivery system without stronger language and guidance governing the required one-stop partners.

Departments' Response: The Departments have released, and will continue to release, guidance relating to this and many other issues. The Departments concluded that the guidance will be sufficient in assisting one-stop partners in supporting a one-stop delivery system and decline to make a change to the regulatory text.

Comments: A few commenters said that § 678.420(b) can be construed to mean that YouthBuild programs must contribute money to their local one-stop delivery system. The commenters expressed concern that YouthBuild programs would have to pay into the one-stop delivery system for infrastructure support when the money is needed to operate the program.

Departments' Response: As a statutorily required one-stop partner program, YouthBuild is required by sec. 121(b)(1)(A)(ii) of WIOA to contribute to the infrastructure costs of any one-stop center in which it participates, based on proportionate use and relative benefit received. The Departments do not have authority to change this requirement and have made no changes to the regulatory text in response to these comments.

Comments: A commenter requested additional guidance on proportional benefits received and also on costs associated with title II providers contributing to one-stop infrastructure.

Departments' Response: The portion of this preamble addressing public comments and changes made to the provisions in subpart E relating to "One-Stop Operating Costs" also addresses many of these issues.

Other Comments

A few commenters recommended rewording this section to state that not all one-stop partners are required to be members of the State and Local WDBs.

Departments' Response: After considering this comment, the Departments have concluded that the language of the proposed regulatory text is clear that not all one-stop partners are required to be members of the State and Local WDBs. No changes to the regulatory text were made in response to this comment.

Comments: One commenter asked what recourse a Local WDB would have if States allocate the majority of their program funding to more populous areas, leaving rural areas underfunded.

Departments' Response: The allocation of funds by programs is beyond the scope of this regulation and WIOA. As such, the Departments have no ability or authority to create such a recourse mechanism. As good faith partners in the one-stop delivery system, however, the Departments expect that programs will operate in a manner that best serves the needs of a State.

Section 678.425 What are the applicable career services that must be provided through the one-stop delivery system by required one-stop partners?

WIOA requires one-stop partners to deliver applicable program-specific career services. This regulation clarifies that an applicable career service is a service identified in § 678.430 and is an authorized program activity.

Comments: A few commenters requested clarification on what services must be physically available in one-stop centers. Another commenter said that proposed § 678.425 does not describe how or where these services must be provided and suggested that customers should be able to receive in-person assistance with the required partners. Another commenter expressed support for eliminating the sequence of services, as this would provide staff with greater flexibility to serve customers.

Departments' Response: The Departments have not made changes to § 678.425. Section 678.305(b)(1) specifically states that comprehensive one-stop centers must provide career services described in § 678.430. The language is not qualified by the phrase "access to," meaning that career services must actually be provided in the comprehensive one-stop centers. With respect to programs and activities to which the one-stop partners must provide access, as set forth in § 678.305(b)(2) through (4), the regulations describe requirements concerning physical presence of staff and in-person assistance in § 678.305(a), (c), and (d). Paragraph (a) of § 678.305 requires that at least one title I staff person be physically present in a comprehensive one-stop center. Paragraph (c) of § 678.305 requires customers to have access to one-stop partner programs in a comprehensive one-stop center, and paragraph (d) defines "access" as including, but not limited to, physical presence of partner program staff appropriately trained to provide information to customers about the programs, services, and activities available through partner programs. That is, one-stop partner programs do not need to be physically present in a comprehensive one-stop center, but they

must provide access to their services in the ways described in § 678.305(d).

Section 678.430 What are career services?

Unemployment Insurance Claims Filing and Assistance. Section 678.430 specifies the career services that one-stop partners must provide through the one-stop delivery system. Paragraph (a)(10) provides that core services include providing meaningful assistance to individuals seeking assistance in filing a claim for unemployment compensation.

Comments: Several commenters addressed the proposed definition of "meaningful assistance." In particular, one commenter expressed support for the definition as it allows for technology to be used to provide the assistance. However, this commenter joined many others in expressing strong disagreement with the discussion in the preamble to the NPRM that one-stop customers referred to a phone-based service for UI claims be sent to a dedicated phone line for one-stop customers, rather than the general State UI queue. These commenters asserted that this requirement is not in WIOA; would be costly and difficult to maintain during times of high call volume; fails to take advantage of existing UI claims filing and assistance technology infrastructure in many States; and gives priority to individuals who are able to travel to one-stop centers, thereby disproportionately affecting individuals who are unable to travel to one-stop centers due to distance, lack of transportation options, or disability. A few commenters also stated that this requirement conflicts with the fact that most UI claims are done remotely through self-service options, including mobile applications and Web sites. One commenter asked for the definition of "within a reasonable time." Another commenter said that the definition of "meaningful assistance" is not clear.

Departments' Response: The Departments disagree with the comments regarding a dedicated phone line for one-stop customers using UI services. States are not required to have a dedicated phone line for one-stop customers, but a phone line would provide a direct linkage for providing services remotely as required by § 678.305(d). More importantly, simply referring one-stop customers to the general UI queue, without otherwise making trained staff available does not qualify as "meaningful assistance." Therefore, if local areas choose to provide meaningful assistance through technological means, trained staff must be available such as through a dedicated phone line.

In response to the comments regarding concerns that the "meaningful assistance" requirement to help individuals file UI claims is overly burdensome, the Departments note that § 678.430(a)(10)(i) provides flexibility to States regarding implementation by providing a menu of options for States to meet the requirement. The regulation does not mandate the service delivery methodology. Options include the ability to provide the service remotely as long as it is provided by trained and available staff within a reasonable time. The Departments also note that this requirement is targeted to individuals who need assistance and is not intended to replace State processes for taking claims remotely, either online or by phone. The Departments have not provided a definition of reasonable time because that varies by circumstances. The Departments have made no changes to the regulatory text in response to these comments.

Comments: Many commenters raised concerns about private entities or contractors providing assistance with filing UI claims, asserting that this should be considered an inherently governmental function that must be conducted by State merit staff. These commenters said that if UI staff is not present in one-stops to fulfill this function, Employment Services staff could do so. A few commenters also recommended that "State merit" be inserted before "staff" in proposed § 678.430(a)(10)(i)(A) and (B). A commenter expressed concern regarding the definition of "filing," suggesting that it should not be the function of one-stop or Wagner-Peyser Act staff to file UI applications.

Another commenter asked for guidance on defining "and assistance" in the requirement to provide "information and assistance regarding filing claims for unemployment compensation." Another commenter expressed support for the proposed expanded definition of "enhanced career services" including UI claims filing assistance and eligibility assessments.

Departments' Response: The Departments decline to make changes to § 678.430(a)(10) to refer to State merit staff. The assistance requirement only encompasses helping the individual navigate the State's claims filing process and providing the individual with general information on their responsibilities as a claimant. These functions are informational in nature and not directly connected to determining the claimant's eligibility for benefits. The requirement does not encompass speaking specifically to the individual's potential eligibility for benefits or making any determinations regarding the individual's eligibility for benefits, which are inherently governmental functions that must be provided by UI merit staff. The Departments note that it has been permissible for non-State merit staff to carry out similar functions, for example, reviewing compliance with State work search requirements as part of the Reemployment and Eligibility Assessment program for many years. The Departments reiterate the importance that, if these functions are carried out by non-UI staff, States must ensure that the staff is well trained. The Departments expect to provide additional guidance and technical assistance to States on the implementation of these provisions. For the reasons stated above, the Departments are not revising the regulatory text in response to these comments. For more information about the impact of WIOA implementation merit staffing for the Wagner-Peyser Act, see 20 CFR 652.215.

Temporary Assistance for Needy Families

Comments: Several commenters addressed the Departments' request for comment regarding the identification and inclusion of TANF employment, related supported services, and TANF intake functions as career services that must be provided in one-stop centers. For example, some commenters suggested that because there are so many ways of delivering TANF intake services (*e.g.*, electronically), States should have flexibility in determining whether TANF intake services should be physically located in the one-stop centers.

Departments' Response: The Departments recognize the need, and utility, of providing States flexibility in implementing TANF intake services and have added two paragraphs to § 678.430. Paragraph (a)(2) of § 678.430 states, in pertinent part, that "[f]or the TANF program, States must provide individuals with the opportunity to initiate an application for TANF assistance and non-assistance benefits and services . . ." This provides States with flexibility as to how this is achieved. As a required partner, however, TANF must still provide access (as defined by § 678.305(d)) to employment services and related support services. To this end, paragraph (d) has been added to § 678.430, stating that "[i]n addition to the requirements in paragraph (a)(2) of this section, TANF

agencies must identify employment services and related support being provided by the TANF program (within the local area) that qualify as career services and ensure access to them via the local one-stop delivery system."

Comments: Another commenter suggested that required partners should be required to provide TANF outreach and intake at one-stop centers.

Departments' Response: As TANF is a required one-stop partner by default, and only is excluded from the one-stop delivery system through a decision by the Governor, TANF outreach and intake services must be provided at any one-stop center for which TANF is a partner.

Comments: One commenter asserted that including TANF intake functions as career services would require significant cross training of other program staff in their State. For these reasons, the commenter supported the continuation of the colocation/co-enrollment model for TANF services at one-stop centers. Another commenter asked whether State agency staff were properly cross trained to conduct TANF intake.

Departments' Response: The Departments recognize that some services come at higher costs than others, and this is one of the many factors that must be weighed in determining how best to deliver services. In addition, the question of what constitutes "proper" training on the TANF program for local one-stop workforce staff will depend on the TANF benefits and services that are offered at the local one-stop center.

Comments: A few commenters stated that requiring one-stop centers to process TANF applications that are not related to employment is unhelpful and should not be considered career services.

Departments' Response: As mentioned above, the Departments' review and consideration of comments made on the NPRM, particularly the language regarding intake, application processing, and initial eligibility determinations for TANF assistance and non-assistance benefits at one-stop centers, prompted the Departments to modify the requirement from how it was proposed in the NPRM. This modified requirement, found in final § 678.430(a)(2), requires that, at a minimum, the one-stop centers must enable a family to initiate an application (as defined by the State agency) for TANF assistance and non-assistance benefits and services. One-stop centers could accomplish this by having paper application forms available at the one-stop center or by having information or links to the application on the one-stop center's Web site.

The Departments have determined that allowing customers in need of career services to have the opportunity to initiate an application for TANF benefits at one-stop centers is not counterproductive or unhelpful. On the contrary, providing for a family's unmet needs via a TANF benefit is crucial to ensuring progress and success in meeting career service objectives.

The Departments affirm the NPRM preamble explanation on the identification and delivery of career services (restated below) absent a definition of career services in the TANF statute.

The TANF statute does not include a definition for career services. Accordingly, the TANF State grantees must identify any employment and related support services that the TANF program provides (within the particular local area) that are comparable with the career services as described in this section.

Comments: A few commenters remarked that there is no universal English as a Second Language (ESL) test under TANF or other employment and training programs and suggested that ESL providers are better at conducting language proficiency testing than employment service providers. Another commenter suggested that one-stop providers should be expected to provide services to linguistically and culturally diverse populations.

Departments' Response: The regulations do not require a specific ESL test as part of the initial assessment of skills, or to gain meaningful access to TANF or other Federal programs. They leave the selection and use of assessment tools, and qualified administrators of such tools, up to the partner program or service provider, as appropriate to individual participants. If any one-stop partner or service provider receives funds directly or indirectly from HHS or other Federal agencies, it is required under title VI of the Civil Rights Act of 1964 and its implementing regulations, to take reasonable steps to ensure meaningful access to its programs by persons with limited English proficiency. Title VI also prohibits Federal grant recipients from utilizing methods of administration that have the effect of discriminating against persons based on their race, color, or national origin. In some cases, a provider's failure to provide language assistance to linguistically or culturally diverse populations could be a violation of title VI. However, the title VI requirement to take reasonable steps to ensure meaningful access does not mean that jurisdictions are required to provide universal ESL training. While individual jurisdictions may need to provide ESL training and testing to TANF family members in some cases, universal ESL training is not a statutorily mandated requirement.

Other Career Services

Comments: A commenter suggested that career services also should include a pre-screening for eligibility for supportive services such as the Children's Health Insurance Program (CHIP), SNAP, the Earned Income Tax Credit, TANF, and transportation services alongside the initial assessment of skill levels.

Departments' Response: Paragraph (a)(2) of § 678.430 requires that, along with intake, an orientation to the other services and programs provided at the one-stop center must be given to participants, and paragraph (a)(5) requires referrals to, and coordination of, activities with other programs and services. The Departments have determined that this strikes a balance between the burden on one program's staff to be knowledgeable about other partner programs and the benefit that this knowledge can be to participants. Requiring all staff to do pre-screening for the programs identified by the commenter would take time away from providing actual programmatic assistance to participants, as well as delay other participants from receiving services.

Comments: Other commenters requested additional guidance on the initial assessment process. The commenters asked whether there is a specific point in service delivery when initial assessments should be provided to customers, what the vision and intent is of this assessment, and how the assessment is to be used. Another commenter asked whether there are any standardized tools to be used to conduct this assessment.

Departments' Response: The Departments intend to issue joint guidance on this subject in the near future.

Comments: One commenter said that the assessment should be tailored to include an evaluation of women's "interest and aptitude for higher-wage, nontraditional careers."

Departments' Response: The Departments have decided not to change the regulatory text in response to this comment. The Departments recognize the importance of placing women in higher-wage, nontraditional careers, but note that local areas have discretion to undertake such an evaluation as part of

the initial assessment of skill levels required in § 678.430(a)(3).

Comments: A commenter recommended rewording paragraph (b)(1) of § 678.430 to state, "Comprehensive and specialized assessments of the skill levels, interests, values, aptitudes, and service needs of adults and dislocated workers . . ."

Departments' Response: The Departments have decided not to change the regulatory text in response to this comment. The assessment of skill levels could very well include these elements, but the Departments had determined that the inclusion of such elements is best left up to the Local WDB and partners to decide, given that they are in a position to adapt these processes to local area needs.

Comments: Another commenter suggested that these assessments should include disability-related barriers to employment and the development of an action plan to reduce these barriers, as well as information on how to access common disability-related services. This commenter also recommended that when to disclose a disability and how to request a reasonable accommodation should be part of career counseling.

Departments' Response: Disability-related barriers to employment and information on how to access disability-related services are elements of the assessment process that the Departments encourage Local WDBs and partner programs to implement, but the Departments have decided not to change § 678.430(b)(1) in response to the comment at this time. The assessment process is meant to be molded to best fit a local area's employment environment and the needs of the participants, potential employers, and the community. Moreover, as written, § 678.430(b)(1)(ii) specifically indicates that assessments may include in-depth interviewing and evaluation to identify employment barriers, which could include disability-related barriers.

Comments: A commenter expressed support for the inclusion of financial literacy as an allowable activity. The commenter stated that bundling financial education with workforce development leads to improved employment and financial outcomes. Another commenter suggested that there should be financial literacy programs specifically targeting individuals with disabilities.

Departments' Response: The Departments agree with the commenter's statements about the bundling of financial education with workforce development. While the Departments have chosen not to change § 678.430(b)(9) to specifically include financial literacy programs targeting individuals with disabilities, the Departments encourage Local WDBs to implement such plans as they determine are necessary to meet the needs of a local area.

Comments: One commenter recommended that one-stop center partners should work with local institutions to ensure that one-stop customers are banked (*e.g.*, have banking accounts) to reduce reliance on predatory lending.

Departments' Response: The Departments recognize the need to combat predatory lending and encourage Local WDBs to make such partnerships a part of their financial literacy services programs. However, the Departments decline to change the regulatory text to mandate such relationships because they may not be appropriate for every local area. The Local WDB is in the best position to determine if such a service is needed in a particular local area.

Comments: Another commenter recommended that transportation should be put in a separate paragraph to emphasize that transportation for youth includes transportation to one-stop centers and work sites. The commenter also suggested that referrals to organizations that assist with housing, food, and obtaining identification documents should be provided at one-stop centers.

Departments' Response: The provision of information about the availability of, and the referral to, transportation provided through TANF are included in WIOA sec.134(c)(2)(A)(1)(ix) and in § 678.430(a)(9) as a career service. The commenter's recommendation about transportation is adequately addressed in the regulatory provision as drafted, and the Departments have decided that it is not necessary to include it in a separate paragraph. The Departments have also determined that § 678.430(a)(9), requiring information and referrals to be provided for other supportive services and assistance, would encompass referrals to other services as suggested by the commenter. While the list in the regulation does not specifically mention some of these services, it is a non-exhaustive list. Local WDBs are free to provide information and referrals to any supportive services that they determine would benefit one-stop participants in a local area.

Comments: Another commenter said that it might be confusing to differentiate between basic and individualized career services.

Departments' Response: The Departments have decided to make a distinction and separation between these terms. Basic services are those made available to each individual who accesses a one-stop center, while individualized services are those that are tailored to each participant to best meet his or her needs.

Comments: A commenter suggested that if career services are classified as "pre-enrollment" and "required enrollment," Local WDBs could determine the customer flow without having to worry about cost issues.

Departments' Response: While the Departments have determined that some career services are more appropriate for those in pre-enrollment or those enrolled in a program, the Departments have determined that it is best to leave this distinction to the Local WDBs, as they are in better positions to recognize and respond to the needs of the local area.

Comments: A couple of commenters stated that § 678.430(a) potentially conflicts with § 678.305, and suggested that the Departments rephrase it to read: "Basic career services must be made available in accordance with the methods outlined in § 678.305, at a minimum. . ."

Departments' Response: The Departments disagree, having found, after examination of the text, no conflicting language or intent in these two sections. No changes to the regulatory were made text in response to this comment.

Comments: Another commenter suggested adding "and recognized postsecondary credentials" to § 678.430(a)(4)(i)(A) to place additional emphasis on the benefits of such credentials.

Departments' Response: The Departments have not made such a change in the regulatory text, but postsecondary credentials and their importance in the employment environment of a local area will be emphasized by title II and other educational programs.

Comments: One commenter expressed disagreement with § 678.430, asserting that it restricts what WIOA allows. The commenter recommended that States should be permitted to develop guidelines to help local areas determine how to deliver services.

Departments' Response: After consideration, the Departments have not found this section to restrict WIOA's allowances and, in fact, the Departments have determined that § 678.430 is unrestrictive regarding what services a one-stop center may provide to a local area. The list of career services here are

required, but the list should not be read as excluding additional career services that a Local WDB may decide the local area needs. Nothing in this regulation prohibits States from developing guidelines on the deliverance of services, and the Departments encourage States to do so.

Comments: A few commenters requested guidance on how to deliver career services when multiple one-stop partners might provide similar services.

Departments' Response: The coordination among partners over which partner or partners will provide a service at any particular one-stop center or affiliated site is a subject that must be agreed upon and described in the MOU.

Comments: A commenter asked for clarification on the definitions of "group counseling" and "individual counseling."

Departments' Response: "Group counseling" involves two or more participants addressing certain issues, problems, or situations that may be shared by the group members, while "individual counseling" is a one-on-one session that may go into greater detail about a particular participant's needs.

Comments: A few commenters recommended that States be given flexibility in determining follow-up time frames and whether follow-up services are appropriate.

Departments' Response: The 12-month time frame requirement for follow-up services to be conducted is established by WIOA sec. 134(c)(2)(A)(iii). No change to the regulatory text was made in this section in response to the comments.

Section 678.435 What are the business services provided through the one-stop delivery system, and how are they provided?

The one-stop delivery system is intended to serve both job seekers and businesses. Similar to job seekers, businesses should have access to a truly one-stop experience in which high quality and professional services are provided across partner programs in a seamless manner. Labor markets are typically regional, but programs often design service delivery strategies around State and local geographic boundaries. Effective business services must be developed in a manner that supports engagement of employers of all sizes in the context of both regional and local economies, but should avoid burdening employers, for example, with multiple uncoordinated points of contact. Section 678.435(a) lists required business services. Section 678.435(b) States that local areas have flexibility to provide services that meet the needs of area businesses and must carry out these activities in accordance with relevant statutory provisions.

Comments: A commenter encouraged the Departments to improve the marketing of one-stop services to employers, because many employers that could benefit substantially from these services are not aware that there are one-stop services available to them.

Departments' Response: While the Departments encourage Local WDBs and one-stop operators to increase efforts to reach out to local business industries and sectors, and to form and foster these relationships and partnerships is required by both the regulations in the section and WIOA, the Departments have determined this is a decision best left up to the Local WDBs. This will ensure that these efforts can be customized to fit the particular employment environment of the local area and remain malleable to the changing employment landscape.

Comments: Several commenters recommended that employers be provided with an individual liaison at the one-stop center.

Departments' Response: Individual liaisons can be an effective mechanism for serving employers. However, each local one-stop center should structure business services to best meet the needs of the employers that they serve; the Departments decline to require that all one-stop centers use this structure, although it may be a best practice that should be encouraged. The Departments also note that the duties of the one-stop operator under § 678.620(a) may include the coordination of service delivery by required one-stop partners and service providers. This could reasonably include interacting with employers on a regular basis to ensure that appropriate service providers are meeting the employers' needs. For these reasons, no change was made to the regulatory text concerning this topic. However, the Departments will continue to engage with business customers to determine the best ways to determine effectiveness in serving employers and to improve those services continuously.

Comments: Several commenters recommended eliminating references to sector partnerships in this section. The commenters asserted that it is important to distinguish between developing and implementing sector partnerships and simply providing career or training services to employers in a particular industry. Further, the commenters said that while sector partnerships are described as a required activity in § 678.435(a), paragraph (c) describes sector partnerships as one of several permissible activities that Local WDBs may undertake. The commenters suggested that the Departments should revise the language to state that Local WDBs should ensure that business services provided at one-stop centers can support sector partnerships in local areas.

Departments' Response: The Departments view the development of industry and sector partnerships as a critical business service that local areas must explicitly provide as required by WIOA sec. 134(c)(1)(A)(v). Regarding the commenters' statements about § 678.435(a) and (c), these paragraphs do not describe the same services. Paragraph (a) refers to "industry or sector partnerships," while paragraph (c)(1) refers to "industry sector strategies," which, as is noted in the regulatory text, could include strategies involving industry partnerships. Because these are separate services and not references to the same or duplicative services, the Departments have concluded that no change to the regulatory text is necessary. Moreover, while it is important for business services provided through one-stop centers to properly support industry sector partnerships, to change the regulatory text to specify this could have the unintended consequence of making this appear as a priority above providing these services to non-partner employers that seek them out.

Comments: One commenter requested additional guidance regarding the implementation of sector partnerships, particularly the role of the convener (*e.g.*, Local WDBs). Another commenter said that the limited instructions in the NPRM regarding sector partnerships might indicate that they are not a high priority and result in delayed implementation.

Departments' Response: The Departments have concluded that the regulatory text does not indicate these sector partnerships are a low priority, but rather the regulatory text indicates that the details of how these partnerships are structured and operate are best left to Local WDBs with agency guidance, as they are in a better position to know the individual needs of a local area.

Comments: The Departments received a number of comments that discussed the types of services that should be available to employers. One commenter suggested that one-stop centers should be able to provide services for employers interested in hiring individuals with disabilities. Another commenter said that the list of services to employers should be expanded to include services that are important for

hiring and retaining employees with disabilities, including "information on work experience options and tax credits, assistance and information on job accommodations and assistive technologies, and disability awareness training."

Departments' Response: The Departments have considered the suggestions regarding the types of services that should be available to employers, and have decided to amend the regulatory text to include some, but not all, of the suggestions.

Business services related to job accommodations and assistive technology for individuals with disabilities have been included at § 678.435(b)(4)(vi) to encourage not only these specific practices, but also the provision of other disability hiring services and general disability awareness. Information on local, State, and Federal tax credits is already listed as a possible business service to be provided under § 678.435(c)(6). The Departments do not consider information on work experience options, suggested by the commenter, as a business service and have not added this to § 678.435(c).

Comments: Another commenter also suggested including individuals with disabilities in job fairs and customized recruitment events and expanding the list of services to include assistance on legal requirements and best practices around accommodating individuals with disabilities.

Departments' Response: The Departments recognize the need to provide access to these services. However, the Departments have concluded not to make this addition to this section of the regulation because the Departments have determined that this level of detail is not necessary. All WIOA services are subject to the nondiscrimination requirements of WIOA sec. 188 and its implementing regulations at 29 CFR part 38. Additionally, the Departments have made technical assistance on holding effective and inclusive job fairs available and will continue to provide guidance and resources regarding appropriate accommodations.

Comments: A couple of commenters expressed support for § 678.435 and suggested additional services to employers including metrics, recordkeeping, and data analysis; affirmative action planning and assistance with goal attainment; assessment of employer needs; accessibility reviews; cultural awareness of specific disabilities; mentoring; on-the-job evaluation; and disability management for existing workforces. Another commenter said that businesses could use assistance developing "position descriptions" to better define the skills required for positions, as well as assistance locating information on where certifications are awarded.

Departments' Response: While the Departments recognize the advantages of providing these and other services, the Departments also recognize that providing an all-encompassing list of possible business services is an impossibility and would restrict creative thinking about methods of service provision, the encouragement of which is at the heart of WIOA. Because of this, the list of possible business services in the regulation will remain a non-exhaustive list and the Departments made no changes to the regulatory text in response to these comments.

Comments: One commenter recommended that the Departments should clarify their use of the phrase "labor laws" to ensure that it is clear this includes all Federal employment discrimination laws.

Departments' Response: The Departments recognize the need for clarity in this language and have revised the regulatory text to include employment and discrimination laws in § 678.435(b)(4)(vii).

Comments: Another commenter suggested that Job Corps should be a required partner in the sector partnerships required in § 678.435(a).

Departments' Response: To fully support the development of sector-based strategies, the Departments are providing States, local areas, and regions with flexibility. The Departments strongly encourage that sector partnerships include a variety of entities, including training and education programs like Job Corps. Given the range of potential partners and the variety of industries and career pathways that may be included in a sector strategy, the Departments are not placing further regulatory requirements around partnerships, but will encourage such partnerships through guidance and technical assistance.

Comments: One commenter asked whether the services provided in § 678.435(b) but conducted by business intermediaries need to be located in the one-stop centers.

Departments' Response: WIOA sec. 134(d)(1)(A) requires that business services, which are listed as a permissible local employment and training activity at WIOA sec. 134(d)(1)(A)(ix), be provided through the one-stop delivery system. No change to the regulatory text was made in response to this comment.

Comments: Another commenter recommended that the Departments clarify in the regulations that it is an allowable activity for local areas to provide business services and develop relationships with the business community that will last beyond a change in one-stop operator or career services provider.

Departments' Response: The Departments encourage Local WDBs to develop strategies to establish and sustain lasting partnerships and provision of business services. These business services may be provided by the Local WDB or through effective business intermediaries working in conjunction with the Local WDB, or through other public and private entities in a manner determined appropriate by the Local WDB and in cooperation with the State, consistent with § 678.435(c). No change has been made to this portion of the regulatory text in response to the comment.

Section 678.440 When may a fee be charged for the business services in this subpart?

WIOA allows customized employer-related services to be provided on a fee-for-service basis. Section 678.440 clarifies that there is no requirement that a fee-for-service be charged to employers. The Local WDBs, however, should examine available resources and assets to determine an appropriate cost structure. These Boards may also provide such services for no fee. The regulatory text was revised to add paragraph (d) to explain that fees earned are program income.

Comments: One commenter expressed support for this section as proposed. Another commenter said that each program should be permitted to determine whether to charge a fee, instead of the Local WDB making that decision.

Departments' Response: After considering this comment, the Departments have concluded that Local WDBs are in the best position to determine what business services are needed in a local area and what fee, if any, should be associated with the provision of these services. The Departments encourage Local WDBs to consult with partner programs when making such decisions, keeping in mind that any fees collected by partners are program income allocable to partner programs in proportion to the partner programs' participation in the activity. In this case, program income must be expended by the partner in accordance with the partner program's authorizing statute, implementing regulations, and Federal cost principles identified in

Uniform Guidance to ensure consistency with program income disbursement requirements. Additionally, the partner must consult its program statute and grant requirements to determine which method to use when disbursing program income as described in the Uniform Guidance at 2 CFR 200.307(e).

Comments: One commenter expressed concern that employer services beyond the provision of no-charge services under the Wagner-Peyser Act have not been discussed.

Departments' Response: Local WDBs are not limited to only those business services discussed in this and other sections. They may also provide other business services that meet the workforce investment needs of area employers. If the Wagner-Peyser Act program provides funds for a business service, a fee cannot be charged. The Departments have concluded that the regulations sufficiently address business services and will not modify the regulatory text in response to this comment. Further joint guidance, however, will be released on this topic.

Comments: A few commenters expressed concern about the prohibition on charging a fee for certain services. These commenters asked whether "appropriate recruitment and other business services on behalf of employers" includes activities such as career expos, job fairs, and sector convening events. The commenters said that these events can be quite costly, and suggested that this section state that no fee, above a cost recovery fee, may be charged for services described in § 678.435(a).

Departments' Response: Events such as career expos, job fairs, and sector convening events are not subject to the prohibition on charging fees as they are services provided under § 678.435(b) and (c). For example, Wagner-Peyser Act funds are used for general labor exchanges, but these are limited to situations such as the use of a job board. These larger events are more tailored for employers, for which fee-for-service is allowed. WIOA sec. 134(d)(1)(A)(ix) discusses activities to promote business services and strategies to meet workforce needs of employers, which may be provided on a fee-for-service basis.

4. Memorandum of Understanding for the One-Stop Delivery System (20 CFR Part 678, Subpart C; 34 CFR 361.500 Through 361.510; 34 CFR 463.500 Through 463.510)

This subpart describes the requirements for the MOU between the Local WDB, CEO, and the one-stop partners relating to the operation of the one-stop delivery system in the local area. The Local WDB acts as the convener of MOU negotiations and shapes how local one-stop services are delivered. One comment concerning the extension of existing MOUs to cover one-stop operations in PY 2016 was very pertinent and, as explained below, helped inform the Departments' decision on the implementation of the State funding mechanism, although this decision did not affect the regulatory language in subpart C. As explained in greater detail below, the Departments promulgate this subpart with no substantive changes.

Comments: A commenter suggested that Governors should be permitted to opt out of the MOU requirement if a comparable mechanism already exists and achieves the desired results.

Departments' Response: While the Departments recognize that existing mechanisms may already be in place in many States and local areas, bypassing the WIOA MOU process is not an option, because partner participation in the MOU is required by WIOA sec. 121(b)(1)(A)(iii). Any existing mechanisms will need to be supplanted by the WIOA MOU mechanism.

Section 678.500 What is the Memorandum of Understanding for the one-stop delivery system and what must be included in the Memorandum of Understanding?

Section 678.500 describes what must be included in the MOU executed between the Local WDB, with the agreement of the CEO, and the one-stop partners relating to the operation of the one-stop delivery system in the local area.

Comments: A commenter recommended allowing existing MOUs in place under WIA to extend for the first program year of WIOA to acknowledge the unlikelihood of negotiating MOUs before the deadline.

Departments' Response: The Departments note the first year of implementation for WIOA MOU provisions was PY 2015 (July 1, 2015 to June 30, 2016), which concluded prior to the effective date of these regulations.

Comments: A commenter asked who specifically is supposed to write the MOU and wondered whether they can trust Local WDBs to write their own agreements.

Departments' Response: Neither WIOA nor the regulations address which entity writes the MOU, but § 678.500(a) specifies that the MOU must be a "product of local discussion and negotiation" among the Local WDB, chief elected official, and the one-stop partners," who all must sign it, according to paragraph (d), and which must include procedures for amending and reviewing it, according to paragraphs (b)(5) and (6). The Departments have determined that these provisions, and those in § 678.510, include adequate safeguards for the drafting of the MOUs, and that specifying a single entity to draft the MOU would be too prescriptive.

Comments: A commenter asked, for single-area States, if the State WDB assumes the MOU negotiation responsibilities, or whether the Governor/mayor assumes these responsibilities.

Departments' Response: WIOA and the regulations do not assign negotiation responsibilities to a single party, and the regulations specify the joint nature of the responsibility among the parties. Therefore, no specific governmental entity is required by these regulations to assume MOU negotiation responsibilities, in single-area States.

Comments: A few commenters supported the inclusion of provisions in this section that would allow one-stop partners to share client data through MOUs and confidentiality agreements.

Departments' Response: WIOA and the regulations are silent on the inclusion of data sharing agreements in the MOU, but the Departments have concluded that the MOU may include such agreements, consistent with all applicable laws and regulations including 34 CFR 361.38 (covering VR program privacy safeguards). No change to the regulatory text was made in response to these comments.

Comments: A commenter said that the regulations should clarify that MOUs must be in accordance with 34 CFR 361.38.

Departments' Response: The Departments agree; MOUs must not contain any provisions that violate the requirements of 34 CFR 361.38, which covers the protection, use, and release of personal information within the VR program. This applies specifically to § 678.500(b)(3), which requires that MOUs include methods for referring individuals between the one-stop operators and partners for appropriate services and activities, as there are specific guidelines to be followed in 34 CFR 361.38(e) regarding the release of participating individuals' information. As there are no specific requirements applying to the sharing of information, but rather only a requirement that the MOU provide the method of referrals from one partner program to another partner program, the Departments are not referencing the requirements of 34 CFR 361.38 in the regulatory text,

although such requirements will be mentioned in guidance released to aid in the implementation of the one-stop delivery system.

Comments: Another commenter said that the MOU should include a specific process to ensure individuals are screened to determine the best set of services to receive at the one-stop center.

Departments' Response: The Departments agree that individuals should receive the services that best meet their needs, but do not agree that the regulations should prescribe a screening process, especially given WIOA's movement away from the sequential delivery of services provided under WIA. The Departments will address this issue in guidance, if necessary, and through technical assistance.

Comments: A few commenters requested additional guidance on MOU requirements, including whether the MOU should address partnerships that do not involve financial commitments, like housing agencies.

Departments' Response: All one-stop partners must be signatories to an MOU, and all must use a portion of their funds to maintain the one-stop delivery system including their proportionate share of one-stop infrastructure costs, whether this is through cash contributions, non-cash contributions, or third-party in-kind contributions. These requirements are covered in much greater detail in subpart E of this part.

Section 678.505 Is there a single Memorandum of Understanding for the local area, or must there be different Memoranda of Understanding between the Local Workforce Development Board and each partner?

Section 678.505 establishes that a Local WDB and one-stop partners may develop a single "umbrella" MOU that applies to all partners, or develop separate agreements between the Local WDB and each partner or groups of partners. Under either approach, the MOU requirements described in § 678.500 apply. The Departments encourage States and local areas to use "umbrella" MOUs to facilitate transparent, flexible agreements that are not burdensome so that partners may focus upon service delivery.

Comments: One commenter expressed support for the option to utilize an umbrella MOU or individual MOUs with each partner. Another commenter agreed that the umbrella MOU is the best approach, and said that MOUs for all local areas should be in a consistent format. In addition, a commenter asserted that WIOA sec. 121(c)(1) requires each Local WDB to enter into one MOU with all of the partners.

Departments' Response: The Departments interpret sec. 121(c)(1) as permitting a single umbrella MOU that encompasses all partner programs, and the Departments encourage the use of such MOUs, but they are not required. No change to the regulatory text was made in response to this comment. The Departments will provide suggestions about the MOU in guidance and through technical assistance. However, because the MOU is the product of local discussion and negotiation developed by the Local WDB, with the agreement of the chief elected official and the local one-stop partners, which relates solely to the operation of the one-stop delivery system in that particular local area, the determination of an MOU's format is best left to the Local WDBs, as long as the MOU meets the requirements outlined in § 678.500 and any requirements mandated by the State.

Comments: A different commenter expressed opposition to umbrella MOUs, saying that they will result in inaccurate cost allocations and inappropriate service delivery decisions.

Departments' Response: The Departments have determined that there is no reason why umbrella MOUs will be less effective than multiple MOUs in addressing cost allocation and service delivery decisions in most situations. No change to the regulatory text was made in response to this comment.

Comments: A commenter remarked that statewide organizations, such as VR, could have to enter into several dozen MOUs to cover all local areas.

Departments' Response: This is correct. Any program that is a partner in a one-stop center, whether they are a partner in one or more, must sign an MOU with the appropriate Local WDB.

Comments: A commenter suggested that the State WDB and any statewide partners negotiate on a "mandatory agreement template" that can be used by Local WDBs in their MOUs with these statewide agencies. Another commenter agreed and supported the development of a standard MOU for use with all Local WDBs.

Departments' Response: While there is nothing to preclude the use of such a strategy, the Departments have determined not to require, encourage, or discourage such a method in order to leave the MOU mechanism as flexible and adaptable to local area situations as possible.

Comments: A commenter said that partner programs operating outside of the workforce area (*e.g.*, INA programs, Job Corps) should not be required to sign MOUs. Rather, the commenter said, these programs should commit to taking referrals from local areas and vice versa.

Departments' Response: If a program is a required one-stop partner under WIOA sec. 121(b)(1) and the corresponding regulations found in subpart B of this part, then that program must sign an MOU with the Local WDB for each local area where it is a partner. According to WIOA sec. 121(b)(1)(A), required partners are limited to those entities that carry out programs or activities in a local area. Likewise, if a program is not required to be a partner but is approved by the Local WDB and CEO as an additional partner, that partner program must sign the respective MOU. The Departments have determined that, as this is required by WIOA, no changes to the regulatory text regarding what entities are required to sign MOUs are necessary.

Section 678.510 How must the Memorandum of Understanding be negotiated?

Section 678.510 describes the collaborative and good-faith approach Local WDBs and partners are expected to use to negotiate MOUs. "Good-faith" negotiations may include fully and repeatedly engaging partners, transparently sharing information, and maintaining a shared focus on the needs of the customer. Section 678.510(a) allows Local WDBs, CEOs, and partners to request assistance from a State agency responsible for the program, the Governor, State WDB, or other appropriate parties when negotiating the MOU. The Departments acknowledge that additional guidance and technical assistance will be needed on MOU requirements and negotiating infrastructure funding agreements. The Departments will issue guidance on this topic. Ongoing technical assistance will be made available to the public workforce system as well.

5. One-Stop Operators (20 CFR Part 678, Subpart D; 34 CFR 361.600 Through 361.635; 34 CFR 463.600 Through 463.635)

This subpart addresses the role and selection of one-stop operators. Unlike the other subparts in this Joint WIOA Final Rule, this subpart is administered primarily by DOL. DOL and ED agreed that the subpart should remain in this part of the Joint Rule, so that all of the subparts having to do with one-stop requirements are together. However, unlike the rest of part 678, this portion of the preamble refers mainly to DOL. For this reason, any reference to "the

Department" throughout this subpart D discussion is a reference to DOL.

Comments: As noted, the Department received and evaluated numerous public comments on this topic. Several commenters expressed support for the Department's proposal to require competition for one-stop operators, primarily on the grounds that competition leads to better services and outcomes for job seekers. Others raised concerns, as detailed below.

Department's Response: It is the conclusion of the Department that the requirement to use a competitive process for the selection of the one-stop operator is required by statute, as is the requirement for continuous improvement through evaluation of operator performance and regularly scheduled competitions. Competition is intended to promote efficiency and effectiveness of the one-stop operator by regularly examining performance and costs. The Department recognizes the challenges associated with competitive selection, including the additional costs such a process carries with it, the statutory requirement for a competitive process is clear. Additionally, competitive procurement processes are not uncommon in State and local government, and the Department encourages the consideration of methods used by other State and local government entities in streamlining their own process, as well as consideration of State and local procurement laws and the Uniform Guidance. Even with such a reference, however, additional guidance and technical assistance will be needed on MOU requirements and negotiating infrastructure funding agreements. Ongoing guidance and technical assistance will be made available to all parts of the public workforce system as well.

Section 121(d)(2)(A) of WIOA only allows for selection of a one-stop operator through a competitive process. This subpart uses the term "selection" of one-stop operator through a competitive process, rather than "designation" or "certification" to avoid confusion. The competitive process established by this subpart requires States to follow the same policies and procedures they use for procurement from non-Federal funds as allowed under the Uniform Guidance at 2 CFR 200.317. All other non-Federal entities, including subrecipients of a State (such as local areas), are required to use a competitive process based on the procurement standards in the Uniform Guidance set out at 2 CFR 200.318 through 200.326.

Unlike under WIA, there is no "designation" or "certification," separate from the competitive selection requirements, of any entity as a one-stop operator, including a Local WDB. For Local WDBs, WIOA imposes an additional step beyond the competitive selection. Section 107(g)(2) of WIOA states that a Local WDB may be designated or certified as a one-stop operator only with the agreement of the CEO in the local area and the Governor. DOL interprets this provision to create an additional requirement for situations in which a Local WDB is selected to be a one-stop operator through the competitive process as required under WIOA sec. 121(d)(2)(A) and as described in this subpart at § 678.605(c). In situations in which the outcome of the competitive selection process is the selection of the Local WDB itself as the one-stop operator, WIOA sec.107(g)(2) requires that the Governor and CEO approve the selection.

The DOL received many public comments regarding the impact of competition on local services. In response to these comments, changes were made to § 678.605, simplifying the language regarding the procedures to be followed in conducting a one-stop operator selection competition. Some minor changes were also made to §§ 678.620 and 678.635 for clarity and consistency.

Section 678.600 Who may operate one-stop centers?

Sections 678.600(a) through (d) describe who may operate a one-stop center. As stated in paragraph (a), WIOA allows a one-stop operator to be a single eligible entity or a consortium of entities. Consortia, like single entities, must be selected through a competitive process. Eligible entities identified in WIOA sec. 121(d)(2)(B). Section 678.600(c)(6) clarifies that a Local WDB, with the approval of the chief elected official and the Governor, may serve as the one-stop operator. Section 678.600(c)(7) clarifies that another interested organization or entity, which is capable of carrying out the duties of the one-stop operator, may serve as the one-stop operator. Section 678.600(d) repeats the requirement in sec. 121(d)(3) of WIOA that elementary schools and secondary schools are not eligible to be one-stop operators; however, nontraditional public secondary schools such as night schools, adult schools, or area career and technical education schools are eligible to be operators.

Section 678.600 states that a one-stop operator may be a single entity or a consortium of entities, and that if a consortium consists of one-stop partners, it must include a minimum of three of the one-stop partners described in § 678.400.

Comments: One commenter stated that these two provisions of § 678.600(a), when taken together, do not make clear whether a single one-stop partner may be a one-stop operator. The commenter further stated that a one-stop operator may be a single one-stop partner, based on WIOA's intent and current practice, but requested that the regulations clarify this point.

Department's Response: The commenter is correct in that a single one-stop partner may serve as a one-stop operator. Paragraph (c) of § 678.600 lists the types of entities that may be selected as the one-stop operator. This repeats the eligible entities from WIOA sec. 121(d)(2)(B), adding paragraph (c)(6) which states that a Local WDB, with the approval of the CEO and the Governor, may serve as a one-stop operator. Paragraph (c)(7) states that an interested organization of any other type that is capable of carrying out the duties of one-stop operator may serve as the operator. A single entity that is also a one-stop partner may serve as operator, but in cases where more than one partner form a consortia to serve as operator, WIOA requires that the consortia contain a minimum of at least three one-stop partners. The Department declines to make any substantive change to the regulatory text and will be issuing guidance on this topic, as well as for competition for one-stop operators.

Comments: A few commenters requested clarification on the phrase, "practices that create disincentives to providing services to individuals with barriers to employment that may require longer-term career and training services." Paragraph (e)(2) requires that State and Local WDBs ensure that one-stop operators do not establish practices that create disincentives to providing services to individuals with barriers to employment who may require longer-term career and training services. One commenter specifically recommended that one such practice that should be "barred" is sending older workers to self-service or the Senior Community Services Employment Program, both of which would prevent those workers from being counted in performance evaluations.

Department's Response: The Departments have reiterated throughout the proposed regulations that all individuals with barriers to employment must be fairly evaluated for services, and services are to be made available and accessible in an equitable manner throughout the one-stop delivery system. Local WDBs must ensure that

one-stop operators do not create barriers that limit services to such individuals. WIOA sec. 188 and the corresponding regulations provide guidance on such issues for protected classes.

Comments: A few commenters expressed concern about the selection of certain entities as one-stop operators. For example, one commenter expressed concern that private entity management would not be efficient or cost-effective for rural areas. Further, the commenter stated that a private entity could have difficulty providing quality service to rural areas due to inadequate expertise, models, or knowledge of living and working in such areas.

Department's Response: The final regulations guard against the concerns expressed by the commenters. Section 678.605 requires that the Local WDB is to make the ultimate selection of the one-stop operator based on the principles of full and open competition. A sound competitive process will objectively evaluate bidders' proposals on factors that may consider costs and the ability to meet the needs of the local area.

Comments: A commenter expressed concern that partner infrastructure and one-stop operating costs could be impacted by the profit motivation of a private for-profit entity acting as a one-stop operator.

Department's Response: The Department does not share this concern. Procurement standards under the Uniform Guidance at 2 CFR 200.323(b), require that profit must be negotiated separately from the price in addition to a cost analysis and/or price analysis. Records documenting or detailing the procurement history including the negotiation and analysis of profit must be maintained by all entities (2 CFR 300.318(h)(i)). This provides transparency in the actual operating costs versus profits for any entity, including for-profit entities, selected under a competitive procurement. Section 683.295 of the DOL WIOA Final Rule addresses the earning of profit. WIOA allows private for-profit entities to be one-stop operators (sec. 121(d)(2)(B)(iv)); therefore, the regulations are consistent with WIOA.

Private for-profit entities also are required to adhere to the Uniform Guidance at 2 CFR part 200. DOL's adoption of the Uniform Guidance at 2 CFR 2900.2 expands the definition of 'non-Federal entity' to include 'for-profit' and 'foreign' entities. As such, any private for-profit entity that is a direct grant recipient or subrecipient of a DOL award must adhere to the Uniform Guidance.

Comments: A commenter urged the Departments to provide maximum flexibility and more defined authority to State WDBs to select the one-stop operator. Additionally, the commenter asked what it means to be an operator, how the operator will be paid, and how firewalls and conflicts of interest are defined.

Department's Response: These final regulations provide maximum flexibility to States and local areas in selecting one-stop operators for the one-stop delivery system as long as the competitive process is consistent with the Uniform Guidance at 2 CFR part 200 and/or with State procurement policies. WIOA sec. 121(d)(1) states that Local WDBs select the one-stop operator, but they must have the agreement of the CEO. Governors and CEOs must concur in cases where the Local WDB acts as the operator itself. In single-area States, the State WDB fulfills the requirements of a Local WDB by selecting the one-stop operator. A competitive selection process creates a level playing field where applicants must propose how to respond to the unique needs and requirements set forth by the Local WDB. Competition is the most effective way to ensure that providers can effectively and efficiently serve as one-stop operators. No changes to the regulatory text were made in response to this comment.

Regarding the role of a one-stop operator, § 678.620(a) only requires that the one-stop operator must coordinate the service delivery of required one-stop partners and service providers. A nonexclusive list of other roles that can be assigned to the one-stop operator also exists in paragraph (a) of § 678.620, but the assignment of these or other roles is always at the discretion of the Local WDB.

Comments: One commenter requested clarity regarding who may approve the Local WDB serving as the one-stop operator when the CEO and the Governor are the same individual.

Department's Response: The comment appears to be addressing concerns about the treatment of single-area States. In single-area States and outlying areas where the CEO and Governor are the same individual, the Governor approves the designation of the Local WDB as one-stop operator after the completion of a competitive process. Single area States will follow their own procurement policies per the Uniform Guidance at 2 CFR 200.317. State procurement policies may include additional procurement methods beyond those included in the Uniform Guidance or may allow for a non-competitive selection of a government entity. In cases where there is no competition, the State and State WDB must work together to establish necessary internal controls and firewalls to provide the public with assurances that although a competitive process is not conducted, there is no conflict of interest. The Department will be issuing guidance on this topic and will follow the issuance of guidance with technical assistance.

As stated above, the competitive process applies to both State and locally operated one-stop delivery systems; WIOA is clear that neither Governors nor State WDBs have the sole authority to designate one-stop operators, except under the conditions of a sole source method of procurement as stated in WIOA sec. 123(b). States are expected to conduct a competitive process for the selection of a one-stop operator, with appropriate protections from conflict of interest, per the State's own procurement policies and procedures.

Section 678.605 How is the one-stop operator selected?

Comments on the Proposed Competition Process

DOL examined the comments received and reviewed the statutory provisions upon which this section is based. WIOA made significant changes to the requirements regarding the selection of one-stop operators. As noted in the preamble to the NPRM, unlike the situation under WIA, WIOA sec. 121(d)(2)(A) only allows selection of a one-stop operation to be made through a competitive process.

Comments: A number of commenters generally questioned the complexities and specificities of the process described in the NPRM.

Department's Response: After considering those comments, the Department has revised the regulatory text by deleting much of the specific contract-related language in the proposed regulations as applied to non-Federal entities other than States. The language now more generally requires that those entities follow the competitive process in accordance with local policies and procedures and the principles of competitive procurement in the Uniform Guidance at 2 CFR 200.318 through 200.326. This provides maximum flexibility in implementing the competition requirement. Furthermore, as noted in revised paragraph (c) of § 678.605, any reference to "noncompetitive proposals" in the Uniform Guidance should be read as "sole source selection" for the purposes of § 678.605(c).

The competitive selection process permits more than one method of procurement, and procurement options are outlined in the Uniform Guidance at 2 CFR 300.320. Discussions based on comments made evident that there are many different methods of procurement used appropriately throughout the public workforce system. Moreover, such methods are generally based on the Uniform Guidance when Federal funds are involved. The Department has determined that it is unnecessary to be overly prescriptive in defining the methods of procurement in these regulations. It is the intention of the Department to provide extensive guidance and technical assistance on acceptable methods of procurement, using the Uniform Guidance as a basis. The Department responds to specific substantive public comments on this topic in the remainder of this Final Rule preamble section.

Comments: Many commenters suggested that existing one-stop operators that are performing well should be grandfathered into WIOA and permitted to continue operating without competitive procurement, which would reduce the burden of the competitive process and ensure continued system stability during the transition to WIOA. Some of the commenters further recommended that Local WDBs and CEOs should have the authority to waive the competitive procurement process after 4 years based on performance and accountability and only conduct a competitive procurement if their evaluations determine it is warranted.

Department's Response: The requirement in WIOA to use a competitive process for the selection of the one-stop operator is an unequivocal statutory requirement, which is clearly set out in WIOA sec. 121(d)(2)(A). Because of this statutory requirement, the competitive selection process for one-stop operators in all local areas cannot be waived. No changes to the regulatory text were made in response to these comments. Past performance, however, is an evaluation factor that may be considered in the competitive process, potentially giving weight to those bidders demonstrating successful performance as a one-stop operator.

Comments: A commenter stated that requiring competitive procurement for its one-stop operators would be detrimental to the State's workforce because any new operator would have to invest in new infrastructure, which would take time and money away from implementing programs. Further, this commenter stated that the existing State employees, who are unionized, could be laid off if new operators were selected.

Department's Response: Costs and burdens placed on the one-stop delivery system by the selection of a new one-stop operator is one of many factors that may be taken into account by a Local WDB or State WDB under the terms of the competitive selection process. Other factors may include, but are not limited to, performance results, performance results by targeted population, certification results, and price. Single-area States will follow their own procurement process per the Uniform Guidance at 2 CFR 200.317. State procurement policies may include additional procurement methods beyond those included in the Uniform Guidance, including sole source procurement. In appropriate instances, the State and State WDB must work together to establish necessary internal controls and firewalls to provide the public with assurances that there are no conflicts of interest. Further, the Department hopes that any disruption to existing public workforce system employees will be limited under the new competitive procurement policies. However, the Department is also confident that the intent of Congress in these provisions was to increase competition among the publicly funded WIOA programs. The implications of collective bargaining agreements will have to be taken into consideration within the provisions of State or Federal procurement and other legal requirements. As such, no changes were made to the regulatory text in response to this comment.

Comments: A few commenters suggested that sole sourcing should be permitted when a public agency is selected as the one-stop operator, reasoning that a competitive process would disrupt delivery of workforce services to job seekers and employers. Another commenter urged that rural areas should be exempt from the competitive process, while a different commenter recommended that single-area States should be exempt from the competitive process.

Department's Response: As stated above, sole source selection is allowable as long as the situation falls within the guidelines and requisite conditions of State and local procurement policies and procedures and the conditions outlined in the Uniform Guidance. The Local WDB must be able to demonstrate that it conducted sufficient market research and outreach to justify sole source selection. No change to the regulatory text was made in response to these comments.

Comments: Some commenters stated that requiring a competitive process would divert resources away from delivery of services.

Department's Response: While the Department recognizes the challenges associated with competitive selection, including the additional costs, the statutory requirement for a competitive process for selection of a one-stop operator is clear. Additionally, competitive procurement processes are not uncommon in State and local government, and the Department encourages the consideration of methods used by other State and local government entities in streamlining their own processes, as well as State and local procurement laws and the Uniform Guidance. No change was made to the regulatory text in response to these comments.

Comments: A commenter recommended that the regulations permit Local WDB personnel to staff one-stop operators and service providers, with the agreement of the CEO and Governor, which would provide more flexibility to the CEO to determine the most efficient and effective one-stop delivery system for their area.

Department's Response: The Department has determined that such staffing is allowable, as long as the Local WDB is selected in accordance with the requirements of the regulations and proper firewalls are in place. As the commenter noted, in such circumstances the agreement of the Governor and CEO is required as an additional step in the approval of the Board as the one-stop operator.

Comments: One commenter recommended that if there is no cost associated with the selection of a consortium as a one-stop operator, there should be no competition.

Department's Response: As noted, WIOA imposes the requirement of a competitive process. The fact that a particular entity, such as the consortium mentioned by the commenter, would be at no cost, however, might be taken into account by the Local WDB under the terms of the selection.

Comments: Several commenters disagreed with the Department's interpretation of the relationship between WIOA secs. 107(g)(2) and 121(d)(2)(A). The commenters asserted that WIOA sec. 107(g)(2), which states that a Local WDB may be designated or certified as a one-stop operator only with the agreement of the CEO and the Governor, is a separate and unrelated provision from WIOA sec. 121(d)(2)(A), which requires a competitive selection process for the one-stop operator. They

suggested that a Local WDB can be designated as a one-stop operator solely under WIOA sec. 107(g)(2), without having to undergo the competitive process described in WIOA sec. 121(d)(2)(A).

Department's Response: The Departments received and evaluated numerous public comments on this topic. It is the conclusion of the Departments that the requirement to use a competitive process for the selection of the one-stop operator is required by statute, as is the requirement for continuous improvement through evaluation of operator performance and regularly scheduled competitions. Competition is intended to promote efficiency and effectiveness of the one-stop operator by regularly examining performance and costs.

The relationship between these two provisions of WIOA was duly noted and considered by the Departments. After extensive consideration, the Departments have not changed their interpretation of the relationship between WIOA secs. 107(g)(2) and 121(d)(2)(A) as providing that a Local WDB may be designated or certified as a one-stop operator, with the agreement of the CEO and the Governor, only after being selected through a competitive process for the one-stop operator. In the Departments' view, the two provisions read together implement Congress' emphasis on increasing competition among the publicly funded WIOA programs, while also giving the CEO and the Governor the flexibility to approve the competitive selection of a Local WDB as a one-stop operator. The Departments read sec. 121(d)(2)(A) as establishing the governing requirement for competitive selection of one-stop operators with sec. 107(g)(2) imposing an additional requirement when the competitive process results in the selection of the Local WDB. No change to the regulatory text was made in response to these comments.

Comments: A few commenters also stated that the Governor should have the authority to designate the one-stop operator in single-area States or States that have a statewide planning region.

Department's Response: All areas, even single-area States, must use a competitive process to determine the one-stop operator by following the Uniform Guidance and State procurement procedures. Sole source selection is available but only if the applicable conditions exist under the State procurement policies and procedures. No change to the regulatory text was made in response to these comments.

Comments: One commenter also recommended that the Department establish a workgroup of single-area States to provide advice for the Final Rule.

Department's Response: Because of the extensive participation of stakeholders, including single-area States and representatives of State governments in the development of the NPRM and in the opportunity to comment on the NPRM before issuance of this Final Rule, the Department determined that it is not necessary to establish a separate workgroup, although workgroups aimed at serving other purposes may still be established.

Comments: Several commenters described potential issues that could arise from a mandate for competitive procurements. They said that there could be: (1) Issues with organized labor representing local workers; (2) delays in service due to staff time being spent on the procurement process; (3) CEOs, who have liability for funding who are unable to choose the best solution for their local area; and (4) loss of local control. A few commenters suggested that requiring competition would increase the liability of the CEO, contribute to loss of local control, and increase the overall cost of operation by dismantling existing, efficient systems that utilize leveraged funding.

Department's Response: The Department is required by WIOA sec. 121(d)(2)(A) to mandate competitive selection of one-stop operators and cannot waive that requirement. Local WDBs should evaluate risk during all stages of the competitive selection process. Leveraged funding or a pledge for matching funds may be considered as a scoring factor when evaluating bidders' proposals for one-stop operator selection, if the solicitation describes how such scoring will be awarded. By following the Uniform Guidance, any such liability of CEOs is mitigated by corresponding protections in the eventual contract. Additionally, the Department encourages Local WDBs to work with local partners and one-stop operators to use innovative and creative ways of mitigating these issues. No change to the regulatory text was made in response to these comments.

Comments: A commenter remarked that while there are likely situations in which there is cause to procure one-stop operators competitively, it is not always the case that Local WDBs are unable to oversee the local workforce system while also serving as the one-stop operator.

Department's Response: The Department agrees, as did Congress. WIOA allows Local WDBs to serve as a one-stop operator with the concurrence of the CEO and the Governor, if the Board is selected under a competitive process as provided in the Final Rule. No change to the regulatory text was made in response to this comment.

Comments: A few commenters asked for clarification on whether the rule for competitive bidding is applied only at the regional or State sub-area level (such as a workforce development area), or if it also applies to operators who are site managers of one-stop sites.

Department's Response: The requirements for the competitive selection of one-stop operators under WIOA would apply only to those procurements carried out by State or Local WDBs. All direct grant recipients and subrecipients of a Federal award must adhere to the procurement standards found in the Uniform Guidance. No change to the regulatory text was made in response to these comments.

Comments: Several commenters expressed concerns about the financial impact of requiring Local WDBs to conduct competitive procurements, as this would be a new cost that could significantly impact limits on administrative costs. A few commenters also asserted that the proposed process of essentially vetting possible candidates prior to issuing a RFP is costly and repetitive. Some commenters said that having a one-stop operator at all is not cost effective.

Department's Response: The Department recognizes that there is a cost burden associated with conducting competitive procurements. Both WIOA and the Uniform Guidance encourage efficiencies in administrative operations through streamlining of services or building from an existing network of services. To the maximum extent practical, the Department encourages States and local areas to leverage their administrative support for procurement to reduce burden.

Comments: A few commenters stated that Congress was intentional in requiring one-stop operators to be selected through a competitive process. These commenters suggested that the Final Rule should not allow contracts to be awarded to entities who then subcontract the work back to State or local agencies on a noncompetitive basis.

Department's Response: The Department agrees that the requirement of using a competitive process for the selection of the one-stop operator cannot be subverted by subcontracting the position of one-stop operator on a noncompetitive basis. By aligning the one-stop operator competitive process

with the procurement requirements in the Uniform Guidance, there are stringent conflicts of interest and documentation requirements that will also apply to one-stop operator competitions. The Uniform Guidance requirements also apply to the award of subcontracts. Application of the Uniform Guidance requirements will ensure the integrity of the process. For this reason, the Department sees no need to change the regulatory language in response to this comment.

Comments: A few commenters also said that the regulations should clarify that one-stop service providers must also be competitively procured. One commenter recommended that the final regulations should ensure that either the adult and dislocated worker service provider is also required to perform the responsibilities of the one-stop operator, and the Local WDB must hold a competition to procure a provider to fill this mixed role; or, if operator and service provider contracts are bid separately, an entity must be allowed to compete for and perform both roles. The commenter went on to recommend that Local WDBs should be required to bid every contract competitively, or request letters of intent at a minimum, and only select an operator through a noncompetitive method if there are no qualified candidates.

Department's Response: The competitive processes outlined in the Uniform Guidance are applicable to procurement transactions with a contractor and not to a sub-awardee such as an adult or dislocated workers service provider. It is when WIOA requires competitive procurement process such as with the one-stop operators and youth service providers that States and Local WDBs must adhere to such requirements.

Comments: A commenter stated that there are competitive selection processes available other than those listed in the proposed regulations. The commenter suggested that invitations to negotiate, professional services solicitations, and other approaches that emphasize performance over price should be considered. Another commenter requested clarity regarding whether "competitive process" requires an RFP. They recommended that "competitive process" be defined to include all methods permitted under State procurement laws.

Department's Response: The commenters are correct in stating that a variety of competitive selection processes exist within approved procurement practices. As a result, the regulatory text has been changed from what was proposed in the NPRM to allow for greater flexibility in defining the competitive process to be followed by non-Federal entities other than States. The regulations now state that where States are engaging in a competitive process, competitions should be based on the State procurement policies as defined in State administrative procedures and should be the same process used for procurement with non-Federal funds. The policies and procedures may encompass many of the areas suggested by the commenters. The regulations also state that where local areas or Local WDBs are engaging in a competitive process, competitions should be based on the local procurement policies as defined in local administrative procedures that must be consistent with all provisions of the Uniform Guidance. The policies and procedures may encompass many of the areas suggested by the commenters. All other entity types follow the Uniform Guidance requirements for procurement, which also contain flexibility in procurement methods, as well as the type of contract vehicle used. For example, the Uniform Guidance does permit sole source as a method of procurement under certain conditions. It was determined to be unnecessary for the Department to be overly prescriptive in defining the methods of procurement in these regulations.

The Department has determined that this approach provides sufficient flexibility to enable a range of operators, including current one-stop operators, State agencies, Local WDBs, or consortia of required partners to be selected under a competitive process as one-stop operators.

Comments: Another commenter asked for clarification on whether "selection" is the same as "procurement," and whether the selection of a one-stop operator is always "procurement," and which parts of the Uniform Guidance apply to such a selection process.

Department's Response: While selection is typically understood as being a part of the procurement process—which typically goes through a series of phases that may include planning, evaluation, negotiation, selection, implementation and closeout—when discussing WIOA one-stop operators in this Final Rule, selection refers to the competitive process by which one-stop operators are chosen. This process may involve a number of methods of procurement as they are described in the Uniform Guidance. The Uniform Guidance describes the process and methods that must be followed to conduct procurement.

Comments: The commenter further stated that the solicitation announcements need to reach a minimum number of vendors to ensure a variety of capable vendors have the ability to bid. In addition, the commenter suggested that selection of one-stop operators should include the ability to serve linguistically and culturally diverse participants.

Department's Response: The Department declines to change the regulatory text in response to this comment. Determining the number of vendors is best left to the Local WDB, based on the needs identified in the local area. Typically, two or more vendors or bidders would be adequate in meeting the minimum requirement of competition, which may already be specified in the State procurement process.

Comments: Another commenter asked how providers of career services are selected. The commenter also asked whether this must involve a competitive process.

Department's Response: Career services are provided by the various partner programs participating in the one-stop center, the details of which are set out and agreed upon in the MOU. As mentioned above, these partners are not required to be procured in a competitive process under WIOA, but they may be under State or local procurement policies.

Comments: Other commenters stated that the Governor should be allowed to recommend the RFP process for their State.

Department's Response: The Governor, in consultation with the State WDB and chief elected official does have the authority under these regulations to choose the type of RFP process for their State that is consistent with State policy and the Uniform Guidance. No change to the regulatory was made text in response to these comments.

Comments: A few commenters requested additional guidance on how a WDB could compete in the procurement process, either alone or as part of a consortium. Another commenter asked if, in single-area States, the State WDB assumes the responsibilities in WIOA sec. 107(d)(10)(A), or if the Governor is authorized to identify a State entity to conduct the competition.

Department's Response: As noted, the Department has revised the regulatory text to allow greater flexibility in defining the competition process for non-Federal entities other than a State, deleting much of the language related to specific procurement methods in the proposed regulations. The Department

provides this flexibility because, as it became apparent through the discussion of comments, there are many different methods of procurement throughout the public workforce system, which are generally based on the Uniform Guidance when Federal funds are involved and which the Department would consider sufficient to meet the requirement for competitive selection of the one-stop operator. It was unnecessary for the Department to be overly prescriptive in defining the methods of procurement in these regulations, and provisions of proposed § 678.605(c) prescribing certain methods have been removed.

Length of Time Required Between Competitions

Comments: A few commenters addressed the Department's question seeking comments regarding the length of time required between competitions for one-stop operators. In particular, a few commenters recommended that the timelines should be determined by States. Other commenters stated that 4 years, as proposed in the NPRM, is appropriate. A few commenters agreed that 4 years between competitions is appropriate, but they suggested that there be an option to extend additional years if performance expectations are met or exceeded. A few commenters suggested allowing more flexibility for States regarding the length of contracts, such as providing guidance that recommends contracts of 3 to 5 years, or allowing the award of 5-year contracts that have an initial base year followed by 4 option years that can be executed if the operator is performing well. A few commenters recommended 6 years between competitions, as that timeline would align with two 3-year certification periods for one-stop operators. Another commenter suggested that local areas should be permitted to extend an operator's contract once by 2 years to reward high performance.

Department's Response: After considering these comments and recommendations, the Department decided to retain the period of 4 years as it is consistent with the other time periods contained in WIOA for resubmission of State Plans as well as re-certification of one-stop centers. The Department has determined that there is not a sufficient reason to shorten this period to 3 years, extend it beyond 4 years, or to leave the timeline determination to individual States. Instead, maintaining the proposed 4 years between competitions is consistent with WIOA's goals of a periodic reexamination of local plans and supporting successfully performing one-stop centers.

Comments: A commenter remarked that, given the timelines for competitive procurement and certification criteria updates, both processes will be conducted simultaneously every 12th year. The commenter suggested that the Department adjust these timelines to be event-driven, rather than simply time dependent.

Department's Response: While the Department recognizes the difficulties that the timing may cause, after considering the comments and suggested changes, the Department concluded that leaving these processes on set timelines, as opposed to event-driven timelines, is the best way to insure integrity in the process and will reap the best outcomes for the one-stop delivery system. As such, the Department has made no changes to the regulatory text in response to this comment. Guidance and technical assistance on this section regarding competition will be made available to all parts of the public workforce system.

Section 678.610 When is the sole-source selection of one-stop operators appropriate, and how is it conducted?

Section 678.610 explains when and how sole-source selection of one-stop operators is appropriate as a part of a competitive procurement process. The text has been changed from the NPRM to delete the references to the specific acceptable processes in proposed § 678.605(d)(3) and to indicate that State and local entities must follow their own procurement rules in addition to the Uniform Guidance, as appropriate. It also includes requirements about maintaining written documentation regarding the entire selection process, and developing appropriate conflict of interest policies. It states that a Local WDB may be selected as one-stop operator through sole source procurement only with the agreement of the CEO in the local area and the Governor. The Governor must approve the conflict of interest policies and procedures the Local WDB has in place when also serving as the one-stop operator. This is consistent with the Departments' interpretation of sec. 107(g)(2) of WIOA—the section adds an additional check in situations where a Local WDB is selected to be operator.

Comments: Several commenters recommended allowing the Governor to designate the one-stop operator when the State is a single-area State, particularly if the State has a history of meeting performance standards. Several commenters also recommended allowing CEOs to designate the one-stop operator without a competitive process so as not to interrupt program continuity, particularly if the operator is already performing well.

Department's Response: WIOA requires the selection of one-stop operators through a competitive process. The Governor or CEOs may not designate an operator without a competitive process. No change to the regulatory text was made in response to these comments. It is possible for the Governor to select an organization, such as the State WDB, by sole source selection after a competitive process. Otherwise, Local WDBs are responsible for conducting a competitive process to select a one-stop operator, which must also be consistent with the Uniform Guidance. The Department encourages Local WDBs to plan for the competitive process and allow for transition time to minimize any disruption and ensure program continuity. Local WDBs can be selected as one-stop operator through sole source procurement only with the agreement of the CEO in the local area and the Governor. Under § 678.610(d), the Governor must approve the conflict of interest policies and procedures that the Local WDB has in place when also serving as one-stop operator. This is consistent with DOL's interpretation of WIOA sec. 107(g)(2)—the section adds an additional check in the situations where a Local WDB is selected to be operator.

Comments: One commenter also suggested that local areas already operating under a consortia model with demonstrated success be permitted to be sole sourced. Another commenter stated that very large, complex local areas should be able to sole source a "system operator" provided that the individual one-stop operators are procured through a competitive process.

Department's Response: While WIOA requires selection of the one-stop operator through a competitive process, under the Uniform Guidance there is the flexibility for sole source as a method of procurement; however, there are conditions that must be met to allow for sole source selection. The Local WDB must be able to demonstrate it conducted sufficient market research and outreach to make that determination. Additionally, § 678.615(b) and (c) require robust conflict of interest policies and procedures as well as internal firewalls within the State agency to address the real and perceived conflicts of interest that could arise for a State or local agency applying to a competition run by a Local WDB.

The Department notes that this section is particularly relevant to the

first competitions that are conducted after these regulations are promulgated for one-stop operators. With appropriate firewalls and conflict of interest policies and procedures to provide a fair and open competitive process, entities serving as one-stop operators at the time these regulations are promulgated, including Local WDBs and other current one-stop operators, may compete and be selected as operator under the competition requirements in this subpart if they are able to do so under applicable procurement policies and procedures. However, appropriate firewalls must be in place to ensure that the current operator is not involved in conducting the competitive process, as that would be an inherent conflict of interest. No change to the regulatory text was made in response to this comment.

Comments: A commenter stated that the Department should reconcile §§ 678.610 through 678.625 with 20 CFR 679.410 to ensure that both one-stop operations and career services are awarded competitively. The commenter provided one exception to this rule: that the Governor and CEO agree that there are insufficient providers available for a competition.

Department's Response: WIOA does not link one-stop operator competition with competition for career services providers. That decision is left to the State and/or Local WDB, and the Department declines to require this by regulation. Competitions for certain types of services are neither expressly prohibited nor required by WIOA. State and Local WDBs are in the best position to determine how extensively to require service provider competitions in their respective areas.

Section 678.615 May an entity currently serving as one-stop operator compete to be a one-stop operator under the procurement requirements of this subpart?

Section 678.615(a) states that Local Boards may compete for and be selected as one-stop operators, as long as appropriate firewalls and conflict of interest policies and procedures are in place. Section 678.615(b) allows State or local agencies to compete for, and be selected as, one-stop operators. However, there must also be strong firewalls, internal controls, and conflict of interest policies and procedures in place.

Comments: A few commenters stated that they interpret the Uniform Guidance on conflict of interest to mean simply that the specifications and requirements for the procurement must be drawn up by a neutral third-party, and that Local and State WDB members can take part in the selection, award, or administration of the one-stop operator contract so long as no member will see an increase in pay or benefits upon award of the contract.

Department's Response: Competitions must be undertaken pursuant to § 678.605. States are required to follow the same policies and procedures used for procurement with non-Federal funds while other non-Federal entities are required to follow local procurement policies and procedures and the requirements in the Uniform Guidance at 2 CFR 200.318 through 200.326. These policies and procedures may allow or require many of the commenter's suggestions. For example, the Uniform Guidance does permit sole source as a method of procurement under certain conditions. The Local WDB must be able to demonstrate it conducted sufficient market research and outreach to make that determination. With appropriate firewalls and conflict of interest policies and procedures to provide a fair and open competitive process, entities serving as one-stop operators at the time these regulations are promulgated, including Local WDBs and other current one-stop operators, may compete and be selected as operator under the competition requirements in this subpart if they are able to do so under the relevant procurement policies and procedures. In the alternative, they may be selected under appropriate sole source processes. However, appropriate firewalls must be in place to provide that the current operator is not involved in conducting the competitive process, as that would be an inherent conflict of interest.

The Department wants to make clear that this approach provides sufficient flexibility to enable a range of operators to compete and be selected, including current one-stop operators, State agencies, Local WDBs, or consortia of required partners.

Comments: Several commenters also asserted that effective firewalls, internal controls, and conflict of interest policies already exist in the workforce development system and have been reviewed by the States and DOL.

Department's Response: While the Department agrees that some effective firewalls, internal controls, and conflict of interest policies already exist in the workforce development system, no change to the regulatory text was made in response to this comment. The procurement standard in the Uniform Guidance provides guidance on written codes of conduct covering real, apparent, and organizational conflicts of interest for persons involved in the procurement process.

Comments: One commenter stated that one-stop operators can be staffed by Local WDBs as long as firewalls and conflict of interest policies are in place, which can include a WDB/CEO agreement with organizational charts.

Department's Response: The Department agrees that, as long as the requisite firewalls and conflict of interest policies and procedures are in place, a Local WDB can compete to fill the one-stop operator position. To be placed in this position, of course, the Local WDB must win the competition and then be approved by the Governor and CEO. While such agreements and organizational charts are a useful tool to define firewalls, proper firewalls must go beyond these tools.

Comments: One commenter asked the Department to define the term "firewall" as it relates to this section. A group of Federal elected officials urged the Departments to establish strong organizational conflict of interest provisions in the Final Rule to ensure fair competition.

Department's Response: The Department has determined that the Uniform Guidance, used in concert with State procurement procedures, establishes adequate standards for conflict of interest policies. Also, § 678.615(b) and (c) require robust conflict of interest policies, as well as internal firewalls within the State agency, to address the real and apparent conflicts of interest that could arise for a State or local agency applying to a competition run by a Local WDB. In order to ensure flexibility for State and local entities in designing one-stop delivery systems, the Department declines to define these terms further in the final regulations.

Comments: A few commenters said that they do not believe it is possible for a sufficient firewall to be established to eliminate a real or apparent conflict of interest when a Local WDB competes to be a one-stop operator. Even if an alternate entity were involved in developing the procurement requirements, according to these commenters, the Local WDB would still need to be involved in developing and approving them. Other commenters agreed and requested that single-area States be granted flexibility on, and waivers of, this provision. Two commenters asserted that in small States where there is very little competition (*e.g.*, a one-stop operator may also be a service provider), it is not cost effective to implement firewalls.

Department's Response: While the Uniform Guidance does provide

flexibility, some State and local procurement policies may prevent a Local WDB from competing under an RFP if it is not possible to establish a sufficient firewall to avoid a real or apparent conflict of interest. The Department declines to revise § 678.615 to provide for a waiver or other flexibility concerning the requirement for firewalls and conflict of interest policies and procedures because avoiding a real or apparent conflict of interest is essential to a fair competitive process. The Department encourages States and local areas to review their procurement policies and procedures to ensure that they are consistent and contain appropriate firewalls and conflict of interest policies and procedures to provide a fair and open competitive process.

Comments: A few commenters suggested that because the Governor has the authority, in agreement with the CEO, to select the Local WDB as the one-stop operator, firewalls and conflict of interest policies are not necessary. Another commenter agreed with this suggestion, adding that firewalls and conflict of interest policies are not necessary because the CEO would have oversight responsibilities.

Department's Response: The Department disagrees. The Uniform Guidance, where applicable, calls for a written code of conduct policy that includes real, apparent, and organizational conflict of interest procedures to provide a fair and open competitive process. Entities serving as one-stop operators at the time these regulations are promulgated, including States, Local WDBs, and other current one-stop operators, may compete and be selected as the operator under the competition requirements in this subpart, if allowable under applicable procurement policies and procedures. Appropriate firewalls, however, must be in place to ensure that the current operator is not involved in conducting the competitive process, as that would be an inherent conflict of interest. Such firewalls pertain to the elected leadership of the State or local area as well as to the Boards. The Uniform Guidance, where applicable, and § 678.615(b) and (c) require robust conflict of interest policies that will create internal firewalls within the State agency to address the real and perceived conflicts of interest that could arise when a State or local agency applies to a competition run by a Local WDB. No change to the regulatory text was made in response to these comments.

Comments: One commenter expressed support for the Department's requirement to establish appropriate firewalls and internal controls.

Section 678.620 What is the one-stop operator's role?

Section 678.620(a) describes the role of the one-stop operator without prescribing a specific and uniform role across the system. The minimum role that an operator must perform is coordination of all one-stop partners and service providers.

A change was made to this section for clarity. The regulatory text was revised to modify the list of potential roles for the one-stop operator, as chosen by the Local WDB, changing it from "coordinating service providers within the center and across the one-stop system . . ." to "coordinating service providers across the one-stop delivery system."

Comments: Several commenters addressed the Department's question regarding whether all of the functions listed in proposed § 678.620(b) are accurately described as inherently the responsibility of the Local WDB. Some commenters agreed that all of these items are inherently the responsibility of the Local WDB. One commenter stated that some of the Local WDB responsibilities may have changed or been devolved to the operator or fiscal agent as the one-stop delivery system has evolved under WIA. A Local WDB recommended that the Department remove this paragraph because it adds confusion, particularly when the Local WDB or fiscal agent is also the one-stop operator. The commenter suggested that CEOs should be responsible for determining who is responsible for each function. Another commenter also stated that, rather than prohibiting certain actions, the NPRM should provide guidance to operators regarding how to deal with conflicting responsibilities. The commenter stated that this is particularly necessary for small States and single area States where agencies serve multiple roles in the system.

Department's Response: The Department considers these provisions necessary and consistent with WIOA. The Department is aware that the requirements related to formally procuring the one-stop operator may be new in many areas, and that the roles and responsibilities for Boards, operators, and service providers under WIOA may differ from those under WIA. Some roles will continue and others will be modified in response to the new requirements and vision presented by WIOA. Transitioning to a new, more integrated system of service under WIOA will take time and technical assistance from all agencies involved. Some guidance is already available to the system in the form of TEGLs on a variety of subjects, such as "*Workforce Innovation and Opportunity Act Transition Authority for Immediate Implementation of Governance Provisions*" (TEGL No. 27–14), "*Vision for the Workforce System and Initial Implementation of the Workforce Innovation and Opportunity Act*" (TEGL No. 4–15), "*Guidance on Services Provided through the Adult and Dislocated Worker Program under the Workforce Innovation and Opportunity Act (WIOA or Opportunity Act) and Wagner Peyser, as Amended by WIOA, and Guidance for the Transition to WIOA Services*" (TEGL No. 3–15), and "*Workforce Innovation and Opportunity Act (WIOA) Youth Program Transition*" (TEGL Nos. 23–14 and 8–15), among others, which can be found at *http://wdr.doleta.gov/directives/All_WIOA_Related_Advisories.cfm.*

Furthermore, WIOA does not permit CEOs to be solely responsible for selecting who carries out each function of a one-stop center; this is something to be set forth in the MOU, as agreed upon by all the local partners and the Local WDB. No change to the regulatory text was made in response to these comments.

Comments: Several commenters stated that the requirement in § 678.620(b) that one-stop operators establish firewalls and conflict of interest policies if they are also a service provider implies that the organization's head would need to establish firewalls between himself and his own staff who are delivering services.

Department's Response: The Department would like to stress that there must be appropriate firewalls between staff providing services and staff responsible for oversight and monitoring of services. The same person or department cannot both provide services and oversee the provision of those services. This may require examination of the organizational structure of a State or local system to ensure that adequate firewalls are in place to ensure appropriate oversight and monitoring of services. Because the WIA system operated under similar internal controls for nearly 2 decades, the Department does not anticipate that the WIOA requirements regarding firewalls, conflict of interest policies, and procurement procedures will be major obstacles to WIOA implementation. The Department also has determined that the provisions of the Uniform Guidance at 2 CFR part 200 sufficiently address these issues. No

change to the regulatory text was made in response to these comments.

Comments: Commenters also asked whether, if the organization that wins the one-stop operator competition is not also the WIOA title I service provider, there would have to be another competition for this service provider and thus another level of administration.

Department's Response: The Department has concluded that State and Local WDBs are in the best position to determine how extensively to require service provider competitions in their respective areas, and the Department encourages States and local areas to review their procurement policies and procedures against the Uniform Guidance to ensure that they are consistent and contain appropriate conflict of interest policies and procedures to provide a fair and open competitive process.

Comments: A commenter suggested that when there is a potential conflict of interest, the State WDB should be required to certify those one-stop centers. Another commenter asked how one-stop operators will be audited to ensure that internal controls are utilized.

Department's Response: The State sets the criteria for certification of one-stop centers, and Federal representatives and State agencies will continue to monitor the entire public workforce system under WIOA. As part of such monitoring and oversight responsibilities, States and Federal representatives will review an entity's compliance with the Uniform Guidance, the soundness of its internal controls, and its internal control framework. Further, States and local agencies are audited either independently or under a State's comprehensive audit on an annual or biannual basis, which includes an examination of the State and local agencies' internal controls and internal controls framework. No change to the regulatory text was made in response to this comment.

Comments: One commenter said that there was not enough clarity regarding staff oversight in one-stop centers. The commenter asked who is responsible for performance outcomes and operations when there are Combined Plan partners, and also, that CEOs be permitted to make this determination. Another commenter agreed that Governors should be able to determine appropriate roles for one-stop operators and Boards.

Department's Response: Some operating guidance on this subject has already been released in TEGL No. 27–14 ("*Workforce Innovation and Opportunity Act Transition Authority for Immediate Implementation of Governance Provisions*"), and much more is in development, especially around performance outcomes of Combined State Plan partners. The Department presumes that staff oversight and other roles and responsibilities of WDBs and operators will be set in each State and local area by the WDB, in accordance with guidance provided by the Department, the Governor, and the provisions of the Uniform Guidance in 2 CFR part 200 regarding the use of Federal funds. There must be appropriate firewalls between staff providing services and staff responsible for oversight and monitoring of services; however to ensure this, the Department has concluded that additional regulatory language is not required. Having proper firewalls in place will ensure that the same person or department does not oversee its own provision of services. This may require examination of the organizational structure of an organization to ensure that adequate firewalls are in place to ensure appropriate oversight and monitoring of services. No change to the regulatory text was made in response to these comments.

Comments: A few commenters requested clarification of the term "another capacity" in § 678.620(b).

Department's Response: The text from § 678.620(b) in the NPRM reads, in part, "[a]n entity serving as a one-stop operator may perform some or all of these functions if it also serves in another capacity, if it has established sufficient firewalls and conflict of interest policies. The policies must conform to the specifications in 20 CFR 679.430 of this chapter for demonstrating internal controls and preventing conflict of interest." The Department has clarified this language, which now refers to "acting in its other role," instead of "serves in another capacity." As revised, § 678.620(b) now reads, "An entity serving as a one-stop operator, that also serves a different role within the one-stop delivery system, may perform some or all of these functions when it is acting in its other role, if it has established sufficient firewalls and conflict of interest policies and procedures. The policies and procedures must conform to the specifications in 20 CFR 679.430 of this chapter for demonstrating internal controls and preventing conflict of interest." The Department has determined that the term "other roles" is more readily understood. These could include such roles as service providers, State agencies, or Local WDBs.

Comments: One commenter suggested that the Department should define the role of a "system coordinator," which would unify a network of one-stop operators in large local areas into a more cohesive local system.

Department's Response: The Department has declined to revise the regulatory text to define such a role, as this is a function of the Local WDB. WIOA does not identify a system coordinator role. Local areas have the ability to coordinate regionally and develop local or regional plans. Any coordination would be established as part of the local planning process.

Comments: One commenter stated that one-stop operators should be allowed to participate in the local plan development only if there are appropriate firewalls and conflict of interest policies in place.

Department's Response: The one-stop operator will be a contractor under the Local WDB. The Local WDB is tasked with oversight and monitoring of the one-stop operator. Therefore, if the operator participates in the development of the local plan, there must be adequate conflict of interest policies and firewalls in place to ensure the one-stop operator staff who are participating do not provide input on any policies associated with oversight and monitoring of their own actions. The Department has determined that this does not require the addition of regulatory language to this section, as §§ 678.615, 678.620, and 678.625 require firewalls and conflict of interest policies to prevent conflicts of interest in the selection of a one-stop operators, in the one-stop operator's role, and in the functioning of the State and Local WDBs.

Comments: One commenter recommended that the regulations should clarify that the one-stop operator chosen through the competitive procurement process is responsible for carrying out the required activities of WIOA sec. 134(c)(1)(A), both directly and through the one-stop required partners.

Department's Response: The Department has determined that it is important to provide flexibility to local areas to define the role of one-stop operator to meet the needs of the local area and that § 678.620 provides this flexibility. No change to the regulatory text was made in regard to this comment.

Section 678.625 Can a one-stop operator also be a service provider?

Section 678.625 allows a one-stop operator to also be a service provider. However, the section clarifies that there

must be firewalls in place to ensure that the operator is not conducting oversight of itself as a service provider. There also must be proper internal controls and firewalls in place to ensure that the entity, in its role as operator, does not conflict with its role as a service provider.

Comments: Some commenters expressed that the process described in the NPRM for the grant recipient to operate the one-stop center and/or provide career services is difficult to follow. They expressed concern that the process as described could lead to "unintended, questionable procurements."

Department's Response: After considering these comments and examining the language of WIOA sec. 121(d), the Departments have determined that the process for separating the functions of operator and service provider is clear. A one-stop operator cannot participate in the selection of a provider to perform services in which the operator intends to compete. Specifically, the operator cannot participate in the planning, development, review, negotiation, and selection phases of the competitive procurement process and then also submit its own proposal. Moreover, proper firewalls must be in place, as well as internal controls, to separate the functions of oversight, monitoring, and evaluation of its role as service provider in order for a one-stop operator to also serve as a service provider. The Department will continue to provide guidance and technical assistance to the public workforce system in this regard.

Comments: One commenter asserted that Congress could not have intended for the WIOA competition provision to be the catalyst for a regulatory structure that would entrench service providers and insulate them from competition while competing out only the more tangential oversight position of one-stop operator, which typically has a much smaller total impact on the quality of services delivered to one-stop users. The commenter remarked that the one-stop operator and service provider roles have been "substantially intertwined" over the years, with WIA sec. 117(d)(2)(D) even suggesting that operators were also expected to be service providers. The commenter stated that it has been common practice at many one-stop centers for the roles of operator and service provider to be bid concurrently, and common practice in other one-stop centers for service providers to be assigned various operator duties as part of their service provider role.

Department's Response: The Departments encourage Local WDBs to review current service providers strategically and plan for the competitive process, allowing for a period of transition to minimize any disruption and ensure program continuity. WIOA does not link one-stop operator competition with competition of providers of services in the one-stop. That decision is left to the State and/or Local WDB. No change to the regulatory text was made in response to this comment.

Section 678.630 Can State merit staff still work in a one-stop center where the operator is not a governmental entity?

Section 678.630 addresses the concern about whether State merit staff can continue to work in a one-stop center where the operator is an entity other than the State. State merit staff support numerous programs at the one-stop center, including Wagner-Peyser Act programs, VR, UI, and the JVSG program. Section 678.630 clarifies that State merit staff may continue to work in the one-stop center so long as a system for the management of merit staff in accordance with State policies and procedures is established. Similar to State merit staff, nothing would prevent local government staff from being employees in the one-stop center, although the Department recognizes that local government employees are not equivalent to the State merit staff, as State merit staff are governed by the requirements attached to specific programs that must be in the one-stop center regardless of operator.

In response to concerns about staffing, the last sentence of § 678.630 has been revised to clarify that continued use of State merit staff for the provision of Wagner-Peyser Act services or services from other programs with merit staffing requirements must be included in the competition for and final contract with the one-stop operator when Wagner-Peyser Act services or services from other programs with merit staffing requirements are being provided.

Comments: Several commenters remarked that local staff do not have the same protections as State merit staff, and new contractors often bring in their own staff when taking over programs. Additionally, these commenters asserted that it would be cost-prohibitive for potential applicants to retain many public employees because they are typically fully vested and may be unionized.

Department's Response: DOL acknowledges the concerns and points regarding the State merit staffing requirement. The benefits of merit staffing in promoting greater consistency, efficiency, accountability, and transparency have been well established, and the Department intends to continue the respective UI, Wagner-Peyser Act, and VR merit staffing requirements under WIOA. While there is no merit staffing requirement under other WIOA core programs, the Department has determined, consistent with 20 CFR 652.215 that Wagner-Peyser Act and VR staff must meet the requirements of merit staff. A revision to the regulatory text, as discussed above, has been made to § 678.630 to respond to concerns about staff.

Comments: Some commenters, including a few unions, urged the Department to require that UI and ES agencies be parties and agree to the establishment of the NPRM's "system for management of merit staff."

Department's Response: UI and Wagner-Peyser Act programs will be party to the establishment of such a system through their participation and decision-making on State or Local WDBs as required partners, and through their good-faith negotiations during the MOU process. The Department has made no changes to the regulatory text in response to these comments.

Comments: Some of these commenters also suggested that the Department should revise § 678.630 to require UI and ES agencies to agree to inclusion of local merit staff in the competition and final contract, to be consistent with proposed 20 CFR 652.216.

Department's Response: The Departments decline to make revisions to policies regarding local merit staffing.

Comments: One commenter stated that the NPRM, which includes VR in the list of State merit staff, conflicts with the responsibility of the designated State agency (DSA) or designated State unit (DSU) in sec. 101(a)(2) of the Rehabilitation Act of 1973 "by inferring that the State Board and one-stop operator may establish State policies regarding the management of" VR staff. The commenter also stated that the NPRM may conflict with RSA Technical Assistance Circulars 12–03 and 13–02. Another commenter expressed support for including VR as State merit staff, as this will provide flexibility for States to integrate VR staff within one-stop centers.

Department's Response: In accordance with this section, State VR personnel are permitted to perform functions and activities in a one-stop center where the one-stop operator is a non-governmental entity.

This section does not circumvent the requirements governing the State VR Program at 34 CFR part 361. In particular, if State VR personnel are

performing functions and activities in a one-stop center operated by a non-governmental entity, the requirements related to the responsibility for administration and the non-delegable functions of the designated State unit at 34 CFR 361.13(c) remain in place.

Contrary to the commenter's suggestion, neither the State WDB nor the one-stop operator would assume sole management of State VR personnel employed by the designated State unit responsible for the administration of the VR services program, because such responsibility rests fully with the designated State unit for the VR program. Rather, the State WDB and the one-stop operator would establish a system for management of State VR personnel in accordance with State policies and procedures, consistent with program specific requirements such as that described in 34 CFR 361.13(c).

Comments: A few commenters recommended that CEOs or Local WDBs should be permitted to determine the best staffing mix for their local areas.

Department's Response: WIOA sec. 107(f) and 20 CFR 679.400 of the DOL Final Rule describe the Local WDB's authority to hire and the appropriate roles for Board staff and § 678.620 describes the role of the one-stop operator in comparison to Local WDB functions. Local WDBs may establish appropriate staffing within the confines of these requirements, but nothing in these provisions would change staffing requirements established pursuant to other laws, such as the Wagner-Peyser Act merit-staffing requirement. The Department made no changes to the regulatory text in response to these comments.

Comments: One commenter asserted that, because WIOA does not specifically amend, address, or rescind the Employment Services merit staff exemption granted to Colorado, Massachusetts, and Michigan under the Wagner-Peyser Act, this exemption remains in full effect.

Department's Response: The benefits of merit staffing in promoting greater consistency, efficiency, accountability, and transparency have been well established and DOL has proposed continuing Wagner-Peyser Act merit staffing requirements under WIOA. Nonetheless, WIOA is silent on the continuation of this exemption, and there is no need to address it in these regulations. However, to prevent significant disruptions in service delivery and to help facilitate implementation of WIOA, the Secretary of Labor has elected to continue all current exemptions to the Wagner-Peyser Act merit staffing requirement. This continuation applies only to the current exemptions; the Department has no immediate plans to expand this authority within States that have been granted this administrative flexibility or to additional States, and such grants could be subject to termination in the future at the discretion of future DOL leadership.

Section 678.635 What is the compliance date of the provisions of this subpart?

While no significant policy changes have been made to this section, the date by which Local WDBs must demonstrate they are preparing for the one-stop operator competition process has been changed from June 30, 2016 to [90 days from publication of this Final Rule], in order to give Local WDBs an adequate amount of time to actively respond to the requirements of these regulations.

Comments: A few commenters requested flexibility to delay competitive selection if a State determines that breaking a lease in existence prior to PY 2014 exceeds the three percent funding cap for that local area's title I or Wagner-Peyser Act funding for PY 2016. The commenters requested guidance or technical assistance if the cost of maintaining current programming in existing one-stop centers exceeds the caps.

Department's Response: DOL has issued operational guidance on the continuation of contracts during the WIA to WIOA transition, and depending on the State or local interpretation of a lease agreement, this guidance may be relevant. Please see TEGL No. 38–14, "*Operational Guidance to Support the Orderly Transition of Workforce Investment Act Participants, Funds, and Subrecipient Contracts to the WIOA,*" which can be found at *http://wdr.doleta.gov/directives/All_WIOA_Related_Advisories.cfm.*

Comments: A commenter stated that DOL should adjust the implementation date of this provision to July 1, 2017 from June 30, 2017 to coincide with the beginning of the new program year, instead of the last day of the previous program year.

Department's Response: After considering this comment, the Department has adjusted the date in § 678.635(a) to July 1, 2017 in order to be consistent with the program year.

Comments: A few commenters expressed support for regulatory language that would allow Local WDBs to continue competitively procured one-stop operator contracts that are executed before the June 30, 2017 effective date.

Department's Response: No regulatory text changes were made in response to these comments. The Department recommends following the guidance that has been released for continuing, adapting, and terminating (if necessary) one-stop services contracts that can be applied to one-stop operator contracts, which can be found in TEGL No. 38–14, "*Operational Guidance to Support the Orderly Transition of Workforce Investment Act Participants, Funds, and Subrecipient Contracts to the Workforce Innovation and Opportunity Act,*" which can be found at *http://wdr.doleta.gov/directives/All_WIOA_Related_Advisories.cfm.*

Other Comments on One-Stop Operators

Comments: A few commenters stated that neither WIOA nor the NPRM state that the Local WDB is required to pay the one-stop operators. They also recommended that Governors be able to set policies for one-stop operators.

Department's Response: A competitive process is required for the selection of the one-stop operator by the Local WDB, and it is expected that a sizable portion of the bid-on costs would be the salary of the one-stop operator's staff. One-stop operator roles and responsibilities are defined in WIOA and these regulations, and existing and future operational guidance and rules will delineate how these policies are set at the local level. WIOA sec. 121(d)(1) delegates the majority of the authority to set these policies to the Local WDB. No change to the regulatory text was made in response to these comments.

Comments: A commenter recommended making this section more collaborative with ED, to be consistent with the rest of the NPRM. The commenter expressed concern that this topic is only under DOL's auspices when both Departments oversee the entities involved in the one-stop delivery system.

Department's Response: The Department agrees; this is a joint regulation and the comment responses, in addition to most existing operational policies, have been developed through collaboration between the Departments of Labor and Education. It is the intention of the Departments to continue to provide joint guidance and training to our respective systems of service in a collaborative manner.

Comments: Another commenter suggested that the Department should establish labor standards for staff working in the one-stop delivery system.

Department's Response: The Department appreciates the concerns giving rise to this suggestion, but the establishment of labor standards for

occupations in State or local governmental entities carrying out the provisions of WIOA is outside the scope of these regulations, as well as the Departments' administrative authority. No change to the regulatory text was made in response to this comment.

6. One-Stop Operating Costs (20 CFR Part 678, Subpart E; 34 CFR 361.700 Through 361.760; 34 CFR 463.700 Through 463.760)

The regulations governing one-stop partner funding of infrastructure costs and other shared costs are intended to:

(1) Maintain the one-stop delivery system to meet the needs of the local areas;

(2) Reduce duplication by improving program effectiveness through the sharing of services, resources and technologies among partners;

(3) Reduce overhead by streamlining and sharing financial, procurement, and facilities costs;

(4) Encourage efficient use of information technology to include, where possible, the use of machine readable forms and shared management systems;

(5) Ensure that costs are appropriately shared by one-stop partners by basing contributions on proportionate use of the one-stop centers and relative benefit received, and requiring that all funds are spent solely for allowable purposes in a manner consistent with the applicable authorizing statute and all other applicable legal requirements, including the OMB's Uniform Guidance set forth in 2 CFR chapter II, part 200 (Uniform Guidance); and

(6) Ensure that services provided by the one-stop partners to reduce duplication or to increase financial efficiency at the one-stop centers are allowable under the partner's program.

Infrastructure costs are the responsibility of all one-stop partner programs, whether they are physically located in the one-stop center or not. Each partner's contribution to these costs, however, may vary, as these contributions are to be based on the proportionate use and relative benefit received by each program, consistent with the partner programs' authorizing laws and regulations and the Uniform Guidance at 2 CFR part 200. Section 121(h)(1)(A) of WIOA establishes two funding mechanisms—a local funding mechanism and a State funding mechanism. Under WIOA sec. 121(c), the Local WDBs must enter into MOUs that cover, in part, the amount each partner will contribute toward the one-stop center's infrastructure costs. The Departments strongly encourage Local WDBs to reach agreement. If the Local WDB fails to reach agreement with each of the partners with regard to the amount each partner will contribute to the one-stop delivery system's infrastructure costs pursuant to WIOA sec. 121(h)(1)(A)(i)(I), the local area is considered to be at an impasse. When a local area fails to reach such agreement, the State funding mechanism is triggered pursuant to WIOA sec. 121(h)(1)(A)(ii).

As discussed in more detail in the analysis of comments regarding § 678.725, the State funding mechanism, in the event a local area fails to reach agreement with the one-stop partners, will not be triggered prior to PY 2017. In other words, the failure of a local area to reach an agreement with regard to the funding of the one-stop centers' infrastructure costs for PY 2017 (which begins July 1, 2017), would trigger the State funding mechanism, in order to provide that funds are available to pay for the one-stop delivery system's infrastructure costs in PY 2017. In specific instances, the triggering of the State funding mechanism will be based on the guidance developed by the Governor under § 678.705(b)(3) as to the timeline for notifying the Governor that the local area was unable to reach agreement. The same would be true for each subsequent program year. States and local areas may continue to negotiate local funding agreements as they have under WIA for the purposes of PY 2016.

The Departments have determined this interpretation is most consistent with the plain meaning of the statutory provision, because all negotiations for purposes of the one-stop delivery system's infrastructure costs for PY 2016, which begins on July 1, 2016, as well as the implementation of a State funding mechanism, would need to occur well before the start of PY 2016 in order to provide funding for the one-stop delivery system in PY 2016. However, sec. 121(h)(1)(A)(ii) makes clear that the State funding mechanism does not apply until negotiations fail to result in an agreement after the start of PY 2016, which, by necessity, would make it applicable beginning with PY 2017, and then for all subsequent program years.

For PY 2017 and all subsequent program years, when a local area fails to reach an agreement, thereby triggering the implementation of the State funding mechanism pursuant to sec. 121(h)(1)(A)(ii), the Governor, or in some cases other officials as described in § 678.730(c)(2) and in more detail below, after consultation with State and Local WDBs and CEOs, will determine the amount each partner must contribute to assist in paying the infrastructure costs of one-stop centers. The Governor, or other official in consultation with the Governor, as appropriate, must calculate amounts based on the proportionate use of the one-stop centers and relative benefit received by each partner and other factors stated in § 678.737(b). The amounts contributed by each one-stop partner in a local area will be based on an infrastructure cost budget determined either by local agreement, as stated in § 678.735(a), or by formula, as stated in § 678.735(b)(3) and in accordance with the remainder of § 678.745 and sec. 121(h)(3)(B) of WIOA. Section 678.738(c) sets forth the limitation for one-stop partners' contributions under the State funding mechanism, based on a percentage of their statewide funding allocation, in accordance with WIOA sec.121(h)(2)(D)(ii).

Comments: A commenter expressed support for the proposed regulations in this subpart. Another commenter requested technical assistance and additional clarity on these provisions. One commenter asked that the Departments describe the expectations in this subpart and in subpart C for each one-stop partner program, individually and separately, because each program has its own requirements for administrative costs and infrastructure contributions based on its authorizing statute.

Departments' Response: The Departments have issued operating guidance that describes the Departments' views on how these provisions will work. The expectations for each partner program will be further defined in guidance on one-stop infrastructure negotiations, and technical assistance will be provided to the public workforce system following publication of these regulations. To describe these details in regulatory language would be overly prescriptive; the Departments decline to change the regulatory text in response to this comment. Required Federal partner programs often operate under different authorizing statutes in addition to WIOA. Those administering agencies will issue program-specific guidance and technical assistance on infrastructure costs and negotiating MOUs in addition to any joint guidance regarding WIOA implementation. The costs of the one-stop delivery system are not only supported by infrastructure funding, but also by the payment of other shared costs that may be part of the MOU.

Comments: A commenter stated that this subpart would have the effect of

worsening or reducing collaboration between local programs. The commenter went on to say that partners do not know how to implement WIOA's options for sharing local infrastructure costs.

Departments' Response: The Departments disagree with this general assessment, and the Departments are aware of many States and local areas where infrastructure and cost sharing agreements have been working well for some time. The intent of WIOA is to continue and enhance the collaboration of partners, with more specific guidelines, and the Departments intend to provide further guidance and technical assistance regarding the sharing of local infrastructure costs and other shared costs. No change to the regulatory text was made in response to this comment.

Comments: A few commenters expressed support for a separate funding line item for one-stop infrastructure costs.

Departments' Response: Since a separate line item was not authorized in WIOA, nor included in any of the Departments' appropriations, the Departments are not authorized to implement separate funding for infrastructure costs. No change to the regulatory text was made in response to these comments.

Section 678.700 What are the one-stop infrastructure costs?

Section 678.700 provides the definition for infrastructure costs based on sec. 121(h)(4) of WIOA. In addition, the section adds common one-stop delivery system identifier costs. These costs are those associated with signage and other expenses related to the one-stop common identifier, as required by subpart G of this part.

Jointly funding services is a necessary foundation for an integrated service delivery system. Section 678.700(c) explains that a partner's contributions to the costs of operating and providing services within the one-stop delivery system must adhere to the partner program's Federal authorizing statute, and to all other applicable legal requirements, including the Federal cost principles that require that costs must be allowable, reasonable, necessary and allocable. These requirements and principles will help one-stop partners identify an appropriate cost allocation methodology for determining partner contributions. There are a variety of methods to allocate costs, for instance: based on the proportion of a partner program's occupancy percentage of the one-stop center (square footage); the proportion of a partner program's customers compared to all customers served by the one-stop; the proportion of partner program's staff compared to all staff at the one-stop; or based on a partner program's use of equipment or other items that support the local one-stop delivery system. A detailed discussion of the Departments' responses to public comments received on this section follows immediately below.

Comments: One commenter asked whether infrastructure costs are applicable only to partners physically located in the one-stop centers or to all partners.

Departments' Response: Infrastructure costs are applicable to all one-stop partner programs, whether they are physically located in the one-stop center or not. Each partner's contribution to these costs, however, may vary, as these contributions are based on the proportionate use and relative benefit received, consistent with the partner programs' authorizing laws and regulations and the Uniform Guidance at 2 CFR part 200.

Comments: Another commenter said that the Departments need to provide sufficient guidance on the expectations for certain programs to ensure that cost negotiations take place and contributions occur.

Departments' Response: Since the issuance of the NPRM, infrastructure funding guidance has been released by the Departments, and more guidance and technical assistance documents will be released throughout the operational lifetime of the regulations.

Comments: One commenter suggested that because the NPRM essentially requires title I programs to police the participation of other programs regarding infrastructure costs, they would discourage optional one-stop partners from participating at all.

Departments' Response: Governors and State WDBs must create the framework for funding and required partner programs must operate within that framework, both at the State and local levels. Local WDBs will follow this framework, which must be inclusive of required partner programs as well as other programs that are additional partners in the one-stop centers in that local area. Once negotiated MOUs are in place, the State will monitor their operations, along with the other fiscal procedures of local areas, as they do now. The Local WDBs will be responsible for ensuring that all of the one-stop infrastructure costs are paid according to the provisions of the MOU, as they are the entity with which the partner programs will be signing the MOU. No change to the regulatory text was made in response to this comment.

Comments: A commenter said that proposed § 678.700(c) should begin, "Each entity described in . . ." to clearly indicate that partners must contribute funds for infrastructure, regardless of whether a partner wants to have a service delivery mechanism separate from the one-stop center.

Departments' Response: The Departments have determined that the regulation is clear as proposed, and have concluded that this change is not needed and would cause unnecessary confusion.

Comments: Another commenter suggested that Perkins Act funds should not be shifted to infrastructure support.

Departments' Response: As a statutorily required partner of the one-stop center under WIOA, a Perkins eligible recipient at the postsecondary level, or a consortium of eligible recipients at the postsecondary level in a local area, will now be involved in the development of local MOUs, which spell out the services to be provided through the one-stop centers. All partners must contribute to the one-stop infrastructure costs according to WIOA, as is described in more detail in § 678.720(a). No change to the regulatory text was made in response to this comment.

Comments: One commenter expressed concern that, given the "proportionate use by or benefit to the partner program" clause in this part, TANF or Basic Food Employment and Training could incur a significant cost due to the volume of clients served by these programs. The commenter also asked if this funding is in addition to the funds already provided for employment services.

Departments' Response: With regard to the TANF program, only those funds used for the provision or administration of employment and training programs are considered in infrastructure and MOU negotiations under WIOA. The Departments wish to clarify that there are numerous methods for allocating costs, of which a proportion of customers is only one. One-stop partners will negotiate MOU's and infrastructure funding agreements that meet the needs of the local areas and the partner programs.

Comments: A few commenters objected to the funding structure described in the NPRM, stating that there is a discrepancy in how contributions are calculated and how funds are reallocated. Specifically, the commenter suggested that the State WDB formula—as discussed in § 678.745—redistribute funds under

what was proposed as the State funding mechanism in the NPRM using different factors than what is used to calculate proportionate share.

Departments' Response: The Departments have determined that the referenced discrepancy does not exist. There will be differences in the application of the framework for infrastructure funding used among local areas, but required partner programs will have consistent requirements across all programs. As the commenter suggested, however, the use of the State WDB formula as proposed in the NPRM created ambiguities in determining what local partner programs should contribute. Because of this and other comments, the formula has been reworked to provide a more stable, and practicable tool for the Governor to use. These changes are detailed in § 678.745 and the associated Preamble discussion.

Comments: A few commenters said that contributions from partner programs must be consistent with their authorizing statutes and all other legal requirements under WIOA.

Departments' Response: The Departments agree that all required partner programs must also comply with the provisions of their own authorizing statutes, in addition to WIOA, and have determined that the regulations reflect this requirement.

Comments: A few commenters asked if only partners colocated within the one-stop must contribute, or if all partners that benefit from the centers must also contribute.

Departments' Response: As mentioned above, all one-stop partners must contribute to infrastructure funding, but will do so based upon a reasonable cost allocation methodology whereby infrastructure costs are charged based on each partner's proportionate use of the one-stop centers and relative benefit received. This would still apply even if the program is not located at the one-stop center, if it is a required partner.

Comments: A commenter asked why the UI system is not a mandatory funding partner.

Departments' Response: This is an incorrect assumption. As a required one-stop partner under WIOA sec. 121(b)(1)(B)(xi), a partner providing UI services must contribute its proportionate share of the infrastructure costs, as is required by WIOA sec. 121(b)(1)(A)(ii).

Comments: Another commenter recommended that TANF should not be required to pay infrastructure costs.

Departments' Response: As a one-stop partner, a TANF program must provide infrastructure cost funding according to its proportionate use of the one-stop centers and relative benefit received, as is required by WIOA, unless the Governor exercises the option not to include TANF as a required partner. See WIOA sec. 121(b)(1)(C). If the Governor has exercised the option so that an entity carrying out a TANF program is not a required one-stop partner, but it chooses to become one voluntarily, the program must provide its share of infrastructure costs as do all required partners. No change to the regulatory text was made in response to this comment.

Comments: A few commenters said that the Departments should make it clear that title I funds can support title II based on the definition of "training" in WIOA sec. 134(c)(3).

Departments' Response: Program funds are for the benefit of the participants enrolled in training authorized in that particular title. Funds provided by partners to support infrastructure and shared costs of the one-stop delivery system are intended to benefit the participants of all programs. Guidance also has been released on the subject in both TEGL No. 2–15, "*Operational Guidance for National Dislocated Worker Grants pursuant to the Workforce Innovation and Opportunity Act,*" and TEGL No. 04–15 "*Vision for the One-Stop Delivery System under WIOA,*" among others, as well as corresponding ED documents, such as TAC–15–01 and Program Memorandum OCTAE 15–3, which are associated with TEGL No. 04–15. All DOL WIOA operating guidance can be found at *http://wdr.doleta.gov/directives/All_WIOA_Related_Advisories.cfm*, and all associated ED documents may be found at *www2.ed.gov/about/offices/list/osers/rsa/wioa-reauthorization.html* and *www2.ed.gov/policy/adulted/guid/memoranda.html.*

Furthermore, an additional section of regulatory text on this subject was added to the DOL WIOA Final Rule at 20 CFR 680.350. No change to the regulatory text was made in response to these comments.

Comments: Multiple commenters urged the elimination of the one-stop delivery system proposed infrastructure payments, and some remarked that the NFJP should be exempt from this requirement because NFJP grantees often operate in satellite locations in rural areas where the communities face transportation barriers. Some of these commenters discussed the extensive outreach necessary in these communities and remarked that NFJP grantees would not have to sacrifice their identity or their close partnerships with one-stop delivery systems if the Departments allow them this exemption.

Departments' Response: The Departments cannot eliminate the one-stop delivery system infrastructure payments for any of the required partner programs, as the infrastructure cost contributions are required by sec. 121(b)(1)(A)(ii) of WIOA. While NFJP grantees are required partners and are required to provide infrastructure funding for the one-stop centers, they will contribute amounts in direct proportion to their use in accordance with the provisions of these regulations and Departmental guidance. No change to the regulatory text was made in response to these comments.

Comments: Several commenters stated that, if deemed necessary, infrastructure payments should be no greater than the value received by NFJP programs, and some commenters suggested that in-kind contributions should be considered as a valid form of payment.

Departments' Response: WIOA requires partners to contribute infrastructure funds according to the partners' proportionate use and relative benefit received. The regulations allow noncash and third-party in-kind contributions as valid forms of payment for infrastructure costs. The Uniform Guidance related to in-kind contributions applies here, and additional guidance regarding noncash and in-kind contributions and shared costs has been released by the Departments. No change to the regulatory text was made in response to these comments.

Comments: A commenter suggested that NFJP grantees should continue to be required partners on State and Local WDBs if NFJP is forced to make a financial contribution.

Departments' Response: The Departments recognize that many important system partners with experience with specific populations—such as certain required one-stop partner programs, tribal organizations, other Department program grantees, and those serving the disadvantaged and disabled populations—are no longer required members of WDBs. However, 20 CFR 679.320(c) of the DOL-only Final Rule requires that the Local WDB must be comprised of workforce representatives that can include one or more representatives of community-based organizations that have demonstrated experience and expertise in addressing the employment, training, or education needs of individuals with barriers to employment. Further, 20 CFR 679.320(e)(4) says the CEO has the

flexibility to appoint "other appropriate individuals," which does not preclude any organization that the CEO deems appropriate. The Departments encourage the CEO to ensure that Local WDB members represent the diversity of job seekers and employers in their local areas, which includes ensuring adequate representation on the Local WDB. Section 679.320 in the DOL WIOA Final Rule implements the WIOA sec. 107(b) Local WDB membership requirements. No change to the regulatory text was made in response to this comment.

Comments: Several commenters addressed the Departments' request for comment on the types of costs that should be included as infrastructure costs. One commenter reasoned that staff development and training is an appropriate use of funds to maintain the one-stop delivery system as described in § 678.700(c). The commenter also asked if the Departments are acknowledging that costs described in paragraphs (a) and (b) are allowed by the required program authorizing statutes. Another commenter asked if infrastructure costs include personnel costs such as facility maintenance, and one commenter asked if they include copy machine leases. A different commenter suggested that infrastructure costs should include one-stop marketing, IT and communication costs, and administrative costs of operating one-stop centers. A couple of commenters suggested that certain one-stop operation personnel costs, such as receptionist, IT support, building security, and manager, should be funded from infrastructure costs. Another commenter agreed, reasoning that if they are not, such costs would fall on WIOA title I–B funds.

Departments' Response: Section 121(h)(4) of WIOA defines one-stop infrastructure costs as "the nonpersonnel costs that are necessary for the general operation of the one-stop center, including rental costs of the facilities, the costs of utilities and maintenance, equipment (including assessment-related products and assistive technology for individuals with disabilities), and technology to facilitate access to the one-stop center, including the center's planning and outreach activities." This definition is also in § 678.700(a). The Departments will provide additional guidance regarding infrastructure costs, but addressing all potential specific items of cost that could be included or excluded from infrastructure costs, based on this definition, is beyond the scope of these regulations.

WIOA allocates equitably the cost responsibility for operating the one-stop delivery system across partner programs; therefore, it is not the intention that any one partner bear a disproportionate share of the costs. The Departments do not agree with the conclusion that if the costs identified by the commenters are not included in infrastructure costs they will fall on WIOA title I funds. Costs that are related to services shared by partners that do not fall into the definition of infrastructure costs should be treated as other shared costs according to WIOA sec. 121(i)(2) and § 678.760 of these regulations.

Comments: One commenter stated that infrastructure costs should be aggregated and addressed at the State level.

Departments' Response: It is not possible to accomplish this by Federal regulation. Funds are separately appropriated to States under a variety of authorizing statutes. The Governor, in working with the State WDB, will develop guidance that, among other things, outlines a framework for identifying infrastructure contribution from each required partner, as discussed in § 678.705 of these regulations. If consensus cannot be reached on an infrastructure funding agreement locally, the Governor will implement the State funding mechanism to determine one-stop partner contributions, as discussed in §§ 678.725 through 678.745. No change to the regulatory text was made in response to this comment.

Comments: A commenter expressed support for including assistive technology as a required infrastructure cost.

Departments' Response: Section 121(h)(4) and § 678.700(a)(3) provide that equipment, including assistive technology for individuals with disabilities, is an infrastructure cost. However, neither of these provisions describes assistive technology as a required infrastructure cost, and the Departments have determined that designating any particular cost as a required infrastructure cost is beyond the scope of these regulations. As previously indicated in this Preamble, the Departments intend to issue guidance regarding specific items of allowable infrastructure costs and will address one-stop center accessibility costs in that guidance. No change to the regulatory text was made in response to this comment.

Comments: A few commenters recommended that costs associated with adopting the common identifier should be funded by the Departments, not from infrastructure costs. One commenter asked for examples of common identifier costs. Another commenter agreed that common identifier costs should be included as common infrastructure costs.

Departments' Response: Costs associated with the common identifier may be included as infrastructure as well, however there is no separate source of funding to allocate from the Federal level for common identifier costs. Examples of common identifier costs would be the cost of new signage, changing material templates, and changing electronic resources, but it would not include any sort of advertising campaign promoting the one-stop center under the new common identifier. No change to the regulatory text was made in response to these comments.

Comments: Several commenters stated that infrastructure cost levels should be set at the State level for adult education programs, rather than requiring local negotiations between each adult education program and each one-stop partner.

Departments' Response: Section 678.415(b) of the regulation specifies that the appropriate entity to serve as a partner for the adult education program is the State eligible agency or entity and the State eligible agency or entity for AEFLA may delegate its responsibilities to act as a local one-stop partner to one or more eligible providers or consortium of eligible providers. As part of these delegated responsibilities to serve as a one-stop partner, a local adult education entity would assume the roles and responsibilities of one-stop partners under sec. 121(b)(1)(A), which would include contributing to infrastructure costs. No change to the regulatory text was made in response to these comments.

Section 678.705 What guidance must the Governor issue regarding one-stop infrastructure funding?

Section 678.705 includes certain requirements for the Governor's guidance, including establishing roles, defining equitable and efficient methods for negotiating around infrastructure costs, and establishing timelines for local areas. These requirements are essential to ensuring a consistent approach to the Governors' guidance across States. This allows for one-stop certification, competition of the one-stop operator, and inclusion of infrastructure funding agreement terms into the local State Plan in appropriate timeframes. Based on comments received, the Departments have concluded that the Governor's guidance and technical assistance will be of greatest value to the public workforce system in implementing the provisions

of the sections that follow. A detailed discussion of the Departments' responses to public comments received on this section follows immediately below.

Comments: A commenter asked whether the Governor may dictate the cost categories and allocation methods, or whether the Governor may provide flexibility to local partners in these areas. Another commenter said that the Departments should issue guidance on cost sharing, allocation, and allowable costs. One commenter recommended that in cases where the Governor needs to intervene to establish local contributions, the contributions should be supported with similar funding sources for all contributors. Another commenter said that guidance on funding should allow for flexible contributions from required partners.

Departments' Response: The Departments have determined that the language in § 678.705 is consistent with the cost principles contained in the Uniform Guidance and those of the authorizing statutes and, thus, provides sufficient parameters within which to define costs, cost allocation, and other principles of cost sharing. For purposes of clarity, specific references to the Uniform Guidance have been added to § 678.705. Furthermore, paragraph (b)(2) also has been revised to clarify that cost allocation should be based on proportionate use of the one-stop centers and relative benefit received. The Governor may not dictate cost categories or allocation methods that are not consistent with the Uniform Guidance. There are a variety of methods to allocate costs that are consistent with the Uniform Guidance, for instance, based on: The proportion of a partner program's occupancy percentage of the one-stop center (square footage); the proportion of a partner program's customers benefitting by coming to the one-stop; the proportion of partner program's staff among all staff at the one-stop center; or the percentage of a partner program's use of equipment at the one-stop center. This portion of the regulation can be complex, and the Departments will continue to issue guidance and provide technical assistance to the public workforce system.

The DOL's previous Financial Management Technical Assistance Guide published for WIA remains useful for an overview of cost allocation methodologies. See *http://www.doleta.gov/grants/pdf/TAG_PartI.pdf* and *http://www.doleta.gov/grants/pdf/TAG_PartII_July2011.pdf.* The Departments jointly will work to update this guide and provide technical assistance on cost allocation in the future.

Comments: A few commenters said there needs to be guidance for local partners to contribute to the one-stop infrastructure costs. The commenter said that these costs need to be defined as program costs.

Departments' Response: In addition to the provisions of these regulations, guidance for local partner contributions will be available from Departmental policy guidance documents, and from the State agencies administering partner funds. However, local required partners and their CEOs also must recognize that funds must be used in accordance with the related authorizing statutes, and consistent with the requirements of the Uniform Guidance. While infrastructure costs may be considered as program costs for DOL WIOA programs—which are primarily WIOA title I programs—this is not the case for all local area partner programs. Other authorizing statutes may have differing interpretations. Further guidance and technical assistance is forthcoming on this issue.

Comments: A few commenters requested additional guidance for the Governor to assist in establishing roles and defining equitable and efficient methods for negotiation. A commenter said that the rule should give guidance on what roles the Departments envision to ensure that the Governors' recommendations are appropriate.

Departments' Response: Since the issuance of the NPRM, the Departments have released infrastructure funding guidance that includes roles and responsibilities, and more guidance and technical assistance documents will be released throughout the operational lifetime of the regulations. No change to the regulatory text was made in response to these comments.

Comments: A commenter said that this section should refer to WIOA sec. 121, concerning infrastructure spending ceilings for certain programs.

Departments' Response: The Departments decline to adopt this recommendation. While the infrastructure funding caps for certain programs under the State funding mechanism are covered in § 678.738(c), they do not apply to contributions of local programs pursuant to the local funding mechanism. No change to the regulatory text was made in response to this comment.

Comments: A couple of commenters said that the regulations need to provide a "fail safe" for local areas in case the State is not negotiating in good faith or fails to meet the requirements of the MOU. The commenter recommended that this would be a plan consisting of MOU terms and cost allocation plans that would go into effect if either condition above occurs.

Departments' Response: The Departments are not authorized by WIOA to implement a "fail safe" plan as the commenter suggested. WIOA and this Joint WIOA Final Rule (at § 678.750) require that the Governor have an appeals process for the State funding mechanism that would allow one-stop partners to appeal a Governor's funding determination. In addition, 20 CFR 683.600 of the DOL WIOA Final Rule would include Local WDBs and CEOs as "other interested parties" that may file grievances under the State established procedures required by WIOA sec. 181(c)(1). No change to the regulatory text was made in response to these comments.

Section 678.710 How are infrastructure costs funded?

Section 678.710 indicates that sec. 121(h)(1)(A) of WIOA establishes two methods for funding the infrastructure costs of one-stop centers: A local funding mechanism and a State funding mechanism. Both methods utilize the funds provided to one-stop partners by their authorizing statutes. There is no separate funding source for one-stop infrastructure costs. The Departments received no comments on this section and made no changes to the regulatory text.

Section 678.715 How are one-stop infrastructure costs funded in the local funding mechanism?

To use the local funding mechanism, Local WDBs, in consultation with CEOs, must engage one-stop partners early in discussions about one-stop center locations, costs, and other services, so that all parties can make decisions cooperatively and reach consensus about funding infrastructure costs. WIOA does not place any limitations on contributions under the local mechanism; however, partner programs' contributions must be in compliance with their Federal authorizing statutes and other applicable legal requirements, including administrative cost limitations, and represent each partner's proportionate share, consistent with the Uniform Guidance. Under this section, agreement is achieved when all of the one-stop partners sign an MOU with the Local WDB, which includes a final agreement regarding funding of infrastructure that includes the elements listed in § 678.755, or an interim funding agreement that includes as many of these elements as possible. A detailed discussion of the Departments'

responses to public comments received on this section follows immediately below.

Comments: One commenter said that partners should pay an equitable share of the infrastructure costs, not a proportionate share based on relative benefits.

Departments' Response: WIOA sec. 121(h)(1)(B)(i) and sec. 121(h)(2)(C) specifically require funding allocations under both the local or State funding options to be based on proportionate use and relative benefit received. The first and preferred option is through methods agreed on by the Local WDB, CEOs, and one-stop partners. If no agreement can be made, then the State funding mechanism applies. Both mechanisms are based upon Federal cost principles contained in the Uniform Guidance. No change to the regulatory text was made in response to this comment.

Comments: A commenter stated that the regulations should clarify that the Local WDB has the responsibility for maintaining and preparing the records necessary to periodically review and reconcile partner shares of infrastructure costs against actual expenditures to ensure equity.

Departments' Response: The Departments disagree; specifics of the roles and responsibilities of local entities is something to be worked out in the MOU, not in Federal regulation. Additionally, MOUs are required to be reviewed no less than once every 3 years as required by WIOA sec. 121(c)(2)(A)(v). No change to the regulatory text was made in response to this comment.

Comments: Another commenter asked for a definition of "proportionate share." One commenter said that the Governor should set policy regarding "proportionate benefit." Another commenter requested guidance on calculating proportionate use.

Departments' Response: There is no specific Federal definition of proportionate share, proportionate benefit, or proportionate use, and none of these terms are defined in WIOA. In a general sense, proportionate share is the share of each partner program's infrastructure costs based upon its proportionate use of the one-stop centers and relative benefit received from that use. The concept of proportionate share, consistent with the partner programs' authorizing statutes and regulations and the Uniform Guidance at 2 CFR part 200, is used by Federal cost principles in the Uniform Guidance, among others. The Departments are aware of the complex nature of arriving at a generally accepted method of calculating proportionate share in a given State or local area and will address this issue through additional fiscal guidance and training. No additional regulatory text is required.

Comments: Several commenters in the adult education field asked for guidance regarding the duties and functions of the Local and State WDBs in small States and single-area States.

Departments' Response: Because WIOA is an evolving system, there is no standard list of all of the possible duties and functions of Local and State WDBs. While WIOA establishes required duties and functions for State and Local WDBs, discussed further in this subpart, each State and Local WDB will develop State and local plans that define their visions and roles and may expand upon these duties and functions. Pursuant to WIOA's Sunshine Provisions, the State and local plans are available for public inspection and Board meetings must be open to the public, which ensures transparency and accountability for all State and Local WDBs.

Comments: A few commenters said that the Departments should issue guidance on simply bypassing the local infrastructure funding process and using the State funding process instead.

Departments' Response: WIOA does not provide authority for bypassing the local funding mechanism. The State funding mechanism is only triggered after the Governor is informed that consensus could not be reached at the local level.

Comments: Many commenters said that the Departments should clarify that both cash and in-kind contributions are permitted in both the local and State funding mechanisms. One commenter asked for clarification on how in-kind contributions should be calculated as an alternative to direct payments. A few commenters asked for clarification of the phrase "fairly evaluated in-kind contributions" and also asked to know who makes this determination. Another commenter said that infrastructure funding should be cash-only. One commenter said that the Departments should update their guidance for in-kind contributions to ensure that such contributions are weighted appropriately. A few other commenters said that provision of alternative communication services (*e.g.*, Braille, deaf interpreters) should be considered an in-kind contribution for the VR program.

Departments' Response: These comments assisted the Departments in making certain adjustments in this part of the regulations. WIOA sec. 121(c)(2) outlines the required content of the local MOU. This includes a description of how the costs of operation of the one-stop delivery system will be funded. Operating budgets for one-stop centers encompass two types of costs that are specifically outlined in the law: Infrastructure costs, defined in WIOA sec. 121(h)(4), and additional costs relating to the operation of the one-stop delivery system that do not constitute infrastructure costs, described in WIOA sec. 121(i)(1), which includes the cost of career services under WIOA sec. 134(c)(2) and may include shared services, defined in WIOA sec. 121(i)(2). WIOA sec. 121(c)(2)(A)(ii)(I) establishes in-kind contributions as valid forms of payment for operations.

The regulatory text in § 678.715 has been revised to clarify that cash, non-cash, and third-party in-kind contributions may be provided by, or on behalf of, one-stop partners to cover their proportionate share of infrastructure costs and to provide further agreement on the terms with definitions provided in the Uniform Guidance. These terms are further defined in § 678.720(c).

Non-cash contributions, which are separate from third-party in-kind contributions, are comprised of receipts for current expenditures incurred by one-stop partners on behalf of the one-stop center and non-cash resources such as goods or services, or the documentation of supporting costs for items owned by the partner's program and used by the one-stop center.

For example, imagine a partner's proportionate share of the one-stop operating costs is $15,000. The partner does not have sufficient cash or other resources to fund its share fully, and wishes to donate (not for its own individual use) gently used surplus computer equipment. The computers at the time of the donation have a value determined in accordance with the requirements of 2 CFR 200.306 of $10,000. The partner would be able to use the $10,000 value as part of the resources provided to fund the shared costs.

Third-party in-kind contributions are contributions of space, equipment, technology, nonpersonnel services, or other like items to support the infrastructure costs associated with one-stop center operations, by a non-one-stop partner to support the one-stop center in general (rather than a specific partner), or contributions by a non-one-stop partner of space, equipment, technology, nonpersonnel services, or other like items to support the infrastructure costs associated with one-stop center operations, to a one-stop partner to support its proportionate share of one-stop infrastructure costs.

There are two types of third-party in-kind contributions: General contributions to one-stop operations (*i.e.,* those not connected to any individual one-stop partner) and specific contributions made to a particular one-stop partner program.

For example, a general in-kind contribution could be a city government allowing the one-stop to use city space rent-free. These in-kind contributions would not be associated with one specific partner, but rather would go to support the one-stop generally and would be factored into the underlying budget and cost pools used to determine proportionate share. The result would be a decrease in amount of funds each partner contributes, as the overall budget will have been reduced.

The second type of in-kind contribution could be a third-party contribution to a specific partner to support one-stop infrastructure. For example, an employer partner provides assistive technology to a VR program that then gives it to the one-stop center. So long as assistive technology was in the one-stop operating budget's infrastructure costs, the partner could then value the assistive technology in accordance with the Uniform Guidance and use the value to count towards its proportionate share. Prior to accepting in-kind contributions from a partner (via a third-party donor), there would need to be agreement among the partners on cost allocation methodology to ensure that other infrastructure operating costs are sufficiently covered through cash and noncash contributions.

Both non-cash and in-kind contributions must be valued consistent with 2 CFR 200.306 and reconciled on a regular basis to ensure that they are fairly evaluated and meeting the partners' proportionate share.

All partner contributions, regardless of the type, must be reconciled on a regular basis (*i.e.,* monthly or quarterly) to ensure each partner program is contributing no more than its proportionate share, in accordance with the Uniform Guidance at 2 CFR part 200. No other change to the regulatory text is made in response to these comments.

Section 678.720 What funds are used to pay for infrastructure costs in the local one-stop infrastructure funding mechanism?

Section 678.720 explains the funds that one-stop partners may use to pay for one-stop infrastructure costs. In funding the one-stop infrastructure costs, partner programs must satisfy the requirements of their authorizing statutes and regulations. Further, all one-stop partners must work together to administer the partner programs and the one-stop and other activities of the core programs under WIOA as efficiently and effectively as possible. This will ensure that, as recipients and stewards of Federal funds for all of these programs, the partners and their subrecipients, when allowable under a partner program's authorizing statute, administer these programs and activities to meet all applicable legal requirements and goals. It is important to note that the different Federal statutes and regulations of partner programs define administrative costs slightly differently. Some programs' statutes and regulations define all of the infrastructure costs listed in § 678.700 as administrative costs, while other programs' statutes and regulations define some of the infrastructure costs as administrative costs, and some as program costs. Under § 678.720 of these final regulations, one-stop partner programs must adhere to the administrative and program cost limitations and requirements to which they are subject.

Several changes were made to this section in response to public comments received by the Departments on the NPRM. In § 678.720(a), language was added clarifying that, for WIOA title I programs, infrastructure costs may be considered program costs. Also in paragraph (a), a distinction was made between title II programs and programs authorized under the Perkins Act. Because the proposed Joint Final Rule had designated the State eligible agency under the Perkins Act as the required one-stop partner, it consequently required that infrastructure costs be paid from the funds reserved by the State eligible agency for State administrative expenses. The joint Final Rule, instead, designates that the Perkins one-stop partner is the eligible recipient at the postsecondary level, or a consortium of eligible recipients at the postsecondary level in a local area. Consequently, the joint Final Rule requires that infrastructure costs under the Perkins Act be paid from funds available for Perkins postsecondary recipients' local administrative expenses, or from other funds made available by the State. The Joint Final Rule also changes the source of infrastructure funding for the title II program, specifying that these costs be paid from the funds available for local administrative expenses or from non-Federal resources that are cash, in-kind or third-party contributions.

Also the Departments added a new paragraph (c) and associated subparagraphs to § 678.720 in response to requests for further clarification, which cover the distinctions between and definitions of cash, non-cash, and third-party in-kind contributions to meet partner programs' infrastructure costs contribution obligations. In addition, the Departments provided operating guidance and technical assistance to the public workforce system, and will continue to provide such assistance, as needed. A detailed discussion of the Departments' responses to public comments received on this section follows immediately below.

Comments: A commenter indicated that this section "is in error in its implication of Perkins State administration funding to support local one-stop infrastructure." This commenter asserted that directing Perkins Act State administration is a violation of the uses of funds for such dollars as articulated in Perkins Act sec. 112(a)(3). The commenter recommended revising § 678.720(a) to read: "In the case of partners administering the Carl D. Perkins Career and Technical Education Act of 2006, these funds shall include local administrative funds available to local eligible institutions or consortia of such institutions." The commenter further stated that Perkins Act funds are not divided among secondary and postsecondary career and technical education programs; the distribution between the eligible recipients only takes place at the local level, and this section and § 678.740(d) should be revised to apply only to local-level funding instead of the Perkins eligible agency and the State's administrative dollars. Another commenter agreed, stating that the regulations appear to require duplicate Perkins funds, including both State and local Perkins administrative funds. The commenter similarly indicated that this is a new use of Perkins State administrative funds. Another commenter interpreted the intent of this section to mean that when the Perkins State eligible agency delegates authority to local entities to serve as one-stop partners, the State agency may require the use of local administrative funds in lieu of State administrative funds.

Departments' Response: The Joint WIOA NPRM designated the State eligible agency under the Perkins Act as the required one-stop partner, and consequently required that infrastructure costs be paid from the funds reserved by the State eligible agency for State administrative expenses. The Final Rule instead designates that the Perkins one-stop partner is the eligible recipient at the postsecondary level, or a consortium of eligible recipients at the postsecondary

level in the local area. The Departments have determined that this change is consistent with WIOA sec. 121(b)(1)(B)(iv) which designates local one-stop Perkins partners as the entity that carries out career and technical education programs at the postsecondary level, authorized under the Perkins Act, in a local area. However, the Departments have concluded the State's involvement could be valuable at the negotiation stage and have modified §§ 678.415(e) and 678.720(a) to provide that the local recipients at the postsecondary level may request assistance from the State eligible agency in completing its responsibilities in negotiating local MOUs. To meet their obligations to cover their proportionate share of infrastructure costs, Perkins postsecondary recipients may use funds available for local administrative costs under the Perkins Act, or draw from other funds made available by the State, at the State's discretion.

Comments: A commenter stated that Perkins funds are not divided among secondary and postsecondary career and technical education programs; rather, the distribution between the eligible recipients only takes place at the local level, and §§ 678.720 and 678.740(d) of the NPRM should be revised to apply only to local-level funding instead of the Perkins eligible agency and the State's administrative dollars.

Departments' Response: As stated above, this comment was taken into consideration in making the final regulatory text changes indicating that the Perkins one-stop partner is the eligible recipient at the postsecondary level, or a consortium of eligible recipients at the postsecondary level in the local area.

Comments: A commenter stated that the regulations appear to require duplicate Perkins funding, including both State and local Perkins administrative funds. The commenter said that this is a new use of Perkins State administrative funds.

Departments' Response: Perkins State funds are no longer required to be used to pay for infrastructure costs, as outlined above, but may be made available by the State, at the State's discretion.

Comments: A commenter said that § 678.720(a) of the NPRM limits title II contributions to no more than five percent of the Federal AEFLA funds received by the State. The commenter said that the Departments should direct States to distribute a share of other title II funds to local partners to pay for infrastructure costs.

Departments' Response: The Departments do not have the authority to direct the States to do this. Section 233(a)(2) of WIOA specifically provides that up to five percent of the AEFLA funds allocated to local eligible providers shall be used for administrative costs, including costs related to the one-stop partner responsibilities in sec. 121(b)(1)(A). These responsibilities include contributing to infrastructure costs. Under sec. 233(a)(1), 95 percent of the funds allocated to local eligible providers must be used for carrying out adult education and literacy activities. However, under sec. 233(b), if the five percent cost limit is too restrictive to permit the local eligible provider to cover the local administrative costs, including the payment of infrastructure costs, the local eligible provider negotiates with the State eligible agency to determine an adequate amount to be used for non-instructional purposes. No change to the regulatory text was made in response to this comment.

Comments: A few commenters asked if the approach described in § 678.720(a) would allow "the Federal funding stream to sidestep its responsibility to cover costs relative to the benefit received by the program."

Departments' Response: As described at the beginning of this section, changes have been made to the local funding mechanism to explain partner responsibilities and make clear that programs must contribute their proportionate share based on proportionate use and relative benefit received.

Comments: Some commenters stated that because WIOA sec. 121 does place a cap on infrastructure funding for the VR program, § 678.720 should not state that there is no cap on the funding a one-stop partner may contribute.

Departments' Response: The caps on infrastructure funding, which are addressed in § 678.738, apply to what the Governor can require partner programs to contribute under the State funding mechanism, triggered when local partners cannot reach consensus on the local-funding mechanism. If a partner program chooses to contribute more than the cap for its program under the State funding mechanism, it can do so, as long as such contributions reflect its proportionate share, consistent with the Uniform Guidance. On the other hand, if the State funding mechanism is not triggered, neither WIOA sec. 121 nor § 678.720 of these final regulations impose a limitation on how much a core program may contribute for infrastructure costs. No change to the regulatory text was made in response to these comments.

Comments: A commenter said that infrastructure costs should use only a portion of the available administrative cost amount, otherwise there will be no funds available for other administrative costs associated with operating the program.

Departments' Response: A one-stop partner program's contributions to infrastructure costs under the local funding mechanism is limited in that contributions for administrative costs may not exceed the amount available for administrative costs under the authorizing statute of the partner program. In addition, the amounts contributed for infrastructure costs must be allowable and based on proportionate use of the one-stop centers and relative benefit received by the partner program, and must be consistent with 2 CFR part 200, including the Federal cost principles. No change to the regulatory text was made in response to this comment.

Comments: Another commenter requested additional clarification on the process and role of adult education programs in contributing to infrastructure costs.

Departments' Response: Upon further review, the Departments note that sec. 233(a)(2) of WIOA specifically provides that adult education program local administrative funds, rather than the State administration funds referenced in the NPRM, are to be used for one-stop partner responsibilities under WIOA sec. 121(b)(1)(A). These responsibilities include contributing toward one-stop infrastructure costs. Further, while AEFLA caps the amount that may be used for local administrative expenses at five percent under sec. 233(a)(2) of WIOA, the State adult education agency may increase the amount that can be spent on local administration in cases where the cost limits are too restrictive to allow for specified activities. This may include funding one-stop center infrastructure that would be part of the one-stop partner responsibilities to be carried out by the eligible provider in a local area.

The NPRM permitted the State eligible agency to use non-Federal funds that it contributes to meeting the program's matching or maintenance of effort requirements for infrastructure costs under both the local and State-level infrastructure funding mechanisms. Upon further review, the Departments have determined that providing States and local entities even greater flexibility to leverage non-Federal resources to pay infrastructure costs is appropriate.

The text of §§ 678.720 and 678.740 have been revised to provide that funds for infrastructure costs for the adult education programs under the local funding mechanism and State funding mechanisms, respectively, must include Federal funds available for local administration of the programs and non-Federal resources that are cash, non-cash, or in-kind or third-party contributions.

Comments: A few commenters said that in times of limited resources, requiring one-stop partners to pay for infrastructure costs out of administrative funds could have the effect of limiting their participation in the one-stop delivery system.

Departments' Response: Each one-stop partner will enter negotiations around the MOU and infrastructure funding agreement with the knowledge of their budgets and the requirements of their program statutes. The Departments hope that all partners find that developing a truly integrated one-stop center system results in efficiencies and enables partners to provide services in a cost effective manner that allows them to support the infrastructure costs of the one-stop center. No change to the regulatory text was made in response to these comments.

Comments: A commenter expressed support for the flexibility provided to partners to use State or local funding options as long as there is minimal administrative burden. A couple of commenters expressed support for State and Local WDBs to have flexibility to determine how to meet their cost sharing requirements.

Departments' Response: The Departments agree that these final regulations provide flexibility to one-stop partners in determining infrastructure funding contributions.

Comments: A commenter asked if there is a difference between administrative and overall funding for one-stop partners.

Departments' Response: As discussed above, the Federal statutes and regulations governing each of the partner programs define "administrative costs" differently; therefore, partners must comply with program-specific requirements governing the expenditure of funds for such purpose.

Comments: A commenter supported only administrative funds being used for one-stop infrastructure costs. Another commenter suggested that workforce development funds should not be co-mingled with career and technical education funds for purposes of funding and allocating one-stop infrastructure costs.

Departments' Response: WIOA does not require or authorize blending or co-mingling of partner funds. Rather, the local MOU and infrastructure funding agreement will identify the infrastructure and operating costs of the one-stop center and develop a cost allocation methodology to determine each partner's proportionate share for both types of costs, consistent with the Uniform Guidance set forth in 2 CFR part 200. This process is similar to what has been done by one-stop partners for several years and it has been working well among one-stop centers in many local areas. Partners can contribute cash, noncash, or third-party in-kind contributions to the Local WDB to satisfy their share. However, infrastructure costs, unlike other shared operating costs, do not include personnel costs and therefore may not be paid for with in-kind personnel time. No change to the regulatory text was made in response to these comments.

Section 678.725 What happens if consensus on infrastructure funding is not reached at the local level between the Local Workforce Development Board, chief elected officials, and one-stop partners?

The Departments have concluded that WIOA sec. 121(h)(1)(A)(i) requires that consensus agreement on the methods of sufficiently funding the costs of infrastructure be reached in negotiations, beginning July 1, 2016. The Departments informed the public and all relevant parties that this section of the WIOA regulations will not be implemented for PY 2016. The workforce development system was informed of this decision through the issuance of a Frequently Asked Question (FAQ) that was posted on agency Web sites on January 28, 2016 (see *https://www.doleta.gov/wioa/FAQs.cfm*). The regulatory text of this section has been revised to further clarify these provisions and to provide that the provisions outlined in this section on the State funding mechanism will be applicable to program years beginning with PY 2017. Before that time, State agencies of the Governor will have issued the mechanism to follow if a local area fails to reach a local infrastructure funding agreement through the process of negotiating MOUs with the required programs.

Section 678.725 states that failure to sign the MOU containing the final infrastructure funding agreement or interim agreement by the beginning of each program year would trigger the State funding mechanism. This section states that Local WDBs must notify the Governor by the deadline established by the Governor's infrastructure guidance developed under § 678.705(b)(3) if the local partners cannot reach consensus. The State will monitor the local areas to address violations of the Governor's guidance. The Governor's guidance might establish an earlier date for notification of a lack of consensus to the State, or of milestones or decision points in the negotiation process, to ensure the uninterrupted services of the one-stop services in the local area. A detailed discussion of the Departments' responses to public comments received on this section follows immediately below.

Comments: A commenter suggested that the regulations should state that if the Governor has to intervene to establish local contributions, that the contribution will be supported with similar funding sources for all contributors.

Departments' Response: The State funding mechanism will be made public prior to application in any local area, and the framework used to determine contributions is the same for all contributors (see § 678.730). There is no statutory requirement in WIOA sec. 121(h) that partners contribute funds for one-stop infrastructure costs under the State funding mechanism from similar sources, as the commenter recommends. The State funding mechanism is developed at the State—not the Federal—level; it would not be appropriate to accept the commenter's suggestion. The Departments decline to do so.

The framework used to determine contributions, however, would be the same for all contributors statewide (see § 678.730). It also should be noted that, while under the local funding mechanism partner programs may contribute through any funds allowed by their authorizing statutes, under the State funding mechanism, infrastructure funds must come from administrative funds for the majority of partner programs.

Section 678.730 What is the State one-stop infrastructure funding mechanism?

This section—as well as §§ 678.735 and 678.740—has undergone significant changes from the NPRM in both content and structure, although the core principles of the State funding mechanism remain the same. Several sections have been added to both break the previous section into more concise parts and to provide further clarity and structure to the State funding mechanism regulations, including § 678.731, which outlines the steps to implement the State mechanism. The Departments recognize that the State

funding mechanism is still complex, and further guidance regarding its design and implementation will be released.

As outlined in § 678.730(b)(1) through (3) of this section, the framework for the State funding mechanism consists of three essential steps to be performed by the Governor once the State mechanism has been triggered by the submission of a notice by the Local WDB that no consensus could be reached in the MOU negotiations:

(1) A budget must be determined for the infrastructure costs for one-stop centers in the local area (§ 678.735).

(2) Each partner's proportionate share must be determined (§§ 678.736 and 678.737).

(3) The calculation of the required funding caps must be made, along with any associated reconsiderations and adjustments to the budget or partner's proportionate share (§ 678.738).

These steps are detailed in §§ 678.731 and 678.735 through 678.738 of the regulatory text and the associated discussion sections below, which include an example scenario. A detailed discussion of the Departments' responses to public comments received on this section follows immediately below. Minor changes were made to NPRM § 678.735(b), which covered instances in which the Governor does not determine the infrastructure funding contribution for certain partners, and this section was moved to § 678.730(c) of the Final Rule.

Comments: One commenter remarked that the requirements in this section are complex, onerous, and will be costly to administer. Specifically, the commenter expressed concern with (1) the annual identification of each partner's required share based on proportionate use, in the absence of a data collection system to accurately track program participants for each partner; (2) collecting and accounting for the funds; (3) ongoing administration, including tracking each partner's contributions; and (4) periodically reviewing costs charged to each partner to ensure they are still in line with proportionate use and benefit.

Departments' Response: As mentioned above, the Departments recognize the complexities of the State funding mechanism and have taken steps to address this. While there will be a cost associated with implementing the State funding mechanism, this cost will be mitigated by the provision of all negotiation materials and documents from the local area to the Governor, as is required by § 678.735(a).

As to the collecting and accounting for funds, the Governor never actually takes possession of any funds, but instead determines a local budget in accordance with § 678.735, as well as partner contributions, and directs partners to pay for their share of infrastructure costs from the individual partner program's funds, as is specified by §§ 678.736 and 678.737. Furthermore, the Governor will not be managing the local plans; the Local WDB and one-stop operator will carry on their duties as under any locally reached agreement. The only difference in the State funding mechanism is that the Governor determines what the infrastructure funding agreement portion of the MOU looks like.

Comments: One commenter expressed confusion over how the State funding mechanism will operate. The commenter stated that in some provisions, it seems that the Governor would assemble a single statewide fund consisting of local contributions, and then distribute them to local areas using the formula established by the State WDB. In other provisions, according to the commenter, it appears that the Governor would decide on an area-by-area basis what the contributions from each partner should be, and collect and allocate those funds to that local area only. Another commenter requested additional clarity on how this mechanism would work, particularly when there is potential for conflict between the partners. A Local WDB requested examples of creating and implementing the one-stop funding provisions.

Departments' Response: The Governor and the State WDB are required to develop and issue guidance to be used by the local areas in negotiating agreements for the funding of the one-stop delivery system, particularly guidance about the roles of one-stop partners and approaches to facilitate equitable and efficient cost allocation for infrastructure costs. The guidance, as required by § 678.705, also would include the development of a State funding mechanism that will be used only in the event that a local area fails to reach an agreement. As to the collecting and accounting for funds, the Governor never actually takes possession of any funds, but they instead determine a local budget in accordance with § 678.735, as well as partner contributions, and direct partners to pay for their share of infrastructure costs from the individual partner program's funds, as is stated by §§ 678.736 and 678.737.

Section 678.731 What are the steps to determine the amount to be paid under the State one-stop infrastructure funding mechanism?

This section was not in the NPRM; and therefore, the Departments did not receive any comments on it directly, but it was created in response to comments that said the State funding mechanism was confusing and overly complex. This section lists the individual steps that must be taken by the Local WDB and the Governor in order to implement the State funding mechanism in order to clarify this process.

Section 678.735 How are infrastructure cost budgets for the one-stop centers in a local area determined in the State one-stop infrastructure funding mechanism?

In response to comments pointing out the complexity of the State funding mechanism regulations, the original § 678.735 ("How are partner contributions determined in the State one-stop funding mechanism?") was broken up into four separate sections and considerably expanded to provide more assistance in explaining how this process will work. Section 678.735 now covers the Governor's determination of the one-stop infrastructure budget under the State funding mechanism. This includes a requirement for the Local WDB to provide the Governor with all pertinent materials from the failed local negotiations (§ 678.735(a)), and provisions for a Governor adopting a budget that was agreed upon at the local level (§ 678.735(b)(1) and (2)), as well as for situations when the adoption of such a budget would not be appropriate or is impossible because one was never locally agreed upon (§ 678.735(b)(3)). In the case of the later situation, the Governor must use the formula created by the State WDB for determining the budget, as is described in § 678.745. A detailed discussion of the Departments' responses to public comments received on proposed § 678.735 follows immediately below.

In this section of the NPRM preamble, the Departments stated that Native American programs must contribute to infrastructure funding as required one-stop partners and must negotiate with the Local WDB on that contribution amount. Upon further review, the Departments have determined that Native American programs are not required to contribute to infrastructure funding, but as required one-stop partners they are encouraged to contribute. Any agreement regarding the contribution or non-contribution to infrastructure funding by Native

American programs must be recorded in the signed MOU (see WIOA sec. 121(h)(2)(D)(iv)). The Departments have determined that the regulatory text proposed in the NPRM is supported by WIOA and the revised statement above properly reflects both the regulatory text and WIOA. As such, no change to the regulatory text was necessary to address this issue.

Comments: Many commenters requested clarification on whether the 1.5 percent cap on funding one-stop infrastructure funds for title II is calculated from the State administration funds, or from the total adult education grant. The commenters stated that if it is 1.5 percent of the total grant, and the funds must be taken from the State administration funds within the grant, that would require 30 percent of the State administration funds to be used for one-stop infrastructure. The commenters asked the Departments to clarify that the cap is 1.5 percent of State administration funds, not the total grant.

Departments' Response: The calculation of the percentage of funds to be used for infrastructure is from the total State grant award. The 1.5 percent cap on contributions of funds from the adult education program is a statewide cap, as implemented in § 678.738. In accordance with § 678.738(b)(1), the Governor must ensure that the funds required to be contributed by each partner program in the local areas in the State under the State funding mechanism, in aggregate, do not exceed the statewide cap for each program. Thus, the amount of funds contributed by each AEFLA partner program in the local areas in the State, in aggregate, cannot exceed the 1.5 percent statewide cap for the AEFLA program, as calculated under § 678.738(a). The funds that the local AEFLA partners contribute toward infrastructure costs must be paid from funds that are available for local administration or from State or other non-Federal resources that are cash, in-kind, or third-party contributions.

Comments: Many of these commenters also stated that it is not fiscally practical for programs such as adult education and NFJP that cover multiple Local WDB regions to give 1.5 percent to each Local WDB. These commenters asked the Departments to clarify that a local program only needs to provide a maximum of 1.5 percent of its administration funds to infrastructure costs.

Departments' Response: For the State funding mechanism, infrastructure costs for the adult education program authorized by title II of WIOA must be paid from funds that are available for local administration or from State or other non-Federal resources that are cash, in-kind, or third-party contributions. No matter the program, be it NFJP, adult education, or other, the percentage cap mentioned in the comment does not apply at the local level or to areas under the local funding mechanism, but to the aggregate amount of funds for local partners of a particular program across the entire State which are in local areas operating under the State funding mechanism.

Comments: A commenter said that because only postsecondary Perkins is a mandatory partner, the 1.5 percent cap is the amount used for administration of postsecondary programs and activities. Another commenter agreed but also said that at the State level there is no distinction between funds available for postsecondary programs and those available for secondary programs. Another commenter asked whether the predetermined amounts are in addition to the "fair share" allocation formulas in § 678.730.

Departments' Response: To clarify, because only local postsecondary Perkins programs are mandatory one-stop partners, the 1.5 percent cap is calculated based upon the amount made available by the State for postsecondary level programs and activities under sec. 132 of the Perkins Act (distribution of Perkins funds for postsecondary education programs) and the amount of funds used by the State under Perkins Act sec. 112(a)(3) during the prior year to administer postsecondary level programs and activities, as applicable. The Departments have clarified the regulatory text to reflect this. As a reminder, the Final Rule designates that the Perkins one-stop partner is the eligible recipient at the postsecondary level, or a consortium of eligible recipients at the postsecondary level in the local area. To meet their obligations to pay infrastructure costs, Perkins postsecondary recipients may use funds available for local administrative costs under the Perkins Act, or draw from other funds made available by the State.

Comments: Some commenters expressed support for the cap for the VR contribution.

A few commenters stated that the Wagner-Peyser Act and VR program do not distinguish between administrative and programmatic funds, resulting in Wagner-Peyser Act programs in particular providing a disproportionate share of infrastructure costs. The commenters recommended the Departments study the allocation percentages no later than WIOA reauthorization in 2020.

Departments' Response: The commenters are correct that the Wagner-Peyser Act program does not make a distinction between the program funds that must be used for the provision of services and those funds that must be used for administrative costs.

WIOA requires partner contributions determined through the State funding mechanism to come from administrative sources. The ED's Rehabilitation Services Administration (RSA) has revised 34 CFR 361.5(c)(2)(viii) to clarify that the definition of "administrative costs" includes those costs associated with the infrastructure of the one-stop delivery system, regardless of whether the VR partner contribution is determined through the local or State funding mechanism (see ED Office of Special Education and Rehabilitative Services Final Rule, RIN 1820–AB70, Docket No. ED–2015–OSERS–0001). Historically, infrastructure costs were considered administrative based upon the statutory and regulatory provisions of the VR program. This clarification will ensure one-stop costs are treated in accordance with long-standing practices in the VR program and will ensure that similar costs are not treated differently based upon which funding mechanism is utilized to determine the VR partner infrastructure contribution.

The Departments want to make clear, however, that each program may contribute only an amount that does not exceed its proportionate share in accordance with the Uniform Guidance set forth in 2 CFR part 200 and an agreed-upon cost allocation methodology developed by the one-stop partners. In so doing, neither partner should be paying a disproportionate share because it would not be an allowable cost under the Uniform Guidance and could not be allocable to the program. The question of studying the allocation percentages in advance of the WIOA reauthorization is not pertinent to these regulations.

Comments: A few commenters said that there is an inherent inequity among the caps for various programs such that some programs' contributions to infrastructure costs, when spread across multiple local areas and one-stop centers, would be negligible.

Departments' Response: The Departments want to clarify that the statutory caps on administrative funds apply only when the State funding mechanism is triggered due to the inability of one or more Local WDBs in a State to reach consensus regarding the funding of local one-stop centers. The Departments encourage Local WDBs to develop MOUs among each of the one-

stop partners that sufficiently fund the one-stop delivery system so that the State funding mechanism, and hence the funding caps, are not needed. Because the administrative caps apply only when the State funding mechanism is triggered, partner programs may contribute more than the cap amount under the local funding mechanism. The partners' shares may be contributed in cash, non-cash, and, in certain aforementioned circumstances, in-kind contributions. However, the partners may not contribute more than their proportionate share.

Comments: A commenter remarked that the Departments should provide a more clear definition of "proportionate benefit," as some partners may claim no benefit from the one-stop delivery system and therefore not contribute to infrastructure costs.

Departments' Response: The allocation of infrastructure costs by partner program must be based on methodologies that are driven by proportionate use of the one-stop centers and relative benefit received, as determined by the Uniform Guidance principles at 2 CFR part 200. The benefit is not subjective, as the commenter suggests, but rather the benefit is based on a cost allocation methodology that determines the proportion of the costs that are allocable to the use of the partner program at the one-stop center.

Comments: Another commenter urged the Departments to recognize that the Perkins Act funds systems and programs instead of individuals, so the proportionality determination will be difficult to implement because there are no data to determine relative benefit on a per-student basis.

Departments' Response: The allocation of infrastructure costs by partner program must be based on methodologies that are driven by proportionate use of the one-stop centers and relative benefit received, as determined by the Uniform Guidance principles at 2 CFR part 200. When making this determination, the calculation is per-program, rather than per-individual. The Departments do not conclude that the fact that Perkins funds systems and programs, rather than individuals, will present an issue for Governors when making this determination. In addition, the Governor has discretion to determine a reasonable cost allocation methodology provided that the calculation of proportionate share is consistent with the Uniform Guidance in 2 CFR part 200, particularly that all costs charged to partners, including Perkins partners, are in proportion to use of the one-stop center, and constitute allowable, reasonable, necessary and allocable costs. No change to the regulatory text was made in response to this comment.

Comments: One commenter hoped the funding obligations for a particular program are determined in the context of program resources and any in-kind support the one-stop receives from program participants.

Departments' Response: Infrastructure funding contributions are either determined using the local or State mechanism. Under each, the proportionate share principle is key; the partners should be contributing an amount proportionate to their use of the one-stop center. Determining this under the local mechanism is completely left up to the local partners and Local WDB to work out in the MOU, as long as it follows the Federal cost principles of the Uniform Guidance. Under the State mechanism, specific language in § 678.737(b)(2) requires the Governor to take into consideration program resources in determining proportionate share. Under both mechanisms, third-party in-kind contributions are acceptable contributions to infrastructure funding, as is detailed in § 678.720. No change to the regulatory text was made in response to this comment.

Comments: One commenter asserted that there would be many administrative difficulties for Wagner-Peyser Act contributions if they are required to be calculated on a fiscal year basis, because Wagner-Peyser Act funds are provided on a program year basis.

Departments' Response: The Departments want to make clear that there is no requirement in WIOA or these final regulations that the one-stop delivery system be funded on a fiscal year, as the commenter seems to suggest. Many of the required partners are funded on different fiscal periods (*e.g.*, some are funded on a program year basis while others are funded on a Federal fiscal year basis); so, accounting methodologies will have to be employed to resolve such differences.

Comments: A commenter encouraged the Departments to clarify their guidelines for infrastructure cost sharing, including in-kind contributions, and the use of administrative vs. program funds.

Departments' Response: The Departments acknowledge that guidance will assist stakeholders in the public workforce system with understanding how to negotiate infrastructure cost sharing agreements and understand other aspects of funding the one-stop delivery system, such as in-kind contributions and the allocation of costs. Some of this guidance is currently available in the form of TEGLs on a variety of subjects, such as, the "*Operational Guidance to Support the Orderly Transition of Workforce Investment Act Participants, Funds, and Subrecipient Contracts to the Workforce Innovation and Opportunity Act*" (TEGL No. 38–14), "*Workforce Innovation and Opportunity Act Transition Authority for Immediate Implementation of Governance Provisions*" (TEGL No. 27–14), "*Vision for the One-Stop Delivery System under the Workforce Innovation and Opportunity Act (WIOA)*" (TEGL No. 4–15), "*Guidance on Services Provided through the Adult and Dislocated Worker Program under the Workforce Innovation and Opportunity Act (WIOA or Opportunity Act) and Wagner Peyser, as Amended by WIOA, and Guidance for the Transition to WIOA Services*" (TEGL No. 3–15), "*Workforce Innovation and Opportunity Act (WIOA) Youth Program Transition*" (TEGL Nos. 23–14 and 8–15), among others. All DOL WIOA operating guidance can be located at *www.doleta.gov/wioa*, and all associated ED documents may be found at *www2.ed.gov/about/offices/list/osers/rsa/wioa-reauthorization.html* and *www2.ed.gov/policy/adulted/guid/memoranda.html*.

In addition, cost principle guidance is provided in the Uniform Guidance at 2 CFR part 200 on the use of Federal funds, and in the existing financial Technical Assistance Guide (TAG) handbooks previously issued by DOL, which are still applicable to WIOA (*see http://wdr.doleta.gov/directives/All_WIOA_Related_Advisories.cfm*). Nevertheless, the Departments' intention is to continue to provide system guidance and technical assistance on all aspects of WIOA throughout the life of this authorizing legislation.

Comments: A commenter said that for the TANF program, the cap of 1.5 percent of the Federal funds provided to "carry out that education program or employment and training program" should instead state "education program or employment and training activities." The commenter also urged the Departments to clarify that "education program" only refers to the TANF funds used to serve adults or teen heads of households in needy families, not dependent children in low-income households.

Departments' Response: The addition of § 678.738(c)(5) provides that for purposes of TANF, the cap on contributions is determined based on total Federal TANF funds expended by the State for "work, education, and training activities" during the prior

Federal fiscal year as reported by States to HHS on the Quarterly TANF Financial Report form (and associated administrative expenditures).

Section 678.736 How does the Governor establish a cost allocation methodology used to determine the one-stop partner programs' proportionate shares of infrastructure costs under the State one-stop infrastructure funding mechanism?

This new section was created from portions of proposed § 678.735 in the NPRM in response to comments regarding the complexity of the State funding mechanism. The new § 678.736 details how the Governor is to establish a cost allocation methodology for determining partner programs' proportionate shares of one-stop infrastructure costs. The idea that partner programs should make contributions to infrastructure costs that are proportionate to the benefit they receive from one-stop centers is central to the funding of the one-stop delivery system under WIOA. There are a variety of methods that may be used—*e.g.*, square footage occupied, number of staff present, number of people served—to make the determination of partner programs' proportionate share. It is important that the Governor choose a methodology that is consistent with the requirements of the Uniform Guidance found at 2 CFR part 200.

Section 678.737 How are one-stop partner programs' proportionate shares of infrastructure costs determined under the State one-stop infrastructure funding mechanism?

This new section is another created from the NPRM's proposed § 678.735 in response to comments regarding the complexity of the State funding mechanism, and details the steps that should be taken by the Governor to determine partner programs' proportionate share of the one-stop infrastructure costs. In addition to the methodology determined in § 678.736, § 678.737(b)(2) states that the Governor must take into account a number of factors, including the costs of administration of the one-stop delivery system for purposes not related to one-stop centers for each partner, costs associated with maintaining the Local WDB or information technology systems, as well as the statutory requirements for each partner program, all other applicable legal requirements, and the partner program's ability to fulfill such requirements. The Governor may also take into account the extent to which proportionate shares were agreed upon in the failed local negotiations, as well as any other elements of the negotiation process provided to the Governor per § 678.735(a).

Section 678.738 How are statewide caps on the contributions for one-stop infrastructure funding determined in the State one-stop infrastructure funding mechanism?

This is the final new section created from proposed § 678.735 in response to comments regarding the complexity of the State funding mechanism, covering the caps that apply to program funding that can be designated by the Governor as one-stop infrastructure funding. Paragraph (a) of § 678.738 is a step-by-step instruction on how the Governor is to calculate the cap for each program. First, the Governor determines the maximum potential cap amount in the State by determining the amount of Federal funds provided to the State to carry out a one-stop partner program for the applicable fiscal year multiplied by the cap percentage applicable to that program under paragraph (c) of § 678.738. Second, the Governor selects a factor or factors that reasonably indicates the use of one-stop centers in the State (such as the total population). The Governor then determines the percentage of that factor applicable to the local areas that reached consensus under the local funding mechanism (for example, 70 percent of the State population resides in those areas). This percentage is applied to the amount of the maximum potential cap. The resulting amount (70 percent of the maximum potential amount) is then deducted from the maximum potential cap amount to produce the applicable cap amount for the local areas subject to the State funding mechanism. This approach recognizes that the statewide caps only apply to those local areas that do not reach consensus, and are not applicable to the local areas that reach agreement. Therefore, the actual amounts of infrastructure agreed to in those local areas that reach agreement should not affect the cap amounts available to those local areas that do not reach agreement. Instead, the applicable cap is determined by selection and application of a factor or factors that would reflect the relative expected use of one-stop centers in the local areas subject to the cap.

Paragraph (b) details the requirement that, in aggregate, a program statewide does not exceed the caps, including only those local partner programs in areas under the State funding mechanism (§ 678.738(b)(1)), as well as the steps to be taken in the event that the proportionate share of a partner causes a program's aggregate infrastructure funding to exceed the cap (§ 678.738(b)(1) through (4)).

Paragraph (c) of § 678.738 sets out the specific limitations put on infrastructure funding from each program, and § 678.738(d) gives instructions on calculating the caps for programs for which it is not feasible to determine the amount of Federal funding used by the program until the end of the fiscal or programmatic year. While the methodologies of these programs somewhat differ in application, the methodologies for the CSBG and TANF programs are similar to that used for the Perkins program because in each case the State is asked to make a determination regarding the amount of administrative costs that are related to relevant education, employment, and training activities carried out within the respective program.

The following is an example scenario to determine one partner program's cap: Partner Program A (a WIOA formula program) receives [*x*]—in this example, $30 million—to carry out its program in the State in the applicable year. There are seven local areas in the State, two of which have not been able to reach consensus through the local funding mechanism. Because Partner Program A is a WIOA formula program, the limitation percentage [*p*] given in § 678.738(c)(1) is applied to the Federal dollars received in total by the program statewide. The example below uses three percent for [*p*], resulting in a maximum potential cap of $900,000 [*y*]. The maximum potential cap [*y*] is calculated by multiplying the program dollars [*x*] by the percentage [*p*], in this example yielding $900,000.

$px = y$

$.03 \times 30{,}000{,}000 = 900{,}000$

The Governor then selects a factor [*f*] that reasonably indicates the use of one-stop centers in the State—such as total population. The Governor then determines the percentage of the total population that resides in the local areas that have reached agreement. In this example, local areas that have reached agreement represent 70 percent of the State's total population. Next the Governor applies this percentage to the maximum potential cap [*y*], $900,000, giving the amount of these dollars represented by the local areas in agreement [*z*]: $630,000.

$fy = z$

$0.7 \times 900{,}000 = 630{,}000$

Finally, the Governor subtracts this amount [*z*], $630,000, from maximum potential cap [*y*], $900,000, giving the amount of the cap to be used for those two areas under the State funding mechanism [*c*], $270,000.

$y - z = c$

900,000 − 630,000 = 270,000

This means that the aggregate of the infrastructure contributions made by the two local partner programs in local areas operating under the State funding mechanism must not exceed $270,000. This calculation must then be done for all the other partner programs in those local areas.

For the VR program, WIOA sec. 121(h)(2)(D)(ii)(III) and § 678.738(c)(3) establishes the limitations for the amount the VR program can be required to contribute toward the funding of the one-stop delivery system's infrastructure costs. In the first year that the State funding mechanism could be applicable—*e.g.*, PY 2017 beginning July 1, 2017 (see explanation above)—the VR program may contribute no more than 0.75 percent of the State's FY 2016 VR allotment (see sec. 121(h)(2)(D)(ii)(III)(aa)). If a local area fails to reach an agreement for purposes of PY 2018, the VR program cannot be required to pay more than one percent of its FY 2017 VR allotment (see sec. 121(h)(2)(D)(ii)(III)(bb) of WIOA). If a local area fails to reach agreement for purposes of PY 2019, the VR program cannot be required to contribute more than 1.25 percent of its FY 2018 VR allotment (WIOA sec. 121(2)(D)(ii)(III)(cc)). Finally, if a local area fails to reach an agreement for PY 2020 and all subsequent years, the VR program cannot be required to contribute more than 1.5 percent of its FY 2019 or, as appropriate, any subsequent year's VR allotment (WIOA sec. 121(h)(2)(D)(ii)(III)(dd)). In States where there are two VR agencies (a general agency and a blind agency), the combined contribution from these programs cannot be required to exceed the cap, which is based on the total VR allotment to the State. In addition to this specific funding limitation, each program, including the VR program, must comply with the requirements of the program's authorizing statute, all other applicable legal requirements, and the requirements in this subpart when contributing funds to cover one-stop center infrastructure costs.

In determining the maximum amount that a VR program could contribute toward the one-stop infrastructure costs under the State funding mechanism, the Governor would first have to determine the amount of the VR allotment to the State for the applicable year as described above. Because the allotment amount to any given State could change throughout a Federal fiscal year due to reductions made for maintenance of effort deficits, funds returned for reallotment to other States, and additional funds received by a State in reallotment, a Governor should base the limitations for infrastructure costs on the final VR allotment amount for the State for the applicable Federal fiscal year (WIOA sec. 110 and 111 of the Rehabilitation Act, as amended by title IV of WIOA). The final VR allotment for any Federal fiscal year may not be determined until September 30 of that fiscal year. Prior to that time and for planning purposes, the Governor can use historical data to estimate or project its contributions. However, these fluctuations of the VR allotment in any particular Federal fiscal year should not affect the VR program's percentage that can be attributed to the infrastructure costs under the State funding mechanism because the final VR allotment for any year would be known well before the implementation of the State funding mechanism for any applicable program year.

It is important to note that WIOA sec. 121(h)(2)(D)(ii)(III) refers to a program year (July 1 through June 30), not a Federal fiscal year (October 1 through September 30). However, because the VR program funds are provided to a State on a Federal fiscal year basis, the Departments have interpreted "program year" in this context, for purposes of determining the VR program's funding limitations, as meaning the funds provided to the State to operate the VR program in a Federal fiscal year.

As this section did not exist in the NPRM, the Departments did not receive any comments that directly refer to it, but did receive comments referring to some of the contributing material, which are discussed under § 678.635 of the Final Rule part 678 discussion.

Section 678.740 What funds are used to pay for infrastructure costs in the State one-stop infrastructure funding mechanism?

This section describes the funding sources that are used under the State funding mechanism by WIOA title I programs, adult education programs, the Carl D. Perkins program, and other WIOA authorized programs. Changes were made in response to comments to § 678.740(d), which addresses Carl D. Perkins program infrastructure funding sources. Because the State is no longer the default Perkins program partner, the Departments' modified this section to state that Perkins postsecondary recipient one-stop partners may use funds available for administrative expenses to pay infrastructure costs and that these funds may be supplemented by any additional funds the State chooses to make available. A detailed discussion of the Departments' responses to public comments received on this section follows immediately below.

Comments: A commenter expressed concern that § 678.740(d) implies an incentive for local areas to fail to develop a local MOU, as defaulting to the State funding mechanism could result in local areas gaining access to State administrative funds. The commenter suggested that the Departments should revise this paragraph to clarify that this is not the case, particularly with regard to Perkins funds, and also revise other paragraphs in the State funding mechanism sections to emphasize local contributions.

Departments' Response: As stated above, § 678.740(d) has been reworded, which has taken the emphasis away from State funds and put more on local entities funding infrastructure costs. No further change to the regulatory text is being made in response to this comment.

Comments: Another commenter made the opposite argument, saying that because this section is about a State funding mechanism, State funds should be used. The commenter also said that in cases where the local Perkins partner is entering into an MOU in the local funding mechanism option, the regulations should clarify that no local recipient is required to contribute more than the cap percentage (*e.g.*, 1.5 percent) in local administrative funds if other partners in that local area are unable to negotiate an MOU and the State process is used for those partners.

Departments' Response: As the State is no longer the default Perkins partner, the suggested course of action no longer applies to the situation. No change to the regulatory text was made in response to this comment.

Comments: A commenter said that Combined State Plan partner programs such as TANF would be limited to the administrative funds at their disposal. Another commenter said that as long as the costs of Senior Community Service Employment Program (SCSEP) funds spent on participants and enrollees assigned to the one-stop is counted toward the cost allocation, the regulations will minimize the impact on this program.

Departments' Response: The TANF program is not a Combined State Plan partner program in the one-stop delivery system, but rather it is a required partner pursuant to WIOA sec. 121(b) unless exempted per sec. 121(b)(1)(C). The SCSEP program is a required partner and must contribute to the infrastructure costs of the local one-stop delivery system. The allocation

methodology agreed upon by the partner programs or the Governor may include participant counts served by the one-stop center. No change to the regulatory text was made in response to this comment.

Section 678.745 What factors does the State Workforce Development Board use to develop the formula described in Workforce Innovation and Opportunity Act sec. 121(h)(3)(B), which is used by the Governor to determine the appropriate one-stop infrastructure budget for each local area operating under the State infrastructure funding mechanism, if no reasonably implementable locally negotiated budget exists?

This section also underwent significant changes in response to public comments received that stated that the State WDB formula provisions were confusing, overly complicated, and could violate authorizing statutes. In order to reduce the confusion centered around the formula, step-by-step instructions are provided on how to apply the formula when a locally negotiated budget does not exist. The new provisions only require the use of the formula in specific situations regarding the determination of the one-stop budget by the Governor (*i.e.*, when the Governor cannot, or has chosen not to, accept a locally agreed upon one-stop budget). The formula is to identify factors and the associated weights of these factors that the Governor must consider when determining the one-stop budget under these situations. Included in these factors are those statutorily required by WIOA and any other factors related to the operation of the one-stop delivery system that the State WDB sees as appropriate. A detailed discussion of the Departments' responses to public comments received on this section follows immediately below.

Comments: A commenter asked how "a redirection of Federal funds from one program to another will not negatively impact the calculation of the Perkins Act's 'maintenance of effort' provisions or Federal 'supplement not supplant' provisions." The commenter said that these provisions would likely be violated if any Perkins State administrative funds are redirected to one-stop infrastructure.

Departments' Response: Because of changes to this provision, the commenter's concerns regarding Perkins State administrative funds are no longer applicable. Additionally, partner contributions must not exceed the partner's proportionate share.

Comments: Likewise, the commenter stated that the Departments need to ensure that the reallocation formula in this part ensures that local Perkins funds return to the local area from which they were derived in order to adhere to the within-State allocation formula of the Perkins Act, sec. 132(a)(2).

Departments' Response: Again, because of the changes to the formula provision, that is that the Governor will never actually collect and re-allocate funds, this commenter's concerns are no longer applicable.

Comments: A commenter said that § 678.745 should include a descriptor of the type of one-stop center (*e.g.*, comprehensive, affiliate, satellite) in the funding formula policy.

Departments' Response: The formula applies to all one-stop center and affiliated sites under the State mechanism where the Governor has not accepted a locally agreed upon budget. Therefore, it is not necessary to specify the type of one-stop center.

Section 678.755 What are the required elements regarding infrastructure funding that must be included in the one-stop Memorandum of Understanding?

Comments: A couple of commenters urged the Departments to encourage shared staffing for similar partner positions (*e.g.*, business development). These commenters said that encouraging partnerships beyond infrastructure could avoid duplication of efforts, particularly with respond to employer services.

Departments' Response: The Departments encourage the partners to consider all available means of integration at the one-stop centers, thereby improving the effectiveness and efficiency of the partner programs in the one-stop delivery system. There is nothing in WIOA or these final regulations that prohibit partner programs in sharing certain key staff positions. However, the Departments caution that such sharing of staff would necessitate the retention of adequate records supporting the allocation of personnel costs between the programs, which also must be consistent with the Uniform Guidance. Furthermore, the Departments reiterate that the sharing of staff will not be considered an infrastructure cost, but it may be paid with other funds in accordance with WIOA sec. 121(i).

Section 678.760 How do one-stop partners jointly fund other shared costs under the Memorandum of Understanding?

The Departments added paragraph (c) to explain that contributions to the additional costs related to operation of the one-stop delivery system may be cash, non-cash, or third-party in-kind contributions. This addition is consistent with the changes made in § 678.720(c). As a result the remaining paragraphs were renumbered.

Comments: Multiple commenters expressed confusion about whether the 1.5 percent spending cap for infrastructure costs for the title II program includes the joint contribution to funding the costs of career services. One commenter recommended that it include the cost of career services so that more funds are available to provide AEFLA services.

Departments' Response: Contribution to shared cost including career services are separate from contributions for infrastructure cost and thus the 1.5 percent cap on contributions does not apply to shared cost.

Comments: Two commenters requested a definition of "additional costs relating to the operation of the one-stop delivery system." Another commenter asked whether this phrase includes the cost for the one-stop operator.

Departments' Response: The Departments will not define additional costs. By allowing States to define additional costs, they will be in a better position of assisting their local areas in meeting the demand and challenges of operating a one-stop delivery system. No change to the regulatory text was made in response to these comments.

7. One-Stop Certification (20 CFR Part 678, Subpart F [678.800]; 34 CFR 361.800; 34 CFR 463.800)

Subpart F of part 678 implements the requirements in WIOA sec. 121(g) that the Local WDB certify the one-stop center every 3 years. The certification process is important to setting a minimum level of quality and consistency of services in one-stop centers across a State. The certification criteria allow States to set standard expectations for customer-focused seamless services from a network of employment, training, and related services that help individuals overcome barriers to becoming and staying employed.

The one major change to this section from what was published in the NPRM was made in response to comments regarding the use of the provision of services beyond regular business hours as a certification factor for one-stop centers. While the Departments have retained this as a certification criterion, the language has been changed at § 678.800(b) to make the consideration of this factor conditional on the Local

WDB determining that there is a need in the local area for such an extension of service hours. The Departments also would like to assure readers that it is highly unlikely that a one-stop center's certification would hinge on such a factor, as there are many criteria that must be taken into account in the certification process.

Section 678.800 How are one-stop centers and one-stop delivery systems certified for effectiveness, physical and programmatic accessibility, and continuous improvement?

General Comments About One-Stop Certification

Comments: Several commenters addressed the proposed timelines for one-stop certification and updates to the evaluation criteria. A commenter stated that the proposed timelines could conflict or overlap. A few commenters suggested that all reviews should be on a 4-year cycle. A few State and Local WDBs recommended that the certification criteria be updated every 3 years to match the certification process. A few commenters asserted that it is impractical for all Local WDBs to update the local additional certification criteria every 2 years as part of the local plan update process. Another commenter suggested that both timelines should be event-dependent.

Departments' Response: The Departments have made no substantive changes to this section other than the changes to § 678.800(a)(1) and (b) discussed below. The timelines related to one-stop certification are statutory: Certification every 3 years from WIOA sec. 121(g)(1) and updated criteria every 2 years from WIOA sec. 121(g)(5). However, the regulations require certification "at least" every 3 years, and Local WDBs may certify more often if it helps align timelines with other efforts. No change to the regulatory text was made in response to this comment.

Comments: One commenter asserted that giving Local WDBs the authority to certify one-stop centers creates a conflict of interest. Another commenter stated that Local WDBs that are one-stop operators are currently permitted to certify themselves.

Departments' Response: The Departments agree that Local WDBs should not certify themselves but have not made changes to this section as § 678.800(a)(3) already stated that State WDBs must certify one-stop centers when the Local WDB is the one-stop operator.

Comments: A commenter suggested that the Departments should provide guidance to State WDBs on developing objective criteria and training or assistance the State WDBs can share with Local WDBs on implementing certification procedures.

Departments' Response: On August 13, 2015, the Departments issued a joint vision for the implementation of American Job Centers as TEGL No. 04–15, and have released other technical assistance materials since then as well. All of these guidance documents and other pieces of guidance relating to WIOA may be found at *http://wdr.doleta.gov/directives/All_WIOA_Related_Advisories.cfm, www2.ed.gov/about/offices/list/osers/rsa/wioa-reauthorization.html,* and *www2.ed.gov/policy/adulted/guid/memoranda.html.* The Departments' staffs continue to remain available for technical assistance.

Comments: A commenter stated that the State Plan should define the certification process for the one-stop delivery system.

Departments' Response: The State Plan may include the one-stop certification process if a State wishes to include it, but the Departments do not consider it appropriate or necessary to require such an inclusion in the State Plan. No change to the regulatory text was made in response to this comment.

Comments: Another commenter recommended that certification criteria focus on system performance instead of program performance; effective communication and data sharing across systems while safeguarding information; and availability of diverse and necessary resources at one-stops.

Departments' Response: States that wish to focus on certain aspects of one-stop center quality can establish criteria for those aspects, but the statutorily required criteria at WIOA sec. 121(g)(2) must be included. The State WDB-established criteria create a baseline of consistency across the State, and States can establish policies about processes and methods. No change to the regulatory text was made in response to this comment.

Comments: A few commenters suggested that the State WDB should consult with Local WDBs when updating certification criteria.

Departments' Response: The Departments agree and have revised § 678.800(a)(1) to clarify that the State WDB must consult with chief elected officials and Local WDBs when it reviews and updates criteria, not only when it establishes criteria.

Comments: A few commenters requested flexibility for States to determine the certification method, while other commenters stated that all Local WDBs should use the same process to certify one-stops.

Departments' Response: While all Local WDBs within a State must use the State required certification criteria, WIOA sec. 121(g)(3) allows Local WDBs to establish additional criteria to be used in that local area as well. The Departments have concluded that Local WDBs should be able to choose the process for certifying one-stop centers that works best for each local area. No change to the regulatory text was made in response to these comments.

Comments: A commenter asked whether the State WDB has discretion to determine the method of certification, and whether the State WDB can delegate the certification process.

Departments' Response: The State WDB does not certify, but it must set the certification criteria. The Departments have determined that this responsibility is an important strategy to establish quality one-stop centers and have not incorporated the suggestion to allow the State WDB to delegate it. The State WDB must approve the final certification criteria.

Comments: Another commenter asked whether the intent is to certify each one-stop center or the local area one-stop delivery system.

Departments' Response: WIOA sec. 121(g)(4) and this section of the regulation state that the Local WDB must certify one-stop centers, not the one-stop delivery system. Although the same criteria used to make this certification are to be used in evaluating a local area's one-stop delivery system, there is no certification process for the one-stop delivery systems themselves, only the one-stop centers that together make up the one-stop delivery system.

Comments: A few commenters asked what would happen if the one-stop center does not meet the evaluation criteria or get certified.

Departments' Response: Paragraph (d) of § 678.800 and WIOA sec. 121(g)(4) state that local areas that do not certify their one-stop centers are not eligible to use infrastructure funding under the State infrastructure option until such certification is complete. Local WDBs can consider ramifications for failing one-stop certifications in their one-stop operator contracts.

Comments: One commenter asked whether technical assistance will be provided to one-stop centers that fail certification.

Departments' Response: States may provide technical assistance to one-stop centers that fail certification or to any other one-stop center that may require or ask for it.

Evaluations of Effectiveness

Comments: Several commenters expressed concern regarding the requirement to include the provision of service outside of regular business hours as a factor to be considered when evaluating one-stop center effectiveness, stating that many one-stop centers may not be able to provide such services and that an inability to do so should not count against them.

Departments' Response: The Departments considered these concerns, and have determined that this should still remain one of the many factors to be considered in evaluating one-stop center effectiveness. Paragraph (b) of § 678.800, however, was revised to include that the consideration of this factor is conditional on whether the applicable Local WDB has determined there is a workforce need for the provision of service outside of regular business hours. The Departments stress that this is one of many factors to be taken into account when evaluating effectiveness, and that it is very unlikely that a one-stop center will fail to qualify for certification solely for not providing services outside of regular business hours.

Comments: Several commenters remarked that the NPRM's inclusion of customer satisfaction in the evaluation of a one-stop center's effectiveness goes beyond what is included in WIOA. The commenters stated that, while this is an important measure, it is not necessarily a measure of effectiveness, and it is also subjective.

Departments' Response: This provision is supported by the statutory requirement to consider how well a one-stop center meets the workforce development needs of local employers and participants in WIOA sec. 121(g)(2)(B)(iii). The Departments have determined that reviewing customer satisfaction is an important part of knowing whether services to employers and participants are effective and meet their needs, and will aid one-stop operators, Local WDBs, and State WDBs in the continued improvement of the one-stop delivery system required by WIOA. For this reason, the Departments have not removed this requirement from the regulations. No change to the regulatory text was made in response to these comments.

Comments: Another commenter stated that Local WDBs could assess customer satisfaction through surveys centered on the one-stop center's responsiveness to the needs of employers and customers, the availability and quality of workshops, and the repeat usage over a period of time.

Departments' Response: The regulations are not specific on how customer satisfaction must be measured and the Departments have concluded that State WDBs and Local WDBs can determine how best to include it as a component of a one-stop certification criteria.

Comments: Two commenters said that the proposed performance accountability metrics already address customer satisfaction.

Departments' Response: To clarify, the proposed accountability metrics concerning customer satisfaction and the requirements in § 678.800 related to customer satisfaction are referring to the same mechanism. This section gives the requirement to review and apply the customer satisfaction data to measure the effectiveness of one-stop centers; the actual measure, its technical aspects, and the timing of the data collection are outlined in § 677.160 (see Joint WIOA Final Rule).

Comments: A few commenters asserted that the most efficient and effective systems are where the Local WDB is the one-stop operator.

Departments' Response: The Departments have determined that regular measurements of effectiveness and efficiency will assist States in determining the most effective one-stop operator, including whether it is effective and efficient for a Local WDB to be the operator.

Evaluations of Accessibility

Comments: Several commenters expressed support for the Departments' dedication to ensuring accessibility to individuals with disabilities. A few commenters also stated that the requirement for one-stop centers to be programmatically and physically accessible should be reiterated in this part.

Departments' Response: The Departments agree and have updated § 678.800(e) to clarify that all one-stop centers must be programmatically, as well as physically, accessible.

Comments: A few commenters also suggested that the language on programs being in integrated settings should be stronger and use the phrase "in an integrated setting" rather than "in the most integrated setting appropriate." The commenters also stated that programs should be in community-based settings.

Departments' Response: The Departments have retained the phrase "in the most integrated setting appropriate" to describe our expectations for integrated and community-based settings in order to remain consistent with WIOA sec. 188 and the Americans with Disabilities Act.

Comments: One commenter stated that the Departments should provide full accessibility and be in full compliance with civil rights laws, the Americans with Disabilities Act, and secs. 504 and 508 of the Rehabilitation Act. The commenter further stated that one-stop operators should have additional training on the importance of full accessibility to individuals with disabilities for all services.

Departments' Response: The Departments are fully committed to accessibility and adhering to civil rights laws. The regulation reiterates the requirement for full accessibility in §§ 678.800(e), 678.305, and 678.310. The Departments have provided, and will continue to provide, technical assistance on accessibility. No change to the regulatory text was made in response to this comment.

Comments: Another commenter stated that there should be transparency in reporting States' performance in physical and programmatic access.

Departments' Response: The DOL currently is conducting a study of accessibility in one-stop centers, which will be published and made available to the public when completed in the summer of 2016. Potential violations of civil rights laws, including the inadequate provision of programmatic and physical accessibility, are investigated by DOL's Civil Rights Center, which may share major findings with the public. States also can improve transparency by making certification results public.

Comments: One commenter expressed concern that accessibility evaluation criteria and guidelines will be determined by the State and Local WDBs. The commenter recommended the Departments establish general guidelines for minimum standards, targets, and metrics.

Departments' Response: The regulations keep the determination of accessibility criteria as a responsibility of the State and Local WDBs, as required by statute, but such criteria must meet, at a minimum, the legal standards established by the regulations implementing WIOA sec. 188, set forth at 29 CFR part 38. DOL has issued best practices in how recipients can comply with accessibility laws in a guide shared in Training and Employment Notice No. 01–15, "Promising Practices in Achieving Universal Access and Equal Opportunity: A Section 188 Disability Reference Guide."

Evaluations of Continuous Improvement

Comments: A commenter expressed concern about the use of performance outcome data in evaluations of continuous improvement because it may not be timely enough to identify and resolve issues.

Departments' Response: States have the flexibility to add additional data to the criteria that are more timely if they wish, but the Departments have determined that no additional data other than that which is already included in the regulations should be required.

8. Common Identifier (20 CFR part 678, subpart G [678.900]; 34 CFR 361.900; 34 CFR 463.900)

The regulations in 20 CFR part 678, subpart G and 34 CFR 361.900 and 463.900 promote increased public identification of the one-stop delivery system through use of a common identifier across the nation, consistent with WIOA sec. 121(e)(4). Section 678.900 designates the name "American Job Center" as the common identifier for the one-stop delivery system. This designation was made by the Secretaries after consulting with the heads of other appropriate departments and agencies, representatives of State WDBs and Local WDBs, and other stakeholders in the one-stop delivery system through various means. This was a process started under WIA, and many one-stop centers are already incorporating use of either the "American Job Center" title or the associated tag line "proud partner of the American Job Center network" into their branding.

The major changes in this section in response to comments relate to the date by which rebranding of the one-stop centers is to be complete. The date by which one-stop centers are required to rebrand all of their primary electronic resources, such as Web sites has been changed to [90 days from the publication of this Final Rule] instead of July 1, 2016, which will provide a reasonable time to effectuate this provision. Additionally, any new products and materials printed, purchased or created after [90 days from the publication of this Final Rule] must comply with the new branding requirements. However the Departments have determined that extending the deadline to July 1, 2017 for other branding, including activities, physical products and signage, would allow an appropriate amount of time for the rebranding to be completed. Additionally, the Departments will not object if the one-stop centers continue to use materials not using the "American Job Center" branding which are created before [90 days from the publication of this Final Rule] until those supplies are exhausted.

Section 678.900 What is the common identifier to be used by each one-stop delivery system?

Comments: Many commenters expressed opposition to the use of American Job Center as a common identifier. Several commenters said that they already have a common brand used in their State, and it would be confusing to the public to discontinue the use of an existing brand and begin utilizing new logos and branding. A few Local WDBs asked that States have flexibility in branding, such as by utilizing "American Job Centers of [State name]." Another commenter suggested that centers should be permitted to utilize their program name, followed by "a partner in America's Workforce System." One commenter requested a waiver for States that already have a widely known brand. Another Local WDB commented that the Departments should allow States with approved names under WIA be able to continue to use those names.

Departments' Response: The Departments are not requiring that any State or local area discontinue use of their existing name or brand. The Departments recognize that many States and local areas use their own brand, some of which are well known. The requirement in § 678.900(c) to use either the "American Job Center" identifier or "a proud partner of the American Job Center network" as a tag line already allows the usage of other identifiers or brands or logos. One-stop centers that want to use their existing name followed by a tagline may use their name along with "a proud partner of the American Job Center network;" the use of "a partner in America's Workforce System" alone would not meet the requirement. The Departments have concluded that this section adequately states that the use of additional identifiers is permitted, and what the tagline requirement is, and so have not made changes in response to these comments. States that wish to use "American Job Center of [State name]" would be including the American Job Center identifier, and thus in compliance with this regulation. While the Departments did not make a change to list different permutations that would be allowed, the Departments will issue guidance on the usage of the identifier.

Comments: Some commenters suggested that the identifier use "career" instead of "jobs." Some commenters also stated that American Job Center implies that only citizens can be served. One commenter asked what "American" means in this context. Another commenter stated that American Job Center implies that only one service—job placement assistance—is available, and does not address the other services available at one-stop centers.

Departments' Response: The Departments considered the concerns about "Job" and "American" shared by commenters but have maintained the name American Job Center. The Departments see value in both "Job" for its simplicity, directness, and description of the end goal of virtually all services; the Departments also see value in "Career" for its emphasis on growth. In deciding between the two, the Departments have chosen to continue to use "job" because many States and local areas have already adopted "American Job Center" or have incorporated the "proud partner of the American Job Center network" tag line into their established branding. Additionally, "American" is not meant to imply that only citizens can be served, but used to communicate that the centers are part of a nation-wide system.

Comments: A few commenters asked the Departments what the logo is for the common identifier. Some commenters asked that the new logo or icon be something simple that can be added to existing signage without changing the names of existing centers. Some commenters stated that they needed clearer expectations to implement the common identifier.

One commenter expressed support for the proposed common identifier. A few commenters expressed support for the flexibility provided by the use of "a proud partner of the American Job Center network" alongside existing brands. Another commenter supported the use of a common identifier, but cautioned that improper use of the logo, brand, or tagline could dilute the brand or mislead the public. This commenter stated that American Job Center should be utilized only for comprehensive one-stop centers, with "A proud partner of the American Job Center Network" permitted to be used at other sites. The commenter also recommended that the Departments trademark the common identifier.

Departments' Response: The logo for American Job Center is available at *www.dol.gov/ajc* and its use, implementation expectations, and suggestions for adoption at various price points will be released in upcoming guidance and technical assistance. In order to allow job seekers and employers to find all the locations that

could assist them, the Departments are continuing to allow all one-stop centers, comprehensive and affiliate, to use "American Job Center" or the tagline "a proud partner of the American Job Center network." The DOL has trademarked the identifier American Job Center, as a commenter suggested.

Comments: A few commenters asserted that this will be an expensive unfunded mandate for most States, and requested that the Departments provide funding to States to help pay for the cost to print new materials and change signage, or else make this requirement optional. One commenter also asked that the Departments phase in the change more slowly. Other commenters urged the Departments to allow one-stop centers to phase in the change as they print new materials.

A few commenters requested clarification regarding the deadline for implementation. They stated that the NPRM regulatory text indicated one-stop centers must utilize the new identifier by July 1, 2016, but the NPRM preamble stated that the identifier be in place during PY 2016, or by June 30, 2017. The commenter requested the later date, reasoning that changing signage and materials by July 1, 2016 would be cost prohibitive.

Departments' Response: The Departments recognize that there is a cost associated with adopting the common identifier, and has extended the timeframe in which one-stop centers must include the identifier, to require that one-stop centers use it on Web sites and online materials by [90 days from the publication of this Final Rule], on new products and materials purchased or created after July 1, 2016 and on all other activities, materials, buildings, and signs by July 1, 2017. These changes are reflected in § 678.900(b) and (c). Implementing the identifier is an allowable use of WIOA title I funds. The Departments will release suggestions for adopting the identifier at various price points in upcoming guidance and technical assistance.

While one-stop centers will be expected to provide the "American Job Center" or "proud partner of the American Job Center network" branding on any newly printed, purchased or created materials after [90 days from the publication of this Final Rule], this does not require one-stop centers to discard previously obtained materials. The Departments will not object to use of any materials lacking the branding that were printed, purchased, or created before this initial deadline until supplies are exhausted, regardless of the final implementation date of July 1, 2017. Paragraphs (b) and (c) of § 678.900 have been modified to reflect the revision of the date when this policy goes into effect.

In addition to the regulatory text changes discussed above, various non-substantive changes have been made for purposes of correcting typographical errors and improving clarity that have not been necessary to note elsewhere.

V. Rulemaking Analyses and Notices

A. Executive Orders 12866 and 13563: Regulatory Planning and Review

Executive Order (E.O.) 12866 directs agencies, in deciding whether and how to regulate, to assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. E.O. 13563 is supplemental to and reaffirms E.O. 12866. It emphasizes the importance of quantifying current and future costs and benefits; directs that regulations be developed with public participation; and, where relevant and feasible, directs that regulatory approaches be considered that reduce burdens, harmonize rules across agencies, and maintain flexibility and freedom of choice for the public. Costs and benefits should include both quantifiable measures and qualitative assessments of possible impacts that are difficult to quantify. If regulation is necessary, agencies should select regulatory approaches that maximize net benefits. The OMB determines whether a regulatory action is significant and, therefore, is subject to review.

Section 3(f) of E.O. 12866 defines a "significant regulatory action" as any action that is likely to result in a rule that could:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising from legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

The Final Rule is a significant regulatory action under sec. 3(f) of E.O. 12866. The economic effects of the costs that will result from the changes in this Final Rule are economically significant.

Outline of the Analysis

Section V.A.1 describes the need for the Joint WIOA Final Rule and section V.A.2 describes the alternatives that were considered in this rule's NPRM. Section V.A.3 summarizes the public comments received related to the NPRM, and comments received related to the VR program-specific requirements set forth in the NPRM on "State Vocational Rehabilitation Services Program; State Supported Employment Services Program; Limitations on Use of Subminimum Wage." Section V.A.3 also provides the Departments' responses to the comments. Section V.A.4 describes the process used to estimate the costs of this Final Rule and the general inputs used, such as wages and number of affected entities. Section V.A.5 explains updates made to the assumptions and inputs used in the analysis of this Final Rule relative to the assumptions and inputs used in the analysis of the NPRM. Section V.A.5 also describes how these changes affected the costs of this Final Rule. Section V.A.6 describes how the provisions of this Final Rule will result in quantifiable costs and presents the calculations the Departments used to estimate them. Finally, section V.A.7 summarizes the estimated first-year and 10-year total costs and describes the benefits and transfers that may result from this Final Rule.

Summary of the Analysis

The DOL and ED, hereafter collectively referred to as "the Departments," provide the following summary of the Regulatory Impact Analysis (RIA):

(1) This Final Rule is a "significant regulatory action" under sec. 3(f)(4) of E.O. 12866 and, accordingly, OMB has reviewed the Final Rule.

(2) This Final Rule is not expected to have a significant cost impact on a substantial number of small entities.

The Departments estimate that this Final Rule will generate benefits (including some that take the form of cost reductions). Because of the nature of these benefits, the Departments are not able to quantify them, but rather describe them qualitatively in the "Regulatory Benefits" section. As shown in Exhibit 1, over the 10-year period, this Final Rule is estimated to have an undiscounted total cost of $626.8 million. This is equivalent to an estimated annual cost of $62.7 million. With 7-percent discounting over the 10-year period, the Final Rule will result in an estimated total cost of $495.2 million. This is equivalent to an

estimated annualized cost of $70.5 million (with 7-percent discounting).

EXHIBIT 1—ESTIMATED MONETIZED COSTS OF THE DEPARTMENTS OF LABOR AND EDUCATION FINAL RULE (2015 DOLLARS) ($ MIL)

Undiscounted 10-Year Total	$626.8
10-Year Total with 3% Discounting	558.9
10-Year Total with 7% Discounting	495.2
10-Year Average	62.7
Annualized with 3% Discounting	65.5
Annualized with 7% Discounting	70.5

The largest contributor to the total cost of the rule is the implementation of performance accountability requirements contained in sec. 116 of WIOA. The largest of these costs include the development and updating of State performance accountability systems, followed by performance reporting requirements, and adjusting levels of performance. See section V.A.6 (Subject-by-Subject Cost-Benefit Analysis) for a detailed explanation.

The Departments were unable to quantify several important benefits to society due to data limitations and lack of existing data or evaluation findings. We qualitatively describe the benefits related to increased alignment of training with local labor markets using economic, education, and workforce data. In addition, based on a review of empirical studies (primarily studies published in peer-reviewed academic publications and studies we sponsored), we identified the following societal benefits: (1) Training services increase job placement rates; (2) participants in occupational training experience higher reemployment rates; (3) training is associated with higher earnings; and (4) State performance accountability measures, combined with the Board membership provision requiring employer/business representation, can be expected to improve the quality of the training and, ultimately, the number and caliber of job placements. We identified several channels through which these benefits might be achieved, including: (1) Better information about training providers enables workers to make more informed choices about programs to pursue; and (2) enhanced services for dislocated workers, self-employed individuals, and workers with disabilities will lead to the benefits discussed above.

In addition, the Departments qualitatively describe an ancillary benefit to the DOL-administered core programs that is expected to result from the integration of DOL program participant records. While the integration of these participant records is not required by WIOA or these implementing regulations, it is highly encouraged. For a detailed description of the regulatory and ancillary benefits of the Final Rule, see section V.A.7 (Summary of Analysis).

1. Need for Regulation

Section 503(f)(1) of WIOA requires publication of implementing regulations. These regulations will ensure that States implement requirements under WIOA efficiently and effectively. In addition, such regulations will provide Congress and others with uniform information necessary to evaluate the outcomes of WIOA.

2. Alternatives to the Required Publication of Regulations

OMB Circular A–4, which outlines best practices in regulatory analysis, directs agencies to analyze alternatives outside the scope of their current legal authority if such alternatives best satisfy the philosophy and principles of E.O. 12866. Although WIOA provides little regulatory discretion, the Departments assessed, to the extent feasible, alternatives to the regulations.

As described in the NPRM, the Departments considered alternatives to accomplish the objectives of WIOA, which also would minimize any significant economic impact on small entities. This analysis considered the extent to which WIOA's prescriptive language presented regulatory options that also would allow for achieving WIOA's programmatic goals. In many instances, we have reiterated WIOA's language in the regulatory text, and have expanded some language to provide clarification and guidance. The additional regulatory guidance should result in more efficient program administration by reducing ambiguities caused by unclear statutory language.

In addition, the Departments considered the issuance of sub-regulatory guidance in lieu of additional regulations. This policy option has two primary benefits to the regulated community. First, sub-regulatory guidance will be issued following publication of the Final Rule, thereby allowing States and local areas additional time to adhere to additional guidance. Second, sub-regulatory guidance is more flexible, allowing for faster modifications and any subsequent issuances, as necessary.

The Departments considered three possible alternatives in the NPRM:

(1) Implement the legislative changes prescribed in WIOA, as noted in this Final Rule, thereby satisfying the legislative mandate;

(2) Take no action, that is, attempt to implement WIOA using existing regulations promulgated under WIA; or

(3) Publish no regulation and rescind existing WIA regulations, which would result in non-compliance with the WIOA requirement to publish implementing regulations.

The Departments considered these three options in accordance with the provisions of E.O. 12866 and concluded that publishing the WIOA Final Rule—that is, the first alternative—was the only appropriate option. We considered the second alternative—retaining existing WIA regulations as the guide for WIOA implementation—but WIOA has changed WIA's requirements substantially enough that new implementing regulations are necessary for the public workforce system to achieve compliance. We considered, but rejected, the third alternative—not to publish implementing regulations and rescind existing WIA regulations—because this option, inherently, does not provide sufficient detailed guidance to implement the statutory requirements effectively.

In addition to the regulatory alternatives noted above, the Departments also considered phasing in certain elements of WIOA over time (different compliance dates), thereby allowing States and localities more time for planning and successful implementation. As a policy option, this alternative appears appealing in a broad theoretical sense and, where feasible, we have recognized and made allowances for different implementation schedules. However, with the exception of these allowances, we are not implementing an alternative that delays certain requirements for the following two reasons: (1) Implementation delays are not operationally feasible because many critical WIOA elements depend on the implementation of other provisions, and (2) the costs associated with additional implementation delays beyond those noted in this Final Rule could outweigh the benefits of alternative starting dates.

3. General Comments Received on the Economic Analysis in the NPRM

The Departments received several public comments regarding the economic analysis, presented RIA in the NPRM for this rule, and a few other comments regarding the economic analysis related to the VR program specifically as set forth in the NPRM on "State Vocational Rehabilitation Services Program; State Supported Employment Services Program; Limitations on Use of Subminimum

Wage" (80 FR 21059 (April 16, 2015)).[1] We considered all comments received. The significant comments and summaries of the Departments' analyses of those comments are discussed in the following two sections, depending on whether the comments relate to jointly administered requirements set forth in the NPRM for this Final Rule or the comments relate to VR program-specific requirements as set forth in the NPRM on "State Vocational Rehabilitation Services Program; State Supported Employment Services Program; Limitations on Use of Subminimum Wage." Comments that pertain only to the VR program, and not jointly administered requirements, will be summarized here, but ED will address them directly in the Final Rule for "State Vocational Rehabilitation Services Program; State Supported Employment Services Program; Limitations on Use of Subminimum Wage," which is published in this edition of the **Federal Register**.

a. Discussion of Public Comments Related to This Rule's NPRM

i. Contextualizing the Costs of WIOA

To provide context for the costs of the NPRM in the RIA, the Departments expressed the annual cost of the NPRM relative to the average annual amount made available to the six core programs in Fiscal Years (FYs) 2012, 2013, and 2014 under WIA.[2] Based on an average annual total Federal appropriation of $6.4 billion for the 3 fiscal years for these programs, the proportional annual cost of the NPRM was between 2.6 percent and 2.7 percent (using 3-percent and 7-percent discounting, respectively).

Comments: A commenter asserted that the incremental cost burden should not be compared to the total funds made available for these six programs under WIA, but instead should be compared to the administrative funds available to the States because this will be the funding source for a majority of the new requirements.

Departments' Response: In section V.A.7 (Summary of Analysis) of this Final Rule, the Departments present the incremental burden of WIOA both as a proportion of the average annual appropriation for carrying out these programs under WIA and as a proportion of the administrative and transition funds that might be used for WIOA implementation.

ii. The Value of Common Exit

In the NPRM, the Departments sought public comments on the value of a cross-program definition of exit (*i.e.*, a "common exit") that is based on the last date of service (other than self-service or information only activities) from all core programs, rather than a program-specific exit as proposed in the NPRM. Under a common exit, an individual would have to complete services from all core programs from which he or she received services to exit from the system.

Comments: Several commenters stated that a common exit approach would be costly. Specifically, some of these commenters asserted that a requirement to report a common exit would be prohibitive to States because a single Management Information System (MIS) does not exist for all core programs. Another commenter indicated that, in addition to the very large costs that would result from the interfaces that would need to be built across programs, additional labor hours would be required to track the exit dates of other programs. Other commenters indicated that some of their clients who cannot complete instructional services might continue to use their services for years if other options are not developed. These commenters further stated that data systems would need to have the capacity to hold clients' data for years, which could result in significant costs.

On the other hand, one commenter remarked that the lack of a common exit would result in the need for more information technology (IT) resources, such as increased storage space.

Departments' Response: The Departments have revised these final regulations to permit—but not require—WIOA title I and Wagner-Peyser Act Employment Service DOL programs to collect and report common exit data. Common exit data collection and reporting will not be permitted or required for core programs under titles II and IV of WIOA.

Although the Departments have concluded an integrated system that would track common exits for an individual is a vision for the workforce development system, an integrated system is not a requirement under WIOA or these final regulations. Furthermore, because the common exit approach is optional, we have not concluded that it would cause providers to extend the duration of program services artificially. In addition, we have no way to anticipate how many, if any, States will implement the common exit approach. For these reasons, no costs are included in this analysis related to the implementation of the optional common exit approach, including the cost of developing integrated systems or artificially extending the duration of services.

iii. Primary Indicators of Performance

Several commenters addressed the costs of implementing proposed requirements related to some of the primary indicators of performance.

Comments: A few commenters indicated concerns about tracking program participants to determine if they had attained a postsecondary credential or a secondary school diploma within 1 year after exiting the program. These commenters stated that no system is in place to collect and track such information and asserted that doing so would be very staff intensive and costly. Commenters also expressed concern that major changes would be needed to their MISs to track data on individuals who had exited the program.

Departments' Response: Although the Departments understand the concerns expressed by commenters, we want to make clear that the performance indicators proposed in the NPRM and contained in these final regulations are consistent with the statutory requirements set forth in sec. 116(b)(2)(A) of WIOA. Moreover, we have concluded that these requirements will not lead to a burden increase for most core programs because similar—although not identical—information was tracked by these programs for performance purposes under WIA. We acknowledge that for some programs, such as the VR program, post-exit data, including credential attainment, is not collected under the current data system. Consequently, States will have to collect such data with the informed written consent of the participant through follow-up with the exited participant or

[1] The NPRM for "State Vocational Rehabilitation Services Program; State Supported Employment Services Program; Limitations on Use of Subminimum Wage" was published at 80 FR 21059 on April 16, 2015. It can be accessed at *http://regulations.gov.*

[2] U.S. Department of Labor, Employment and Training Administration. (2015). Archive of State Statutory Formula Funding. Retrieved from: *https://www.doleta.gov/budget/py01_py09_arra_archive.cfm.* The Departments used data from the following files to estimate the average annual WIA budget: WIA Adult Activities Program (Program Years [PYs] 2011, 2012, 2013, and 2014); WIA Dislocated Worker Activities Program (PYs 2011, 2012, 2013, and 2014); and WIA Youth Activities (PYs 2012, 2013, and 2014). Note that for the adult and dislocated worker activities programs, each fiscal year's funding is calculated as the sum of the program year's July funding and the previous program year's October funding. The youth activities funding is obligated to States in April and corresponds to the fiscal year in which it is obligated.

U.S. Department of Education. (2016). Department of Education Budget Tables. Retrieved from: *http://www2.ed.gov/about/overview/budget/tables.html?src=ct.* The Departments used data from the following files to estimate the average annual WIA budget: Congressional Action (FYs 2012, 2013, and 2014).

the educational institution or entity where the individual was receiving training. We have concluded this process will not be overly burdensome to the VR program, as suggested by the commenters, however, because the VR program provides postsecondary education and training only as a necessary service to support an employment goal on the individualized plan for employment. As a result, in the vast majority of cases, a credential will be obtained prior to employment and prior to exit from the VR program. Very few individuals will obtain postsecondary credentials after exiting the VR program. Hence, only a small percentage of cases will need to be tracked manually.

Comments: In response to the Departments seeking comments on clarifications that might be needed to implement the credential attainment rate performance indicator, one commenter indicated that implementing and tracking the time frames would be an immense reporting burden on States.

Departments' Response: The Departments did not establish a time frame for obtaining a credential for purposes of the performance indicator required by sec. 116(b)(2)(A)(i)(IV) of WIOA, except for that required by WIOA—specifically that the credential be attained during the participant's participation in the program or within 1 year after exit from the program. Given that WIOA requires this particular time frame, there is no statutory authority to eliminate it from these final regulations or eliminate any burden estimate related to its implementation. Therefore, the estimated burden related to implementing the statutorily required time frame is maintained. During the development of the NPRM, the Departments considered the extent of the work required for data collection and reporting on this indicator and incorporated the level of effort for those follow-up activities in the burden estimates that were published in the NPRM. These costs will not be substantial because the time frame for participants to obtain a credential was lengthened from only 3 quarters from exit under WIA to 4 quarters under WIOA.

Comments: The NPRM proposed that States would be required to report information on the career and training services provided by title I core programs, as well as the percentage of those participants who obtain training-related employment. One commenter said that the States' administrative data do not indicate whether employment is related to training. The commenter asserted that such data would be costly to collect directly from each participant on a case-by-case basis.

Departments' Response: Although the Departments understand the commenter's concern, we want to make clear that the requirement to collect and report this information is required by sec. 116(d)(2)(G) of WIOA. We do not agree that collecting and reporting the required data will be as costly or burdensome as the commenter suggests. Currently, State (UI) agencies provide wage data that, at a minimum, include a North American Industry Classification System (NAICS) code that generally provides an indication of whether employment outcomes were training related. In addition, costs for follow-ups to determine if training was related to employment were already accounted for in the baseline because they were collected under WIA. The other core programs are not required to collect and report such data.

Comments: One commenter suggested that some of the performance measures proposed for INA supplemental youth service programs are burdensome—particularly given the disparity in funding between the INA youth grants and State grants. The commenter remarked that it would cost $1 million to update its Bear Tracks performance reporting system, which is currently used by INA grantees to collect data for performance measures. The performance reporting system would have to be upgraded because: (1) It is not a Web-based application; (2) it does not provide an adequate level of data security; and (3) it soon could be incompatible with the Departments' new technology. In addition, training would be required for the INA grantees across the United States. Furthermore, the commenter warned that its program only might be able to handle the additional reporting burden by keeping participants as "active participants" by not exiting them from the program until they graduate from high school. The commenter stated that this would create a significant burden because grantees would have to provide qualified follow-up service every 90 days to keep the participants active.

Departments' Response: The Departments acknowledge that some grantees, including grantees awarded funding under WIOA, title I, subtitle D—National Programs, could experience higher burdens than other entities. We want to make clear that the cost estimates presented in the NPRM and these final regulations represent the cost for a single representative State, not potential cost burden that could be realized by individual grantees because such effects are based on a variety of factors specific to each program. Furthermore, we point out that data for a credential attainment measure are currently being collected by the INA program (under WIA) that is similar to the education and credential indicators under WIOA and, therefore, the burden associated with such requirements is not new but rather is burden already accounted for in the baseline presented in the RIA for the NPRM and these final regulations.

iv. Additional State Performance Indicators

Comments: A commenter questioned why the NPRM's RIA projected burdens for only five States with regard to establishing additional performance accountability indicators and asked for clarification on which five States were expected to submit these data. The commenter asserted that if all States were expected to submit data, by accounting only for five, the Departments were significantly underestimating the cost of this requirement in the NPRM.

Departments' Response: Under WIA, States were permitted to establish performance indicators in addition to the required indicators. No State, however, established additional performance indicators under WIA. Based on this past practice, the Departments estimate that very few States, if any, will establish additional performance indicators and report related data under WIOA. In an effort to estimate all potential costs where quantifiable, however, we provided burden estimates based on as many as five States choosing to establish additional performance indicators. To be clear, the five States referenced in the NPRM's RIA were intended as an upper-level estimate of the number of States expected to establish additional State performance indicators, and were not intended to mean that we knew which States, if any, would choose to do so. Burden estimates associated with collection and reporting of data for the primary indicators of performance include all States and are accounted for elsewhere in provision (c) Performance Accountability System of the RIA for these final regulations. For the foregoing reasons, we have concluded the burden estimates proposed in the NPRM, and revised for these final regulations, reflect an accurate representation of the expected cost burden of WIOA in the event that as many as five States decide to implement and report on additional performance indicators.

Comments: In the NPRM, the Departments estimated that seven VR agencies each would experience $5,000

in one-time software and IT systems costs and annual labor costs for 60 technical staff members at 9 hours each to obtain additional information for new data fields for those States, if any, choosing to establish additional performance indicators under WIOA. A commenter noted that the $35,000 first-year software and IT systems costs associated with programming designated State unit systems (*i.e.*, VR agencies) accounted for only 7 VR agencies not 80. In addition, the commenter indicated that the Departments underestimated the level of effort per entity to modify the State-developed case management system (CMS) so that designated State agencies and VR agencies could report on the required performance measures.

Departments' Response: The Departments want to make clear that the estimates referenced by the commenter reflect the increased burden to the VR program should a few States adopt additional performance indicators. As stated in the response to another commenter, no State established additional performance indicators under WIA, even though each was permitted to do so. To avoid underestimating costs, however, the NPRM estimated the burden to the State if up to five States—two of which have a separate agency for the individuals who are blind (*i.e.*, seven VR agencies)—choose to adopt additional performance indicators. After further Departmental review of the proposed burden estimate, we have reduced the estimated number of affected entities from seven to five VR agencies and reduced the estimated labor cost per entity, as indicated in Exhibit 33.

In response to public comments and based on additional information received, the Departments have also eliminated the estimated burden for the revision of existing CMSs to accommodate the collection of data to support additional State indicators. We have concluded that such indicators likely would not require the collection of additional new data. In addition, any changes needed to State CMSs for such measures already would be subsumed by the one-time costs of revising their existing systems to collect required data to support the primary indicators of performance, reported under the Development and Updating of State Performance Accountability Systems subsection of provision (c) "Performance Accountability System" displayed in Exhibit 18.

iv. State Performance Reports

Comments: In the NPRM, the Departments proposed that States would be required to submit a State performance report, which would describe, among other things, the amount of funds spent on career and training services, respectively, for the current program year and the 3 preceding program years. Several commenters asserted that breaking out the funds spent by service would be too costly.

One commenter expressed opposition to tracking and reporting the amount of funds spent on each type of career and training service. The commenter stated that the NPRM did not take into account the expense of doing so. Citing their own experiences, multiple commenters noted that costs incurred for programming in addition to the ongoing administrative costs related to IT systems would be prohibitive.

Another commenter stated that the existing CMSs do not track funds spent on each type of career and training service. The commenter indicated that this would require the costly and time-intensive integration of the State's CMS with the financial systems in place in each of the local areas.

A commenter expressed that, in addition to tracking specific payments to training providers, it would have to track indirect costs such as benefits paid to staff, building space, and the cost of devices used in delivering services (*e.g.*, computers). The commenter concluded that the effort to determine these specific cost breakouts greatly would exceed the value gained from this information.

Departments' Response: The Departments want to make clear that the statutory requirement and these final regulations are less burdensome than the commenters appear to believe. Section 116(d)(2)(D) of WIOA requires the State to report on the amount of funds spent on "each type of service," which we have interpreted to mean career services, as one type, and training services, as the other type—not each *individual* type of career or training services, provided to participants. Therefore, the NPRM's RIA did not account for burden associated with tracking each individual type of career service and training service provided because such tracking is not required by WIOA or these final regulations. Moreover, the cost estimates in the NPRM and these final regulations do not account for IT system integration because the Departments concluded that States are unlikely to update their IT systems to allow for the integration of fiscal, case management, and performance data.

The Departments agree with the commenters that such micro-level reporting would be burdensome to the States. Before publishing the NPRM, we consulted with States and concluded that this type of tracking would be extremely burdensome. Therefore, we have concluded that affected entities are likely to use a model that divides the total cost spent on career services or training services by the total number of participants who received career services or training services to determine the cost per participant.

v. Underestimated Burden for Development of Strategies for Aligning Technology and Data Systems Across One-Stop Partner Programs To Enhance Service Delivery and Improved Efficiencies

In the NPRM, the Departments estimated that State WDBs would incur a one-time cost of $1.2 million and that State- and local-level AEFLA programs and VR agencies would incur annual costs of $35.5 million related to the development of strategies for aligning technology and data systems across one-stop partner programs. This includes costs for design implementation of common intake, data collection, case management information, performance accountability measurement, reporting processes, and incorporation of local input into design and implementation to improve coordination of services across one-stop partner programs.

Comments: A few commenters asserted that the cost of aligning data and data systems to collect data on performance measures across programs was understated in the NPRM. One of these commenters stated that the Departments underestimated the burden for coordinating service delivery across all of the relevant programs given the large array of data systems, software platforms, and partners involved. Another commenter suggested that aligning technology and data systems might prove expensive for State agencies due to changing or integrated data system and collection methods. The commenter concluded that full integration of technology and data systems would be a costly and time-consuming process.

Departments' Response: First, the Departments want to make clear that WIOA has no statutory requirement that data systems be integrated across all core programs, as some of the commenters appear to believe. State WDBs are required to assist Governors in developing strategies to align technology and data systems across one-stop partner programs to enhance service delivery. Therefore, the NPRM and these final regulations reflect the estimated burden for the DOL-

administered and VR programs associated with the future implementation of integrated IT systems across core programs and the burden for State agencies to enhance their AEFLA program participation in the Statewide Longitudinal Data Systems (SLDS) Grant Program. Because States are at varying stages in the data alignment process, the cost estimates for DOL-administered and VR programs presented in the NPRM represent the national average costs for "low-" and "high-effort" States, while the cost estimates for the AEFLA program do not adopt such a classification of States and, instead, use a standard cost estimate for all States. The Departments understand that some States could experience higher actual costs, while actual costs could be lower for others.

vi. Integrating Record Collection and Performance Reporting

Comments: One commenter stated that the Departments underestimated the cost of integrating record collection across ED and between DOL and ED in terms of time and resources. In particular, the commenter indicated that the costs would be greater for the VR program because the VR program has the most disparate system (*i.e.*, WISPR is a DOL-specific platform), according to the commenter. Furthermore, the commenter suggested that the burden for integrating data for performance reporting across core programs belongs at the Federal level because DOL and ED receive records from each State for their respective programs. To have Federal agencies work out the integration of data elements and then push this integration to the States that are integrating their systems based on Federal recommendations would be more efficient. In addition, the commenter stated that costs are associated with the guidance and technical assistance that would be needed to bridge the gap between workforce partners' current systems and the Final Rule requirements before the data could be integrated.

Departments' Response: The Departments acknowledge that some affected entities would experience higher burdens than other entities. Following additional consultation with program experts in the affected DOL and ED program areas, and based on the best available evidence, we calculated the compliance costs of each component of this Final Rule based on a range of burden estimates by States, a standard burden estimate per State, or an estimate for a single representative State that was used as a proxy for the average cost per State in the analysis. Please note, however, that this Final Rule does not require the integration of data collection and reporting systems across DOL and ED programs. Under WIOA, State VR programs will continue to submit RSA–911 data to RSA, except that data will be submitted quarterly on open and closed service records instead of annually on closed service records as had been done historically. RSA will use these four quarterly reports to generate the annual WIOA performance report, which will be sent to the State agencies, reducing the burden on State VR agencies.

Concerning the comment about burden for integrated reporting belonging at the Federal level, as part of the implementation of this rule, DOL and ED jointly are proposing an Information Collection for the WIOA Performance Management, Information, and Reporting System (OMB Control Number 1205–0526). This ICR (WIOA Joint Performance ICR) and associated documents, including the WIOA Participant Individual Record Layout (PIRL), provides a standardized set of data elements, definitions, and reporting instructions that will be used to describe the characteristics, activities, and outcomes of WIOA participants.

vii. Reductions in State VR Agency Resources and the Impact of WIOA Implementation

Comments: One commenter stated that the cost estimates for the VR program in the NPRM did not appear to account for the current reductions in agency staff and State funding.

Departments' Response: Although the Departments understand the concern expressed by the commenter, we want to make clear that the burden estimates are based on the estimation of what implementing new requirements under WIOA, including both jointly administered requirements and program-specific requirements, will cost States. The burden estimates do not account for circumstances individual States face at the State level, such as reductions in staff or reductions in State funds for match purposes.

viii. Benefits Due To Reduced Youth Unemployment

Comments: One commenter said that WIOA includes improvements that would ensure low-income workers have the skills and support needed for full participation in the workforce. Specifically, the commenter expressed that provisions that increase the focus on comprehensive programming for out-of-school youth should reduce the effect youth unemployment has on Federal and State governments. The commenter cited a 2014 report, which found that the average unemployed 18- to 24-year-old costs taxpayers over $4,000 annually and the average unemployed 25- to 34-year-old costs taxpayers approximately $9,000 annually.

Departments' Response: WIOA provides additional opportunities to coordinate education and employment services for youth across the core programs. The Departments will continue to encourage these partnerships and the benefits that result from their implementation. The study cited by the commenter evaluates impacts resulting from reduced welfare and unemployment benefits being paid out, as well as increased tax revenue. The Departments considered these outcomes in evaluating the impact of WIOA, and described these and other impacts resulting from training and employment services, such as re-engagement of dislocated workers, in the Regulatory Benefits discussion and the Transfers discussion in section V.A.7 (Summary of Analysis) of this RIA.

ix. Inability to Quantify Benefits

In the NPRM, the Departments stated that they were unable to quantify the benefits associated with the NPRM because of data limitations and a lack of operational WIOA data or evaluation findings on the provisions of the NPRM. The Departments invited comments regarding how the benefits described qualitatively in the NPRM could be estimated.

Comments: Several commenters stated that State workforce and business agencies have developed a set of performance measures designed to capture the financial impact of services delivered at the local community, workforce area, regional, and State levels. The measures also allow for the calculation of return on investment. The commenters remarked that the measures would allow the economic value of services delivered to local communities to be expressed, attainable goals that align with staff activities to be set, and staff to understand the value of their work. These tools are in the initial stages of development and implementation.

Departments' Response: The Departments acknowledge that the tools described by the commenters are currently being developed and tested. We understand, however, that these tools were developed for use at the State, local, and regional levels and have not been applied for similar purposes at the national level. Therefore, modifying these tools to

obtain information in the limited time frame for this analysis was not feasible.

b. Discussion of Public Comments Related to the Proposed Program-Specific Rules for the VR Program

i. Underestimated Costs to the VR Program

Comments: The Departments received a few comments related to one of ED's three WIOA-related NPRMs, which, among other things, covered VR program-specific requirements.

Departments' Response: The public comments pertaining to estimates provided in the NPRM specific to the VR program will be responded to directly by ED in the Final Rule governing, among other things, the VR program published elsewhere in this issue of the **Federal Register**.

4. Analysis Considerations

The Departments estimated the additional costs, benefits, and transfers associated with implementing this WIOA-required Final Rule from the existing baseline, that is, the practices complying with, at a minimum, the 2000 WIA Final Rule (65 FR 49294, Aug. 11, 2000).

The Departments explain how the required actions of States, Local WDBs, employers and training entities, government agencies, and other related entities were linked to the estimated costs and expected benefits. We also consider, when appropriate, the unintended consequences of the regulations introduced by this Final Rule. We have made every effort to quantify and monetize the costs and benefits of the Final Rule. We were unable to quantify benefits associated with the Final Rule because of data limitations and a lack of operational data or evaluation findings on the provisions of the Final Rule or WIOA in general. Therefore, we describe some benefits qualitatively.

The Departments have made every effort to quantify all incremental costs associated with the implementation of WIOA's requirements as distinct from those that already exist under WIA, WIOA's predecessor statute. Despite our best efforts, however, we might be double counting some activities that occurred under WIA. Thus, the costs itemized below represent an upper bound for the potential cost of implementing WIOA.

In addition to this Final Rule, the Departments are publishing separate final rules to implement program-specific requirements of WIOA that fall under each Department's purview; see section I of this Joint WIOA Final Rule (Executive Summary). We acknowledge that these final rules and their associated impacts might not be fully independent from one another, but we are unaware of a reliable method to quantify the effects of this interdependence. Therefore, this analysis does not capture the correlated impacts of the costs and benefits of this Final Rule and those associated with the other Final Rules. We have made an effort to ensure no duplication of benefits and costs between this and the other Final Rules.

In accordance with the regulatory analysis guidance articulated in Circular A–4, and consistent with the Departments' practices in previous rulemakings, this regulatory analysis focuses on the likely consequences (*i.e.,* costs and benefits that accrue to citizens and residents of the United States) of this WIOA-required Final Rule. The analysis covers 10 years (2016 through 2025) to ensure it captures major additional costs and benefits that accrue over time. The Departments express all quantifiable impacts in 2015 dollars and use 3-percent and 7-percent discounting following Circular A–4.

Exhibit 2 presents the estimated number of entities expected to experience a change in level of effort (workload) due to the regulations included in this Final Rule. The Departments provide these estimates and use them extensively throughout this analysis to estimate the cost of each provision, where feasible.

EXHIBIT 2—NUMBER OF AFFECTED ENTITIES BY TYPE

Entity type	Number of entities
DOL Program:	
States [3]	[4] 57
States establishing additional performance indicators	[5] 5
Local WDBs	[6] 580
AEFLA Program:	
States	[7] 57
States establishing additional performance indicators	[8] 5
Local AEFLA providers	[9] 2,396
Local AEFLA providers establishing additional performance indicators	[10] 200
RSA Program:	
VR agencies	[11] 80
VR agencies establishing additional performance indicators	[12] 5

[3] For simplicity, the Departments' use of the term "States" in this Final Rule RIA refers to the 50 States; the District of Columbia; the U.S. territories of American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the Virgin Islands; and the Republic of Palau, a country in free association with the United States. In the NPRM, the number of States for the DOL program was 56 and 57 for the AEFLA and RSA programs because DOL did not include the Republic of Palau.

[4] Based on internal DOL data.

[5] DOL estimate.

[6] DOL estimate.

[7] Based on internal ED data.

[8] ED estimate.

[9] Local AEFLA providers include local education agencies; community-based organizations; faith-based organizations; libraries; community, junior, and technical colleges; 4-year colleges and universities; correctional institutions; and other agencies and institutions.

[10] Based on internal ED data.

[11] Pursuant to sec. 7(34) of the Rehabilitation Act of 1973, as amended, this figure includes the 50 States, the District of Columbia, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the Virgin Islands. Twenty-four States have two DSAs for the VR program; therefore, the total number of VR agencies is 80. The Departments note particularly that we have sought to avoid duplication of costs, given the fact that some States have two VR agencies.

[12] Based on internal ED data.

Estimated Number of Workers and Level of Effort

The Departments present the estimated average number of workers and the estimated average level of effort required per worker for each activity in the subject-by-subject analysis. Where possible, Federal program experts consulted with State programs to estimate the average levels of effort and the average number of workers needed for each activity to meet the requirements relative to the baseline (*i.e.*, the current practice under WIA) to derive these estimates. These estimates are the national averages for all States; thus, some States could experience higher actual costs, while actual costs could be lower for other States.

Compensation Rates

In the subject-by-subject analysis, the Departments present the additional labor and other costs associated with the implementation of the provisions in this Final Rule. Exhibit 3 presents the compensation rates for the occupational categories expected to experience an increase in level of effort (workload) due to the Final Rule. We use the Bureau of Labor Statistics' (BLS) mean hourly wage rate for State and local employees.[13] [14] We also use wage rates from the Office of Personnel Management's Salary Table for the 2015 General Schedule for Federal employees.[15] We adjust the wage rates using a loaded wage factor to reflect total compensation, which includes non-wage factors such as health and retirement benefits. For the State and local sectors, we use a loaded wage factor of 1.57, which represents the ratio of average total compensation [16] to average wages for State and local government workers in 2015.[17] [18] For Federal employees, we use a loaded wage factor of 1.63, which was estimated using a two-step process. First, we calculated a loaded wage rate of 1.44 for private industry workers, which is the ratio of average total compensation [19] to average wages [20] for private industry workers in 2015. We then multiplied the 2015 loaded wage rate for private workers (1.44) by the ratio of the loaded wage factors for Federal workers to private workers (1.13) using data from a Congressional Budget Office report [21] to estimate the 2015 loaded wage rate for Federal workers of 1.63.[22] We then multiply the loaded wage factor by each occupational category's wage rate to calculate an hourly compensation rate.

The Departments use the hourly compensation rates presented in Exhibit 3 throughout this analysis to estimate the labor costs for each provision.

[13] Bureau of Labor Statistics. (2015). *May 2015 national industry-specific occupational employment and wage estimates: NAICS 999200—State government, excluding schools and hospitals (OES designation).* Retrieved from: *http://www.bls.gov/oes/current/naics4_999200.htm.*

[14] Bureau of Labor Statistics. (2015). *May 2015 national industry-specific occupational employment and wage estimates: NAICS 999300—Local government, excluding schools and hospitals (OES designation).* Retrieved from: *http://www.bls.gov/oes/current/naics4_999300.htm.*

[15] The wage rate for Federal employees is based on Step 5 of the General Schedule (source: OPM, 2015, "Salary Table for the 2015 General Schedule"). Retrieved from: *https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2015/GS_h.pdf.*

[16] Bureau of Labor Statistics. (2016). *2015 Employer Costs for Employee Compensation.* Retrieved from: *http://www.bls.gov/schedule/archives/ecec_nr.htm.* The Departments calculated this value using data from Table 3. "Employer Costs per Hour Worked for Employee Compensation and Costs as a Percent of Total Compensation: State and Local Government Workers, by Major Occupational and Industry Group." Total compensation for all workers. To calculate the average total compensation in 2015 of $44.53, we averaged the total compensation for all workers provided in March, June, September, and December releases.

[17] Bureau of Labor Statistics. (2016). *2015 Employer Costs for Employee Compensation.* Retrieved from: *http://www.bls.gov/schedule/archives/ecec_nr.htm.* The Departments calculated this value using data from Table 3. "Employer Costs per Hour Worked for Employee Compensation and Costs as a Percent of Total Compensation: State and Local Government Workers, by Major Occupational and Industry Group." Wages and salaries for all workers. To calculate the average wage and salary in 2015 of $28.41, we averaged the wage and salaries for all workers provided in March, June, September, and December releases.

[18] The State and local loaded wage factor was applied to all non-Federal employees. Discerning the number of State and local-sector employees and private-sector employees at the local level is difficult; therefore, the Departments used the State and local-sector loaded wage factor (1.57) instead of the private-sector wage factor (1.44) for all non-Federal employees to avoid underestimating the costs.

[19] Bureau of Labor Statistics. (2016). *2015 Employer Costs for Employee Compensation.* Retrieved from: *http://www.bls.gov/schedule/archives/ecec_nr.htm.* The Departments calculated this value using data from Table 5. "Employer Costs per Hour Worked for Employee Compensation and Costs as a Percent of Total Compensation: Private Industry Workers, by Major Occupational Group and Bargaining Unit Status." Total compensation for all workers. To calculate the average total compensation in 2015 of $31.57, we averaged the total compensation for all workers provided in March, June, September, and December releases.

[20] Bureau of Labor Statistics. (2016). *2015 Employer Costs for Employee Compensation.* Retrieved from: *http://www.bls.gov/schedule/archives/ecec_nr.htm.* The Departments calculated this value using data from Table 5. "Employer Costs per Hour Worked for Employee Compensation and Costs as a Percent of Total Compensation: Private Industry Workers, by Major Occupational Group and Bargaining Unit Status." Wages and salaries for all workers. To calculate the average wage and salary in 2015 of $21.97, we averaged the wage and salaries for all workers provided in March, June, September, and December releases.

[21] Congressional Budget Office. (2012). *Comparing the compensation of federal and private-sector employees.* Tables 2 and 4. Retrieved from: *https://www.cbo.gov/sites/default/files/112th-congress-2011-2012/reports/01-30-FedPay_0.pdf.* The Departments calculated the loaded wage rate for Federal workers of all education levels of 1.63 by dividing total compensation by wages (1.63 = $52.50/$32.30). We then calculated the loaded wage rate for private sector workers of all education levels of 1.44 by dividing total compensation by wages (1.44 = $ 45.40/$31.60). Finally, we calculated the ratio of the loaded wage factors for Federal to private sector workers of 1.13 (1.13 = 1.63/1.44).

[22] The Departments conclude that the overhead costs associated with this Final Rule are small because the additional activities required by the Final Rule will be performed by existing employees whose overhead costs are already covered. However, acknowledging that there might be additional overhead costs, as a sensitivity analysis of results, we calculate the impact of more significant overhead costs by including an overhead rate of 17 percent. This rate has been used by the Environmental Protection Agency (EPA) in its final rules (*see* for example, EPA Electronic Reporting under the Toxic Substances Control Act Final Rule, Supporting & Related Material), and is based on a Chemical Manufacturers Association study. An overhead rate from chemical manufacturing may not be appropriate for all industries, so there may be substantial uncertainty concerning the estimates based on this illustrative example. (By contrast, DOL's Employee Benefits Security Administration (EBSA) includes overhead costs that are substantially higher and more variable across employee types than EPA's—between 39 and 138 percent of base wages for compensation and benefits managers, lawyers, paralegals and other legal assistants, and computer systems analysts—as presented in detail at *www.dol.gov/ebsa/pdf/labor-cost-inputs-used-in-ebsa-opr-ria-and-pra-burden-calculations-march-2016.pdf.*) Using an overhead rate of 17 percent would increase the total cost of the Final Rule by 4.7 percent, from $135.2 million in Year 1 to $141.5 million. Over the 10-year period, using an overhead rate of 17 percent would increase the total undiscounted cost of the Final Rule from $620.4 million to $650.2 million, or 4.8 percent.

EXHIBIT 3—COMPENSATION RATES

[2015 dollars]

Position	Grade level	Average hourly wage rate	Loaded wage factor	Hourly compensation rate
		a	b	c = a × b
Local Employees				
Computer systems analysts	N/A	$38.70	1.57	$60.76
Database administrators		37.96		59.60
Management analysts		38.60		60.60
Management occupations staff		40.53		63.63
Office and administrative support occupations		18.70		29.36
Social and community service managers		38.86		61.01
State Employees				
Computer systems analysts	N/A	35.78	1.57	56.17
Database administrators		36.32		57.02
Lawyers		41.71		65.48
Management analysts		29.22		45.88
Management occupations staff		41.65		65.39
Office and administrative support occupations		19.47		30.57
Rehabilitation counselors		23.35		36.66
Social and community service managers		34.53		54.21
Social workers		22.43		35.22
Staff trainers [23]		34.53		54.21
State Rehabilitation Council Board members [24]		29.22		45.88
Federal Employees				
Federal positions	GS–12, Step 5	33.39	1.63	54.43
	GS–13, Step 5	39.70		64.71
	GS–14, Step 5	46.92		76.48

The subject-by-subject analysis presents the total incremental costs of the Final Rule relative to the baseline—that is, requirements applicable to core programs prior to the enactment of WIOA. This analysis estimates these incremental costs, which affected entities will incur in complying with the Final Rule. The equation below shows the method the Departments use to calculate the incremental total cost for each provision over the 10-year analysis period.

$$\text{Total Cost} = \sum_{T=1}^{10}\left(A_l \sum_{i=1}^{n}(\mathrm{N_i} \times \mathrm{H_i} \times \mathrm{W}_i \times \mathrm{L}_i) + \sum_{j=1}^{m}\mathrm{A_j} \times \mathrm{C_j}\right)$$

Where,

A_l Number of affected entities that will incur labor costs,

N_i Number of staff of occupational category *i*,

H_i Hours required per staff of occupational category *i*,

W_i Mean hourly wage rate of staff of occupational category *i*,

L_i Loaded wage factor of staff of occupational category *i*,

A_j Number of affected entities incurring non-labor costs of type *j*,

C_j Non-labor cost of type *j*,

i Occupational category,

n Number of occupational categories,

j Non-labor cost type,

m Number of non-labor cost types,

T Year.

The total cost of each provision is calculated as the sum of the total labor cost and total non-labor cost incurred each year over the 10-year period (see Exhibit 50 for a summary of the average annual cost of the Final Rule by provision). The total labor cost is the sum of the labor costs for each occupational category *i* (*e.g.*, computer systems analysts, database administrators, and lawyers) multiplied by the number of affected entities that will incur labor costs, A_l. The labor cost for each occupational category *i* is calculated by multiplying the number of staff members required to perform the activity, N_i; the hours required per staff member to perform the activity, H_i; the mean hourly wage rate of staff of occupational category *i*, W_i; and the loaded wage factor of staff of occupational category *i*, L_i. The total non-labor cost is the sum of the non-labor costs for each non-labor cost type *j* (*e.g.*, consulting costs) multiplied by the number of affected entities that will incur non-labor costs, A_j.

Transfer Payments

The Departments provide an assessment of transfer payments associated with transitioning the Nation's public workforce system from the requirements of WIA to the new

[23] Based on the BLS mean hourly wage for social and community service managers.

[24] Based on the BLS mean hourly wage rate for management analysts.

requirements of WIOA. In accordance with Circular A–4, we consider transfer payments as payments from one group to another that do not affect total resources available to society. For example, under both WIA and WIOA, financial transfers via formula grants will be made from the Federal government to the States and from the States to Local WDBs, as appropriate. In accordance with the State allotment provisions required by WIOA sec. 127, the interstate funding formula methodology is not significantly different from that used for the distribution of funds under WIA.[25]

One example of where impacts are discussed qualitatively, rather than quantified, is the expectation that available U.S. workers trained and hired who were previously unemployed will no longer seek new or continued UI benefits. Assuming other factors remain constant, the Departments expect State UI expenditures to decline because of the hiring of U.S. workers following WIOA implementation. We cannot quantify these transfer payments, however, due to a lack of adequate data.

5. Updates to the Cost-Benefit Analysis for the Final Rule

In total, the Departments estimate that this Final Rule will result in a 10-year undiscounted cost of $626.8 million (in 2015 dollars). We estimated that the NPRM would result in $1.5 billion in undiscounted costs (in 2013 dollars). As discussed below, after reviewing public comments and with further consultation with program experts in the DOL and ED program areas, we updated the cost analysis and made changes to specific provisions in the NPRM that affected costs.

General Updates

In the Final Rule economic analysis, the Departments update all costs to 2015 dollars from 2013 dollars in the NPRM. This update increases the estimated cost of the Final Rule relative to the cost presented in the NPRM.

In addition, the Departments have made several updates to the labor cost estimates. First, we use more appropriate occupational categories than those used in the NPRM (*i.e.*, administrative staff, Board members, counsel staff, local stakeholders, managers, and technical staff). In this Final Rule, the occupational categories include: computer systems analysts, database administrators, lawyers, management analysts, management occupations staff (hereafter referred to as "managers"), office and administrative support occupations staff (hereafter referred to as "office and administrative support staff"), rehabilitation counselors, social and community service managers, social workers, staff trainers, and State Rehabilitation Council (SRC) Board members. Due to the numerous changes made to each provision in the analysis, which are described in detail below, these occupational categories add more specificity to the labor costs, but it is unclear whether they had a positive or negative effect on costs as a whole.

Second, the Departments have updated labor costs, including wage rates and loaded wage factors, to reflect 2015 BLS data. Furthermore, instead of using State government employee wage rates for workers at both the State and local level as in the NPRM, we applied wage rates for State government employees and local government employees to workers at the State and local levels, respectively. Depending on the occupational category, the State-level wage rate could be higher or lower than the corresponding local-level wage rate; thus, it is unclear whether this had a positive or negative effect on costs as a whole.

Third, based on further discussion with DOL program experts, the Departments have increased the overall number of States affected by DOL program requirements from 56 to 57 in the Final Rule because we concluded that the WIOA requirements also will affect the Republic of Palau.

In the Final Rule, the Departments have made several changes to the provisions presented in the NPRM. Exhibit 4 presents a summary of the updates made to the NPRM provisions in the Final Rule. To simplify the analysis and combine related requirements, we merge the following provisions:

- Provision (b) "New Elements to State and Local Plans" and provision (f) "Unified or Combined State Plans" are combined to form provision (b) "Unified or Combined State Plan: Expanded Content, Biennial Development and Modification Process, and Submission Coordination Requirements."
- Provision (c) "Development and Updating of State Performance Accountability Measures," provision (e) "Development of Strategies for Aligning Technology and Data Systems across One-Stop Partner Programs," provision (h) "State Performance Accountability Measures," provision (i) "Performance Reports," and provision (j) "Evaluation of State Programs" are combined to form provision (c) "Performance Accountability System."

In addition, the Departments have decided that the following two provisions are more appropriate in the DOL WIOA Final Rule RIA: Provision (d) "Identification and Dissemination of Best Practices" and provision (g) "Local Plan Revisions." Although the updates made to each provision (*i.e.*, changes from the NPRM estimates) are discussed under the relevant headings below, a detailed description of each cost provision remains in section V.A.6 (Subject-by-Subject Cost-Benefit Analysis).

EXHIBIT 4—UPDATES TO COST PROVISIONS IN THE NPRM

NPRM	Final rule	Required activities in NPRM[26]
(a) Time to Review the New Rule	(a) Time to Review the New Rule	• Learn about new regulations and plan for compliance.
(b) New Elements to State and Local Plans	(b) Unified or Combined State Plans: Expanded Content, Biennial Development and Modification Process, and Submission Coordination Requirements.	• Develop new 4-year Unified or Combined State Plans; and • Review and modify 4-year Unified or Combined State Plans.

[25] States may elect to change the distribution of funds at the local level and appropriately document such changes in the State Plans. Because small entities are fully funded by the States, which are not small entities, however, the Departments do not anticipate any impact on small entities.

[26] This column maps the requirements from the RIA of the NPRM to the RIA of the Final Rule, and is not a comprehensive list of all Final Rule requirements.

EXHIBIT 4—UPDATES TO COST PROVISIONS IN THE NPRM—Continued

NPRM	Final rule	Required activities in NPRM[26]
(c) Development and Updating of State Performance Accountability Measures.	(c) Performance Accountability System	• Develop and update the State performance accountability systems; • Implement measures for data collection and reporting on the effectiveness in serving employers; • Negotiate levels of performance; • Run statistical adjustment model to adjust levels of performance based on actual economic conditions and characteristics of participants; • Provide technical assistance to States; • Obtain UI wage data; and • Purchase data analytic software and perform training.
(d) Identification and Dissemination of Best Practices.	Moved to the DOL WIOA Final Rule (*see* provision (c) "Identification and Dissemination of Best Practices").	N/A.
(e) Development of Strategies for Aligning Technology and Data Systems across One-Stop Partner Programs.	(c) Performance Accountability System	• Align technology and data systems across one-stop partner programs.
(f) Unified or Combined State Plan	(b) Unified or Combined State Plans: Expanded Content, Biennial Development and Modification Process, and Submission Coordination Requirements.	• Review and develop new 4-year Unified or Combined State Plans to ensure they satisfy the new content requirements; and • Coordinate actions for developing a new 4-year Unified or Combined State Plan among the core programs administered by the Departments.
(g) Local Plan Revisions	Moved to the DOL WIOA Final Rule: (See provision (m) "Local and Regional Plan Modification").	N/A.
(h) State Performance Accountability Measures	(c) Performance Accountability System	• Collect data to report on additional State performance accountability measures.
(i) Performance Reports	(c) Performance Accountability System	• Develop a performance report template that reports outcomes via the new WIOA performance accountability metrics; • Develop, update, and submit eligible training provider (ETP) reports; • Collect, analyze, and report performance data; and • Provide training on data collection.
(j) Evaluation of State Programs	(d) State Evaluation Responsibilities	• Coordinate any evaluation activities to cooperate in the provision of various forms of data for evaluation activities; and • Coordinate in designing and developing evaluations carried out under sec. 116(e) of WIOA.

Time To Review the New Rule

This section describes the updates to the NPRM's provision (a) "Time to Review the New Rule." In this Final Rule's subject-by-subject analysis, costs related to this provision are found in provision (a) "Time to Review the New Rule." The cost of this provision reflects the cost for individuals in the regulated community to learn about the new regulations and plan for compliance. Each core program has different staffing and WIOA affects them differently, which would result in different labor categories and level of effort for them to read and understand the Joint WIOA Final Rule. The total undiscounted 10-year cost of this provision decreased from $17.7 million for the NPRM to $3.3 million for this Final Rule.[27]

At the State level for the DOL programs, the Departments made the following changes, which are presented in Exhibit 5. Following additional discussions with program experts, we decreased the number of DOL management staff from two to one. We added four lawyers who will review the new requirements in the Final Rule. Finally, we replaced the technical staff in our previous estimate with the more appropriate occupational category of social and community service manager. Although the number of personnel in this last category was reduced from four to two, the level of effort was increased from 20 to 40 hours; hence, the overall level of effort (80 hours) remained the same.

[27] This variance in cost is mainly a result of the decrease in the estimated number of staff and level of effort required for this activity for the State- and local-level AEFLA program.

EXHIBIT 5—UPDATES TO COSTS OF STATE-LEVEL DOL PROGRAMS—TIME TO REVIEW THE NEW RULE

NPRM					Final rule				
(a) Time to review the new rule					(a) Time to review the new rule				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Manager	2	20	One time	56 States	Management occupations staff.	1	20	One time	57 States.
Technical staff.	4	20			Lawyer	4	20		
					Social & community service manager.	2	40		

Exhibit 6 presents the updates to the State-level AEFLA program. The Departments consulted with experts at the State-level AEFLA program and decided to reduce the number of managers from five to four after concluding that the number needed to reflect an average staffing level across all States and outlying areas was less than expected. Three of the four managers are categorized as social and community service managers and will have a level of effort of 20 hours rather than 40 hours because we concluded that associate staff will not spend as much time on this activity as the State director.[28] We reduced the level of effort required from the lawyer from 40 to 20 hours because we concluded that the lawyer, whose role is largely advisory, will not spend as much time on this activity as the State director, who will be responsible for implementation. We also excluded the two technical and five administrative staff included in our previous estimate because those occupational categories generally are not involved in reviewing regulations.

EXHIBIT 6—UPDATES TO COSTS OF STATE-LEVEL AEFLA PROGRAMS—TIME TO REVIEW THE NEW RULE

NPRM					Final rule				
(a) Time to review the new rule					(a) Time to review the new rule				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Manager	5	40	One time	57 States	Management occupations staff.	1	40	One time	57 States.
Counsel staff.	1	40			Lawyer	1	20		
Technical staff.	2	40			Social & community service manager.	3	20		
Admin. staff	5	40							

The Departments made the following updates to the State VR program, which are shown in Exhibit 7. We consulted with VR program experts and decided to increase the number of managers from three to four. Three of these four managers are categorized as social and community service managers. In addition, we increased the level of effort per manager from 20 to 40 hours to reflect the greater complexity of the new rule. We replaced the counsel and technical staff members with three rehabilitation counselors to review the new requirements of the Final Rule. This change was made to better reflect the VR agency staff who will be performing this task.

EXHIBIT 7—UPDATES TO COSTS OF STATE-LEVEL VR PROGRAMS—TIME TO REVIEW THE NEW RULE

NPRM					Final rule				
(a) Time to review the new rule					(a) Time to review the new rule				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Manager	3	20	One time	80 VR agencies.	Management occupations staff.	1	40	One time	80 VR agencies.

[28] The Departments used the occupations category of "management occupations staff" to estimate the compensation rate for the State Director.

EXHIBIT 7—UPDATES TO COSTS OF STATE-LEVEL VR PROGRAMS—TIME TO REVIEW THE NEW RULE—Continued

NPRM					Final rule				
(a) Time to review the new rule					(a) Time to review the new rule				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Counsel staff.	1	20			Social & community service manager.	3	40		
Technical staff.	1	20			Rehabilitation counselor	3	40		

At the local level for the AEFLA program, the Departments made the following changes, which are presented in Exhibit 8. We concluded that local involvement in reviewing the new rule generally will require participation in a statewide meeting convened by the State office to present the new rule and address questions raised by local staff. We added one social and community service manager who will review the new requirements of the Final Rule. Based on conversations with additional program experts, we excluded the technical and administrative staff included in our previous estimate, because those occupational categories generally are not involved in reviewing regulations. Note that, instead of presenting the costs at the State level as in the NPRM, we are presenting costs at the program, or local, level.

EXHIBIT 8—UPDATES TO COSTS OF LOCAL-LEVEL AEFLA PROGRAMS—TIME TO REVIEW THE NEW RULE

NPRM					Final rule				
(a) Time to review the new rule					(a) Time to review the new rule				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Manager	40	40	One time	57 States	Management occupations staff.	1	4	One time	2,396 local programs.
Technical staff.	40	40			Social & community service manager.	1	4		
Admin. staff	40	40							

New Elements to State and Local Plans

This section describes the updates to the NPRM's provision (b) "New Elements to State and Local Plans." In this Final Rule's subject-by-subject analysis, this cost provision is included in provision (b) "Unified or Combined State Plans: Expanded Content, Biennial Development and Modification Process, and Submission Coordination Requirements" and it captures the cost of developing new 4-year Unified or Combined State Plans, performing a review of each State Plan, and modifying it 2 years after it is submitted. For this activity, the total 10-year cost (undiscounted) decreased from $53.9 million in the NPRM to $1.9 million in the Final Rule.[29] These revised cost estimates can be found under the subsections "Four-Year Plan Modification—Third Year," "Development of New 4-Year Plan—Fifth Year," "Four-Year Plan Modification—Seventh Year," and "Development of New 4-Year Plan—Ninth Year," in provision (b) of this Final Rule.

At the State level for the DOL programs, the Departments made the following changes, which are presented in Exhibit 9. In the Final Rule, required compliance activities are measured biennially and instead of assuming a constant level of effort for each biennial activity, we assumed that the level of effort will be slightly higher for managers and management analysts to modify the first 4-year State Plan and develop the second State Plan than it will be to produce new State Plans and modifications in subsequent years. The Departments expect that more effort initially will be expended to build relationships between new partners and to acquire experience drafting State Plans in a format that might be new to some partners. In addition, we added managers and lawyers and we replaced the technical staff in our previous estimate with the more appropriate occupational category of management analyst.

[29] The variance in cost is due to changes to the assumptions used to estimate costs (*e.g.*, number of staff, occupational categories, level of effort, and frequency.) More specifically, this variance in cost is mainly due to AEFLA omitting biennial State-level consulting costs and biennial local-level labor costs and the Departments' assumption that the level of effort to undertake the biennial development and modification process will decrease over time rather than remain constant. The Final Rule does not implement any policy changes over the NPRM that impact this cost.

EXHIBIT 9—UPDATES TO COSTS OF STATE-LEVEL DOL PROGRAMS—NEW ELEMENTS TO STATE AND LOCAL PLANS

NPRM					Final rule				
(b) New elements to state and local plans					(b) Unified or combined state plans: expanded content, biennial development and modification process, and submission coordination Requirements				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Technical staff.	2	16	Annual	56 States	*Four-Year Plan Modification—Third Year*				
Admin. staff	1	16			Management occupations staff.	1	12	3rd year	57 States.
					Lawyer	1	4		
					Management analyst	2	12		
					Office & admin. support staff.	1	4		
					Development of New 4-Year Plans—Fifth Year				
					Management occupations staff.	1	12	5th year	57 States.
					Lawyer	1	4		
					Management analyst	2	12		
					Office & admin. support staff.	1	4		
					Four-Year Plan Modification—Seventh Year				
					Management occupations staff.	1	8	7th year	57 States.
					Lawyer	1	4		
					Management analyst	2	8		
					Office & admin. support staff.	1	4		
					Development of New 4-Year Plans—Ninth Year				
					Management occupations staff.	1	10	9th year	57 States.
					Lawyer	1	4		
					Management analyst	2	10		
					Office & admin. support staff.	1	4		

Exhibit 10 presents the changes made by the Departments at the State level for the AEFLA program. The Departments considered the State office's historical level of effort for State Plan development. The Departments expect that it will take more effort initially to build relationships between new partners and to acquire experience drafting State Plans in a format that may be new to some partners. We concluded that the AEFLA State office could leverage economies of scale for the biennial State Plan development and modification process required under WIOA. That is, established procedures and experienced staff already will be in place from previous State Plan efforts to gather, refine, and incorporate input for modification of the new elements. In addition, we anticipate that the extent of necessary plan modifications will decrease over time as the elements are improved with each revision cycle. Burdens will be higher in the fifth and ninth years to account for the additional burden involved with developing new State Plans. Furthermore, we reduced the number of managers from five to four (three of which are categorized as social and community service managers). We removed technical and administrative staff because we concluded that those occupational categories are not typically involved in State Plan development. In addition, we removed the consultant cost because we concluded that consultants are not commonly engaged in State Plan development.

EXHIBIT 10—UPDATES TO COSTS OF STATE-LEVEL AEFLA PROGRAMS—NEW ELEMENTS TO STATE AND LOCAL PLANS

NPRM					Final rule				
(b) New elements to state and local plans					(b) Unified or combined state plans: Expanded content, biennial development and modification process, and submission coordination requirements				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Manager	5	40	Biennial	57 States	*Four-Year Plan Modification—Third Year*				
Counsel staff	1	20			Management occupations staff.	1	10	3rd year	57 States.
Technical staff	2	40			Lawyer	1	10		
Admin. staff	5	20			Social & community service manager.	3	10		
Consultant cost	$25,000				*Development of New 4-Year Plans—Fifth Year*				
					Management occupations staff.	1	15	5th year	57 States.
					Lawyer	1	15		
					Social & community service manager.	3	15		
					Four-Year Plan Modification—Seventh Year				
					Management occupations staff.	1	5	7th year	57 States.
					Lawyer	1	5		
					Social & community service manager.	3	5		
					Development of New 4-Year Plan—Ninth Year				
					Management occupations staff.	1	10	9th year	57 States.
					Lawyer	1	10		
					Social & community service manager.	3	10		

The Departments made the following updates to the State VR program, which are shown in Exhibit 11. Instead of assuming a constant level of effort for each biennial activity, we assumed the level of effort will be highest for modifying the first new 4-year State Plan in the third year, will decrease slightly for developing the second 4-year State Plan in the fifth year, and will remain at a slightly lower level for the subsequent development and modification process. Again, this decrease over time reflects the initial effort to build relationships between new partners and to acquire experience drafting State Plans in a format that might be new to some partners. In addition, we replaced the technical staff in our previous estimate with the more appropriate occupational category of social and community service manager.

EXHIBIT 11—UPDATES TO COSTS OF STATE-LEVEL VR PROGRAMS—NEW ELEMENTS TO STATE AND LOCAL PLANS

NPRM					Final rule				
(b) New elements to state and local plans					(b) Unified or combined state plans: Expanded content, biennial development and modification process, and submission coordination requirements				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Manager	1	5	Biennial	80 VR agencies.	*Four-Year Plan Modification—Third Year*				
Technical staff	1	5			Management occupations staff.	2	14	3rd year	80 VR agencies.
					Social & community service manager.	2	14		
					Development of New 4-Year Plan—Fifth Year				

EXHIBIT 11—UPDATES TO COSTS OF STATE-LEVEL VR PROGRAMS—NEW ELEMENTS TO STATE AND LOCAL PLANS—Continued

NPRM					Final rule				
(b) New elements to state and local plans					(b) Unified or combined state plans: Expanded content, biennial development and modification process, and submission coordination requirements				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
					Management occupations staff.	2	10	5th year	80 VR agencies.
					Social & community service manager.	2	10		
					Four-Year Plan Modification—Seventh Year				
					Management occupations staff.	2	7	7th year	80 VR agencies.
					Social & community service manager.	2	7		
					Development of New 4-Year Plan—Ninth Year				
					Management occupations staff.	2	7	9th year	80 VR agencies.
					Social & community service manager.	2	7		

For the AEFLA program at the local level, the Departments made the following changes, which are presented in Exhibit 12. We have concluded that local AEFLA staff will not bear the burden for reviewing State and Local Plans because we have concluded that reviewing State and Local Plans is not the role of local AEFLA staff. Therefore, we removed all cost inputs at the local level related to this provision.

EXHIBIT 12—UPDATES TO COSTS OF LOCAL-LEVEL AEFLA PROGRAMS—NEW ELEMENTS TO STATE AND LOCAL PLANS

NPRM					Final rule				
(b) New elements to state and local plans					NA				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Manager	40	40	Biennial	57 States	N/A				
Admin. staff	40	20							

Development and Updating of State Performance Accountability Measures

This section describes the updates to the NPRM's provision (c) "Development and Updating of State Performance Accountability Measures." In this Final Rule, this cost provision has been included in provision (c) "Performance Accountability System," and it captures the cost of: (1) Developing and updating the State performance accountability system; (2) implementing measures for data collection and reporting on the effectiveness in serving employers; (3) negotiating levels of performance; (4) running the statistical adjustment model to adjust levels of performance based on actual economic conditions and characteristics of participants; (5) providing technical assistance to States; (6) obtaining UI wage data; and (7) purchasing data analytic software and performing training. For these activities, the total 10-year cost (undiscounted) increased from $128.9 million in the NPRM to $320.0 million in this Final Rule.[30] [31] These revised cost estimates can be found under the subsections "Development and Updating of State Performance Accountability Systems," "Negotiation of Levels of Performance," "Running Statistical Adjustment Model to Adjust Levels of Performance Based on Actual Economic Conditions and Characteristics of Participants," "Technical Assistance to States," "Obtain UI Wage Data," and "Data Analytic Software and Training," in provision (c) of this Final Rule.

At the Federal level for the DOL programs, the Departments made the following changes, which are presented in Exhibit 13. We added a one-time Federal software and IT systems cost of $750,000 to upgrade the system to meet the requirements of WIOA. Following discussions with additional program experts, we accounted for the effort related to negotiating levels of performance and adjusting levels of performance based on economic

[30] A portion of the $320.0 million in costs accounts for software and IT systems costs from provision (e) "Development of Strategies for Aligning Technology and Data Systems across One-Stop Partner Programs," provision (i) "Performance Reports," and provision (j) "Evaluation of State Programs." Thus, this value overstates how much costs have increased in this Final Rule relative to the NPRM.

[31] This variance in cost is mainly due to new burdens for negotiating levels of performance and running statistical adjustment models to adjust levels of performance and to new Federal-level burdens for the VR program to develop and update the State performance accountability systems.

conditions and the characteristics of participants. For negotiations, we added one manager and two management analysts. The biennial level of effort is estimated at 8 hours for both occupational categories. This additional level of effort is required for existing staff to compile new inputs that were not required under WIA. For adjusting levels of performance, we also added one manager and two computer systems analysts to account for running the regression model twice per year as required under WIOA rather than only once per year as required under WIA. The annual level of effort is estimated at 250 hours for managers and 1,000 hours for computer systems analysts. Furthermore, licensing fees of $10,000 will be incurred to purchase the statistical software used to perform the regression analysis and modeling.

EXHIBIT 13—UPDATES TO COSTS OF FEDERAL-LEVEL DOL PROGRAMS—DEVELOPMENT AND UPDATING OF STATE PERFORMANCE ACCOUNTABILITY MEASURES

NPRM					Final rule				
(c) Development and updating of state performance accountability measures					(c) Performance accountability system				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
N/A					*Development and Updating of State Performance Accountability Systems*				
					Software/IT systems cost.	$750,000		One time	1
					Negotiation of Levels of Performance				
					Management occupations staff (GS–14, Step 5).	1	8	1st year, then every 2 years.	1
					Management analyst (GS–12, Step 5).	2	8		
					Running Statistical Adjustment Model to Adjust Levels of Performance Based on Actual Economic Conditions and Characteristics of Participants				
					Management occupations staff (GS–14, Step 5).	1	250	Annual	1
					Computer systems analysts (GS–13, Step 5).	2	1,000		
					Licensing fee	$10,000			

The Departments made the following updates to the Federal-level AEFLA program, which are presented in Exhibit 14. We accounted for the additional burden for Federal staff to negotiate levels of performance for the new performance indicators under WIOA. We added four managers and four social community service managers to perform these activities. The biennial level of effort for each occupational category is estimated at 24 hours for each staff member.

The Departments also revised the estimates from the NPRM to include an important source of Federal burden for running the new statistical adjustment model. In the NPRM, we originally estimated no hours for this activity. After further review and consideration, however, we concluded that Federal staff hours will be required annually to account for running the statistical adjustment model twice per year as required under WIOA. We added two managers at 40 hours each and two management analysts at 80 hours each to perform these tasks annually.

In addition, the Departments added a one-time Federal consultant cost of $1 million in the second year to provide technical assistance to States in the collection of data to comply with the new requirements relating to the WIOA performance accountability indicators.

EXHIBIT 14—UPDATES TO COSTS OF FEDERAL-LEVEL AEFLA PROGRAMS—DEVELOPMENT AND UPDATING OF STATE PERFORMANCE ACCOUNTABILITY MEASURES

NPRM					Final rule				
(c) Development and updating of state performance accountability measures					(c) Performance accountability system				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
N/A					*Negotiation of Levels of Performance*				
					Management occupations staff (GS–14, Step 5).	4	24	1st year, then every 2 years.	1

EXHIBIT 14—UPDATES TO COSTS OF FEDERAL-LEVEL AEFLA PROGRAMS—DEVELOPMENT AND UPDATING OF STATE PERFORMANCE ACCOUNTABILITY MEASURES—Continued

NPRM					Final rule				
(c) Development and updating of state performance accountability measures					(c) Performance accountability system				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
					Social & community service manager (GS–13, Step 5).	4	24		
					Running Statistical Adjustment Model to Adjust Levels of Performance Based on Actual Economic Conditions and Characteristics of Participants				
					Management occupations staff (GS–14, Step 5).	2	40	Annual	1
					Management analysts (GS–12, Step 5).	2	80		
					Technical Assistance to States				
					Consultant cost	$1,000,000		2nd year	1

Exhibit 15 presents the following changes made by the Departments to the Federal level for the VR program. After consulting with additional program experts, we accounted for and revised the level of effort needed to develop and update State performance accountability systems, negotiate levels of performance, and run the statistical adjustment model to adjust levels of performance based on actual economic conditions and characteristics of participants.

For developing and updating State performance accountability systems, the Departments added two data management specialists positions, one of which will be General Schedule (GS)-level 14 and the other GS-level 13. Both specialists will devote 768.63 hours in the first year of the rule to program the database and perform related software development tasks. For negotiations, we added four managers to reflect the analysis and review of State and Federal data during the negotiation process. The level of effort for the managers is estimated at 12 hours each biennially. For adjusting levels of performance, we added two managers and two database administrators to review the State and Federal data relative to the adjustments made to the levels of performance by the final run of the model. The level of effort for managers is estimated at 52 hours each annually, while the level of effort for database administrators is estimated at 156 hours each annually.

EXHIBIT 15—UPDATES TO COSTS OF FEDERAL-LEVEL VR PROGRAMS—DEVELOPMENT AND UPDATING OF STATE PERFORMANCE ACCOUNTABILITY MEASURES

NPRM					Final rule				
(c) Development and updating of state performance accountability measures					(c) Performance accountability system				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
N/A					*Development and Updating of State Performance Accountability Systems*				
					Data Management Specialist (GS–14, Step 5).	1	768.63	One time	1.
					Data Management Specialist (GS–13, Step 5).	1	768.63	One time	1.
					Negotiation of Levels of Performance				
					Management occupations staff (GS–14, Step 5).	4	12	1st year, then every 2 years.	1.
					Running Statistical Adjustment Model to Adjust Levels of Performance Based on Actual Economic Conditions and Characteristics of Participants				
					Management occupations staff (GS–14, Step 5).	2	52	Annual	1.
					Database admin. (GS–13, Step 5).	2	156		

At the State level for the DOL programs, the Departments made the following updates, which are presented in Exhibit 16. We replaced the technical staff in our previous estimate with the more appropriate occupational category of computer systems analyst. Following discussions with program experts, we increased the level of effort for each administrative staff member from 32 to 72 hours, and we decided that costs related to the work performed by staff and the software and IT systems will be incurred only once rather than annually. In addition, we accounted for the effort related to negotiating levels of performance and adjusting levels of performance. For negotiations, we added one manager and two office and administrative support staff members. The estimated level of effort for each staff member in both occupational categories is 8 hours biennially. For adjusting levels of performance, we added one manager, two computer systems analysts, and two office and administrative support staff members. These staff members will gather and input various data points to the tool, which then will create statewide levels of performance for each WIOA performance indicator. The estimated annual level of effort for each manager, computer systems analyst, and office and administrative support staff member is 10 hours, 40 hours, and 20 hours, respectively.

EXHIBIT 16—UPDATES TO COSTS OF STATE-LEVEL DOL PROGRAMS—DEVELOPMENT AND UPDATING OF STATE PERFORMANCE ACCOUNTABILITY MEASURES

NPRM					Final rule				
(c) Development and updating of state performance accountability measures					(c) Performance accountability system				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Manager	1	32	Annual	56 States	*Development and Updating of State Performance Accountability Systems*				
Technical Staff.	3	80			Management occupations staff.	1	32	One time	57 SWAs.
Admin. staff	1	32			Computer systems analyst.	3	80		
Software/IT systems cost.	$100,000				Office & admin. support staff.	1	72		
Licensing fee	$50,000				Software/IT systems cost.	$100,000			
Consultant cost.	$75,000		One time		Licensing fee	$50,000		Annual.	
					Consultant cost	$75,000		One time.	
					Negotiation of Levels of Performance				
					Management occupations staff.	1	8	1st year, then every 2 years.	57 States.
					Office & admin. support staff.	2	8		
					Running Statistical Adjustment Model to Adjust Levels of Performance Based on Actual Economic Conditions and Characteristics of Participants				
					Management occupations staff.	1	10	Annual	57 States.
					Computer systems analysts.	2	40		
					Office & admin. support staff.	2	20		

The Departments made the following updates to the State-level AEFLA program, which are presented in Exhibit 17. For the costs related to developing and updating State performance accountability systems, we reduced the number of managers from five to four after determining that this number will reflect more accurately the staffing level needed across all States and outlying areas. Three of these staff members are categorized as social and community service managers, and we decreased the level of effort per staff member from 80 hours to 60 hours. We replaced the two technical staff in our previous estimate with the more appropriate occupational categories of database administrator and computer systems analyst. After consideration, we revised the calculation to exclude the five administrative staff members included in our previous estimate, because those occupational categories are generally not involved in these tasks. We eliminated a one-time consultant cost because we have concluded that consultants are typically not engaged in this task. We added an annual $350,000 software and IT systems cost for the State AEFLA data system. This annual $350,000 software and IT systems cost replaces one-time and annual State

software and IT systems costs that were previously attributed in the NPRM to provisions (i) "Performance Reports" and (j) "Evaluation of State Programs." We have concluded that using annual State software and IT systems costs, rather than one-time software and IT systems costs, more accurately reflects the typical IT funding pattern of the State-level AEFLA program.

These changes also are based on the review of public comments, which resulted in a decision by the Departments that each exit by a participant during a program year will count as a separate response to be used for data collection and outcome reporting for the performance indicators. Prior to WIOA, the AEFLA program reported only unduplicated counts of participant outcomes. Making the change to an accountability structure that is based on reporting outcomes for each exit by a participant during a program year represents a significant operational change for the AEFLA program and will require a commensurate increase in the level of effort needed for implementation.

In addition, after discussions with program experts, the Departments accounted for additional burden for State staff to negotiate levels of performance for the new indicators under WIOA. We added one manager and one social community service manager to perform these activities. The biennial level of effort per staff member is estimated at 12 hours.

The Departments eliminated the State burden for running the statistical adjustment model, after consulting with statistical experts and determining that the model will only be run in the Federal office using aggregate State data.

EXHIBIT 17—UPDATES TO COSTS OF STATE-LEVEL AEFLA PROGRAMS—DEVELOPMENT AND UPDATING OF STATE PERFORMANCE ACCOUNTABILITY MEASURES

NPRM					Final rule				
(c) Development and updating of state performance accountability measures					(c) Performance accountability system				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Manager	5	80	One time	57 States	*Development and Updating of State Performance Accountability Systems*				
Technical staff.	2	80			Management occupations staff.	1	60	One time	57 States.
Admin. staff	5	80			Computer systems analyst.	1	80		
Consultant cost.	$25,000				Social & community service manager.	3	60		
					Database administrator	1	80		
					Software/IT systems cost.	$350,000		Annual.	
					Negotiation of Levels of Performance				
					Management occupations staff.	1	12	1st year, then every 2 years.	57 States.
					Social & community service manager.	1	12		

Note: Under the "Development and Updating of State Performance Accountability Systems," the software and IT systems costs are a combination of inputs that were previously accounted for under provisions (i) "Performance Reports" and (j) "Evaluation of State Programs."

Exhibit 18 presents the updates to the State VR program. Based on public comment and further deliberation, the Departments significantly revised the estimated State-level burden associated with the development and updating of State VR agency performance accountability systems. First, to more appropriately account for the burden associated with the establishment of State performance goals and the State's evaluation and analysis of progress toward such goals, the Departments reduced the number of managers from six to four, three of which are categorized as social and community service managers, and replaced the four technical staff with two database administrators. However, this decrease in the number of staff is offset by the increase in the level of effort from 10 to 80 hours for managers and 10 to 100 hours for database administrators. We also included SRC members because they will need to play an advisory role in developing and updating levels of performance for the State VR agency. These costs will occur biennially.

Although the Departments estimate that each VR agency will require computer systems analysts for this one-time task, the related burden for changing a State's CMS has been broken down to reflect the variation among the 80 State VR agencies with respect to their size and whether they contract for outside assistance for developing and maintaining their CMS. For example, the level of effort for the 30 VR agencies that have a maintenance contract with a CMS vendor to make system updates will be less than the 50 agencies that are without vendor support. The burden hours shown in Exhibit 18 for tasks to be carried out by computer systems analysts has been adjusted to reflect only those hours we attribute to new requirements under sec. 116 in title I of WIOA. The remaining hours related to this new burden are accounted for in the RIA accompanying the final regulations for "State Vocational Rehabilitation Services Program; State Supported Employment Services Program; Limitations on Use of Subminimum Wage," which is published in this edition of the **Federal Register**. We also

added the proportional cost of annual licensing fees of $6,930 for 48 VR agencies for vendor-supplied CMS software.

In addition, following discussions with program experts, the Departments accounted for and revised the level of effort needed to negotiate and adjust levels of performance and we are adding one manager, two social and community service managers, and two management analysts to accommodate the increased level of effort. Similarly, we used input from public comment and program experts to revise the level of effort needed to apply the statistical adjustment model and we are adding one manager, one computer systems analyst, one database administrator, and one management analyst to account for the effort needed to integrate the statistical adjustment model into the process of establishing expected levels of performance and negotiated levels of performance.

In response to public comment and discussions with program experts, the Departments have included the estimated burden for obtaining UI Wage Data by VR Agencies. The estimates reflect that VR agencies will incur new costs for obtaining UI wage data on participants that exit the program after receiving services and will incur different levels of annual data query costs related to obtaining UI wage data, depending on the size of the agency. State VR agencies operating under the increased data and performance requirements of WIOA will also need the capability to analyze their program performance data more effectively. In response to public comment, we added a new software and IT systems cost for data analytic software and related training. The amount of the software and IT systems costs varies, depending on the size of the agency.

EXHIBIT 18—UPDATES TO COSTS OF STATE-LEVEL VR PROGRAMS—DEVELOPMENT AND UPDATING OF STATE PERFORMANCE ACCOUNTABILITY MEASURES

NPRM					Final rule				
(c) Development and updating of state performance accountability measures					(c) Performance accountability system				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Manager	6	10	One time	80 VR agencies.	*Development and Updating of State Performance Accountability Systems*				
Technical staff.	4	10			Management occupations staff.	1	80	1st year, then every 2 years.	80 VR agencies.
					Social & community service manager.	3	80		
					Database administrator	2	100		
					SRC Board members ...	12	3		
					Computer systems analyst.	5	360	One time	5 (large) VR agencies w/o vendor support.
						2	360		45 (small & med.) VR agencies w/o vendor support.
						2	54		30 VR agencies w/CMS vendor contracts.
					Licensing fee	$6,930		Annual	48 VR agencies.
					Negotiation of Levels of Performance				
					Management occupations staff.	1	12	1st year, then every 2 years.	80 VR agencies.
					Social & community service manager.	2	12		
					Management analyst	2	12		

EXHIBIT 18—UPDATES TO COSTS OF STATE-LEVEL VR PROGRAMS—DEVELOPMENT AND UPDATING OF STATE PERFORMANCE ACCOUNTABILITY MEASURES—Continued

NPRM					Final rule				
(c) Development and updating of state performance accountability measures					(c) Performance accountability system				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
					Running Statistical Adjustment Model to Adjust Levels of Performance Based on Actual Economic Conditions and Characteristics of Participants				
					Management occupations staff.	1	4	Annual	80 VR agencies.
					Computer systems analyst.	1	4		
					Database administrator	1	20		
					Management analyst	1	4		
					Obtain UI Wage Data				
					Data query cost	$20,000		Annual	10 (large) VR agencies.
						$8,000			42 (med.) VR agencies.
						$4,000			28 (small) VR agencies.
					Data Analytic Software and Training				
					Software/IT systems cost.	$25,000		One time	10 (large) VR agencies.
						$15,000			42 (med.) VR agencies.
						$10,000			28 (small) VR agencies.

At the local level for the DOL programs, the Departments made the following updates, which are presented in Exhibit 19. Based on discussions with program experts, we added one manager and two office and administrative support staff members to account for the effort needed to negotiate levels of performance biennially. The biennial level of effort per staff member for both occupational categories is estimated at 8 hours. We also added one manager, two computer systems analysts, and two office and administrative support staff members to account for the effort needed to run the statistical adjustment model annually. The estimated annual level of effort per staff member for the manager, computer systems analysts, and administrative staff members is 10 hours, 40 hours, and 20 hours, respectively.

EXHIBIT 19—UPDATES TO COSTS OF LOCAL-LEVEL DOL PROGRAMS—DEVELOPMENT AND UPDATING OF STATE PERFORMANCE ACCOUNTABILITY MEASURES

NPRM					Final rule				
(c) Development and updating of state performance accountability measures					(c) Performance accountability system				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
N/A					*Negotiation of Levels of Performance*				
					Management occupations staff.	1	8	1st year then every 2 years.	580 Local WDBs.
					Office & admin. occupations staff.	2	8		
					Running Statistical Adjustment Model to Adjust Levels of Performance Based on Actual Economic Conditions and Characteristics of Participants				
					Management occupations staff.	1	10	Annual	580 Local WDBs.
					Computer systems analysts.	2	40		
					Office & admin. support staff.	2	20		

Exhibit 20 presents the updates to the local-level AEFLA program. The Departments considered the typical experience of local involvement and concluded that local staff will participate in statewide stakeholder meetings, convened by the State AEFLA office, to develop and update State performance accountability measures. We found that the level of effort for local AEFLA programs will be significantly less than previously expected because their role would be limited to those stakeholder meetings. Note that instead of presenting the costs at the State level as in the NPRM, we are presenting costs at the program, or local, level using the total number of local AEFLA programs reflected in actual program data submitted by States for the most recent reporting year.

EXHIBIT 20—UPDATES TO COSTS OF LOCAL-LEVEL AEFLA PROGRAMS—DEVELOPMENT AND UPDATING OF STATE PERFORMANCE ACCOUNTABILITY MEASURES

NPRM					Final rule				
(c) Development and updating of state performance accountability measures					(c) Performance accountability system				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Manager	40	80	One-time	57 States	*Development and Updating of State Performance Accountability Systems*				
Technical staff.	40	80			Management occupations staff.	1	4	One-time	2,396 local programs.
					Database administrator	1	4		

Identification and Dissemination of Best Practices

After further consideration, the Departments decided that the costs associated with provision (d) "Identification and Dissemination of Best Practices" in the NPRM are more appropriate in the DOL WIOA Final Rule because the requirements affect only State WDBs. This provision now can be found as provision (c) in the DOL WIOA Final Rule. Therefore, this provision and its costs that result from the inputs presented in Exhibit 21 ($2.9 million) are no longer included in the economic analysis for this Final Rule.

EXHIBIT 21—UPDATES TO COSTS OF LOCAL-LEVEL DOL STATE WDBS—IDENTIFICATION AND DISSEMINATION OF BEST PRACTICES

NPRM					Final rule				
(d) Identification and dissemination of best practices					Moved to DOL WIOA final rule				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Manager	1	20	One-time	40 States	N/A. See DOL WIOA Final Rule				
Technical staff.	2	40							
Admin. staff	1	20							

Development of Strategies for Aligning Technology and Data Systems Across One-Stop Partner Programs To Enhance Service Delivery and Improve Efficiencies

This section describes the updates to the NPRM's provision (e) "Development of Strategies for Aligning Technology and Data Systems across One-Stop Partner Programs to Enhance Service Delivery and Improve Efficiencies." In the Final Rule's subject-by-subject analysis, this cost provision is combined into provision (c) "Performance Accountability System," and it captures the cost of aligning technology and data systems across one-stop partner programs. For this activity, the total 10-year cost (undiscounted) decreased from $356.6 million in the NPRM to $166.5 million in the Final Rule.[32] These revised cost estimates can be found under the subsection "Development and Updating of State Performance Accountability Systems" in provision (c) of the Final Rule.

Exhibit 22 presents the changes made by the Departments for the State Workforce Agencies (SWAs) State-level program. After further consideration, we removed the manager and technical staff members and replaced them with consultant and software and IT systems costs. We estimated that the 23 SWAs that are farther in the process of aligning their technology and data systems will incur $100,000 in first-year consultant costs for designing the new systems, $200,000 in first-year software and IT systems costs for purchasing hardware and implementing the new systems, and $100,000 in software and IT systems costs in the following 2 years for system maintenance. We estimate that the 34 SWAs that use legacy systems will require more effort to align their technology and data systems. These SWAs will incur $200,000 in first-year consultant and software and IT system costs; $100,000 and $200,000 in second-year consultant and software and IT system costs, respectively; and $100,000 in software and IT systems costs for maintenance in the third through fifth years.

EXHIBIT 22—UPDATES TO COSTS OF SWA—DEVELOPMENT OF STRATEGIES FOR ALIGNING TECHNOLOGY AND DATA SYSTEMS ACROSS ONE-STOP PARTNER PROGRAMS

NPRM					Final rule				
(e) Development of strategies for aligning technology and data systems across one-stop partner programs					(c) Performance accountability system				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Manager	1	80	One time	56 States	*Aligning Technology and Data Systems across One-stop Partner Programs*				
Technical staff.	2	120			Consultant cost ("Low-Effort" SWAs).	$100,000		One time	23 SWAs.
					Software and IT systems cost ("Low-Effort" SWAs).	$200,000		One time.	
					Software and IT systems cost ("Low-Effort" SWAs).	$100,000		2nd & 3rd years.	
					Consultant cost ("High-Effort" SWAs).	$200,000		One time	34 SWAs.
					Consultant cost ("High-Effort" SWAs).	$100,000		2nd year.	
					Software and IT systems cost ("High-Effort" SWAs).	$200,000		1st & 2nd years.	

[32] The variance in cost is due to changes to the assumptions used to estimate costs (*e.g.*, number of staff, occupational categories, level of effort, and frequency.) More specifically, this variance in cost is due to the reduction in annual software and IT systems cost for the State-level AEFLA program and the removal of the local-level AEFLA program costs. The Final Rule does not implement any policy changes over the NPRM that impact this cost.

EXHIBIT 22—UPDATES TO COSTS OF SWA—DEVELOPMENT OF STRATEGIES FOR ALIGNING TECHNOLOGY AND DATA SYSTEMS ACROSS ONE-STOP PARTNER PROGRAMS—Continued

NPRM					Final rule				
(e) Development of strategies for aligning technology and data systems across one-stop partner programs					(c) Performance accountability system				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
					Software and IT systems cost ("High-Effort" SWAs).	$100,000		3rd–5th years.	

For the AEFLA State-level program, the Departments made the following updates, which are shown in Exhibit 23. We removed the labor costs because these occupational categories are not generally involved in aligning technology and data systems. The annual software and IT systems cost decreased from $150,000 to $100,000 because we were initially accounting for some costs that are now accounted for in the costs for performance reports under provision (c) of the Final Rule. As a result of the opportunities created for greater program coordination under WIOA, we estimate that AEFLA State agencies will enhance their participation in the SLDS Grant Program, which supports the design, development, implementation, and expansion of P–20W (early learning through the workforce) longitudinal data systems.[33] The annual IT systems cost of $100,000 estimated in Exhibit 23 accounts for this work.

EXHIBIT 23—UPDATES TO COSTS OF STATE-LEVEL AEFLA PROGRAMS—DEVELOPMENT OF STRATEGIES FOR ALIGNING TECHNOLOGY AND DATA SYSTEMS ACROSS ONE-STOP PARTNER PROGRAMS

NPRM					Final rule				
(e) Development of strategies for aligning technology and data systems across one-stop partner programs					(c) Performance accountability system				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Manager	5	40	Annual	57 States	*Aligning Technology and Data Systems across One-stop Partner Programs*				
Technical staff.	2	120			Software/IT systems cost.	$100,000		Annual	57 States.
Admin. staff	5	40							
Software/IT systems cost.	$150,000								

The Departments made the following changes to the VR program cost burden at the State level, which are presented in Exhibit 24. After further consideration, we removed the managers as well as the counsel and technical staff members and replaced them with consultant and software and IT systems costs. We estimated that the 32 VR agencies that are further in the process of aligning their technology and data systems will incur $100,000 in first-year consultant costs for designing the new systems, $200,000 in first-year software and IT systems costs for purchasing hardware and implementing the new systems, and $100,000 in software and IT systems costs in each of the following 2 years for system maintenance. We estimate that the 48 VR agencies that use legacy systems will require more effort to align their technology and data systems. These VR agencies will incur $200,000 in first-year consultant and software and IT system costs; $100,000 and $200,000 in second-year consultant and software and IT system costs, respectively; and $100,000 in software and IT systems costs for maintenance in each year from the third through fifth years.

[33] For more information on the SLDS Grant Program, *see* the U.S. Department of Education, Institute of Education Sciences, National Center for Education Statistics' Web site: *https://nces.ed.gov/programs/slds/about_SLDS.asp.*

EXHIBIT 24—UPDATES TO COSTS OF STATE-LEVEL VR PROGRAMS—DEVELOPMENT OF STRATEGIES FOR ALIGNING TECHNOLOGY AND DATA SYSTEMS ACROSS ONE-STOP PARTNER PROGRAMS

NPRM					Final rule				
(e) Development of strategies for aligning technology and data systems across one-stop partner programs					(c) Performance accountability system				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Manager	1	8	Annual	80 VR agencies.	*Aligning Technology and Data Systems across One-Stop Partner Programs*				
Counsel staff.	1	4			Consultant cost ("Low-Effort" VR agencies).	$100,000		One time	32 VR agencies.
Technical staff.	1	16			Software and IT systems cost ("Low-Effort" VR agencies).	$200,000		One time.	
					Software and IT systems cost ("Low-Effort" VR agencies).	$100,000		2nd & 3rd years.	
					Consultant cost ("High-Effort" VR agencies).	$200,000		One time	48 VR agencies.
					Consultant cost ("High-Effort" VR agencies).	$100,000		2nd year.	
					Software and IT systems cost ("High-Effort" VR agencies).	$200,000		1st & 2nd years.	
					Software and IT systems cost ("High-Effort" VR agencies).	$100,000		3rd–5th years.	

For the AEFLA program at the local level, the Departments made the following changes, which are shown in Exhibit 25. We have concluded that local AEFLA staff will not bear the burden for aligning technology and data systems because AEFLA data are collected and maintained at the State level in each State and outlying area. Therefore, we removed all cost inputs at the local level related to this provision.

EXHIBIT 25—UPDATES TO COSTS OF LOCAL-LEVEL AEFLA PROGRAMS—DEVELOPMENT OF STRATEGIES FOR ALIGNING TECHNOLOGY AND DATA SYSTEMS ACROSS ONE-STOP PARTNER PROGRAMS

NPRM					Final rule				
(e) Development of strategies for aligning technology and data systems across one-stop partner programs					N/A				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Manager	40	40	Annual	57 States	N/A				
Technical staff.	40	120							

Unified or Combined State Plan

This section describes the updates to the NPRM's provision (f) "Unified or Combined State Plans." In this Final Rule's subject-by-subject analysis, this cost provision has been included in provision (b) "Unified or Combined State Plans: Expanded Content, Biennial Development and Modification Process, and Submission Coordination Requirements," and it captures the cost of (1) reviewing and developing new 4-year Unified or Combined State Plans to ensure they satisfy the new content requirements and (2) coordinating actions for developing new 4-year Unified or Combined State Plans among the core programs administered by the Departments. For these activities, the total 10-year cost (undiscounted) decreased from $17.2 million in the NPRM to $9.6 million in this Final Rule.[34] These revised cost estimates can be found under the subsections "Expanded Content" and "Coordinating Submission of State Plans" in provision (b) of this Final Rule.

At the State level for the DOL programs, the Departments made the

[34] This variance in cost is mainly due to the reduction in the number and types of workers expected to incur incremental cost for the local-level AEFLA program and a reduction in their level of effort.

following updates, which are presented in Exhibit 26: (1) We added a one-time cost to review and revise existing plans to ensure they include the new elements; (2) we concluded the costs will be incurred biennially rather than only in the second and sixth years of the analysis period; (3) we reduced the number of managers from two to one along with their level of effort; (4) we removed the lawyers; (5) we replaced the four technical staff members in our previous estimate with the more appropriate management analyst occupational category; and (6) we reduced the level of effort per analyst from 20 to 8 hours.

EXHIBIT 26—UPDATES TO COSTS OF LOCAL-LEVEL DOL STATE WDBS—UNIFIED OR COMBINED STATE PLAN

NPRM					Final rule				
(f) Unified or Combined State Plan					(b) Unified or Combined State Plans: Expanded Content, Biennial Development and Modification Process, and Submission Coordination Requirements				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Manager	2	20	2nd & 6th years	56 States	*Expanded Content*				
Counsel staff	1	8			Management occupations staff.	4	20	One time	57 states.
Technical staff.	4	20			Lawyer	1	8		
Admin. staff	1	8			Social & community service manager.	2	20		
					Office & admin. support staff.	1	8		
					Coordinating Submission of State Plans				
					Management occupations staff.	1	8	1st year, then every 2 years.	57 states.
					Management analyst	2	8		
					Office & admin. support staff.	1	8		

The Departments made the following updates to the State-level AEFLA program, which are presented in Exhibit 27. After consulting with additional program experts, we added a one-time cost to review and revise existing plans to ensure that they include the new elements. We concluded that the costs for coordinating submissions will be incurred biennially rather than only once. We reduced the number of managers from five to one, which is a more accurate reflection of typical staffing in a State adult education office, and reduced the level of effort because we have concluded that the process of coordinating the submission of the State Plan does not require the level of effort we initially estimated. We decreased the lawyer's level of effort from 8 to 4 hours because we have concluded that the process of coordinating the submission the State Plan does not require the level of effort we initially estimated. We clarified that the work done by the two technical staff will be done by three social and community service managers because we have concluded that technical staff members are typically not involved in the process of coordinating the submission of the State Plan. We also decreased the number of administrative staff from five to one, which is a more accurate reflection of typical staffing in a State adult education office, and halved the level of effort for the staff member because we have concluded that the process of coordinating the submission of the State Plan does not cumulatively require more than 1 full day of work for the administrative staff member. Finally, we removed the $25,000 consultant cost because we have concluded that a consultant is not required for the submission of the State Plan.

EXHIBIT 27—UPDATES TO COSTS OF STATE-LEVEL AEFLA PROGRAMS—UNIFIED OR COMBINED STATE PLAN

NPRM					Final rule				
(f) Unified or Combined State Plan					(b) Unified or Combined State Plans: Expanded Content, Biennial Development and Modification Process, and Submission Coordination Requirements				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Manager	5	24	One time	57 states	*Expanded Content*				
Counsel staff	1	8			Management occupations staff.	1	20	One time	57 States.

EXHIBIT 27—UPDATES TO COSTS OF STATE-LEVEL AEFLA PROGRAMS—UNIFIED OR COMBINED STATE PLAN—Continued

NPRM					Final rule				
(f) Unified or Combined State Plan					(b) Unified or Combined State Plans: Expanded Content, Biennial Development and Modification Process, and Submission Coordination Requirements				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Technical staff.	2	24			Lawyer	1	20		
Admin. staff	5	16			Social & community service manager.	3	20		
Consultant cost.	$25,000				*Coordinating Submission of State Plans*				
					Management occupations staff.	1	8	1st year, then every 2 years.	57 States.
					Lawyer	1	4		
					Social & community service.	3	8		
					Office & admin. support staff.	1	8		

Exhibit 28 presents the changes made by the Departments to the State level for the VR program. After further consideration, we added a one-time cost to review and revise existing plans to ensure they include the new elements. We concluded that these costs for coordinating submissions will be incurred biennially rather than annually and we doubled the level of effort per manager and social and community service manager. We replaced the technical staff in our previous estimate with the more appropriate occupational category of social and community service manager.

EXHIBIT 28—UPDATES TO COSTS OF STATE-LEVEL VR PROGRAMS—UNIFIED OR COMBINED STATE PLAN

NPRM					Final rule				
(f) Unified or Combined State Plan					(b) Unified or Combined State Plans: Expanded Content, Biennial Development and Modification Process, and Submission Coordination Requirements				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Manager	2	7	Annual	80 VR agencies.	*Expanded Content*				
Technical staff.	2	7			Management occupations staff.	2	21	One time	80 VR agencies.
					Social & community service manager.	2	21		
					Coordinating Submission of State Plans				
					Management occupations staff.	2	14	1st year, then every 2 years.	80 VR agencies.
					Social & community service manager.	2	14		

The Departments made the following changes to the local-level AEFLA program, which are presented in Exhibit 29. We considered the typical experience of local involvement and concluded that local staff will participate in statewide stakeholder meetings, convened by the State AEFLA office, to examine State Plan elements in need of modification and to gather input for those revisions. Therefore, we reduced the number of managers and removed the lawyers, technical and administrative staff, and local stakeholders and replaced them with social and community service managers. Note that instead of presenting the costs at the State level as in the NPRM, we are presenting costs at the program level.

EXHIBIT 29—UPDATES TO COSTS OF LOCAL-LEVEL AEFLA PROGRAMS—UNIFIED OR COMBINED STATE PLAN

NPRM					Final rule				
(f) Unified or combined state plan					(c) Unified or combined state plans: Expanded content, biennial development and modification process, and submission coordination requirements				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Manager	40	24	One time	57 States	*Coordinating Submission of State Plans*				
Counsel staff.	3	8			Management occupations staff.	1	4	1st year, then every 2 years.	2,396 local programs.
Technical staff.	40	24			Social & community service manager.	1	4		
Admin. staff	40	16							
Local stakeholder.	100	8							

Local Plan Revisions

After further consideration, the Departments decided that the costs associated with provision (g) "Local Plan Revisions" in the NPRM are more appropriate in the DOL WIOA Final Rule. The costs associated with this provision now can be found under provision (m) "Local and Regional Plan Modification" in the DOL WIOA Final Rule. Therefore, this provision and its costs that result from the inputs presented in Exhibit 30 ($22.6 million) are no longer included in this Final Rule economic analysis.

EXHIBIT 30—UPDATES TO COSTS OF LOCAL-LEVEL PROGRAMS—LOCAL PLAN REVISIONS

NPRM					Final rule				
(g) Local plan revisions					Moved to the DOL WIOA final rule				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Workforce Development Board Costs									
Manager	2	20	2nd & 6th years.	580 Local WDBs.	N/A. See DOL WIOA Final Rule				
Counsel staff.	1	8							
Technical staff.	4	20							
Admin. staff	1	8							
AEFLA Program Costs									
Manager	40	24	One time	57 States	N/A. See DOL WIOA Final Rule				
Technical staff.	40	24							
Admin. staff	40	16							
Local stakeholders.	100	8							

State Performance Accountability Measures

This section describes the updates to the NPRM's provision (h) "State Performance Accountability Measures," which in this Final Rule's subject-by-subject analysis is included in provision (c) "Performance Accountability System." This provision captures the cost of collecting data to report on any additional State performance accountability indicators established by a State pursuant to WIOA sec. 116(b)(2)(B). For this activity, the total 10-year cost (undiscounted) decreased from $11.7 million in the NPRM to $170,000 in the Final Rule.[35] These revised cost estimates can be found under the subsections "Additional State Performance Accountability Indicators (Beyond Required Performance Indicators)" in provision (c) of the Final Rule.

At the State level for the DOL programs, the Departments made the

[35] The variance in cost is mainly due to changes for State-level DOL programs including: a reduction in the level of effort per worker; costs incurred once rather than annually; and the removal of annual software and IT systems costs and licensing fees and one-time consultant costs.

following updates, which are presented in Exhibit 31. After discussions with additional program experts, we made the following updates: (1) We concluded that costs will be incurred only once rather than annually; (2) we halved the level of effort for managers; (3) we replaced the technical staff in our previous estimate with the more appropriate occupational category of computer systems analyst and halved their level of effort; (4) we increased the level of effort from 32 to 36 hours; and (5) we removed the software and IT systems cost, licensing fees, and consultant cost.

EXHIBIT 31—UPDATES TO COSTS OF STATE-LEVEL DOL PROGRAMS—STATE PERFORMANCE ACCOUNTABILITY MEASURES

NPRM					Final rule				
(h) State performance accountability measures					(c) Performance accountability measures				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Manager	1	32	Annual	5 States	*Additional State Performance Accountability Indicators (Beyond Required Performance Indicators)*				
Technical staff.	3	80			Management occupations staff.	1	16	One time	5 States
Admin. staff	1	32			Computer systems analyst.	3	40		
Software/IT systems cost.	$100,000				Office & admin. support staff.	1	36		
Licensing fee.	$50,000								
Consultant cost.	$75,000		One time						

The Departments made the following updates at the State level for the AEFLA program, which are presented in Exhibit 32. We increased the hours for all State staff and reduced the number of management staff members from five to four after determining the number needed to reflect a staffing level that is more representative of the States and outlying areas. Three of these managers are categorized as social and community service managers. We replaced the two technical staff members in our previous estimate with the more appropriate occupational categories of database administrators and computer systems analysts. We revised the calculation to exclude the five administrative staff members included in our previous estimate, because those occupational categories generally would not be involved in the development of additional State performance accountability measures.

EXHIBIT 32—UPDATES TO COSTS OF STATE-LEVEL AEFLA PROGRAMS—STATE PERFORMANCE ACCOUNTABILITY MEASURES

NPRM					Final rule				
(h) State performance accountability measures					(c) Performance accountability measures				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Manager	5	7	One time	5 States	*Additional State Performance Accountability Indicators (Beyond Required Performance Indicators)*				
Technical staff.	2	7			Management occupations staff.	1	8	One time	5 States.
Admin. staff	5	7			Computer systems analyst.	1	8		
					Social & community service manager.	3	8		
					Database administrator	1	8		

Exhibit 33 presents the changes made by Departments for the State-level VR program. After additional discussion with our program experts, we became aware that the estimated burden for obtaining UI wage data in the NPRM was not related to the additional State performance indicators. In this Final Rule, the burden will be for 80 State VR agencies to obtain UI wage data for the reporting on the primary indicators of performance, which is included in Exhibit 18. In addition, due to public comment and additional consultation with program experts, we reduced the number of VR agencies that will incur costs related to the additional State performance accountability indicators

from seven to five and decreased the level of effort from 9 to 8 hours for each occupational category. We removed the software and IT systems costs from the subsection on "Additional State Performance Accountability Indicators (Beyond Required Performance Indicators)" because upon further consideration, we concluded that this software cost applies only to data collection for the primary indicators of performance.

EXHIBIT 33—UPDATES TO COSTS OF STATE-LEVEL VR PROGRAMS—STATE PERFORMANCE ACCOUNTABILITY MEASURES

NPRM					Final rule				
(h) State performance accountability measures					(c) Performance accountability measures				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Obtain Quarterly State UI Wage Data					*Additional State Performance Accountability Indicators (Beyond Required Performance Indicators)*				
Manager	2	20	One time	7 VR agencies	Management occupations staff.	1	8	One time	5 VR agencies.
Counsel staff.	1	20			Computer systems analyst.	1	8		
Technical staff.	2	20			Social & community service manager.	3	8		
Obtain Additional Information for New Data Fields					Database administrator	1	8		
Technical staff.	60	9	Annual	7 VR agencies.					
Software/IT systems cost.	$5,000		One time.						

At the local level for the AEFLA program, the Departments made the following changes, which are presented in Exhibit 34. We considered the typical experience of local involvement and concluded that local staff will participate in statewide stakeholder meetings, convened by the State AEFLA office, to develop and update the additional State performance accountability measures. Therefore, we reduced the level of effort from 7 to 4 hours. Note that instead of presenting the costs at the State level as in the NPRM, we are presenting costs at the program, or local, level.

EXHIBIT 34—UPDATES TO COSTS OF LOCAL-LEVEL AEFLA PROGRAMS—STATE PERFORMANCE ACCOUNTABILITY MEASURES

NPRM					Final rule				
(h) State performance accountability measures					(c) Performance accountability system				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Manager	40	7	One time	5 States	*Additional State Performance Accountability Indicators (Beyond Required Performance Indicators)*				
Technical staff.	40	7			Management occupations staff.	1	4	One time	200 local programs.
					Database administrator	1	4		

Performance Reports

This section describes the updates to the NPRM's provision (i) "Performance Reports." In the Final Rule, this cost provision has been included in provision (c) "Performance Accountability System" and it captures the costs of developing a performance template that reports outcomes via the new WIOA performance accountability metrics; developing, updating, and submitting ETP reports; and collecting, analyzing, and reporting performance data. For this activity, the total 10-year cost (undiscounted) increased from $121.9 million in the NPRM to $295.4 million in the Final Rule.[36] [37] These revised cost estimates can be found under the subsections "Development and Updating State Performance Accountability Systems" and "Performance Reports" in provision (c) of this Final Rule.

[36] A portion of the $295.4 million in costs accounts for software and IT systems costs from provision (e) "Development of Strategies for Aligning Technology and One-Stop Partner Programs" and provision (j) "Evaluation of State Programs." Thus, this value overstates how much costs have increased in this Final Rule relative to the NPRM.

[37] This variance in cost is due to new annual and one-time software and IT systems costs for Federal AEFLA programs, new annual labor costs for the State-level DOL program, and new one-time and annual labor costs for the State-level VR program.

At the Federal level for the DOL programs, the Departments made the following updates, which are shown in Exhibit 35. After consultation with additional program experts, we added annual burden hours for one manager, one computer systems analyst, and one management analyst to implement and review the new ETP performance reporting template. We also added an estimated annual software and IT systems cost of $250,000 for ETP reporting.

EXHIBIT 35—UPDATES TO COSTS OF FEDERAL-LEVEL DOL PROGRAMS—PERFORMANCE REPORTS

NPRM					Final rule				
(i) Performance reports					(c) Performance accountability system				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
N/A					*Performance Report*				
					Management occupations staff (GS–14, Step 5).	1	8	Annual	1
					Computer systems analysts (GS–13, Step 5).	1	5		
					Management analyst (GS–12, Step 5).	1	16		
					Software/IT systems cost.	$250,000			

The Departments made the following updates for the Federal-level AEFLA program, which are presented in Exhibit 36. We concluded that updating and maintaining the Federal data system for compliance with the new requirements of WIOA will be performed annually rather than once because Federal data system costs have been historically incurred annually. We reduced the number of Federal staff members and clarified that the work will be performed by one manager, one social and community service manager, and one database administrator. We reduced the level of effort per manager from 60 to 8 hours, because most of this work will be performed by the database administrator. The managers will direct and oversee the modernization process and the database administrator will manage the new system. Finally, we revised our estimate to add a one-time Federal cost of $5 million for IT systems development, modernization, and enhancement to build the data infrastructure and increase the capacity of the adult education data collection system at the Federal, State, and local levels to comply with the new performance reporting requirements under WIOA. An annual software and IT cost of $250,000 also has been included to maintain the data infrastructure in steady state.

EXHIBIT 36—UPDATES TO COSTS OF FEDERAL-LEVEL AEFLA PROGRAMS—PERFORMANCE REPORTS

NPRM					Final rule				
(i) Performance reports					(c) Performance accountability system				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Manager (GS–13, Step 5).	1	60	One time	1	*Performance Report*				
Federal staff (GS–13, Step 5).	10	15			Management occupations staff (GS–14, Step 5).	1	8	Annual	1
					Social & community service manager (GS–13, Step 5).	1	16		
					Database administrator (GS–13, Step 5).	1	40		
					Software/IT systems cost.	$250,000			
					Software/IT systems cost.	$5,000,000		One time	1

The Departments made the following updates for the Federal-level VR program, which are presented in Exhibit 37. We added a one-time software and IT cost of $68,925 to support the VR program's ability to compile quarterly

data reported by VR agencies into the annual reports required under WIOA. The ED will be developing and submitting the annual reports based on quarterly data submitted by the VR agencies. This cost was not included in the NPRM because at the time the NPRM was published, the PIRL and RSA–911 had not been finalized. Since that time, ED has completed a more comprehensive analysis of the data structure required to meet the WIOA requirements and found that additional software is necessary to support the development of the annual reports for VR agencies by ED.

EXHIBIT 37—UPDATES TO COSTS OF FEDERAL-LEVEL VR PROGRAMS—PERFORMANCE REPORTS

NPRM					Final rule				
(i) Performance reports					(c) Performance accountability system				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
N/A					*Performance Reports*				
					Software/IT systems cost.	$68,925		One-time	1

Exhibit 38 presents updates to the State-level DOL program. The Departments added one manager, one computer systems analyst, one management analyst, and one office and administrative support staff member to account for the annual effort related to ETP reporting.

EXHIBIT 38—UPDATES TO COSTS OF STATE-LEVEL DOL PROGRAMS—PERFORMANCE REPORTS

NPRM					Final rule				
(i) Performance reports					(c) Performance accountability system				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
N/A					*Performance Reports*				
					Management occupations staff.	1	8	Annual	57 States.
					Computer systems analyst.	1	40		
					Management analyst	1	60		
					Office & admin. support staff.	4	20		

The Departments made the following changes for the AEFLA program at the State level, which are presented in Exhibit 39. We concluded that the effort from all relevant staff members will occur on an annual basis rather than once. We reduced the number of managers from five to four after determining that this number will reflect more accurately the staffing level needed across all States and outlying areas. Three of these staff members are categorized as social and community service managers. We replaced the two technical staff members in our previous estimate with the more appropriate occupational categories of database administrator and computer systems analyst. We also revised the calculation to exclude the five administrative staff members included in our previous estimate because those occupational categories are generally not involved with performance reports. In addition, we moved the State data system costs to the subsection under provision (c) on "Development and Updating of State Performance Accountability Systems" where more realistic costs will be captured that States will incur in establishing the capabilities to collect the data necessary to calculate the newly required performance measures (see Exhibit 17). We have concluded that the one-time cost estimate for the State-level software and IT systems cost needed to be aligned with actual funding patterns across all States and outlying areas and will occur annually. In addition, we eliminated the recurring licensing fee, since we accounted for such fees in the annual cost estimate for the State data system under the subsection "Development and Updating of State Performance Accountability Systems."

EXHIBIT 39—UPDATES TO COSTS OF STATE-LEVEL AEFLA PROGRAMS—PERFORMANCE REPORTS

NPRM					Final rule				
(i) Performance reports					(c) Performance accountability system				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Manager	5	40	One time	56 States	*Development and Updating of State Performance Accountability Systems*				
Technical staff.	2	40			Software/IT systems cost.	$350,000		Annual	57 States.
Admin. staff	5	40			*Performance Reports*				
					Management occupations staff.	1	40	Annual	57 States.
Software/IT cost.	$1,750,000			57 States	Computer systems analyst.	1	40		
Licensing fee.	$25,000		Annual		Social & community service manager.	3	40		
					Database administrator	1	40		

At the State level for the VR program, the Departments made the following changes, which are presented in Exhibit 40. We added one manager, one computer systems analyst, two social and community service managers, and one database administrator to address the State-level effort involved in reviewing and verifying the annual performance report that RSA will assemble from the quarterly RSA–911 data the States have previously reported.

In response to comments, the Departments have included the burden associated with the training of VR staff on the collection of new data and related data collection requirements. Based on information from the RSA–2 Cost Report, we use an average of 62 rehabilitation counselors per VR agency in calculating this burden and have added labor burden of 6 hours for one staff trainer and 3 hours for each of the 62 rehabilitation counselors to participate in the training.

Finally, Exhibit 40 includes the annual labor for 62 rehabilitation counselors per VR agency to collect the new data. The data collection related labor burden included in this analysis is limited to the hours the Departments have attributed to the requirements under sec. 116 of title I of WIOA implemented in these joint regulations. We estimate that approximately 36 percent of all new data elements required by WIOA are related to requirements under sec. 116 of title I of WIOA and have prorated the total additional data collection burden accordingly. For the first year of data collection, VR agencies will incur a greater data collection burden than in subsequent years. All VR participants who are still receiving services (*i.e.*, have not exited) by the start of PY 2016 (July 1, 2016) become WIOA participants and will be counted and tracked in accordance with the WIOA performance requirements set forth in sec. 116 of WIOA. Based on State-reported RSA data for FY 2015, we estimate that each VR agency will incur an additional 3,600 hours in labor burden to collect sec. 116 performance data for current and new participants in the first year of data collection, or 58 additional hours per VR counselor. However, for the second and subsequent years of data collection under these final regulations, we estimate that each VR agency will incur an additional 945 hours per year in labor burden to collect joint performance data, or 15 hours per year per counselor. The data collection burden associated with the implementation of amendments to the VR program under title IV of WIOA is included in the RIA section of the final regulations for the "State Vocational Rehabilitation Services Program; State Supported Employment Services Program; Limitations on Use of Subminimum Wage" also published in this edition of the **Federal Register**.

EXHIBIT 40—UPDATES TO THE FINAL RULE ANALYSIS COSTS OF STATE-LEVEL VR PROGRAMS—PERFORMANCE REPORTS

NPRM					Final rule				
(i) Performance reports					(c) Performance accountability system				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
N/A					*Performance Reports—Review and Verify Annual Performance Reports*				
					Management occupations staff.	1	5	Annual	80 VR agencies.
					Computer systems analyst.	1	5		
					Social & community service manager.	2	10		

EXHIBIT 40—UPDATES TO THE FINAL RULE ANALYSIS COSTS OF STATE-LEVEL VR PROGRAMS—PERFORMANCE REPORTS—Continued

NPRM					Final rule				
(i) Performance reports					(c) Performance accountability system				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
					Database administrator	1	25		
					Performance Reports—Training on New Data Collection				
					Staff trainer	1	6	One time	80 VR agencies.
					Rehabilitation counselor	62	3		
					Performance Reports –Data Collection				
					Rehabilitation counselor	62	58	First year	80 VR agencies.
					Rehabilitation counselor	62	15	Second and subsequent years.	80 VR agencies.

At the local level for the AEFLA program, the Departments made the following updates, which are presented in Exhibit 41. We considered the extent of actual local involvement in performance reporting and additional burden under WIOA. Instead of presenting the costs at the State level as in the NPRM, we are presenting annual costs at the program, or local, level. As a result, we reduced the number of managers and the hours per local manager and increased the number of entities to reflect local programs for this provision. In addition, we added one database administrator for data collection, analysis, and entry.

EXHIBIT 41—UPDATES TO COSTS OF LOCAL-LEVEL AEFLA PROGRAMS—PERFORMANCE REPORTS

NPRM					Final rule				
(i) Performance reports					(c) Performance accountability system				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Manager	40	40	One time	57 States	*Performance Reports*				
					Management occupations staff.	1	8	Annual	2,396 local programs.
					Social & community service manager.	1	8		
					Database administrator	1	8		

Evaluation of State Programs

This section describes the updates to the NPRM's provision (j) "Evaluation of State Programs." In the Final Rule's subject-by-subject analysis, costs related to this provision can be found primarily in provision (d) "State Evaluation Responsibilities." [38] The cost of this provision of the Final Rule reflects the cost for affected entities to conduct evaluations of title I activities over multiple years to provide various forms of data for Federal evaluations, and for SWAs and other State agencies to coordinate in designing and developing evaluations carried out under sec. 116(e) of WIOA. For this provision, the total 10-year cost (undiscounted) decreased from $737.9 million in the NPRM to $222.5 million in this Final Rule.[39] [40]

At the Federal level for the DOL programs, the Departments made the following updates, which are presented in Exhibit 42. We added two managers, one computer system analyst, and two management analysts to account for Federal effort related to SWA evaluation activities under sec. 116(e) of WIOA. We added these Federal staff costs to support all aspects of State evaluation

[38] A small portion of State-level software and IT systems costs for the AEFLA program was moved to provision (c) "Performance Accountability System."

[39] A portion of the $222.5 million in costs accounts for software and IT systems costs from provision (e) "Development of Strategies for Aligning Technology and One-Stop Partner Programs" and provision (i) "Performance Reports." Thus, this value understates how much costs have decreased in this Final Rule relative to the NPRM.

[40] This variance in cost is due to the reduction in software and IT systems costs for State-level DOL programs and the removal of costs for local-level AEFLA programs.

activities, including technical assistance, monitoring, and dissemination.

EXHIBIT 42—UPDATES TO COSTS OF FEDERAL-LEVEL DOL PROGRAMS—EVALUATION OF STATE PROGRAMS

NPRM					Final rule				
(j) Evaluation of state programs					(d) State evaluation responsibilities				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
N/A					Management occupations staff (GS–14, Step 5).	2	25	Annual	1.
					Computer systems analysts (GS–13, Step 5).	1	3		
					Management analyst (GS–12, Step 5).	2	30		

Exhibit 43 presents the changes made by the Departments to reflect the cost of Federal AEFLA program staff in providing technical assistance and promoting State adult education agency participation in the coordination process, and possibly in the design and development of State evaluation activities under WIOA sec. 116(e). These Federal staff costs were added to support all aspects of State evaluation activities, including technical assistance, monitoring, and dissemination.

EXHIBIT 43—UPDATES TO COSTS OF FEDERAL-LEVEL AEFLA PROGRAMS—EVALUATION OF STATE PROGRAMS

NPRM					Final rule				
(j) Evaluation of state programs					(d) State evaluation responsibilities				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
N/A					Management occupations staff (GS–14, Step 5).	4	10	Annual	1.
					Computer systems analysts (GS–13, Step 5).	1	5		
					Management analyst (GS–12, Step 5).	2	30		

Exhibit 44 presents the changes made by the Departments to reflect the cost of Federal staff responsible for the VR program in providing technical assistance and promoting State VR agency participation and coordination in carrying out State evaluations under sec. 116(e) of WIOA, including possible involvement in the design and development of such evaluations. We added these Federal staff costs to support all aspects of State evaluation activities such as technical assistance, monitoring, and dissemination.

EXHIBIT 44—UPDATES TO COSTS OF FEDERAL-LEVEL VR PROGRAMS—EVALUATION OF STATE PROGRAMS

NPRM					Final rule				
(j) Evaluation of state programs					(d) State evaluation responsibilities				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
N/A					Management occupations staff (GS–14, Step 5).	2	5	Annual	1.
					Social & community service manager (GS–13, Step 5).	2	10		
					Management analyst (GS–12, Step 5).	2	15		

The Departments made the following updates to the State-level DOL programs, which are presented in Exhibit 45. After consultation with additional program experts, we made the following updates: (1) We replaced the manager in our previous estimate with the more appropriate occupational category of social and community service manager; (2) we replaced the two technical staff members in the previous estimate with the more appropriate occupational category of computer systems analyst and reduced the annual level of effort per staff member from 20 hours to 15 hours; (3) we added a management analyst with an annual level of effort of 10 hours; (4) we reduced the annual software and IT systems costs from $200,000 and $1 million for 20 "low-effort" States and 15 "high-effort" States, respectively, to $10,000 for all 57 SWAs; and (5) we added an annual consultant cost of $21,400. In the NPRM, we assumed that full cooperation would occur. Realistically, cooperation will be difficult to achieve because there is an overall lack of funding for evaluations; therefore, a reduced cost estimate is appropriate.

EXHIBIT 45—UPDATES TO COSTS OF STATE-LEVEL DOL PROGRAMS—EVALUATION OF STATE PROGRAMS

NPRM					Final rule				
(j) Evaluation of state programs					(d) State evaluation responsibilities				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Manager	1	20	Annual	56 States	Computer systems analyst.	2	15	Annual	57 SWAs.
Technical staff.	2	20			Social & community service manager.	1	20		
Admin. staff	1	10			Management analyst	1	10		
Software/IT systems cost ("Low-Effort" States).	$200,000			20 States	Office & admin. support staff.	1	10		
Software/IT systems cost ("High-Effort" States).	$1,000,000			15 States	Software/IT systems cost.	$10,000			
					Consultant cost	$21,400			

At the State level for the AEFLA program, the Departments made the following changes, which are presented in Exhibit 46. We reduced the number of managers from five to two after determining that the number needed to reflect an average staffing level for this activity across all States and outlying areas. One of these managers is categorized as a social and community service manager. We replaced the two technical staff members in the previous estimate with the more appropriate occupational categories of computer systems analysts and management analysts. We also revised the calculation to exclude the five administrative staff members included in the previous estimate, because those occupational categories are generally not involved in the evaluation of State programs. We reduced the level of effort for the staff because we have concluded that this work does not require the level of effort we initially estimated. In addition, we eliminated the annual IT systems costs from this provision and accounted for them under subsection "Development and Updating of State Performance Accountability Systems" in provision (c) of this Final Rule because they were more appropriately placed there (see Exhibit 17).

EXHIBIT 46—UPDATES TO COSTS OF STATE-LEVEL AEFLA PROGRAMS—EVALUATION OF STATE PROGRAMS

NPRM					Final rule				
(j) Evaluation of state programs					(c) Performance accountability system				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Manager	5	120	Annual	57 States	*Development and Updating of State Performance Accountability Systems*				
Technical staff.	2	80			Software/IT systems cost.	$350,000		Annual	57 States.
Admin. staff	5	80			(d) State Evaluation Responsibilities				

EXHIBIT 46—UPDATES TO COSTS OF STATE-LEVEL AEFLA PROGRAMS—EVALUATION OF STATE PROGRAMS—Continued

NPRM					Final rule				
(j) Evaluation of state programs					(c) Performance accountability system				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Software/IT systems cost.	$250,000				Management occupations staff.	1	10	Annual	57 SWAs.
					Computer systems analyst.	1	20		
					Social & community service manager.	1	10		
					Management analyst	1	20		

For the State VR program, the Departments replaced the technical staff member in the previous estimate with the more appropriate occupational category of computer systems analysts, as shown in Exhibit 47. In addition, we added one social community service manager and one management analyst.

EXHIBIT 47—UPDATES TO COSTS OF STATE-LEVEL VR PROGRAMS—EVALUATION OF STATE PROGRAMS

NPRM					Final rule				
(j) Evaluation of state programs					(d) State evaluation responsibilities				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Manager	1	1	Annual	80 VR agencies.	Management occupations staff.	1	1	Annual	80 VR agencies.
Technical staff.	1	13			Computer systems analyst.	1	13		
Admin. staff	1	2			Social & community service managers.	1	5		
					Management analyst	1	5		
					Office and admin. support staff.	1	2		

The Departments made the following changes for the local-level AEFLA program, which are presented in Exhibit 48. We reconsidered the extent of local involvement in the evaluation of State programs. As a result, we concluded that hours for local staff should be eliminated for this provision.

EXHIBIT 48—UPDATES TO COSTS OF LOCAL-LEVEL AEFLA PROGRAMS—EVALUATION OF STATE PROGRAMS

NPRM					Final rule				
(j) Evaluation of state programs					(d) State evaluation responsibilities				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Manager	40	120	Annual	57 States	N/A				
Technical staff.	40	80							
Admin. staff	40	80							

Effectiveness in Serving Employers

This section describes the updates to the rule's cost analysis. In the NPRM, the Departments did not include costs for States to implement effectiveness in serving employer approaches because, at the time of the NPRM's publication, policy decisions had not yet been made on whether these measures would be added to the rule. In the Final Rule, the Departments estimated the cost of the pilot program and the implementation

of the effectiveness in serving employers measures, which amounted to a total undiscounted 10-year cost of $6.4 million. See the cost subsection of section V.A.6 (Subject-by-Subject Analysis) below for details on this estimate.

6. Subject-by-Subject Cost-Benefit Analysis

The Departments' analysis below covers the expected costs of implementing the requirements of the Final Rule against the baseline cost under WIA, especially with regard to the following four expected costs: (a) "Time to Review the New Rule;" (b) "Unified or Combined State Plans: Expanded Content, Biennial Development and Modification Process, and Submission Coordination Requirements;" (c) "Performance Accountability System;" and (d) "State Evaluation Responsibilities."

The Departments emphasize that many of the requirements in this Final Rule are not new, for DOL programs, but rather were requirements under WIA. For example, States were required to "prepare performance reports" under title I of WIA and other authorizing statutes amended by WIA required States to submit performance information. Similarly, many of the requirements governing the one-stop system's infrastructure and operations under WIA are carried forward under WIOA. Therefore, these and other such costs are not considered "new" cost burdens under this Final Rule for some of the core programs, but rather are included in the "baseline costs" used as a comparison for the new burden costs. Accordingly, this regulatory analysis focuses on new costs that can be attributed exclusively to new requirements under title I of WIOA as addressed in this Final Rule.

a. Time To Review the New Rule

Upon publication of this Final Rule, the regulated community will need to learn about the new regulations and plan for compliance.

Affected entities will incur costs based primarily on the level of effort needed by relevant individuals to review and understand the Final Rule. This includes interpretation and learning how to navigate the Final Rule, but it does not include any steps beyond what is included in the baseline related to running a Federal program. Costs for developing a detailed action plan for compliance would not be included in the new cost burden because they will be accounted for in other burden estimate discussions. In addition, affected entities will incur relatively minor costs for the first steps needed to comply, such as notifying relevant personnel of the rule. The Departments estimate that learning about the new regulations and planning for compliance with those regulations will involve one-time labor costs for State-level DOL programs, State- and local-level AEFLA programs, and State VR agencies in the first analysis year. Local WDBs might incur limited costs under this provision, which are not accounted for below, because the costs for relevant individuals to comply are accounted for in the DOL, AEFLA, and VR agency estimates. DOL expects that the States will carefully review and interpret the Final Rule before passing along any necessary information to Local WDBs. Although Local WDBs are not required to review the Final Rule, those that do are likely to limit their review to a few paragraphs or sections most relevant to them.

i. Costs

At the State level for DOL's core programs (see Exhibit 5), the Departments estimated this labor cost by multiplying the estimated number of lawyers per State (4) by the time required to read and review the new rule (20 hours each), and then by the applicable hourly compensation rate ($65.48/hour). We performed the same calculation for the following occupational categories: Managers (1 manager at $65.39/hour for 20 hours) and social and community service managers (2 managers at $54.21/hour for 40 hours each). We summed the labor cost for all three categories ($10,883) and multiplied the result by the number of States (57) to estimate this one-time cost of $620,331. Over the 10-year period, this calculation yields an average annual cost of $62,033.

At the State level for the AEFLA program (see Exhibit 6), the Departments estimated this labor cost by multiplying the estimated number of lawyers per State (1) by the time required to read and review the new rule (20 hours) and then by the applicable hourly compensation rate ($65.48/hour). We performed the same calculation for the following occupational categories: Managers (1 manager at $65.39/hour for 40 hours) and social and community service managers (3 managers at $54.21/hour for 20 hours each). We summed the labor cost for all three categories ($7,178) and multiplied the result by the number of States (57). This calculation resulted in a one-time cost of $409,135, which is equal to an average annual cost of $40,913.

At the local level for the AEFLA program (see Exhibit 8), the Departments multiplied the estimated number of managers (1) by the time required to read and review the new rule (4 hours) and then by the hourly compensation rate ($63.63/hour). We repeated the calculation for social and community service managers (1 manager at $61.01/hour for 4 hours). We did not estimate lawyer hours for local-level AEFLA programs because our experience indicates that this occupational category is typically engaged only at the State level. We summed the labor cost for both occupational categories ($499) and multiplied the result by the number of local AEFLA providers (2,396). This calculation yields $1.2 million ($1,194,550) in labor costs in the first year of the rule. Over the 10-year period, this calculation yields an average annual cost of $119,455.

For State VR agencies (see Exhibit 7), the Departments multiplied the estimated number of managers per VR agency (1) by the time required to read and review the new rule (40 hours) and then by the hourly compensation rate ($65.39/hour). We performed the same calculation for the following occupational categories: Social and community service managers (3 managers at $54.21/hour for 40 hours each) and rehabilitation counselors (3 counselors at $36.66/hour for 40 hours each). We summed the labor cost for all three categories ($13,520) and multiplied the result by the number of VR agencies (80). This calculation resulted in a one-time labor cost of $1.1 million ($1,081,600), which is equal to an average annual cost of $108,160 over the 10-year period.

The sum of these costs yields a total one-time labor cost of $3.3 million ($3,305,615) for individuals from State-level DOL programs, State- and local-level AEFLA programs, and State VR agencies to read and review the new rule. Over the 10-year period of analysis, these one-time costs result in an average annual cost of $330,562.

b. Unified or Combined State Plans: Expanded Content, Biennial Development and Modification Process, and Submission Coordination Requirements

Under WIOA title I, each State must develop and submit a 4-year Unified State Plan that covers the following six core programs: The adult, dislocated worker, and youth formula programs (WIOA title I); the AEFLA program (WIOA title II); the Employment Service program authorized under the Wagner-Peyser Act, as amended by WIOA title

III; and the VR program as authorized by title I of the Rehabilitation Act of 1973, as amended by WIOA title IV. In the alternative, a State may submit a 4-year Combined State Plan that covers the six core programs plus one or more Combined State Plan partner programs identified in sec. 103(a)(2) of WIOA. Section 103(b)(1) of WIOA requires the portion of a Combined State Plan covering the core programs to meet the same requirements as for a Unified State Plan under sec. 102 of WIOA. States must have an approved Unified or Combined State Plan in place to receive funding for the six core programs.

Under WIA, States were required to submit separate State Plans that covered: (1) The title I and Wagner-Peyser Act Employment Service DOL programs; (2) the AEFLA program; and (3) the VR program. Because States, under WIOA, must integrate what had historically been stand-alone State Plans for the AEFLA and VR programs into a single Unified or Combined State Plan with the title I and Wagner-Peyser Act Employment Service DOL programs, the Departments anticipate added cost burdens for the States as they work together to strategize alignment of all six core programs into one Unified or Combined State Plan. Thus, the requirement that the Unified or Combined State Plan must include the ED-administered programs is new under WIOA.

Affected entities will incur costs to (1) review and develop new 4-year Unified or Combined State Plans to ensure that they satisfy the new content requirements; (2) perform the development and modification process for the plans; and (3) coordinate on developing a Unified or Combined State Plan that covers all six core programs.

i. Expanded Content

WIOA sec. 102(b) expands the content requirements for Unified and Combined State Plans, many of which are new to all core programs, such as strategic and operational planning elements. Strategic planning elements include State analyses of economic and workforce conditions, an assessment of workforce development activities (including education and training) in the State, and formulation of the State's vision and goals for preparing an educated and skilled workforce that meets the needs of employers and a strategy to achieve the vision and goals. Operational planning elements include State strategy implementation, State operating systems and policies, program-specific requirements, assurances, and additional requirements imposed by the Secretaries of Labor and Education, or other Secretaries (for Combined State Plan purposes), as appropriate. Most of the WIOA operational planning elements are functionally equivalent to State Plan content requirements that were required by DOL's core programs under WIA sec. 112(b). The WIOA strategic planning elements, however, constitute new or expanded State planning requirements for all core programs that were not required under WIA. For example, WIOA requires that more economic, education, and workforce data be included in the State Plan than was required under WIA.[41]

Therefore, this will be an expansion of a State planning requirement for DOL's core programs under WIOA and will be new requirements for the AEFLA and VR programs. Because DOL core programs were already analyzing and using economic, education, and workforce data under WIA, those programs will not experience as much in incremental costs associated with that particular requirement as will the AEFLA and VR programs. The Departments anticipate that any costs incurred by the States with regard to new or expanded State planning content requirements will constitute one-time incremental costs for all core programs to ensure that all Unified or Combined State Plans satisfy the new content requirements.

Costs

At the State level for the DOL core programs (see Exhibit 26), the Departments estimated this labor cost by multiplying the estimated number of lawyers per State (1) by the time required to review and develop new Unified or Combined State Plans to ensure that the new elements are included (8 hours) and by the hourly compensation rate ($65.48/hour). We performed the same calculation for the following occupational categories: Managers (4 managers at $65.39/hour for 20 hours each), social and community service managers (2 managers at $54.21/hour for 20 hours each), and office and administrative support staff members (1 staff member at $30.57/hour for 8 hours). We summed the labor cost for all four categories ($8,168) and multiplied the result by the number of States (57) to estimate this one-time cost of $465,576. Over the 10-year period, this calculation yields an average annual cost of $46,558.

At the State level for the AEFLA program (see Exhibit 27), the Departments estimated this cost by multiplying the estimated number of lawyers per State (1) by the time required to review and develop new Unified or Combined State Plans to ensure that the new elements are included (20 hours) and by the hourly compensation rate ($65.48/hour). We performed the same calculation for the following occupational categories: Managers (1 manager at $65.39/hour for 20 hours) and social and community service managers (3 managers at $54.21/hour for 20 hours each). We summed the labor cost for the three occupational categories ($5,870) and multiplied the result by the number of States (57). This calculation yields $334,590 in one-time labor costs, which is equal to an average annual cost of $33,459 over the 10-year period.

For State VR agencies (see Exhibit 28), the Departments estimated this cost by first multiplying the estimated number

[41] WIOA sec. 102(b)(1) requires:

(1) Strategic Planning Elements.—The Unified State Plan shall include strategic planning elements consisting of a strategic vision and goals for preparing an educated and skilled workforce, that include—

(A) an analysis of the economic conditions in the State, including—

(i) existing and emerging in-demand industry sectors and occupations; and

(ii) the employment needs of employers, including a description of the knowledge, skills, and abilities, needed in those industries and occupations;

(B) an analysis of the current workforce, employment and unemployment data, labor market trends, and the educational and skill levels of the workforce, including individuals with barriers to employment (including individuals with disabilities), in the State;

(C) an analysis of the workforce development activities (including education and training) in the State, including an analysis of the strengths and weaknesses of such activities, and the capacity of State entities to provide such activities, in order to address the identified education and skill needs of the workforce and the employment needs of employers in the State;

(D) a description of the State's strategic vision and goals for preparing an educated and skilled work-force (including preparing youth and individuals with barriers to employment) and for meeting the skilled work-force needs of employers, including goals relating to performance accountability measures based on primary indicators of performance described in section 116(b)(2)(A), in order to support economic growth and economic self-sufficiency, and of how the State will assess the overall effectiveness of the workforce investment system in the State; and

(E) taking into account analyses described in subparagraphs (A) through (C), a strategy for aligning the core programs, as well as other resources available to the State, to achieve the strategic vision and goals described in subparagraph (D).

WIA sec. 112(b)(4) required:

(b) Contents.—The State plan shall include—

* * * * *

(4) information describing—

(A) the needs of the State with regard to current and projected employment opportunities, by occupation;

(B) the job skills necessary to obtain such employment opportunities;

(C) the skills and economic development needs of the State; and

(D) the type and availability of workforce investment activities in the State;

of managers per VR agency (2) by the time required to review and develop new Unified or Combined State Plans to ensure that the new elements are included (21 hours each) and by the hourly compensation rate ($65.39/hour). We performed the same calculation for social and community service managers (2 managers at $54.21/hour for 21 hours each). Summing the labor cost for both categories ($5,023) and multiplying the result by the number of VR agencies (80) will result in a one-time cost of $401,856. Over the 10-year period, this calculation yields an average annual cost of $40,186.

The sum of these costs yields a total one-time cost of $1.2 million ($1,202,022) for individuals from the State-level DOL core programs, AEFLA program, and VR agencies to review and develop new Unified or Combined State Plans to ensure that the new elements are included. Over the 10-year period of analysis, these one-time costs result in an average annual cost of $120,202.

ii. New 4-Year State Plan Development and Modification

Under WIA sec. 112(d), modifications to a State Plan covering the DOL core programs were permitted but not required. For the AEFLA program under WIA sec. 224, States submitted 5-year State Plans, and revisions to plans were required only if those revisions were substantial. Upon the expiration of authorization of the program, and pending reauthorization, States submitted annual State Plan extensions containing revisions that were updated sections of their original 5-year plans. For the VR program under title IV of WIA (sec. 101 of the Rehabilitation Act), States were required to update specified State Plan attachments annually and modifications to State Plan assurances and other attachments were required only if substantive changes occurred. Under WIOA sec. 102(c)(3)(A), States must submit modifications to the Unified or Combined State Plan, at a minimum, at the end of the first 2-year period of any 4-year Plan. The modifications must reflect changes in labor market and economic conditions or other factors affecting implementation of the 4-year Unified or Combined State Plan. This mandatory biennial review and modification of a 4-year Unified or Combined State Plan is a new cost under WIOA for all six core programs.

State-level DOL programs, AEFLA programs, and VR agencies will incur biennial labor costs to review and modify the Unified or Combined State Plan at the end of the 2-year period after any 4-year plan. In the absence of significant economic or administration changes within a State, most costs resulting from the State Plan modification requirements will occur during the first and second submissions because the unified State planning process is new for all core programs and States will just be learning the new requirements of WIOA and how to coordinate among all core programs so that they become more aligned to promote an integrated workforce development system. The Departments anticipate that new Unified or Combined State Plans submitted in 2020 and thereafter, and the 2-year modifications of those Plans, will be easier for States to develop. For this reason, we present the costs by year of submission of either the development of a 4-year Unified or Combined State Plan or the 2-year modification of that Plan.

Costs

Four-Year Plan Modification—Third Year

At the State level for the DOL core programs (see Exhibit 9), the Departments estimated this labor cost by multiplying the estimated number of lawyers per State (1) by the time required to review and modify the 4-year Unified or Combined State Plan (4 hours) and by the hourly compensation rate ($65.48/hour). We performed the same calculation for the following occupational categories: Managers (1 manager at $65.39/hour for 12 hours), management analysts (2 analysts at $45.88/hour for 12 hours each), and office and administrative support staff members (1 staff member at $30.57/hour for 4 hours). We summed the labor cost for all four categories ($2,270) and multiplied the result by the number of States (57) to estimate this one-time cost of $129,390, occurring in 2018. Over the 10-year period, this calculation yields an average annual cost of $12,939.

At the State level for the AEFLA program (see Exhibit 10), the Departments estimated this cost by multiplying the estimated number of lawyers per State (1) by the time required to review and modify the 4-year Unified or Combined State Plan (10 hours) and by the hourly compensation rate ($65.48/hour). We performed the same calculation for the following occupational categories: Managers (1 manager at $65.39/hour for 10 hours) and social and community service managers (3 managers $54.21/hour for 10 hours each). We summed the labor cost for the three occupational categories ($2,935) and multiplied the result by the number of States (57). This results in a one-time cost of $167,295, occurring in 2018. Over the 10-year period of the analysis, this one-time cost results in an average annual cost of $16,730.

For State VR agencies (see Exhibit 11), the Departments estimated this cost by first multiplying the estimated number of managers per VR agency (2) by the time required to review and modify the 4-year Unified or Combined State Plan (14 hours each) and by the hourly compensation rate ($65.39/hour). We performed the same calculation for social and community service managers (2 managers at $54.21/hour for 14 hours each). Summing the labor cost for both categories ($3,349) and multiplying the result by the number of VR agencies (80), we estimate this one-time cost at $267,904, occurring in 2018. This calculation yields an average annual cost of $26,790 over the 10-year period.

The sum of these costs yields a total one-time cost of $564,589, occurring in 2018, for individuals from the State-level DOL core programs, AEFLA program, and VR agencies to review and modify the 4-year Unified or Combined State Plan. Over the 10-year period of analysis, these one-time costs result in an average annual cost of $56,459.

Development of 4-Year State Plan—Fifth Year

At the State level for the DOL core programs (see Exhibit 9), the Departments estimated this labor cost by multiplying the estimated number of lawyers per State (1) by the time required to review and develop a new 4-year Unified or Combined State Plan (4 hours) and by the hourly compensation rate ($65.48/hour). We performed the same calculation for the following occupational categories: Managers (1 manager at $65.39/hour for 12 hours), management analysts (2 analysts at $45.88/hour for 12 hours each), and office and administrative support staff members (1 staff member at $30.57/hour for 4 hours). We summed the labor cost for all four categories ($2,270) and multiplied the result by the number of States (57) to estimate this one-time cost of $129,390, occurring in 2020. This one-time cost results in an average annual cost of $12,939 over the 10-year period.

At the State level for the AEFLA program (see Exhibit 10), the Departments estimated this cost by multiplying the estimated number of lawyers per State (1) by the time required to review and develop a new 4-year Unified or Combined State Plan (15 hours) and by the hourly compensation rate ($65.48/hour). We performed the same calculation for the following occupational categories:

Managers (1 manager at $65.39/hour for 15 hours) and social and community service managers (3 managers at $54.21/hour for 15 hours each). We summed the labor cost for the three occupational categories ($4,403) and multiplied the result by the number of States (57). This will result in a one-time cost of $250,943, occurring in 2020. Over the 10-year period, this calculation yields an average annual cost of $25,094.

For State VR agencies (see Exhibit 11), the Departments estimated this cost by first multiplying the estimated number of managers per VR agency (2) by the time required to review and develop a new 4-year Unified or Combined State Plan (10 hours each) and by the hourly compensation rate ($65.39/hour). We performed the same calculation for social and community service managers (2 managers at $54.21/hour for 10 hours each). We summed the labor cost for both categories ($2,392) and multiplied the result by the number of VR agencies (80). This calculation yields $191,360 in one-time labor costs, occurring in 2020. This one-time cost results in an average annual cost of $19,136 over the 10-year period.

The sum of these costs yields a total one-time cost of $571,693, occurring in 2020, for individuals from the State-level DOL core programs, AEFLA program, and VR agencies to review and develop a new 4-year Unified or Combined State Plan. Over the 10-year period of analysis, the sum of these one-time costs results in an average annual cost of $57,169.

Four-Year State Plan Modification—Seventh Year

At the State level for the DOL core programs (see Exhibit 9), the Departments estimated this labor cost by multiplying the estimated number of lawyers per State (1) by the time required to review and modify the 4-year Unified or Combined State Plan (4 hours) and by the hourly compensation rate ($65.48/hour). We performed the same calculation for the following occupational categories: Managers (1 manager at $65.39/hour for 8 hours), management analysts (2 analysts at $45.88/hour for 8 hours each), and office and administrative support staff members (1 staff member at $30.57/hour for 4 hours). We summed the labor cost for all four categories ($1,641) and multiplied the result by the number of States (57) to estimate this cost of $93,560, occurring in 2022. This is equal to an average annual cost of $9,356.

At the State level for the AEFLA program (see Exhibit 10), the Departments estimated this cost by multiplying the estimated number of lawyers per State (1) by the time required to review and modify the 4-year Unified or Combined State Plan (5 hours) and by the hourly compensation rate ($65.48/hour). We performed the same calculation for the following occupational categories: Managers (1 manager at $65.39/hour for 5 hours) and social and community service managers (3 managers at $54.21/hour for 5 hours each). We summed the labor cost for the three occupational categories ($1,468) and multiplied the result by the number of States (57). This results in a one-time cost of $83,648, occurring in 2022. This is equal to an average annual cost of $8,365.

For State VR agencies (see Exhibit 11), the Departments estimated this cost by first multiplying the estimated number of managers per VR agency (2) by the time required to review and modify the 4-year Unified or Combined State Plan (7 hours) and by the hourly compensation rate ($65.39/hour). We performed the same calculation for social and community service managers (2 managers at $54.21/hour for 7 hours each). Summing the labor cost for both categories ($1,674) and multiplying the result by the number of VR agencies (80), we estimate this one-time cost of $133,952, occurring in 2022. This is equal to an average annual cost of $13,395.

The sum of these costs for the modification process occurring for new 4-year Unified or Combined State Plans yields a total cost of $311,159, occurring in 2022, for individuals from the State-level DOL core programs, AEFLA program, and VR agencies. Over the 10-year period of analysis, this results in an average annual cost of $31,116.

Development of 4-Year State Plan—Ninth Year

At the State level for the DOL core programs (see Exhibit 9), the Departments estimated this labor cost by multiplying the estimated number of lawyers per State (1) by the time required to review and develop a new 4-year Unified or Combined State Plan (4 hours) and by the hourly compensation rate ($65.48/hour). We performed the same calculation for the following occupational categories: Managers (1 manager at $65.39/hour for 10 hours), management analysts (2 analysts at $45.88/hour for 10 hours each), and office and administrative support staff members (1 staff member at $30.57/hour for 4 hours). We summed the labor cost for all four categories ($1,956) and multiplied the result by the number of States (57) to estimate this one-time cost of $111,475, occurring in 2024. This one-time cost results in an average annual cost of $11,147 over the 10-year period.

At the State level for the AEFLA program (see Exhibit 10), the Departments estimated this cost by multiplying the estimated number of lawyers per State (1) by the time required to review and develop a new 4-year Unified or Combined State Plan (10 hours) and by the hourly compensation rate ($65.48/hour). We performed the same calculation for the following occupational categories: Managers (1 manager at $65.39/hour for 10 hours) and social and community service managers (3 managers at $54.21/hour for 10 hours each). We summed the labor cost for the three occupational categories ($2,935) and multiplied the result by the number of States (57). This will result in a one-time cost of $167,295, occurring in 2024. Over the 10-year period, this calculation yields an average annual cost of $16,730.

For State VR agencies (see Exhibit 11), the Departments estimated this cost by first multiplying the estimated number of managers per VR agency (2) by the time required to review and develop a new 4-year Unified or Combined State Plan (7 hours each) and by the hourly compensation rate ($65.39/hour). We performed the same calculation for social and community service managers (2 managers at $54.21/hour for 7 hours each). We summed the labor cost for both categories ($1,674) and multiplied the result by the number of VR agencies (80). This calculation yields $133,952 in one-time labor costs, occurring in 2024. This one-time cost results in an average annual cost of $13,395 over the 10-year period.

The sum of these costs yields a total one-time cost of $412,722, occurring in 2024, for individuals from the State-level DOL core programs, AEFLA program, and VR agencies to review and develop a new 4-year Unified or Combined State Plan. Over the 10-year period of analysis, the sum of these one-time costs results in an average annual cost of $41,272.

In total, the cost for the biennial development and modification process over the 10-year period is $1.9 million ($1,860,163). This estimated total 10-year cost results in an average annual cost of $186,016.

iii. Coordinating Submissions

Affected entities will incur costs associated with coordinating actions among the core programs administered by DOL and ED because, as explained above, under WIA, only the DOL core programs were covered by a single State Plan; the AEFLA and VR programs each

had stand-alone State Plans under WIA. For State WDBs, the Departments estimate that costs will be associated with State planning attributed to the extra effort to coordinate and develop a plan that covers all six core programs, which is a new requirement under WIOA.

The Departments estimate that the AEFLA and VR programs will incur one-time costs associated with coordinating and participating in statewide stakeholder meetings and other activities to coordinate, develop, and review their first-time State Plan submissions. We anticipate that the AEFLA and VR programs will incur a larger cost than the DOL core programs because, under WIA, neither the AEFLA nor VR program were required to coordinate with other partner programs in developing a State Plan. We also anticipate that the DOL core programs will experience an incremental increase in their coordination costs because this will be the first time that DOL core programs must coordinate with the AEFLA and VR programs for State planning purposes. Although the DOL core programs have had to coordinate with each other under WIA, because new relationships will need to be formed with the AEFLA and VR partners, their costs will increase.

In addition, in some States, different agencies that previously have not worked together will have to build infrastructure to form partnerships. Working together might take the form of "shaking hands" and following a "model agreement" involving State councils.

Compliance with this provision will increase biennial labor costs—in connection with the development of a 4-year Unified or Combined State Plan or the 2-year modifications of each of those plans—for State-level DOL core programs, State- and local-level AEFLA programs, and State-level VR agencies.

Costs

At the State level for the DOL core programs (see Exhibit 26), the Departments estimated this labor cost by multiplying the estimated number of managers per State (1) by the time required to coordinate on developing a Unified or Combined State Plan among all six core programs (8 hours) and by the hourly compensation rate ($65.39/hour). We performed the same calculation for the following occupational categories: Management analysts (2 analysts at $45.88/hour for 8 hours each) and office and administrative support staff members (1 staff member at $30.57/hour for 8 hours). We summed the labor cost for all three categories ($1,502) and multiplied the result by the number of States (57) to estimate this biennial cost of $85,600. Over the 10-year period, this calculation yields a total cost of $428,002, which is equal to an average annual cost of $42,800.

At the State level for the AEFLA program (see Exhibit 27), the Departments estimated this labor cost by multiplying the estimated number of lawyers per State (1) by the time required to coordinate on developing the Unified or Combined State Plan submission (4 hours) and by the hourly compensation rate ($65.48/hour). We performed the same calculation for the following occupational categories: Managers (1 manager at $65.39/hour for 8 hours), social and community service managers (3 managers at $54.21/hour for 8 hours each), and office and administrative support staff members (1 staff member at $30.57/hour for 8 hours). We summed the labor cost for all four categories ($2,331) and multiplied the result by the number of States (57). This calculation yields a biennial cost of $132,846. Over the 10-year period, this calculation results in a total cost of $664,232, which is equal to an average annual cost of $66,423.

At the local level for the AEFLA program (see Exhibit 29), the Departments estimated this cost by multiplying the estimated number of managers per local AEFLA provider (1) by the time required to coordinate on developing the Unified or Combined State Plan submission (4 hours) and by the hourly compensation rate ($63.63/hour). We repeated the calculation for social and community service managers (1 manager at $61.01/hour for 4 hours). We summed the labor cost for the two occupational categories ($499) and multiplied the result by the number of local AEFLA providers (2,396). The biennial cost at the local level for the AEFLA program is estimated to be $1.2 million ($1,194,550). Over the 10-year period, this calculation results in a total cost of $6.0 million ($5,972,749), which is equal to an average annual cost of $597,275.

For State VR agencies (see Exhibit 28), the Departments estimated this cost by first multiplying the estimated number of managers per VR agency (2) by the time required to coordinate and develop the Unified or Combined State Plan submission (14 hours each) and by the hourly compensation rate ($65.39/hour). We performed the same calculation for social and community service managers (2 managers at $54.21/hour for 14 hours each). Summing the labor cost for both categories ($3,349) and multiplying the result by the number of VR agencies (80) results in a biennial cost of $267,904 for State VR agencies. Over the 10-year period, this calculation yields a total cost of $1.3 million ($1,339,520), which is equal to an average annual cost of $133,952.

The sum of these costs yields a biennial cost of $1.7 million ($1,680,901). Over the 10-year period, this calculation results in a total cost of $8.4 million ($8,404,503), which is equal to an average annual cost of $840,450, for individuals from State-level DOL core programs, State- and local-level AEFLA programs, and State-level VR agencies to coordinate actions among all six core programs.

The sum of the costs for the Unified or Combined State Plans: Expanded Content, Biennial Development and Modification Process, and Submission Coordination requirements, which includes the costs to expand content requirements, develop and modify State Plans, and coordinate the submission of State Plans results in a 10-year total cost of $11.5 million ($11,466,688), which results in an average annual cost of $1.1 million ($1,146,669).

c. Performance Accountability System

WIOA sec. 116 establishes performance accountability indicators and performance reporting requirements to assess the effectiveness of States and local areas in achieving positive outcomes for individuals served by the six core programs (WIOA sec. 116(b)(3)(A)(ii)). With few exceptions, including the local accountability system under WIOA sec. 116(c), the performance accountability requirements apply across all six core programs.

Affected entities will incur costs to (1) develop and update their State performance accountability system; (2) implement measures for data collection and reporting on effectiveness of serving employers; (3) negotiate levels of performance; (4) run statistical adjustment model to adjust levels of performance based on actual economic conditions and characteristics of participants; (5) collect data to report on any additional State performance accountability indicators; (6) provide technical assistance to States; (7) develop a performance report template that reports outcomes via the new WIOA performance accountability metrics; develop, update, and submit ETP reports; and collect, analyze, and report performance data; (8) obtain UI wage data; and (9) purchase data analytic software and perform training.

i. Development and Updating of State Performance Accountability Systems

Under WIOA sec. 101(d)(8), States must help Governors develop strategies for aligning technology and data systems across one-stop partner programs to enhance service delivery and improve efficiencies in reporting on performance accountability measures. This WIOA provision specifies that such strategies must include design and implementation of common intake, data collection, case management information, and performance accountability measurement and reporting processes. The strategies also must incorporate local input to such design and implementation to improve coordination of services across one-stop partner programs.

Although this State WDB requirement is implemented in the DOL WIOA Final Rule, one-stop partner programs will have to contribute to the development of the data system alignment strategies required by WIOA. Moreover, the implementation of these data system alignment strategies developed by the State WDBs—the actual alignment of technology and data systems across one-stop partner programs—would impose costs on one-stop partners. For these reasons, the Departments consider the costs imposed on State WDBs and the potential future costs to one-stop partner programs by this WIOA requirement a cost of this Final Rule.

WIOA sec. 116(b)(2)(A)(i) establishes six primary indicators of performance for measuring the effectiveness of activities provided for under each of the core programs:

(1) Percentage of program participants who are in unsubsidized employment during the second quarter after exit from the program;

(2) Percentage of program participants who are in unsubsidized employment during the fourth quarter after exit from the program;

(3) Median earnings of program participants who are in unsubsidized employment during the second quarter after exit from the program;

(4) Percentage of program participants who obtain a recognized postsecondary credential, or a secondary school diploma or its recognized equivalent, during participation in or within 1 year after exit from the program;

(5) Percentage of program participants who, during a program year, are in an education or training program that leads to a recognized postsecondary credential or employment and who are achieving measurable skill gains toward such a credential or employment; and

(6) Indicator(s) of effectiveness in serving employers.[42]

Under WIOA sec. 116(b)(2)(A)(i), however, the fourth and fifth indicators are not applicable to the Wagner-Peyser Act Employment Service program because that program provides no education or training services, which are measured by those performance indicators. Additionally, for youth activities authorized under WIOA title I, subtitle B, WIOA specifies slightly modified versions of the first two primary indicators of performance.[43] Under WIA sec. 136, the performance indicators differed and applied only to activities under the adult, dislocated worker, and youth formula programs administered by DOL. Under WIA sec. 212, the AEFLA program was subject to indicators of performance that applied specifically to that program. The VR program was subject to standards and indicators of performance established under the Rehabilitation Act. Thus, the task of measuring program effectiveness through the calculation and updating of levels of performance as indicated by the specific performance indicator metrics established in WIOA is somewhat new for all six core programs.

The Departments assume that the potential implementation of the strategies for aligning technology and data systems across one-stop partner programs would involve consulting and software and IT systems for State-level DOL programs and VR agencies. There would be larger upfront consulting costs to design the system and software and IT systems costs to purchase hardware and implement the system. Subsequent software and IT systems costs would also be incurred for maintaining the systems. Some States are already working to better align technology and data systems where feasible and are at varying points in the alignment process. States that are farther in the process will require less effort for alignment than those using legacy systems. We estimate that 40 percent of State-level DOL programs (*i.e.*, SWAs) (23 SWAs) and VR agencies (32 agencies) will be "low-effort" SWAs and VR agencies, and 60 percent will be "high-effort" SWAs (34 SWAs) and VR agencies (48 agencies). These estimates are based on the Departments' experience with WIA programs and information received from SWAs, and represent costs for average SWAs and VR agencies within each effort classification. We understand that some SWAs and VR agencies will experience costs far exceeding those we account for in "high-effort" entities and far below those estimated for "low-effort" entities. In addition, the Departments anticipate that the State-level AEFLA programs will incur annual software and IT systems costs to enhance their participation in the SLDS Grant Program, which supports the design, development, implementation, and expansion of P–20W (early learning through the workforce) longitudinal data systems.

The affected entities will incur costs to develop and update their performance accountability systems, which involves establishing the capabilities to collect and regularly update the relevant performance data. State-level DOL core programs, State- and local-level AEFLA programs, and Federal- and State-level VR agencies will incur labor costs related to complying with this provision's requirements in the first year of the Final Rule. Furthermore, compliance will result in a one-time non-labor cost for software and IT systems for the Federal DOL program. For State-level DOL core programs, compliance will result in one-time non-labor costs for software and IT systems and consultants and annual non-labor costs for licensing fees. In addition, compliance will result in annual software and IT systems costs for the AEFLA program at the State level.

Costs

Aligning Technology and Data Systems Across One-Stop Partner Programs

For the future costs associated with implementing strategies for aligning technology and data systems across one-stop partner programs (see Exhibit 22), the Departments estimated costs for "low-" and "high-effort" SWAs for DOL core programs. We estimated the consultant cost for "low-effort" SWAs by multiplying the one-time consultant cost ($100,000) by the number of "low-effort" SWAs (23). This calculation yields a one-time cost of $2.3 million ($2,300,000) in the first year of the Final Rule, which is equal to an average annual cost of $230,000 over the 10-year period.

The Departments estimated the consultant cost for "high-effort" SWAs

[42] WIOA sec. 116(b)(2)(A)(iv) requires DOL and ED to develop one or more indicators of performance to measure the effectiveness of the core programs in serving employers.

[43] WIOA sec. 116(b)(2)(A)(ii) establishes the following youth performance indicators in place of the first and second indicators applicable to the other core programs: (1) The percentage of program participants who are in education or training activities, or in unsubsidized employment, during the second quarter after exit from the program; and (2) the percentage of program participants who are in education or training activities, or in unsubsidized employment, during the fourth quarter after exit from the program.

by multiplying the sum of the consultant cost for the first year of the rule ($200,000) and for the second year ($100,000) by the number of "high-effort" SWAs (34). This results in a 10-year total cost of $10.2 million ($10,200,000), which is equal to an average annual cost of $1.0 million ($1,020,000).

The Departments estimated the software and IT systems cost for "low-effort" SWAs by multiplying the sum of the cost for the first year of the rule ($200,000) and the cost for the second and third years ($100,000 per year) by the number of "low-effort" SWAs (23). This calculation yields a total 10-year cost of $9.2 million ($9,200,000), which is equal to an average annual cost of $920,000.

The Departments estimated the software and IT systems cost for "high-effort" SWAs by multiplying the sum of the cost for the first and second years of the rule ($200,000 per year) and the cost in for the third year through the fifth year ($100,000 per year) by the number of "high-effort" SWAs (34). This calculation results in an average annual cost of $2.4 million ($2,380,000), which is equal to a total cost of $23.8 million ($23,800,000) over the 10-year period.

For the State-level AEFLA program (see Exhibit 23), the Departments estimated the software and IT systems cost for States to enhance their participation in the SLDS Grant Program by multiplying the annual software and IT cost ($100,000) by the number of States (57). This calculation results in a total 10-year cost of $57.0 million ($57,000,000), which is equal to an average annual cost of $5.7 million ($5,700,000).

The Departments estimated implementation and future alignment costs for "low-" and "high-effort" VR agencies (see Exhibit 24). We estimated the consultant cost for "low-effort" VR agencies by multiplying the one-time consultant cost ($100,000) by the number of "low-effort" VR agencies (32). This calculation yields a one-time cost of $3.2 million ($3,200,000) in the first year of the rule, which is equal to an average annual cost of $320,000 over the 10-year period.

The Departments estimated the consultant cost for "high-effort" VR agencies by multiplying the sum of the consultant cost for the first year of the rule ($200,000) and the second year ($100,000) by the number of "high-effort" VR agencies (48). This results in a total 10-year cost of $14.4 million ($14,400,000), which is equal to an average annual cost of $1.4 million ($1,440,000) over the 10-year period.

The Departments estimated the software and IT systems cost for "low-effort" VR agencies by multiplying the sum of the cost for the first year of the rule ($200,000) and the cost for the second and third years ($100,000 per year) by the number of "low-effort" VR agencies (32). This calculation yields a total 10-year cost of $12.8 million ($12,800,000), which is equal to an average annual cost of $1.3 million ($1,280,000).

The Departments estimated the software and IT systems cost for "high-effort" VR agencies by multiplying the sum of the cost for the first and second years of the rule ($200,000 per year) and the cost for the third year through the fifth year ($100,000 per year) by the number of "high-effort" VR agencies (48). This calculation results in a total 10-year cost of $33.6 million ($33,600,000), which is equal to an average annual cost of $3.4 million ($3,360,000).

The sum of these potential costs for aligning technologies and data systems across one-stop partner programs yields a total cost of $166.5 million ($166,500,000) in non-labor costs from the SWAs, the State-level AEFLA program, and VR agencies. Over the 10-year analysis, these costs result in an average annual cost of $16.7 million ($16,650,000).

Development and Updating of State Performance Accountability Systems

For the costs related to developing and updating State performance accountability systems (see Exhibit 13), the Departments estimated the one-time Federal software and IT systems cost for DOL to be $750,000 in the first year of the Final Rule. This is equivalent to an average annual cost of $75,000.

At the State level for DOL core programs (*i.e.*, SWAs) (see Exhibit 16), the Departments estimated this labor cost by first multiplying the estimated number of managers per SWA (1) by the time required to develop and update the performance accountability system (32 hours) and by the hourly compensation rate ($65.39/hour). We performed the same calculation for computer systems analysts (3 analysts at $56.17/hour for 80 hours each) and office and administrative support staff members (1 staff member at $30.57/hour for 72 hours). We summed the labor cost for all three categories ($17,774) and multiplied the result by the number of SWAs (57) to estimate a one-time cost of $1.0 million ($1,013,136). Over the 10-year period, this calculation yields an average annual cost of $101,314.

The Departments estimated the software and IT systems cost for SWAs by multiplying the software and IT systems cost per SWA ($100,000) by the number of SWAs (57). This calculation yields a one-time cost of $5.7 million ($5,700,000) in the first year of the rule, which results in an average annual cost of $570,000 over the 10-year period.

The Departments estimated the licensing fees for SWAs by multiplying the annual licensing fee per SWA ($50,000) by the number of SWAs (57). This calculation results in an annual cost of $2.9 million ($2,850,000), which is equal to a 10-year total cost of $28.5 million.

The Departments estimated the consultant cost for SWAs by multiplying the consultant cost per SWA ($75,000) by the number of SWAs (57). This calculation yields a one-time cost of $4.3 million ($4,275,000) in the first year of the rule, which is equal to an average annual cost of $427,500 over the 10-year period.

At the State level for the AEFLA program (see Exhibit 17), the Departments estimated this labor cost by first multiplying the estimated number of managers per State (1) by the time required to develop and update the performance accountability system (60 hours) and by the hourly compensation rate ($65.39/hour). We repeated the calculation for computer systems analysts (1 analyst at $56.17/hour for 80 hours), social and community service managers (3 managers at $54.21/hour for 60 hours each), and database administrators (1 administrator at $57.02/hour for 80 hours). We summed the labor cost for all four categories ($22,736) and multiplied the result by the number of States (57), resulting in an estimated one-time cost of $1.3 million ($1,295,975).[44] Over the 10-year period, this calculation yields an average annual cost of $129,597.

The Departments estimated the software and IT systems cost for the State-level AEFLA program by multiplying the software and IT systems cost per State ($350,000) by the number of States (57). This calculation yields an annual cost of $20.0 million ($19,950,000), which is equal to a total 10-year cost of $199.5 million ($199,500,000).

At the local level for the AEFLA program (see Exhibit 20), the Departments estimated this cost by first multiplying the estimated number of managers per local AEFLA provider (1) by the time required to develop and update the performance accountability system (4 hours) and by the hourly compensation rate ($63.63/hour). We

[44] This provision will be a joint effort between State and local AEFLA staff.

performed the same calculation for database administrators (1 administrator at $59.60/hour for 4 hours). We summed the labor cost for the two occupational categories ($493) and multiplied the result by the number of local AEFLA providers (2,396), resulting in a one-time cost of $1.2 million ($1,181,036). Over the 10-year period, this calculation yields an average annual cost of $118,104.

At the Federal level for the VR program (see Exhibit 15), the Departments estimated this labor cost by first multiplying the estimated number of GS–14 level, Step 5 data management specialists (1) by the time required to program the database and perform related software development tasks (768.63 hours) and by the hourly compensation rate ($76.48/hour). We performed the same calculation for GS–13 level, Step 5 data management specialists (1 specialist at $64.71/hour for 768.63 hours). We summed the labor cost for both categories to estimate this one-time cost of $108,523, which is equal to an average annualized cost of $10,852.

For State VR agencies (see Exhibit 18), the Departments estimated the cost associated with the establishment of State performance goals and the State's evaluation and analysis of progress toward such goals by first multiplying the estimated number of managers per VR agency (1) by the time required to develop and update the performance accountability system (80 hours) and by the hourly compensation rate ($65.39/hour). We repeated the calculation for the following occupational categories: Social and community service managers (3 managers at $54.21/hour for 80 hours each), database administrators (2 administrators at $57.02/hour for 100 hours each), and SRC Board members (12 members at $45.88/hour for 3 hours each). We summed the labor cost for the four categories ($31,297) and multiplied the result by the number of VR agencies (80) to estimate the biennial cost as $2.5 million ($2,503,782). In addition, to estimate the cost of updating and modifying VR agency case management systems we multiplied the estimated number of computer systems analysts per large VR agency that is updating case management and reporting systems using in-house staff (5) by the time required to make system changes (360) and by the hourly compensation rate ($56.17/hour). We multiplied the result ($101,106) by the number of large VR agencies updating systems using in-house staff (5) to estimate this one-time cost of $505,530. We then multiplied the estimated number of computer systems analysts per small or medium VR agency that is updating case management and reporting systems using in-house staff (2) by the time required to make system changes (360 hours) and by the hourly compensation rate ($56.17/hour). We multiplied the result ($40,442) by the number of small and medium VR agencies updating systems using in-house staff (45) to estimate this one-time cost of $1.8 million ($1,819,908). Finally, we multiplied the estimated number of computer systems analysts per VR agency that has a maintenance contract with a single CMS vendor (2) by the time required to make system changes (54 hours) and by the hourly compensation rate ($56.17/hour). We multiplied the result ($6,066) by the number of VR agencies with a maintenance contract (30) to estimate this one-time cost of $181,991. In total, the sum of these calculations yields a total 10-year cost of $15.0 million ($15,026,341), which results in an average annual cost of $1.5 million ($1,502,634) over the 10-year period.

The Departments estimated the annual licensing fees cost for State VR agencies by multiplying the annual licensing fee per VR agency ($6,930) by the number of VR agencies that receive vendor-supplied CMS software (48). This calculation results in an annual cost of $332,640, which is equal to a 10-year total cost of $3.3 million ($3,326,400).

The sum of these costs for the development and updating of State performance accountability systems yields a total 10-year cost of $260.7 million ($260,676,411) in costs from the SWAs, AEFLA program, and VR program. Over the 10-year analysis period, these costs result in an average annual cost of $26.1 million ($26,067,641).

The sum of the costs for individuals from the Federal- and State-level DOL core programs, State- and local-level AEFLA programs, and Federal- and State-level VR agencies to implement strategies for aligning technology and data systems across one-stop partners and to develop and update the performance accountability measures yields a total 10-year cost of $427.2 million ($427,176,411) and an average annual cost of $42.7 million ($42,717,641).

ii. Effectiveness in Serving Employers

WIOA sec. 116(b)(2)(A)(i)(VI) provides that the sixth primary indicator of performance will be an indicator of effectiveness in serving employers, which will be established pursuant to WIOA sec. 116(b)(2)(A)(iv). This indicator will measure program effectiveness in serving employers. Under WIOA sec. 116(b)(2)(A)(iv), the Departments must consult with stakeholders on proposed approaches to defining this indicator. The NPRM described three approaches to measure employer satisfaction. In the first approach, States would use wage records to identify whether a participant's identification matches the same FEIN in the second and fourth quarters. The second approach to define this performance indicator would use the number or percentage of employers that are using the core program services out of all employers represented in an area or State served by the system (*i.e.*, employers served). The third approach would measure the repeated use rate for employers' use of the core programs. Both the market penetration and repeat business measure should come from already existing data sources. For market penetration, States will have to produce the total number of business customers, as well as the total number of businesses, which is readily available through BLS. For repeat businesses, these figures will also come from the business customer database and will be shown as a sum within the reporting period.

In this Final Rule, the Departments are initially implementing the performance indicator of effectiveness in serving employers in the form of a pilot program to test the rigor and feasibility of the three proposed approaches and to develop a standardized indicator. The performance indicator for effectiveness in serving employers will not be included in sanctions determinations until the standardized indicator is developed in accordance with rulemaking requirements. The WIOA Joint Performance ICR and the DOL Performance ICR include the data elements and specifications to calculate all three measures proposed in the NPRM (employee retention with the same employer, market penetration, and repeat business). States will be required to choose two of the three measures of effectiveness in serving employers for data collection and reporting for PYs 2016 and 2017 with results to be included in the WIOA annual reports due in October.

The Departments cannot anticipate which of the three approaches States will select, limiting our ability to estimate the cost of these activities. Due to this uncertainty, the Departments estimated the costs of the pilot program in 2016 and 2017 using the assumption that the realized cost will be the midpoint of the range of the total costs if on the low end, all States choose the

two lowest-cost approaches; if on the high end, all States choose the two highest-cost approaches. The Departments similarly estimated the cost of the implementation beginning in 2019 using the assumption that this cost will be the midpoint of the range of the total costs if on the low end, all States choose the lowest-cost approach; on the high end, all States choose the highest-cost approach. Below we discuss the estimated costs for each approach in the pilot program if all States were to choose that approach. We then use these values to estimate the cost of this provision as discussed.

Costs

Approach 1—Retention With the Same Employer

At the Federal level for the DOL core programs, the Departments estimated the one-time labor cost associated with the first approach by multiplying the estimated number of GS–14, Step 5 management analysts (1) by the time required for technical assistance development (8 hours) and by the hourly compensation rate ($76.48/hour). This calculation would result in a one-time labor cost of $612.

The Departments estimated DOL's annual labor costs for the first approach by multiplying the estimated number of GS–14, Step 5 management analysts (1) by the time required for technical assistance delivery (4 hours) and by the hourly compensation rate ($76.48/hour). This calculation would result in an annual labor cost of $306.

At the State level for the DOL core programs, the Departments estimated the first approach's one-time labor cost by multiplying the estimated number of management analysts (1) by the time required for programming and data collection (8 hours) and by the hourly compensation rate ($45.88/hour). We multiplied the labor cost ($367) by the number of States (57) to estimate this one-time cost of $20,921.

The Departments estimated the State-level DOL core programs' annual labor cost associated with the first approach in the pilot program by multiplying the estimated number of management analysts (1) by the sum of time required for data collection (4 hours) and for Federal reporting (4 hours) and by the hourly compensation rate ($45.88/hour). We multiplied the labor cost ($367) by the number of States (57) to estimate this annual cost of $20,291.

At the Federal level for the AEFLA program, the Departments estimated the one-time labor cost associated with the first approach in the pilot program by multiplying the estimated number of GS–14, Step 5 management analysts (1) by the time required for technical assistance development (8 hours) and by the hourly compensation rate ($76.48/hour). This calculation would result in a one-time labor cost of $612.

The Departments estimated AEFLA's annual labor cost for the first approach by multiplying the estimated number of GS–14, Step 5 management analysts (1) by the time required for technical assistance delivery (4 hours) and by the hourly compensation rate ($76.48/hour). This calculation would result in an annual labor cost of $306.

At the State level for the AEFLA program, the Departments estimated the first approach's one-time labor cost by multiplying the estimated number of management analysts (1) by the time required for programming and data collection (8 hours) and by the hourly compensation rate ($45.88/hour). We multiplied the labor cost ($367) by the number of States (57) to estimate this one-time cost of $20,921.

The Departments estimated the State-level AEFLA program's annual labor cost associated with the first approach by multiplying the estimated number of management analysts (1) by the sum of time required for data collection (4 hours) and for Federal reporting (4 hours) and by the hourly compensation rate ($45.88/hour). We multiplied the labor cost ($367) by the number of States (57) to estimate this annual cost of $20,921.

At the Federal level for the VR program, the Departments estimated the one-time labor cost associated with the first approach in the pilot program by multiplying the estimated number of GS–14, Step 5 management analysts (1) by the time required for technical assistance development (8 hours) and by the hourly compensation rate ($76.48/hour). This calculation would result in a one-time labor cost of $612.

The Departments estimated the annual labor costs for the VR program associated with the first approach by multiplying the estimated number of GS–14, Step 5 management analysts (1) by the time required for technical assistance delivery (4 hours) and by the hourly compensation rate ($76.48/hour). This calculation would result in an annual labor cost of $306.

At the State level for the VR program, the Departments estimated the first approach's one-time labor cost by multiplying the estimated number of management analysts (1) by the time required for programming and data collection (8 hours) and by the hourly compensation rate ($45.88/hour). We multiplied the labor cost ($367) by the number of VR agencies (80) to estimate this one-time cost of $29,363.

The Departments estimated the State-level AEFLA program's annual labor cost associated with the first approach by multiplying the estimated number of management analysts (1) by the sum of time required for data collection (4 hours) and for Federal reporting (4 hours) and by the hourly compensation rate ($45.88/hour). We multiplied the labor cost ($367) by the number of VR agencies (80) to estimate this annual cost of $29,363.

In total, Approach 1 would result in one-time costs of $73,041 for individuals from the Federal- and State-level DOL core programs, AEFLA program, and VR program. In addition, Approach 1 would result in $72,123 in annual costs for these entities.

Approach 2—Percentage of Employers Using Services Out of All Employers in the State

At the Federal level for the DOL core programs, the Departments estimated the one-time labor cost associated with the second approach in the pilot program by multiplying the estimated number of GS–14, Step 5 management analysts (1) by the time required for technical assistance development (8 hours) and by the hourly compensation rate ($76.48/hour). This calculation would result in a one-time labor cost of $612.

The Departments estimated DOL's annual labor cost associated with the second approach by multiplying the estimated number of GS–14, Step 5 management analysts (1) by the time required for technical assistance delivery (4 hours) and by the hourly compensation rate ($76.48/hour). This calculation would result in an annual labor cost of $306.

At the State level for the DOL core programs, the Departments estimated the second approach's annual labor cost by multiplying the estimated number of management analysts (1) by the sum of time required for data collection (4 hours), providing training and technical assistance to Local WDBs (3 hours), and Federal reporting (4 hours) and by the hourly compensation rate ($45.88/hour). We multiplied the labor cost ($505) by the number of States (57) to estimate this annual cost of $28,767.

For local-level DOL core programs, the Departments estimated the annual labor cost for the second approach by multiplying the estimated number of management analysts (1) by the time required for data collection (4 hours) and by the hourly compensation rate ($60.60/hour). We multiplied the labor cost ($242) by the number of Local

WDBs (580) to estimate this annual cost of $140,592.

At the Federal level for the AEFLA program, the Departments estimated the one-time labor cost associated with the second approach in the pilot program by multiplying the estimated number of GS–14, Step 5 management analysts (1) by the time required for technical assistance development (8 hours) and by the hourly compensation rate ($76.48/hour). This calculation would result in a one-time labor cost of $612.

The Departments estimated AEFLA's annual labor cost associated with the second approach by multiplying the estimated number of GS–14, Step 5 management analysts (1) by the time required for technical assistance delivery (4 hours) and by the hourly compensation rate ($76.48/hour). This calculation would result in an annual labor cost of $306.

At the State level for the AEFLA program, the Departments estimated the second approach's annual labor cost by multiplying the estimated number of management analysts (1) by the sum of time required for data collection (4 hours), providing training and technical assistance to local AEFLA providers (3 hours), and Federal reporting (4 hours) and by the hourly compensation rate ($45.88/hour). We multiplied the labor cost ($505) by the number of States (57) to estimate this annual cost of $28,767.

For the local-level AEFLA program, the Departments estimated the annual labor cost for the second approach by multiplying the estimated number of management analysts (1) by the time required for data collection (4 hours) and by the hourly compensation rate ($60.60/hour). We multiplied the labor cost ($242) by the number of local AEFLA providers (2,396) to estimate this annual cost of $580,790.

At the Federal level for the VR program, the Departments estimated the one-time labor cost associated with the second approach in the pilot program by multiplying the estimated number of GS–14, Step 5 management analysts (1) by the time required for technical assistance development (8 hours) and by the hourly compensation rate ($76.48/hour). This calculation would result in a one-time labor cost of $612.

The Departments estimated the VR program's annual labor cost associated with the second approach by multiplying the estimated number of GS–14, Step 5 management analysts (1) by the time required for technical assistance delivery (4 hours) and by the hourly compensation rate ($76.48/hour). This calculation would result in an annual labor cost of $306.

At the State level for the VR program, the Departments estimated the second approach's one-time labor cost by multiplying the estimated number of staff trainers (1) by the time required for training of rehabilitation counselors (4 hours) and by the hourly compensation rate ($54.21/hour). We repeated the calculation for the rehabilitation counselors (62 assistants at $36.66/hour for 1 hour each). We summed the labor cost for both categories ($2,490) and multiplied it by the number of VR agencies (80) to estimate this one-time cost of $199,181.

The Departments estimated the State-level VR program's annual labor cost associated with the second approach by multiplying the estimated number of management analysts (1) by the time required for Federal reporting (4 hours) and by the hourly compensation rate ($45.88/hour). In addition, we added the estimated number of rehabilitation counselors (62 assistants) by the time required for data collection (1 hour each) and by the hourly compensation rate ($36.66/hour). We summed the labor cost for both categories ($2,456) and multiplied it by the number of VR agencies (80) to estimate this annual cost of $196,515.

In total, Approach 2 would result in one-time costs of $201,016 for individuals from the Federal-level DOL core programs, AEFLA program, and VR program and the State-level VR program. In addition, Approach 2 would result in $976,349 in annual costs for the Federal-, State-, and local-level DOL core programs and AEFLA program and the State-level VR program.

Approach 3—Percentage of Repeat Employers Using Services Within the Previous 3 Years

At the Federal level for the DOL core programs, the Departments estimated the one-time labor cost associated with the third approach in the pilot program by multiplying the estimated number of GS–14, Step 5 management analysts (1) by the time required for technical assistance development (8 hours) and by the hourly compensation rate ($76.48/hour). This calculation would result in a one-time labor cost of $612.

The Departments estimated DOL's annual labor cost associated with the third approach by multiplying the estimated number of GS–14, Step 5 management analysts (1) by the time required for technical assistance delivery (4 hours) and by the hourly compensation rate ($76.48/hour). This calculation would result in an annual labor cost of $306.

At the State level for the DOL core programs, the Departments estimated the third approach's annual labor cost by multiplying the estimated number of management analysts (1) by the sum of time required for data collection (4 hours), providing training and technical assistance to Local WDBs (3 hours), and Federal reporting (4 hours) and by the hourly compensation rate ($45.88/hour). We multiplied the labor cost ($505) by the number of States (57) to estimate this annual cost of $28,767.

For the local-level DOL core programs, the Departments estimated the annual labor cost for third approach in the pilot program by multiplying the estimated number of management analysts (1) by the time required for data collection (6 hours) and by the hourly compensation rate ($60.60/hour). We multiplied the labor cost ($364) by the number of Local WDBs (580) to estimate this annual cost of $210,888.

At the Federal level for the AEFLA program, the Departments estimated the one-time labor cost associated with the third approach in the pilot program by multiplying the estimated number of GS–14, Step 5 management analysts (1) by the time required for technical assistance development (8 hours) and by the hourly compensation rate ($76.48/hour). This calculation would result in a one-time labor cost of $612.

The Departments estimated AEFLA's annual labor cost associated with the third approach by multiplying the estimated number of GS–14, Step 5 management analysts (1) by the time required for technical assistance delivery (4 hours) and by the hourly compensation rate ($76.48/hour). This calculation would result in an annual labor cost of $306.

At the State level for the DOL core programs, the Departments estimated the third approach's annual labor cost by multiplying the estimated number of management analysts (1) by the sum of time required for data collection (4 hours), providing training and technical assistance to local AEFLA providers (3 hours), and Federal reporting (4 hours) and by the hourly compensation rate ($45.88/hour). We multiplied the labor cost ($505) by the number of States (57) to estimate this annual cost of $28,767.

For the local-level AEFLA program, the Departments estimated the annual labor cost for the third approach by multiplying the estimated number of management analysts (1) by the time required for data collection (6 hours) and by the hourly compensation rate ($60.60/hour). We multiplied the labor cost ($364) by the number of local AEFLA providers (2,396) to estimate this annual cost of $871,186.

At the Federal level for the VR program, the Departments estimated the

one-time labor cost associated with the third approach in the pilot program by multiplying the estimated number of GS–14, Step 5 management analysts (1) by the time required for technical assistance development (8 hours) and by the hourly compensation rate ($76.48/hour). This calculation would result in a one-time labor cost of $612.

The Departments estimate the VR program's annual labor cost associated with the third approach by multiplying the estimated number of GS–14, Step 5 management analysts (1) by the time required for technical assistance delivery (4 hours) and by the hourly compensation rate ($76.48/hour). This calculation would result in an annual labor cost of $306.

At the State level for the VR program, the Departments estimated the third approach's one-time labor cost by multiplying the estimated number of staff trainers (1) by the time required for training of rehabilitation counselors (4 hours) and by the hourly compensation rate ($54.21/hour). We repeated the calculation for the rehabilitation counselors (62 counselors at $36.66/hour for 1 hour each). We summed the labor cost for both categories ($2,490) and multiplied it by the number of VR agencies (80) to estimate this one-time cost of $199,181.

The Departments estimated the State-level VR program annual labor cost associated with the third approach by multiplying the estimated number of management analysts (1) by the time required for Federal reporting (4 hours) and by the hourly compensation rate ($45.88/hour). In addition, we added the estimated number of rehabilitation counselors (62 counselors) by the time required for data collection (1 hour each) and by the hourly compensation rate ($36.66/hour). We summed the labor cost for both categories ($2,456) and multiplied it by the number of VR agencies (80) to estimate this annual cost of $196,515.

In total, Approach 3 would result in one-time costs of $201,016 for individuals from the Federal-level DOL core programs, AEFLA program, and VR program and the State-level VR program. In addition, Approach 3 would result in $1.3 million (1,337,040) in annual costs for the Federal-, State-, and local-level DOL core programs and AEFLA program and the State-level VR program.

As presented in Exhibit 49, Approach 1 is the lowest-cost approach with $73,041 in one-time costs and $72,124 in annual costs for Federal- and State-level costs for DOL, AEFLA, and the VR program. Approach 3 is the highest-cost approach with $201,016 in one-time costs and $1.3 million ($1,337,040) in annual costs for Federal-, State-, and local-level costs for DOL and AEFLA and Federal- and State-level costs for the VR program.

EXHIBIT 49—ESTIMATED COST OF THE PILOT PROGRAM BY APPROACH

Approach	One-time cost	Annual cost
Approach 1—Retention with the Same Employer	$73,041	$72,124
Approach 2—Percentage of Employers Using Services Out of All Employers in the State	201,016	976,349
Approach 3—Percentage of Repeat Employers Using Services within the Previous 3 Years	201,016	1,337,040

The Departments estimated the one-time labor cost for the pilot program to be incurred in 2016 and the annual labor cost to be incurred in 2017 by taking the average of the low-end range of costs (*i.e.*, if all States were to choose the two lowest-cost approaches) and the high-end range of costs (*i.e.*, if all States were to choose the two highest-cost approaches). If all States chose the two lowest-cost approaches (*i.e.*, Approaches 1 and 2), the one-time cost to the States would be $274,057 ($73,041 + $201,016). If all States chose the two highest-cost approaches (*i.e.*, Approaches 2 and 3), the one-time cost to the States would be $402,032 ($201,016 + $201,016). We took the average of this range to estimate the one-time cost of the pilot program of $338,045 to be incurred in 2016. We repeated this calculation to estimate the annual cost for the pilot program. If all States chose the two lowest-cost approaches, the annual cost to the States would be $1.0 million ($1,048,473) ($72,124 + $976,349). If all States chose the two highest-cost approaches, the annual cost to the States would be $2.0 million ($2,313,389) ($976,349 + $1,337,040). We took the average of this range to estimate the annual cost of the pilot program of $1.7 million ($1,680,931) to be incurred in 2017. The sum of these calculations results in a total 10-year cost of $2.0 million ($2,018,976), which is equal to an average annual cost of $201,898 for the pilot program.

The Departments estimated the one-time labor cost for implementation to be incurred in 2019 and the annual labor cost to be incurred annually starting in 2020 by taking the average of the low-end range of costs (*i.e.*, if all States were to choose the lowest-cost approach) and the high-end range of costs (*i.e.*, if all States were to choose the highest-cost approach). If all States chose the lowest-cost approach (*i.e.*, Approach 1), the one-time cost to the States would be $73,041. If all States chose the highest-cost approach (*i.e.*, Approach 2), the one-time cost to the States would be $201,016. We took the average of this range to estimate the one-time cost of the program of $137,029 to be incurred in 2019. We repeated this calculation to estimate the annual cost for the program. If all States chose the lowest-cost approach, the annual cost to the States would be $72,124. If all States chose the highest-cost approach, the annual cost to the States would be $1.3 million ($1,337,040). We took the average of this range to estimate the annual cost of the program of $704,582 to be incurred beginning in 2020. The sum of these calculations results in a total 10-year cost of $4.4 million ($4,364,521), which is equal to an average annual cost of $436,452 for the implementation.

The sum of the costs for the pilot program and the implementation results in a total 10-year cost of $6.4 million ($6,383,497), which is equal to an average annual cost of $638,350 for the implementation.

iii. Negotiation of Levels of Performance

WIOA sec. 116(b)(3) requires States to negotiate with DOL and ED and agree on levels of performance for each performance indicator for each core program every 2 years. States must establish expected levels of performance for each of the six core programs in the submitted Unified or Combined State Plan. Prior to approving the Unified or Combined State Plan, however, DOL and ED must negotiate with the States to agree on an adjusted performance level (referred to as a "negotiated level of performance" in § 677.170(b) of these final regulations). The negotiated level of performance must be incorporated into the Unified or Combined Plan prior to its approval. The negotiated levels of performance are based on factors including how the expected levels compare to other States, the statistical

adjustment model, the extent to which the levels promote continuous improvement, and the extent to which the levels will assist the State in meeting its long-term performance goals. This negotiation of levels of performance will result in recurring costs incurred by each core program.

Costs will be incurred by entities at Federal, State, and local levels to negotiate adjusted levels of performance. Specifically, biennial labor costs will be incurred at the Federal, State, and local levels for the DOL core programs, at the Federal and State levels for the AEFLA program, and at the Federal and State levels for the VR program.

Costs

At the Federal level for DOL core programs (see Exhibit 13), the Departments estimated this labor cost by first multiplying the estimated number of GS–14 level, Step 5 managers (1) by the time required to negotiate levels of performance (8 hours) and by the hourly compensation rate ($76.48/hour). We performed the same calculation for GS–12 level, Step 5 management analysts (2 analysts at $54.43/hour for 8 hours each). We summed the labor cost for both categories to estimate this biennial cost of $1,483. This calculation results in a total 10-year cost of $7,414, which is equal to an average annual cost of $741.

At the State level for DOL core programs (see Exhibit 16), the Departments estimated this labor cost by first multiplying the estimated number of managers per State (1) by the time required to negotiate levels of performance (8 hours) and by the hourly compensation rate ($65.39/hour). We performed the same calculation for office and administrative support staff members (2 staff members at $30.57/hour for 8 hours each). We summed the labor cost for both categories ($1,012) and multiplied the result by the number of States (57). This calculation yields a biennial cost of $57,698. Over the 10-year period, this calculation results in a total cost of $288,488, which is equal to an average annual cost of $28,849.

At the local level for DOL core programs (see Exhibit 19), the Departments estimated this labor cost by first multiplying the estimated number of managers per Local WDB (1) by the time required to negotiate levels of performance (8 hours) and by the hourly compensation rate ($63.63/hour). We performed the same calculation for office and administrative support staff members (2 staff members at $29.36/hour for 8 hours each). We summed the labor cost for both categories ($979) and multiplied the result by the number of Local WDBs (580), which results in a biennial cost of $567,704. This calculation results in a total 10-year cost of $2.8 million ($2,838,520), which is equal to an average annual cost of $283,852.

At the Federal level for the AEFLA programs (see Exhibit 14), the Departments estimated this labor cost by first multiplying the estimated number of GS–14 level, Step 5 managers (4) by the time required to negotiate levels of performance (24 hours each) and by the hourly compensation rate ($76.48/hour). We performed the same calculation for GS–13 level, Step 5 social and community service managers (4 managers at $64.71/hour for 24 hours each). We summed the labor cost for both categories to estimate this biennial cost of $13,554. Over the 10-year period, this calculation yields a total cost of $67,771, which is equal to an average annual cost of $6,777.

At the State level for the AEFLA program (see Exhibit 17), the Departments estimated this labor cost by first multiplying the estimated number of managers per State (1) by the time required to negotiate levels of performance (12 hours) and by the hourly compensation rate ($65.39/hour). We repeated the calculation for social and community service managers (1 manager at $54.21/hour for 12 hours). We summed the labor cost for both categories ($1,435) and multiplied the result by the number of States (57). This calculation results in a biennial cost of $81,806. Over the 10-year period, this calculation results in a total cost of $409,032, which is equal to an average annual cost of $40,903.

At the Federal level for the VR program (see Exhibit 15), the Departments estimated this biennial labor cost by first multiplying the estimated number of GS–14 level, Step 5 managers (4) by the time required to negotiate levels of performance (12 hours each) and by the hourly compensation rate ($76.48/hour).[45] The biennial labor cost of $3,671 results in a total 10-year cost of $18,355, which is equal to an average annual cost of $1,836.

For State VR agencies (see Exhibit 18), the Departments estimated the cost of negotiating levels of performance by first multiplying the estimated number of managers per VR agency (1) by the time required to negotiate adjusted levels of performance (12 hours) and by the hourly compensation rate ($65.39/hour). We repeated the calculation for the following occupational categories: social and community service managers (2 managers at $54.21/hour for 12 hours each) and management analysts (2 analysts at $45.88/hour for 12 hours each). We summed the labor cost for the three categories ($3,187) and multiplied the result by the number of VR agencies (80) to estimate this biennial cost as $254,947. This calculation results in a 10-year cost of $1.3 million ($1,274,736), which is equal to an average annual cost of $127,474 over the 10-year analysis period.

The sum of these calculations yields a biennial cost of $980,863 for individuals from the Federal, State, and local level for the DOL core programs, from the Federal- and State-levels for the AEFLA program, and from the Federal and State levels for the VR program to negotiate levels of performance. This results in a total 10-year cost of $4.9 million ($4,904,316), which is equal to an average annual cost of $490,432.

iv. Running Statistical Adjustment Model To Adjust Levels of Performance Based on Actual Economic Conditions and Characteristics of Participants

WIOA sec. 116(b)(3) requires DOL, ED, and States to ensure that negotiated levels of performance are adjusted using a statistical adjustment model—developed and disseminated by DOL and ED—based on the differences among States in (1) actual economic conditions (including differences in unemployment rates and job losses or gains in particular industries) and (2) the characteristics of participants when they entered the relevant program (including indicators of poor work history, lack of work experience, lack of education or occupational skills attainment, dislocation from high-wage and high-benefit employment, low levels of literacy or English proficiency, disability status, homelessness, ex-offender status, and welfare dependency). Regularly adjusting the levels of performance for each primary performance indicator for each core program will result in annual costs being incurred at the Federal, State, and local levels for the DOL core programs, at the Federal level for the AEFLA program, and at the Federal and State levels for the VR program to collect and update data on participants. Furthermore, DOL will experience costs related to annual licensing fees.

Costs

At the Federal level for DOL core programs (see Exhibit 13), the Departments estimated this labor cost by first multiplying the estimated number

[45] Managers include data, VR program, State liaison, and unit chief participation.

of GS–14 level, Step 5 managers (1) by the time required to collect and update data on the core programs' participants (250 hours) and by the hourly compensation rate ($76.48/hour). We performed the same calculation for GS–13 level, Step 5 computer systems analysts (2 analysts at $64.71/hour for 1,000 hours each). We summed the labor cost for both categories to estimate this annual cost of $148,540, which results in a total 10-year cost of $1.5 million ($1,485,400).[46]

The Departments estimated the annual licensing fee for DOL to be $10,000, or a total cost of $100,000 over the 10-year analysis period.

At the State level for DOL core programs (see Exhibit 16), the Departments estimated this labor cost by first multiplying the estimated number of managers per State (1) by the time required to collect and update data on the programs' participants (10 hours) and by the hourly compensation rate ($65.39/hour). We performed the same calculation for the following occupational categories: computer systems analysts (2 analysts at $56.17/hour for 40 hours each) and office and administrative support staff members (2 staff members at $30.57/hour for 20 hours each). We summed the labor cost for the three categories ($6,370) and multiplied the result by the number of States (57) to estimate this annual cost of $363,107. This result is equal to a total 10-year cost of $3.6 million ($3,631,071).

At the local level for DOL core programs (see Exhibit 19), the Departments estimated this labor cost by first multiplying the estimated number of managers per Local WDB (1) by the time required to collect and update data on the programs' participants (10 hours) and by the hourly compensation rate ($63.63/hour). We performed the same calculation for the following occupational categories: computer systems analysts (2 analysts at $60.76/hour for 40 hours each) and office and administrative support staff members (2 staff members at $29.36/hour for 20 hours each). We summed the labor cost for both categories ($6,672) and multiplied the result by the number of Local WDBs (580). The annual cost is estimated to be $3.9 million ($3,869,470), which results in a 10-year total cost of $38.7 million ($38,694,700).

At the Federal level for the AEFLA program (see Exhibit 14), the Departments estimated this labor cost by first multiplying the estimated number of GS–14 level, Step 5 managers (2) by the time required to provide Federal oversight and technical assistance (40 hours each) and by the hourly compensation rate ($76.48/hour). We performed the same calculation for GS–12 level, Step 5 management analysts (2 analysts at $54.43/hour for 80 hours each). We summed the labor cost for both categories to estimate this annual cost of $14,827, which results in a total 10-year cost of $148,272.

At the Federal level for the VR program (see Exhibit 15), the Departments estimated this biennial labor cost by first multiplying the estimated number of GS–14 level, Step 5 managers (2) by the time required to collect and update data on its participants (52 hours each) and by the hourly compensation rate ($76.48/hour).[47] The Departments repeated the calculation for GS–13 level, Step 5 database administrators (2 administrators at $64.71/hour for 156 hours each). We summed the annual labor cost for the two categories ($28,143), which results in a total 10-year cost of $281,434.

For State VR agencies (see Exhibit 18), the Departments estimated this cost by first multiplying the estimated number of managers per VR agency (1) by the time required to collect and update data on its participants (4 hours) and by the hourly compensation rate ($65.39/hour). We repeated the calculation for the following occupational categories: Database administrators (1 administrator at $57.02/hour for 20 hours), computer systems analysts (1 analyst at $56.17/hour for 4 hours), and management analysts (1 analyst at $45.88/hour for 4 hours). We summed the labor cost for the four categories ($1,810) and multiplied the result by the number of VR agencies (80) to estimate this annual cost as $144,813, which results in a total 10-year cost of $1.4 million ($1,448,128).

The sum of these calculations yields an annual cost of $4.6 million ($4,578,901) for individuals from the Federal, State, and local levels for the DOL core programs, the Federal level for the AEFLA program, and the Federal and State levels for the VR program to collect and update data on their participants. This is equal to a 10-year total cost of $45.8 million ($45,789,005).

v. Additional State Performance Accountability Indicators (Beyond Required Performance Indicators)

Under WIOA sec. 116(b), States must include levels of performance for the six primary performance indicators in their Unified or Combined State Plans. In addition, WIOA sec. 116(b)(2)(B) permits States to identify in the State Plan additional performance accountability indicators for the core programs beyond the six required primary indicators. Although States had similar latitude under WIA, no State has ever established additional performance indicators. Therefore, the Departments do not expect any State to establish additional performance accountability indicators under WIOA. If a State chooses to do so, however, we have conservatively calculated a burden estimate based on five States establishing additional indicators of performance. The costs associated with this activity are those incurred by State-level DOL core programs, State- and local-level AEFLA programs, and State VR agencies having to collect additional data to report on the additional performance indicators in the first year of the Final Rule.

Costs

At the State level for DOL core programs (see Exhibit 31), the Departments estimated this labor cost by first multiplying the estimated number of managers per State providing additional data (1) by the time required to collect additional data (16 hours) and by the hourly compensation rate ($65.39/hour). We performed the same calculation for computer systems analysts (3 analysts at $56.17/hour for 40 hours each) and office and administrative support staff members (1 staff member at $30.57/hour for 36 hours). We summed the labor cost for all three categories ($8,887) and multiplied the result by the number of States providing additional data (5) to estimate this one-time cost of $44,436. Over the 10-year period, this calculation yields an average annual cost of $4,444.

At the State level for the AEFLA program (see Exhibit 32), the Departments estimated this labor cost by first multiplying the estimated number of managers per State providing additional data (1) by the time required to collect additional data (8 hours) and by the hourly compensation rate ($65.39/hour). We repeated the calculation for the following occupational categories: Database administrators (1 administrator at $57.02/hour for 8 hours), computer systems analysts (1 analyst at $56.17/

[46] For DOL programs, the Federal program will experience the heaviest burden as ETA will produce all State and local calculations and disseminate them to States and local areas.

[47] Managers will include data unit database administrative staff and management staff.

hour for 8 hours), and social and community service managers (3 managers at $54.21/hour for 8 hours each). We summed the labor cost for all four categories ($2,730) and multiplied the result by the number of States providing additional data (5) to estimate this one-time cost of $13,648.[48] Over the 10-year period, this calculation yields an average annual cost of $1,365.

At the local level for the AEFLA program (see Exhibit 34), the Departments estimated this cost by first multiplying the estimated number of managers per local AEFLA provider proving additional data (1) by the time required to collect additional data (4 hours) and by the hourly compensation rate ($63.63/hour). We performed the same calculation for database administrators (1 administrator at $59.60/hour for 4 hours). We summed the labor cost for the two occupational categories ($493) and multiplied the result by the number of local AEFLA providers providing additional data (200) to estimate this one-time cost of $98,584. Over the 10-year period, this calculation yields an average annual cost of $9,858.

For State VR agencies (see Exhibit 33), the Departments estimated this cost by first multiplying the estimated number of managers per VR agency providing additional data (1) by the time required to collect additional data (8 hours) and by the hourly compensation rate ($65.39/hour). We repeated the calculation for the following occupational categories: Database administrators (1 administrator at $57.02/hour for 8 hours), computer systems analysts (1 analyst at $56.17/hour for 8 hours), and social and community service managers (3 managers at $54.21/hour for 8 hours each). We summed the labor cost for the four categories ($2,730) and multiplied the result by the number of VR agencies providing additional data (5) to estimate this one-time cost as $13,648. Over the 10-year period, this calculation yields an average annual cost of $1,365.

The sum of these calculations yields a total first-year cost of $170,317 from the State-level DOL core programs, State- and local-level AEFLA programs, and State VR agencies to collect additional data. This is equal to an average annual cost of $17,032.

vi. Technical Assistance to States

The cost of this activity reflects the Federal cost for procuring a consultant to provide technical assistance to States in the collection of data to comply with the new performance accountability requirements of WIOA. The cost for this activity was not included in the NPRM, because the FY 2017 budget request was in the process of being developed. For FY 2017, the Administration requested funds to help meet WIOA performance requirements through improved data infrastructure along with $1 million for ED to provide technical assistance to help AEFLA grantees comply with the new requirements, including the collection of new WIOA data elements. The total 10-year cost (undiscounted) for this activity represents a one-time Federal consultant cost of $1 million in the second year of WIOA.

Costs

At the Federal level for the AEFLA program (see Exhibit 14), the Departments estimated the cost related to providing technical assistance to States to comply with the new WIOA performance accountability requirements, including the collection and reporting of new data as a one-time consultant cost ($1,000,000) in the second year of the rule. Over the 10-year period, this calculation yields an average annual cost of $100,000.

vii. Performance Reports

Under WIOA sec. 116(d)(6), States must make available (including by electronic means) performance reports for local areas and for ETPs under title I of WIOA. WIA required DOL to make State performance reports publicly available but did not require States, themselves, to make their performance reports available (*see* WIA sec. 136(d)(3)). Section 116(d)(1) of WIOA requires the Departments to provide a performance reporting template to be used by States, Local WDBs, and ETPs for the performance reports required in WIOA secs. 116(d)(2) through (4). This Final Rule requires States to submit quarterly participant and performance data reports for each of the DOL core programs. Because DOL has required quarterly reporting for its programs prior to WIOA, the frequency of the reporting requirement should not result in incremental cost increases for any of the DOL core programs; rather, the Federal costs associated with this rule's performance reporting requirements will be associated with the implementation of the new performance reporting template. In addition, DOL State-level costs will be associated with developing, updating, and submitting ETP reports because while ETP reporting was required under WIA, many States received waivers allowing them not to make the submissions. Under WIOA, DOL does not expect to allow waivers for this reporting requirement. The State-level AEFLA programs reported annually under WIA, while local-level AEFLA programs reported annually to States under WIA, and both will continue to do so under WIOA. AEFLA programs will incur costs to collect, analyze, and report performance data. Under WIA, VR agencies submitted annual performance data on closed service records through the RSA–911 Case Service Report, and under WIOA, they will incur costs to transition to reporting on open and closed service records on a quarterly basis.

The DOL and ED, for purposes of the DOL core programs and the AEFLA program, will incur annual Federal level costs to collect, analyze, and report performance data. Furthermore, both Federal agencies will experience annual costs for software and IT systems. The Departments do not anticipate an increase in annual Federal-level costs for the VR program compared to the baseline. However, ED will incur a one-time software and IT systems cost to support its ability to compile quarterly data reported by VR agencies into annual reports required under WIOA. At the State level for the DOL core programs, the AEFLA program, and the VR program, as well as at the local level for the AEFLA program, there will be annual costs to collect, analyze, and report performance data.

Costs

At the Federal level for DOL core programs (see Exhibit 35), the Departments estimated this labor cost by first multiplying the estimated average number of GS–14, Step 5 managers (1) by the time required to implement and review the new performance reporting template (8 hours) and by the hourly compensation rate ($76.48/hour). We performed the same calculation for GS–13, Step 5 computer systems analysts (1 analyst at $64.71/hour for 5 hours) and GS–12, Step 5 management analysts (1 analyst at $54.43/hour for 16 hours). We summed the labor cost for all three categories to estimate an annual cost of $1,806, which results in a total cost of $18,063 over the 10-year analysis period.

The Departments estimated the annual software and IT systems cost at the Federal level for the DOL core programs to be $250,000, which yields a total cost of $2.5 million ($2,500,000) over the 10-year analysis period.

At the State level for the DOL core programs (see Exhibit 38), the Departments estimated this labor cost by first multiplying the estimated average number of managers per State (1) by the

[48] This provision will be a joint effort between State and local AEFLA staff.

time required to develop, update, and submit ETP reports (8 hours) and by the hourly compensation rate ($65.39/hour). We performed the same calculation for the following occupational categories: Computer system analysts (1 analyst at $56.17/hour for 40 hours), management analysts (1 analyst at $45.88/hour for 60 hours), and office and administrative staff members (4 staff members at $30.57/hour for 20 hours each). We summed the labor cost for all four categories ($7,968) and multiplied the result by the number of States (57) to estimate an annual cost of $454,194, which results in a total cost of $4.5 million ($4,541,942) over the 10-year analysis period.

At the Federal level for the AEFLA program (see Exhibit 36), the Departments estimated this labor cost by first multiplying the estimated number of GS–14, Step 5 managers (1) by the time required to collect, analyze, and report performance data (8 hours) and by the hourly compensation rate ($76.48/hour). We repeated the calculation for GS–13, Step 5 social and community service managers (1 manager at $64.71/hour for 16 hours) and GS–13, Step 5 database administrators (1 administrator at $64.71/hour for 40 hours). We summed the labor cost for all three categories to estimate an annual cost of $4,236. Over the 10-year period, this calculation yields a total cost of $42,356.

The Departments estimated a one-time software and IT systems cost at the Federal level for the AEFLA program to be $5 million for development, modernization, and enhancement. Over the 10-year period, this calculation yields an average annual cost of $500,000.

The Departments also estimated the annual software and IT systems cost for the AEFLA program at the Federal level to be $250,000 to maintain the steady state. Over the 10-year period, this calculation yields a cost of $2.5 million ($2,500,000).

At the State level for the AEFLA program (see Exhibit 39), the Departments estimated this labor cost by first multiplying the estimated average number of managers per State (1) by the time required to collect, analyze, and report performance data (40 hours) and by the hourly compensation rate ($65.39/hour). We repeated the calculation for the following occupational categories: Computer systems analysts (1 analyst at $56.17/hour for 40 hours), social and community service managers (3 managers at $54.21/hour for 40 hours each), and database administrators (1 administrator at $57.02/hour for 40 hours). We summed the labor cost for all four categories ($13,648) and multiplied the result by the number of States (57) to estimate an annual cost of $777,959. Over the 10-year period, this calculation yields a total cost of $7.8 million ($7,779,588).[49]

At the local level for the AEFLA program (see Exhibit 41), the Departments estimated this cost by first multiplying the estimated number of managers per local AEFLA provider (1) by the time required to collect, analyze, and report performance data (8 hours) and by the hourly compensation rate ($63.63/hour). We performed the same calculation for social and community service managers (1 manager at $61.01/hour for 8 hours) and database administrators (1 administrator at $59.60/hour for 8 hours). We summed the labor cost for all three occupational categories ($1,474) and multiplied the result by the number of local AEFLA providers (2,396) to estimate an annual cost of $3.5 million ($3,531,512). Over the 10-year period, this calculation yields a total cost of $35.3 million ($35,315,123).

At the Federal level for the VR program (see Exhibit 37), the Departments estimated a one-time software and IT systems cost to be $68,925 to support ED's ability to compile quarterly data reported by VR agencies into annual reports required under WIOA. Over the 10-year period, this calculation yields an average annual cost of $6,893.

For State VR agencies (see Exhibit 40), the Departments estimated this cost by first multiplying the estimated number of managers per VR agency (1) by the time required to review and verify the annual performance report that RSA will assemble from the quarterly RSA–911 data that the States have previously reported (5 hours) and by the hourly compensation rate ($65.39/hour). We repeated the calculation for the following occupational categories: Computer systems analysts (1 analyst at $56.17/hour for 5 hours), social and community service managers (2 managers at $54.21/hour for 10 hours each), and database administrators (1 administrator at $57.02/hour for 25 hours). We summed the labor cost for all four categories ($3,118) and multiplied the result by the number of VR agencies (80) to estimate an annual cost as $249,400, which results in a total 10-year cost of $2.5 million ($2,494,000).[50]

For State VR agencies (see Exhibit 40), the Departments estimated this cost by first multiplying the estimated number of staff trainers per VR agency (1) by the time required to train staff on new data collection (6 hours) and by the hourly compensation rate ($54.21/hour). We repeated the calculation for rehabilitation counselors (62 counselors at $36.66/hour for 3 hours each). We summed the labor cost for both categories ($7,144) and multiplied the result by the number of VR agencies (80) to estimate a one-time cost of $571,522, which results in an average annual cost of $57,152.

For State VR agencies (see Exhibit 40), the Departments estimated this cost by first multiplying the estimated number of rehabilitation counselors (62) by the time required to collect data in the first year (58 hours) and by the hourly compensation rate ($36.66/hour). We summed the labor cost ($131,829) and multiplied the result by the number of VR agencies (80) to estimate a first year cost of $10.5 million ($10,546,349). We then multiplied the estimated number of rehabilitation counselors (62) by the time required to collect data in the second and subsequent years (15 hours) and by the hourly compensation rate ($36.66/hour). We summed the labor cost ($34,094) and multiplied the result by the number of VR agencies (80) to estimate an annual cost of $2.7 million ($2,727,504). This results in a total 10-year cost of $35.1 million ($35,093,885), which is equivalent to an average annual cost of $3.5 million ($3,509,388).

The sum of these calculations yields an average annual cost of $9.6 million ($9,592,540) for individuals from the Federal- and State-level DOL core programs, the Federal-, State-, and local-level AEFLA programs, and the Federal- and State-level VR agencies, that will incur costs related to the performance reports. This is equal to a total 10-year cost of $95.9 million ($95,925,404).

viii. Obtain UI Wage Data

WIOA core programs will need access to quarterly State UI wage data to efficiently identify exited participants who are employed in the second and fourth full quarters after exit to report on the employment performance indicators. These core programs also will need access to the State quarterly UI wage data to identify the individual quarterly wages in the second full quarter to calculate the median wage performance measure. Prior to WIOA, the AEFLA program obtained quarterly UI wage data on its participants and DOL's public workforce systems had costs associated with UI wage matches. This will be the first time, however, that

[49] This provision will be a joint effort between State and local AEFLA staff.

[50] Costs for the Federal RSA program are not estimated because Federal costs for report generation will not be in excess of current RSA–911 report costs.

State VR agencies will be required to obtain and report UI wage data. VR programs will need to contribute a reasonable and proportional share of the costs for maintaining and using the State UI wage system and interstate wage information systems, on a per individual, per query, monthly, quarterly, or annual basis.

Costs

For State VR agencies (Exhibit 18), the Departments estimated this cost by first multiplying the data query cost for large VR agencies ($20,000) by the number of large VR agencies (10). We then multiplied the data query cost for medium VR agencies ($8,000) by the number of medium VR agencies (42). Finally, we multiplied the data query cost for small VR agencies ($4,000) by the number of small VR agencies (28). We summed the annual data query cost for all VR agencies ($648,000), which results in a total 10-year cost of $6.5 million ($6,480,000).[51]

ix. Data Analytic Software and Training

VR agencies also will require data analytic and reporting software to extract the information required from their data collection systems necessary to match individual cases to the employment and quarterly earnings data contained in the UI wage data system. DOL and AEFLA, which have the software and perform the analytics, will experience no incremental costs related to this activity. This software also will be required to import the wage and earnings information to their information collection and reporting systems, and complete the calculations necessary to report on the second quarter employment and median-age performance indicators, and on the fourth-quarter employment indicator.

Costs

For State VR agencies (see Exhibit 18), the Departments estimated this cost by first multiplying the software and IT systems cost for large VR agencies ($25,000) by the number of large VR agencies (10). We then multiplied the software and IT systems cost for medium VR agencies ($15,000) by the number of medium VR agencies (42). Finally, we multiplied the software and IT systems cost for small VR agencies ($10,000) by the number of small VR agencies (28). We summed the one-time software and IT systems cost for all VR agencies, resulting in a total one-time cost of $1.2 million ($1,160,000), which is equivalent to an average annual cost of $116,000.[52]

The sum of the costs for the Performance Accountability System, which includes the costs to:

- Develop and update State performance accountability systems (which includes the cost to align technology and data systems across one-stop partner programs);
- Implement measures for data collection and reporting on the effectiveness in serving employers;
- Negotiate levels of performance;
- Run a statistical adjustment model to adjust levels of performance;
- Obtain data to report on any additional State performance accountability indicators beyond required performance indicators;
- Provide technical assistance to States;
- Develop a performance report template;
- Develop, update and submit ETP reports;
- Collect, analyze, and report performance data; and provide training;
- Collect UI wage data; and
- Purchase data analytic software and provide training.

This calculation results in a 10-year total cost of $589.0 million ($588,988,950), which is equal to an average annual cost of $58.9 million ($58,898,895).

d. State Evaluation Responsibilities

WIOA sec. 116(e)(1) requires States, in coordination with Local WDBs and agencies responsible for administering core programs, to conduct ongoing evaluations of title I activities carried out in the State under the core programs. Such program evaluations were required under WIA; however, WIOA specifies that SWAs and other State agencies must coordinate the evaluations with the evaluation and research conducted by the Secretary of Labor or the Secretary of Education under the provisions of Federal law identified in WIOA secs. 169 and 242(c)(2)(D); secs. 12(a)(5), 14, and 107 of the Rehabilitation Act of 1973 (29 U.S.C. 709(a)(5), 711, 727) (applied with respect to the VR program); and the investigations provided for by the Secretary of Labor under sec. 10(b) of the Wagner-Peyser Act (29 U.S.C. 49i(b)). Additionally, WIOA sec. 116(e)(4) directs that SWAs and other State agencies must, to the extent practicable, cooperate in the evaluations (including related research projects) conducted under the provisions of Federal law identified in the preceding sentence. Specifically, such cooperation must include the provision of data and responses to surveys, as well as allowing timely site visits. These directives regarding coordination within States as well as coordination with and cooperation in Federal evaluations were not present in WIA. Finally, WIOA sec. 116(e)(3) requires States to prepare and submit annually to the State and Local WDBs within a State, and make available to the public (including by electronic means), any reports containing the results of evaluations conducted by the State under this section. Under WIA sec. 136(e)(3), States were required to prepare and submit periodically evaluation reports to the State and Local WDBs within the State and to DOL as part of their annual report, but were not required to make them electronically available to the public.

Requirements related to Federal coordination to support State evaluations will be new to the AEFLA and VR programs under WIOA; however, DOL core programs had evaluation-related requirements under WIA, as discussed above.

DOL will incur Federal-level costs for SWA evaluation activities under sec. 116(e) of WIOA. The Federal-level AEFLA and VR programs will incur costs for providing technical assistance and promoting State AEFLA and VR agency participation, respectively, in the coordination process (which may include the design and development of State evaluation activities). All Federal programs will incur costs for technical assistance, monitoring, and dissemination. Costs will be incurred by affected entities to coordinate any evaluations of activities carried out in the States and in cooperating in the provision of various forms of data for Federal evaluations. The Departments estimate that implementing these requirements will generate annual labor costs at the Federal and State level for DOL and ED programs. In addition, there will be some marginal software and IT systems and consultant costs for State-level DOL programs.

i. Costs

At the Federal level for DOL core programs (see Exhibit 42), the Departments estimated this labor cost by first multiplying the estimated number of GS–14, Step 5 managers per State (2) by the time required to support State evaluation activities (25 hours each) and by the hourly compensation rate ($76.48/hour). We performed the same

[51] Costs for the Federal RSA program are not estimated because Federal costs for report generation will not be in excess of current RSA–911 report costs.

[52] Costs for the Federal RSA program are not estimated because Federal costs for report generation will not be in excess of older RSA–911 report costs.

calculation for GS–13, Step 5 computer system analysts (1 analyst at $64.71/hour for 3 hours) and GS–12, Step 5 management analysts (2 analysts at $54.43/hour for 30 hours each). We summed the labor cost for all three categories ($7,284) to estimate the costs this entity will incur annually. This is equivalent to a 10-year cost of $72,839.

At the State level for DOL core programs (see Exhibit 45), the Departments estimated this labor cost by first multiplying the estimated number of computer systems analysts per State (2) by the time required to coordinate any evaluations of activities carried out in the States and to cooperate in the provision of various forms of data for Federal evaluations (15 hours each) and by the hourly compensation rate ($56.17/hour). We performed the same calculation for the following occupational categories: Social and community managers (1 manager at $54.21/hour for 20 hours), management analysts (1 analyst at $45.88/hour for 10 hours), and office and administrative staff members (1 staff member at $30.57/hour for 10 hours). We summed the labor cost for all four categories ($3,534) and multiplied the result by the number of States (57) to estimate an annual cost of $201,427. This is equivalent to a 10-year cost of $2.0 million ($2,014,266).

At the State level for DOL core programs, the Departments estimated the software and IT systems costs. We first multiplied the software and IT systems cost ($10,000) by the number of States (57) to estimate an annual cost of $570,000. This estimate represents the cost associated with this Final Rule beyond the IT expenditures currently incurred by SWAs. This is equivalent to a 10-year cost of $5.7 million ($5,700,000).

At the State level for DOL core programs, the Departments estimated the consultant costs. We first multiplied the consultant costs ($21,400) by the number of States (57) to estimate an annual cost of $1.2 million ($1,219,800). This is equivalent to a 10-year cost of $12.2 million ($12,198,000).

At the Federal level for the AEFLA program (see Exhibit 43), the Departments estimated the labor cost by first multiplying the estimated number of GS–14, Step 5 managers per State (4) by the time required to support State adult education agency participation in the coordination process (10 hours each) and the hourly compensation rate ($76.48/hour). We performed the same calculation for the following occupational categories: GS–13, Step 5 computer systems analysts (1 analyst at $64.71/hour for 5 hours), and GS–12, Step 5 management analysts (2 analysts at $54.43/hour for 30 hours each). We summed the labor cost for all three categories to estimate an annual cost of $6,649. This is equivalent to a 10-year cost of $66,486.

At the State level for the AEFLA program (see Exhibit 46), the Departments estimated this labor cost by first multiplying the estimated number of managers per State (1) by the time required to coordinate any evaluations of activities carried out in the States and in cooperating in the provision of various forms of data for Federal evaluations (10 hours) and by the hourly compensation rate ($65.39/hour). We performed the same calculation for the following occupational categories: Computer systems analysts (1 analyst at $56.17/hour for 20 hours), social and community managers (1 manager at $54.21/hour for 10 hours), and management analysts (1 analyst at $45.88/hour for 20 hours). We summed the labor cost for all four categories ($3,237) and multiplied the result by the number of States (57) to estimate an annual cost of $184,509. This is equivalent to a 10-year cost of $1.8 million ($1,845,090).

At the Federal level for the VR program (see Exhibit 44), the Departments estimated the labor cost by first multiplying the estimated number of GS–14, Step 5 managers per State (2) by the time required to support State VR agency participation and coordination in carrying out State evaluations (5 hours each) and the hourly compensation rate ($76.48/hour). We performed the same calculation for the following occupational categories: GS–13, Step 5 social and community service managers (2 managers at $64.71/hour for 10 hours each) and GS–12, Step 5 management analysts (2 analysts at $54.43/hour for 15 hours each). We summed the labor cost for all three categories to estimate an annual cost of $3,692. This is equivalent to a 10-year cost of $36,919.

At the State level for the VR program (see Exhibit 47), the Departments estimated this labor cost by first multiplying the estimated number of managers per State (1) by the time required to coordinate any evaluations of activities carried out in the States and for cooperating in the provision of various forms of data for Federal evaluations (1 hour) and by the hourly compensation rate ($65.39/hour). We performed the same calculation for the following occupational categories: Computer systems analysts (1 analyst at $56.17/hour for 13 hours), social and community service managers (1 manager at $54.21/hour for 5 hours), management analysts (1 analyst at $45.88/hour for 5 hours), and office and administrative support staff (1 staff member at $30.57/hour for 2 hours). We summed the labor cost for all five categories ($1,357) and multiplied the result by the number of VR agencies (80) to estimate an annual cost of $108,575. This is equivalent to a 10-year cost of $1.1 million ($1,085,752).

The sum of these calculations yields a total 10-year cost of $23.0 million ($23,019,352) resulting in an average annual cost of $2.3 million ($2,301,935), for individuals from the Federal- and State-level DOL, AEFLA and VR programs related to State evaluation responsibilities.

Relative to the baseline of practice under WIA, the four provisions of the WIOA Final Rule described above are expected to result in costs of $626.8 million ($626,780,605) over the 10-year period. This is equivalent to an average annual cost of $62.7 million ($62,678,060). See section V.A.7 (Summary of Analysis) for a summary of these costs.

7. Summary of Analysis

Exhibit 50 summarizes the estimated undiscounted average annual costs for each provision of this Final Rule. The exhibit also presents a high-level qualitative description of the benefits resulting from full WIOA implementation for each rule provision. These qualitative forecasts are predicated on program experience and are outcomes for which data will become available only after implementation. The Departments estimate the average annual cost of this Final Rule over the 10-year period of analysis to be $62.7 million. The largest contributor to this cost is the provision related to the development and updating of State performance accountability systems, which is estimated at $42.7 million per year. The next largest cost results from performance reports at an estimated $9.6 million per year, followed by the average cost of adjusting performance based on actual economic conditions and characteristics of participants at an estimated $4.6 million per year.

EXHIBIT 50—ESTIMATED COSTS OF THE DEPARTMENTS OF EDUCATION AND LABOR FINAL RULE BY PROVISION

Provision	Average annual cost (undiscounted)	Percent of total cost	Qualitative benefit highlights
(a) Time to Review the New Rule	$330,562	0.53	General requirement.
(b)(i) Unified or Combined State Plans—Expanded Content Requirements.	120,202	0.19	Enhanced data for management decision-making and policy integration; avoided program service duplication; enhanced internal State planning; avoids "silos" and service duplications; more efficient use of public resources.
(b)(ii) Unified or Combined State Plans—Biennial Development and Modification Process.	186,016	0.30	
(b)(iii) Unified or Combined Plans—Coordinating Submission of State Plans.	840,450	1.34	
(c)(i) Development and Updating of State Performance Accountability Systems.	42,717,641	68.15	Clear articulation of expectations and outcomes for accountability purposes; improved policy and management decision-making from performance measure data; better management and policy decisions using outcome data; improved service and placements; more accountability.
(c)(ii) Effectiveness of Serving Employers	638,350	1.02	1.02%
(c)(iii) Negotiation of Levels of Performance	490,432	0.78	
(c)(iv) Running Statistical Adjustment Model to Adjust Levels of Performance Based on Actual Economic Conditions and Characteristics of Participants.	4,578,901	7.31	
(c)(v) Additional State Performance Accountability Indicators (Beyond Required Performance Indicators).	17,032	0.03	
(c)(vi) Technical Assistance to States	100,000	0.16	
(c)(vii) Performance Reports, including collection of new data.	9,592,540	15.30	
(c)(viii) Obtain UI Wage Data	648,000	1.03	
(c)(ix) Data Analytic Software and Training	116,000	0.19	
(d) State Evaluation Responsibilities	2,301,935	3.67	Improved service delivery and customer service; enhanced policy-making and system building; more accountability.
Total Costs	62,678,060	100.00	

Note: Totals might not sum due to rounding.

Exhibit 51 summarizes the first-year costs for each provision of this Final Rule. The Departments estimated the total first-year cost of this Final Rule to be $135.5 million. The largest contributor to the first-year cost is the provision related to developing and updating State performance accountability systems at $97.5 million. The next largest first-year cost results from performance reports, amounting to $21.7 million, followed by adjusting levels of performance based on actual economic conditions and characteristics at $4.6 million.

EXHIBIT 51—ESTIMATED FIRST-YEAR COSTS OF THE FINAL RULE BY PROVISION

Provision	Total first-year cost	Percent of total first-year cost
(a) Time to Review the New Rule	$3,305,615	2.44
(b)(i) Unified or Combined State Plans—Expanded Content Requirements	1,202,022	0.89
(b)(ii) Unified or Combined State Plans—Biennial Development and Modification Process	0	0.00
(b)(iii) Unified or Combined Plans—Coordinating Submission of State Plans	1,680,901	1.24
(c)(i) Development and Updating of State Performance Accountability Systems	97,467,521	71.91
(c)(ii) Effectiveness of Serving Employers	338,045	0.25
(c)(iii) Negotiation of Levels of Performance	980,863	0.72
(c)(iv) Running Statistical Adjustment to Adjust Levels of Performance Based on Actual Economic Conditions and Characteristics of Participants	4,578,901	3.38
(c)(v) Additional State Performance Accountability Indicators (Beyond Required Performance Indicators)	170,317	0.13
(c)(vi) Technical Assistance to States	0	0.00
(c)(vii) Performance Reports, including collection of new data	21,705,903	16.01
(c)(viii) Obtain UI Wage Data	648,000	0.48
(c)(ix) Data Analytic Software and Training	1,160,000	0.86
(d) State Evaluation Responsibilities	2,301,935	1.70
Total Cost	135,540,023	100.00

Note: Totals might not sum due to rounding.

Exhibit 52 summarizes the estimated annual and total costs of this Final Rule. The estimated total (undiscounted) cost of the rule sums to $626.8 million over the 10-year analysis period, which is equal to an average annual cost of $62.7 million per year. In total, the estimated 10-year discounted costs of the Final Rule range from $495.2 million to $558.9 million (with 7- and 3-percent discounting, respectively).

To contextualize the cost of this Final Rule, the average annual budget for WIA implementation over FY 2012–2014 for the Departments of Labor and Education combined was $7.2 billion.[53] Thus, the annual additional cost of implementing this Final Rule is 0.9 to 1 percent of the average annual WIA budget for FY 2012–2014 (with 3-percent and 7-percent discounting, respectively). In response to public comments, the Departments also contextualize the cost of the Final Rule relative to the amount of administrative and transition funds available to States, which averaged $200.1 million between PY 2014 and PY 2015.[54] The annual additional cost of implementing the Final Rule is between 32.7 percent and 35.2 percent of the average annual administrative and transition funds budget (with 3-percent and 7-percent discounting, respectively).

EXHIBIT 52—ESTIMATED MONETIZED COSTS OF DEPARTMENTS OF LABOR AND EDUCATION FINAL RULE

[2015 dollars]

2016	$135,540,023
2017	77,389,018
2018	64,038,222
2019	52,945,116
2020	59,249,908
2021	45,312,669
2022	50,789,374
2023	45,312,669
2024	50,890,937
2025	45,312,669
Undiscounted 10-Year Total	626,780,605
10-Year Total with 3% Discounting	558,940,877
10-Year Total with 7% Discounting	495,158,156
10-Year Average	62,678,060
Annualized with 3% Discounting	65,524,922
Annualized with 7% Discounting	70,499,382

Note: Totals might not sum due to rounding.

Regulatory Benefits

The Departments were unable to quantify several important benefits to society due to data limitations and a lack of existing data or evaluation findings on particular items.[55] These include increased employment opportunities for unemployed or underemployed U.S. workers, enhanced ETP process, and evaluation of State programs. Below, we describe qualitatively the benefits related to this Final Rule.

The Departments provide a qualitative description of the anticipated WIOA benefits below. The anticipated WIOA benefits are the results of expanded services to a larger number of people and/or improving services that are already being offered under WIA. These qualitative forecasts are predicated on program experience and are outcomes for which data will become available only after implementation. The studies discussed below are largely based on programs and their existing requirements under WIA and therefore they capture the benefits associated with WIA. However, they still can illustrate the types of benefits that are expected from this Final Rule.

Increased alignment of training with local labor markets through economic, education, and workforce data. Under WIOA, more substantial economic, education, and workforce data are required to be integrated into the State Plan than was required under WIA for ED programs. Under WIA, economic, education, and workforce data were not included in State Plans for ED programs.[56] Hence, it was possible that some program participants were being trained for jobs with no local demand at the time of the participants' exit from the training program, even though the demand for the job might have existed elsewhere. Under WIOA, economic, education, and workforce data will be shared by DOL and ED via the core programs in the State Plan. Relative to WIA, the use of economic, education, and workforce data are expected to result in training that is better aligned with local labor market demand (*i.e.*, the likelihood that more participants are learning skills that are applicable to jobs for which there will be local demand is increased).

This is expected to result in three potential benefits: (1) Improved employment outcomes in the local area, (2) higher wages, and (3) reduced costs associated with returning training participants. First, because training participants will primarily be trained for jobs with local demand, these individuals will have an increased likelihood of obtaining employment following their training due to their applicable skill set and the increased availability of local labor market positions. This could minimize the duration of unemployment in some local areas. Second, these individuals could be paid a higher wage because they will possess job-specific training for jobs in demand in the local area. Finally, under WIA, if an individual was not employed after exiting a training program, he or she was able to participate in some additional training programs, which resulted in greater costs for those training providers and one-stop partners. Under WIOA, the Departments expect costs for returning participants could decrease due to some participants' increased likelihood of obtaining employment. Overall, having better aligned training programs will have a positive effect on the economy from benefits such as reduced retraining

[53] U.S. Department of Labor, Employment and Training Administration. (2015). Archive of State Statutory Formula Funding. Retrieved from: *https://www.doleta.gov/budget/py01_py09_arra_archive.cfm*. The Departments used data from the following files to estimate the average annual WIA budget: WIA Adult Activities Program (PYs 2011, 2012, 2013, and 2014); WIA Dislocated Worker Activities Program (PYs 2011, 2012, 2013, and 2014); and WIA Youth Activities (PYs 2012, 2013, and 2014). Note that for adult and dislocated worker activities, the Departments summed the program year's July funding with the previous program year's October funding to calculate the amount of funding per fiscal year. The youth activities funding is obligated to States in April and therefore corresponds to the fiscal year in which it is obligated. We inflated the funding for each fiscal year, so that the average annual WIA budget is in 2015 dollars.

U.S. Department of Labor, Employment and Training Administration. (2015) State Statutory Formula Funding. Retrieved from: *https://www.doleta.gov/budget/statfund.cfm*. The Departments also used data from the following files to estimate the average annual WIA budget: Employment Services Program Dollar Tables (PYs 2012, 2013, and 2014). Note that Wagner-Peyser Act funds for a program year are obligated to States in July; therefore, these funds correspond to the fiscal year in which they are obligated. We inflated the funding for each fiscal year, so that the average annual WIA budget is in 2015 dollars.

U.S. Department of Education. (2016). Department of Education Budget Tables. Retrieved from: *http://www2.ed.gov/about/overview/budget/tables.html?src=ct*. The Departments used data from the following files to estimate the average annual WIA budget: Congressional Action (FYs 2012, 2013, and 2014). The budget was updated to 2015 dollars.

[54] Training and Employment Guidance Letter (TEGL) 34–14, TEGL 12–14, TEGL 24–14. The Departments inflated the funding for each program year.

[55] The Departments were able to estimate many but not all of the inputs that would be necessary to quantify a benefit to DOL programs that could result from this Final Rule if affected entities choose to integrate DOL program participant records. This activity is highly encouraged but not required by this Final Rule; hence, one of the key inputs to the benefits calculation (the number of entities choosing to integrate) is highly uncertain. Given the inability to reliably estimate this input, no quantitative estimate of cost savings is presented; instead these ancillary benefits are discussed at the end of this benefits section.

[56] DOL already included economic, education, and workforce data in the State Plans under WIA, so DOL programs will not experience as much in incremental costs associated with this particular requirement as will the AEFLA and VR programs.

costs, and improved worker morale. The lengthy and involved process of implementing changes to existing programs and developing new programs, however, might delay the benefits derived from improved economic, education, and workforce data.[57]

State evaluation research. In support of a State's strategic plan and goals, State-conducted evaluations and other forms of research will enable each State to test various interventions geared toward State conditions and opportunities. Results from such evaluation and research, if used by States, could improve service quality and effectiveness, potentially leading to higher employment rates and earnings among participants. Implementing various innovations that have been tested and found effective also could lead to lower unit costs and increased numbers of individuals served within a State. Sharing the findings nationally could lead to new service or management practices that other States could adopt to improve participant labor market outcomes, lower unit costs, or increase the number served.

Training's impact on job placement. A recent study found that flexible and innovative training that is closely related to a real and in-demand occupation is associated with better labor market outcomes for training participants. Youth disconnected from work and school can benefit from comprehensive and integrated models of training that combine education, occupational skills, and support services.[58] The study noted, however, that evidence for effective employment and training-related programs for youth is less extensive than for adults, and that there are fewer positive findings from evaluations.[59] The WIA youth program remains largely untested.[60] One study found that WIA training services increase placement rates by 4.4 percent among adults and by 5.9 percent among dislocated workers,[61] while another study concluded that placement rates are 3 to 5 percent higher among all training recipients.[62]

Participants in occupational training had a reemployment rate 5 percentage points higher than those who received no training, and reemployment rates were highest among recipients of on-the-job training, a difference of 10 to 11 percentage points.[63] The study found that training, however, did not correspond to higher employment retention or earnings.[64] A Youth Opportunity Grant Initiative study found that Youth Opportunity was successful at improving outcomes for high-poverty youth. Youth Opportunity also increased the labor-force participation rate overall and for subgroups, including 16- to 19-year-old adolescents, women, African Americans, and in-school youth.[65] DOL-sponsored research found that participants who received core services (often funded by Employment Services) and other services in American Job Centers were more likely to enter and retain employment.[66]

Training's impact on wages. Before enactment of WIA, Job Training Partnership Act services had a modest but statistically significant impact on the earnings of adult participants.[67] WIA training increased participants' quarterly earnings by $660; these impacts persisted beyond 2 years and were largest among women.[68] WIA adult program participants who received core services (*e.g.*, skill assessment, labor market information) or intensive services (*e.g.*, specialized assessments, counseling) earned up to $200 more per quarter than non-WIA participants. Participants who received training services in addition to core and intensive services initially earned less but caught up within 10 quarters with the earnings of participants who received only core or intensive services; marginal benefits of training could exceed $400 per quarter. Earnings progressions were similar for WIA adult program participants and users of the labor exchange only.[69] WIA training services also improved participants' long-term wage rates, doubling earnings after 10 quarters over those not receiving training services.[70] WIA participants who did not receive training, however, earned $550 to $700 more in the first quarter after placement. The study also noted that individuals who did not receive training received effective short-term counseling that enabled them to gain an immediate advantage in the labor market.[71]

Another DOL program, the Job Corps program for disadvantaged youth and young adults, produced sustained increases in earnings for participants in their early twenties. Students who completed Job Corps vocational training experienced average earnings increases by the fourth follow-up year over the comparison group, whereas those who

[57] Johnson, T., Gritz, M., Jackson, R., Burghardt, J., Boussy, C., Leonard, J., and Orians, C. (1999). *National Job Corps Study: Report on the process analysis.* Prepared by Mathematica Policy Research, Inc. for U.S. Department of Labor, Employment and Training Administration. Retrieved from: *http://wdr.doleta.gov/research/FullText_Documents/99-jc_analysis.pdf.*

[58] U.S. Department of Labor, U.S. Department of Commerce, U.S. Department of Education, and U.S. Department of Health and Human Services. (2014). *What works in job training: A synthesis of the evidence.* Retrieved from: *http://www.dol.gov/asp/evaluation/jdt/jdt.pdf.*

[59] *Ibid.*

[60] Decker, P.T., & Berk. J.A. (2011). Ten years of the Workforce Investment Act (WIA): Interpreting the research on WIA and related programs. *Journal of Policy Analysis and Management, 30*(4), 906–926.

[61] Hollenbeck, K., Schroeder, D., King, C.T., and Huang, W.J. (2005). *Net impact estimates for services provided through the Workforce Investment Act* (Occasional Paper 2005–06). Washington, DC: U.S. Department of Labor, Employment and Training Administration, Office of Policy and Research, Division of Research and Demonstration. Retrieved from: *http://wdr.doleta.gov/research/FullText_Documents/Net%20Impact%20Estimates%20for%20Services%20Provided%20through%20the%20Workforce%20Investment%20Act-%20Final%20Report.pdf.*

[62] Heinrich, C.J., Mueser, P.R., and Troske, K.R. (2009). *Workforce Investment Act non-experimental net impact evaluation.* Columbia, MD: IMPAQ International, LLC. Retrieved from: *http://wdr.doleta.gov/research/FullText_Documents/Workforce%20Investment%20Act%20Non-Experimental%20Net%20Impact%20Evaluation%20-%20Final%20Report.pdf.*

[63] Park, J. (2011). *Does occupational training by the Trade Adjustment Assistance Program really help reemployment?: Success measured as matching.* Washington, DC: U.S. Department of Labor, Employment and Training Administration. Retrieved from: *https://wdr.doleta.gov/research/FullText_Documents/ETAOP_2011-09.pdf.*

[64] *Ibid.*

[65] Jackson, R.H., Malené Dixon, R., McCoy, A., Pistorino, C., Zador, P., Lopdell, J., . . . and Bruno., L. (2007). *Youth Opportunity Grant Initiative: Impact and synthesis report.* Prepared by Decision Information Resources, Inc. for U.S. Department of Labor, Employment and Training Administration. Retrieved from: *http://wdr.doleta.gov/research/FullText_Documents/YO%20Impact%20and%20Synthesis%20Report.pdf.*

[66] U.S. Department of Labor, Employment and Training Administration, Office of Policy Development and Research. (2013). *Five-Year research and evaluation strategic plan program years 2012–2017.* Retrieved from: *http://wdr.doleta.gov/research/FullText_Documents/ETAOP_2013_21.pdf.*

[67] Barnow, B., and Gubits, D. (2003) *Review of recent pilot, demonstration, research, and evaluation initiatives to assist in the implementation of programs under the Workforce Investment Act* (Occasional Paper 2003–10). U.S. Department of Labor, Employment and Training Administration. Retrieved from: *http://wdr.doleta.gov/research/FullText_Documents/ETAOP%202003-10%20Review%20of%20Recent%20Pilot%2C%20Demonostration%2C%20Research%2C%20and%20Evaluation%20Initiatives.pdf.*

[68] *Ibid.*

[69] Chrisinger, C.K. (2011). *Earnings progression among workforce development participants: Evidence from Washington State.* U.S. Department of Labor, Employment and Training Administration. Retrieved from: *http://wdr.doleta.gov/research/FullText_Documents/ETAOP_2011-11.pdf.*

[70] Heinrich, C.J., Mueser, P.R., and Troske, K.R. (2009). *Workforce Investment Act non-experimental net impact evaluation.* Columbia, MD: IMPAQ International, LLC. Retrieved from: *http://wdr.doleta.gov/research/FullText_Documents/Workforce%20Investment%20Act%20Non-Experimental%20Net%20Impact%20Evaluation%20-%20Final%20Report.pdf.*

[71] *Ibid.*

did not complete training experienced no increase.[72] Another publication noted that on average, adults experienced a $743 quarterly post-exit earnings boost.[73]

Those who completed training experienced a 15 percent increase in employment rates and an increase in hourly wages of $1.21 relative to participants without training.[74] Participation in WIA training also had a distinct positive but smaller impact on employment and earnings, with employment 4.4 percentage points higher and quarterly earnings $660 higher than comparison group members.

National and international studies such as the recent Survey of Adult Skills [75] provide strong evidence of the need for and economic value of adult basic skills (ABS). A growing body of research indicates strong economic return on basic skills at given levels of education. Estimates have been made of the potential economic benefits that would accrue from increased educational attainment and levels of basic skills. The Longitudinal Study of Adult Learning [76] (LSAL) randomly sampled approximately 1,000 high school dropouts and followed them for nearly a decade from 1998 to 2007. LSAL followed both participants and nonparticipants in ABS programs, assessing their literacy skills and skill uses over long periods, along with changes in their social, educational, and economic status, offering a rich picture of adult literacy development. The study found that individuals who participate in ABS programs have higher future earnings, and income premiums are larger with more intensive participation.[77] Individuals who participate in ABS programs tend to have higher levels of future literacy proficiency. Their proficiency premiums are larger with more intensive participation.[78] The study also found a robust impact of ABS program participation on secondary school credential attainment [79] and engagement in postsecondary education.[80]

Vocational and adult literacy's education impact. Vocational managers indicate that closely aligning service offerings with labor market reports improves the likelihood that participants will learn applicable skills. The lengthy and involved process of implementing changes to existing programs and developing new programs, however, might delay the benefits derived from improved labor market data.[81]

The following are channels through which the benefits discussed above might be achieved:

Better information for workers. The performance accountability measures will provide workers with higher-quality information about potential training program providers and enable them to make better-informed choices about which programs to pursue. The information analyzed and published by the WDBs about local labor markets also will help trainees and providers target their efforts and develop reasonable expectations about outcomes.

Consumers of educational services, including those with barriers to employment, such as disadvantaged and displaced workers, require reliable information on the value of different training options to make informed choices. Displaced workers tend to be farther removed from schooling and lack information about available courses and the fields with the highest economic return.[82] Given these information gaps and financial pressures, it is important that displaced workers learn of the economic returns to various training plans.[83] Still, one study concluded that the cost-effectiveness of WIA job training for disadvantaged workers is "modestly positive" due to the limited sample of States on which the research was based.[84]

State performance accountability measures. This requirement will include significant data collection for Local WDBs to address performance measures for the core programs in their jurisdictions. This data collection will permit the State WDBs to assess performance across each State. Training providers will be required to provide data to Local WDBs, which will represent a cost in the form of increased data collection and processing. Employers and employees also will have to provide information to the training providers, which will take time. This provision—in combination with the Board membership provision requiring employer/business representation that is part of the DOL WIOA Final Rule—is expected to improve the quality of local training and, ultimately, the number and caliber of job placements.

Implementation of follow-up measures, rather than termination-based measures, might improve long-term labor market outcomes, although some

[72] Gritz, M., and Johnson, T. (2001). *National Job Corps Study: Assessing program effects on earnings for students achieving key program milestones.* Prepared by Battelle Memorial Institute for U.S. Department of Labor, Employment and Training Administration, Office of Policy and Research. Retrieved from: *http://wdr.doleta.gov/research/FullText_Documents/MilestoneImpactReport-Final.pdf.*

[73] Hollenbeck, K., Schroeder, D., King, C.T., and Huang, W.J. (2005). *Net impact estimates for services provided through the Workforce Investment Act* (Occasional Paper 2005–06). Washington, DC: U.S. Department of Labor. Retrieved from: *http://wdr.doleta.gov/research/FullText_Documents/Net%20Impact%20Estimates%20for%20Services%20Provided%20through%20the%20Workforce%20Investment%20Act-%20Final%20Report.pdf.*

[74] Needels, K., Bellotti, J., Dadgar, M., and Nicholson, W. (2006). *Evaluation of the Military Base National Emergency Grants: Final report* (Occasional Paper 2007–02). Prepared by Mathematica Policy Research for U.S. Department of Labor, Employment and Training Administration, Office of Policy Development and Research. Retrieved from: *https://wdr.doleta.gov/research/FullText_Documents/Evaluation%20of%20the%20Military%20Base%20National%20Emergency%20Grants%20Final%20Report.pdf.*

[75] OECD. About the Survey of Adult Skills (PIAAC). Retrieved from: *https://www.oecd.org/site/piaac/surveyofadultskills.htm.*

[76] Portland State University. (2010). *Introduction* to LSAL. Retrieved from: *http://www.lsal.pdx.edu/index.html.*

[77] U.S. Department of Education, Office of Career, Technical, and Adult Education. *The Impact of ABS Program Participation on Long-Term Economic Outcomes.* Washington, DC, 2014. Retrieved from: *http://lincs.ed.gov/employer/1_ABS_Economic_Outcomes.pdf.*

[78] U.S. Department of Education, Office of Career, Technical, and Adult Education. *The Impact of ABS Program Participation on Long-Term Literacy Growth.* Washington, DC, 2014. Retrieved from: *http://lincs.ed.gov/employer/2_ABS_Literacy_Growth.pdf.*

[79] U.S. Department of Education, Office of Career, Technical, and Adult Education. *The Impact of ABS Program Participation on Long-Term GED Attainment.* Washington, DC, 2014. Retrieved from: *http://lincs.ed.gov/employer/3_ABS_GED_Attainment.pdf.*

[80] U.S. Department of Education, Office of Career, Technical, and Adult Education. *The Impact of ABS Program Participation on Long-Term Postsecondary Engagement.* Washington, DC, 2014. Retrieved from: *http://lincs.ed.gov/employer/4_ABS_Post secondary_Engagement.pdf.*

[81] Johnson, T., Gritz, M., Jackson, R., Burghardt, J., Boussy, C., Leonard, J. and Orians, C. (1999). *National Job Corps study: Report on the process analysis.* Prepared by Mathematica Policy Research, Inc. for U.S. Department of Labor, *Employment* and Training Administration. Retrieved from: *http://wdr.doleta.gov/research/FullText_Documents/99-jc_analysis.pdf.*

[82] Greenstone, M., and Looney, A. (2011). *Building America's job skills with effective workforce programs: A training strategy to raise wages and increase work opportunities.* Washington, DC: The Hamilton Project. Retrieved from: *http://www.brookings.edu/~/media/research/files/papers/2011/11/training-greenstone-looney/11_training_greenstone_looney.pdf.*

[83] Jacobson, L.S., Lalonde, R.J., and Sullivan, D. (2011). *Policies to reduce high tenured displaced workers' earnings losses through retraining* (Discussion Paper 2011–11). Washington, DC: The Hamilton Project. Retrieved from: *http://www.brookings.edu/~/media/research/files/papers/2011/11/displaced-jacobson-lalaonde-sullivan/11_displaced_jls_paper.pdf.*

[84] Heinrich, C.J., Mueser, P.R., Troske, K.R., Jeon, K.S., and Kahvecioglu, D.C. (2009). *New estimates of public employment and training program net impacts: A nonexperimental evaluation of the Workforce Investment Act program* (Discussion Paper 4569). Bonn, Germany: Institute for the Study of Labor (IZA). Retrieved from: *http://ftp.iza.org/dp4569.pdf.*

could divert resources from training activities.[85]

Before-after earning metrics capture the contribution of training to earnings potential and minimize incentives to select only training participants with high initial earnings.[86] With the exception of programs in a few States, current incentives do not reward enrollment of the least advantaged.[87] In addition, the study noted evidence that the performance-standards can be "gamed" in an attempt to maximize centers' measured performance.[88]

Pressure to meet performance levels could lead providers to focus on offering services to participants most likely to succeed. For example, current performance accountability measures might create incentives for training providers to screen participants for motivation, delay participation for those needing significant improvement, or discourage participation by those with high existing wages.[89]

The following subsections present additional channels by which economic benefits may be associated with various aspects of this Final Rule:

Dislocated workers. A study found that, for dislocated workers, receiving WIA services significantly increased employment rates by 13.5 percent and boosted post-exit quarterly earnings by $951.[90] Another study, however, found that training in the WIA dislocated worker program had a net benefit close to zero or even below zero.[91]

Self-employed individuals. Job seekers who received self-employment services started businesses sooner and had longer lasting businesses than nonparticipants. Self-employment assistance participants were 19 times more likely to be self-employed than nonparticipants and expressed high levels of satisfaction with self-employment. A study of Maine, New Jersey, and New York programs found that participants were four times more likely to obtain employment of any kind than nonparticipants.[92]

Workers with disabilities. A study of individuals with disabilities enrolled in training for a broad array of occupations found that the mean hourly wage and hours worked per quarter for program graduates were higher than for individuals who did not complete the program.

In conclusion, after a review of the quantitative and qualitative analysis of the impacts of this Final Rule, the Departments have concluded that the societal benefits justify the anticipated costs.

Ancillary Benefits

The following section describes the ancillary benefit to the DOL program that may result from this Final Rule due to integrated DOL program participant records—an activity that is highly encouraged in the Final Rule, but is not required.

Integrated DOL Program Participant Records. Section 504 of WIOA requires State and Local WDBs to establish procedures and criteria that will simplify reporting requirements and reduce reporting burdens. Under WIOA, States will be highly encouraged to submit one record for an individual participating in one or more DOL title I and Wagner-Peyser Act Employment Service core programs. The individual records would be standardized in terms of data elements and associated reporting specifications. Under WIA, for the DOL core programs, States were required to provide two separate individual records for an individual receiving services under the DOL title I programs and the Wagner-Peyser Act Employment Service program. A single integrated individual record for DOL core programs would eliminate duplicative reporting of an individual's demographic information across programs.

According to a recent report which sampled 28 local areas, career counselors reported that their high caseloads (approximately 50 to 100 cases per counselor) limited the amount of time they could spend providing individualized career services (individualized career services under WIOA) per client.[93] Efficiencies in the intake process will allow case managers to spend more time per client delivering intensive services. The study also found that intensive services led to increased employment and earnings, and individuals that received intensive services were more likely to have stable jobs with more benefits.[94] In addition to the technical benefits of integrated systems, this process will reduce administrative burdens in service delivery that existed under WIA. WIOA removes a sequence of service requirement that in some cases may have prolonged or created barriers to effective service delivery. Under WIOA, career planners can deliver the needed services without going through these administrative processes. By doing so, individuals will get the services they need sooner which can lead to quicker entry into employment or training. Furthermore, having integrated records will help the programs find the best mix of services for individuals, which can result in UI payment reductions, improved job placement rates, higher paying jobs, and reduced government assistance. Although there will be some upfront costs to develop the system (as discussed in provision (c) "State Performance Accountability System"), the Departments expect long-term benefits.

Transfers

In addition, there are two important transfers that the Departments were unable to quantify. Below, we describe qualitatively the transfers that are expected to result from improved system alignment and the Reemployment and Eligibility Assessment Program.

Improved system alignment. Under WIOA, State WDBs must help Governors develop strategies for

[85] Courty, P., and Marschke, G. (2007). Making government accountable: Lessons from a federal job training program. *Public Administration Review, 67*(5), 904–916.

[86] Heckman, J.J., Heinrich, C., and Smith, J.A. (1997). Assessing the performance of performance standards in public bureaucracies. *American Economic Review, 87*(2), 389–395.

[87] *Ibid.*

[88] *Ibid.*

[89] Dunham, K., Mack, M., Salzman, J., and Wiegand, A. (2005). *Evaluation of the WIA performance measurement system: Survey report.* Prepared by Social Policy Research Associates for U.S. Department of Labor, Employment and Training Administration. Retrieved from: *http://wdr.doleta.gov/research/FullText_Documents/Evaluation%20of%20the%20WIA%20Performance%20Measurement%20System%20-%20Survey%20Report.pdf.*

[90] Hollenbeck K., Schroeder, D., King, C.T., and Huang, W.-J. (2005). *Net impact estimates for services provided through the Workforce Investment Act* (Occasional Paper 2005–06). Washington, DC: U.S. Department of Labor, Employment and Training Administration, Office of Policy and Research, Division of Research and Demonstration. Retrieved from: *http://wdr.doleta.gov/research/FullText_Documents/Net%20Impact%20Estimates%20for%20Services%20Provided%20through%20the%20Workforce%20Investment%20Act-%20Final%20Report.pdf.*

[91] Heinrich, C.J., Mueser, P.R., and Troske, K.R. (2009). *Workforce Investment Act non-experimental net impact evaluation.* Columbia, MD: IMPAQ International, LLC. Retrieved from: *http://wdr.doleta.gov/research/FullText_Documents/Workforce%20Investment%20Act%20Non-Experimental%20Net%20Impact%20Evaluation%20-%20Final%20Report.pdf.*

[92] Kosanovich, W., Fleck, H., Yost, B., Armon, W., and Siliezar, S. (2001). *Comprehensive assessment of self-employment assistance programs.* Prepared by DTI Associates for U.S. Department of Labor, Office of Workforce Security. Retrieved from: *http://wdr.doleta.gov/research/FullText_Documents/Comprehensive%20Assessment%20of%20Self-Employment%20Assistance%20Programs.pdf.*

[93] D'Amico, R. *et al.* (2015). *Providing public workforce services to job seekers: Implementation findings on the WIA Adult and Dislocated Worker Programs.* Washington, DC: Mathematic Policy Research.

[94] McConnell, S. *et al.* (2016). *Providing public workforce services to job seekers: 15-Month impact findings on the WIA Adult and Dislocated Worker Programs.* Washington, DC: Mathematica Policy Research.

aligning technology and data systems across one-stop partner programs to enhance service delivery and improve efficiencies in reporting on performance accountability measures. Improved system alignment will allow States to better understand and address State-level problems. Integrated data systems will allow for unified and streamlined intake, case management, and service delivery; minimize the duplication of data; ensure consistently defined and applied data elements; facilitate compliance with performance reporting and evaluation requirements; and provide meaningful information about core program participation to inform operations. For example, participants in a title I job training program, who need to improve their basic literacy skills, will be able to access the title II adult education services they need in one location which will help to facilitate concurrent service delivery by the one-stop core partner programs and ultimately accelerate overall timeliness for outcome attainment. With this improved information, States will have the ability to negotiate levels of performance more accurately, which will subsequently reduce the likelihood that States will receive sanctions for failing to meet the State-adjusted levels of performance for a program for a second consecutive program year or for failing to submit a report for any program year.

The Reemployment and Eligibility Assessment program. The Reemployment and Eligibility Assessment program, which has now evolved to become the Reemployment Service and Eligibility Assessment program, was effective in assisting claimants to exit the UI program and avoid exhausting regular UI benefits in Florida, Idaho, and Nevada. By avoiding UI benefit exhaustion, the program led to reductions in the likelihood of receiving unemployment compensation benefits. There exists notable evidence that the Reemployment and Eligibility Assessment program is cost-effective, particularly when provided through an integrated service delivery model, which WIOA also promotes.[95] The program reduced UI payments and increased tax revenue resulting from increased worker earnings.

[95] Poe-Yamagata, E., Benus, J., Bill, N., Carrington, H., Michaelides, M., and Shen, T. (2011). *Impact of the Reemployment and Eligibility Assessment (REA) Initiative.* Columbia, MD: IMPAQ International, LLC. Retrieved from: *http://wdr.doleta.gov/research/FullText_Documents/ETAOP_2012_08_Impact_of_the_REA_Initiative.pdf.*

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 603, requires agencies to prepare a regulatory flexibility analysis to determine whether a regulation will have a significant economic impact on a substantial number of small entities. Section 605 of the RFA allows an agency to certify a rule in lieu of preparing an analysis if the regulation is not expected to have a significant economic impact on a substantial number of small entities. Further, under the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801 (SBREFA), an agency is required to produce compliance guidance for small entities if the rule has a significant economic impact.

The Small Business Administration (SBA) defines a small business as one that is "independently owned and operated and which is not dominant in its field of operation." The definition of small business varies from industry to industry to the extent necessary to reflect industry size differences properly. An agency must either use the SBA definition for a small entity or establish an alternative definition, in this instance, for the workforce industry. The Departments have adopted the SBA definition for purposes of this certification.

The Departments have notified the Chief Counsel for Advocacy, SBA, under the RFA at 5 U.S.C. 605(b), and certify that this rule will not have a significant economic impact on a substantial number of small entities. This finding is supported, in very large measure, by the fact that small entities are already receiving financial assistance under the WIA program and will likely continue to do so under the WIOA program as articulated in this Final Rule.

Affected Small Entities

The Final Rule can be expected to impact small one-stop center operators. One-stop operators can be a single entity (public, private, or nonprofit) or a consortium of entities. The types of entities that might be a one-stop operator include: (1) An institution of higher education; (2) an employment service State agency established under the Wagner-Peyser Act; (3) a community-based organization, nonprofit organization, or workforce intermediary; (4) a private for-profit entity; (5) a government agency; (6) a Local WDB, with the approval of the chief elected official and the Governor; or (7) another interested organization or entity that can carry out the duties of the one-stop operator. Examples include a local chamber of commerce or other business organization, or a labor organization.

This Final Rule can also be expected to impact a variety of AEFLA local providers: (1) Local education agencies; (2) community-based organizations; (3) faith-based organizations; (4) libraries; community, junior, and technical colleges; (5) 4-year colleges and universities; (6) correctional institutions; and (7) other institutions, such as medical and special institutions not designed for criminal offenders.[96]

Impact on Small Entities

The Departments indicate that transfer payments are a significant aspect of this analysis in that the majority of WIOA program cost burdens on State and Local WDBs will be fully financed through Federal transfer payments to States. We have highlighted costs that are new to WIOA implementation and this Final Rule. Therefore, we expect that this WIOA Final Rule will have no cost impact on small entities.

C. Small Business Regulatory Enforcement Fairness Act of 1996

The Departments have concluded that this Joint WIOA Final Rule does not impose a significant economic impact on a substantial number of small entities under the RFA; therefore, the Departments are not required to produce any Compliance Guides for Small Entities, as mandated by the SBREFA.

D. Paperwork Reduction Act

The purposes of the PRA, 44 U.S.C. 3501 *et seq.*, include minimizing the paperwork burden on affected entities. The PRA requires certain actions before an agency can adopt or revise a collection of information, including publishing for public comment a summary of the collection of information and a brief description of the need for and proposed use of the information.

As part of continuing efforts to reduce paperwork and respondent burden, the Departments conduct preclearance consultation activities to provide the public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the PRA. *See* 44 U.S.C. 3506(c)(2)(A). This activity helps to ensure that the public understands the collection instructions, respondents can provide the requested data in the desired format, reporting

[96] In terms of VR grantees, they are State government entities and, by definition, are not small entities.

burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Departments can properly assess the impact of collection requirements on respondents.

A Federal agency may not conduct or sponsor a collection of information unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. The public is also not required to respond to a collection of information unless it displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person will be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB Control Number (44 U.S.C. 3512).

In accordance with the PRA, the Departments submitted two ICRs—(1) Workforce Innovation and Opportunity Act Common Performance Reporting and (2) Unified or Combined State Plan and Plan Modifications under the Workforce Innovation and Opportunity Act, Wagner-Peyser Act WIOA Title I Programs, and Vocational Rehabilitation Adult Education—to OMB when the NPRM was published. The NPRM provided an opportunity for the public to send comments on the two information collections directly to the Departments; commenters also were advised that comments under the PRA could be submitted directly to OMB. OMB issued a notice of action for each request asking the Departments to resubmit the ICRs, after considering public comments, at the Final Rule stage. Given that information collection instruments were not ready at the time the NPRM published, the Departments provided additional opportunities for the public to comment on the information collections through notices in the **Federal Register** that provided additional comment periods on the associated forms and instructions. These comment periods provided at least 60 days for comments to be submitted to the agencies. Each of these ICRs was then submitted for OMB approval, and additional notices were published in the **Federal Register** that invited comments to be sent to OMB for a period lasting at least 30 days. The Departments also submitted each ICR for further approval to incorporate the provisions of this Joint WIOA Final Rule; these Final Rule ICRs were not subject to further public comment. The Departments provide a status of each ICR in the summary section that immediately follows in this portion of the preamble. Where a review remained pending, when this preamble was drafted, the Department will publish an additional notice to announce OMB's final action on the ICR. The Departments also discuss the public comments received related to the ICRs in this section of the preamble. It should be noted that these ICRs have been submitted under a procedure that allows a collection to be sponsored by one agency and later subscribed to by other agencies. Such ICRs are classified as "common forms." In making the initial request, the host agency submits the request and claims its portion of the burden; ultimately, the full burden is accounted for as other agencies subscribe and claim their share of the burden. For purposes of this Joint WIOA Final Rule preamble, only the DOL share of the burden is discussed. The full burden is addressed in the supporting statement used to justify the request.

It should be noted that the ICR review status reported in this section only relates to requests related directly to the Final Rule. Certain ICR packages that were previously approved are being updated to change references to those in the Joint WIOA Final Rule. As has been the practice throughout WIOA implementation, the agencies will continue to update stakeholders on the status of the joint ICRs related to State planning and performance accountability through other means.

The Required Elements for the Submission of the Unified or Combined State Plan and Plan Modifications Under the Workforce Innovation and Opportunity Act Information Collection, OMB 1205–0522 substantive requirements were approved via a notice of action dated February 19, 2016. As of the date of the drafting of this preamble, the information collection is being updated to reflect references in the Joint WIOA Final Rule. Also, the Workforce Innovation and Opportunity Act Common Performance Reporting ICR review is pending as of the date this preamble was drafted. The substantive requirements will be approved through a notice of action by OMB, and will take effect as of that date. The Departments will announce this approval.

The information collections in this Final Rule are summarized as follows.

Workforce Innovation and Opportunity Act Common Performance Reporting

Agency: DOL–ETA.

Title: Workforce Innovation and Opportunity Act Common Performance Reporting.

Type of Review: New collection.

OMB Control Number: 1205–0526.

Affected Public: State, Local, and Tribal Governments; Private Sector; and Individuals or Households.

Obligation to Respond: Required to obtain or retain benefits (WIOA sec. 116).

Total Estimated Number of Respondents Annually: 16,246,121.

Total Estimated Number of Annual Responses: 32,456,962.

Frequency of Response: On occasion.

Total Estimated Annual Time Burden: 8,372,737 hours.

Total Estimated Annual Other Costs Burden: $26,147,067.

Regulations Sections: 20 CFR part 680 (adult and dislocated worker programs, and ETPs); 20 CFR part 681 (youth program); 20 CFR part 652 (Wagner-Peyser Act Employment Service program); 34 CFR parts 462 and 463 (AEFLA program); and 34 CFR part 361 (VR program).

ICR Approval Status: Not yet approved.

Overview and Response to Comments Received

Overview: This information collection will collect common performance data required under sec. 116 of WIOA from all six core programs—the adult, dislocated worker, youth, Wagner-Peyser Act Employment Service, AEFLA, and VR programs—as well as from ETPs. The Departments will use a common approach to standardize the quarterly and annual reporting, as appropriate, of common data elements for all core programs and ETPs. These data are in addition to other performance data reported by each of the core programs under current information collections in accordance with final joint and program-specific regulations discussed elsewhere in this issue of the **Federal Register**. The Departments note that the OMB control number for this new information collection was shown in the NPRM as 1205–0420. After further review and consultation with OMB, due to the need to continue reporting other data associated with WIA, 1205–0420 will remain as a WIA-only collection and the new WIOA performance collection will receive the control number 1205–0526.

Response to Comments Received: The Departments received general and specific comments concerning this performance information collection. The comments focused specifically upon three areas: Measurable skill gains; ETP; and the ICR instruments.

General Comments

General comments focused on data collection and overall burden.

Comments: One commenter stated that the Departments should be aware that the proposed definitions and rules could create unintended incentives that do not align with program objectives. Another commenter stated that there is too much data included in the WIOA Joint Performance ICR. Several commenters requested clarification about data collection, reducing the burden, and other requirements.

Departments' Response: The Departments have established a reporting system that reflects all the requirements of WIOA and, to the extent possible, safeguards against false or inaccurate reporting. The statistical adjustment model will contribute greatly to such efforts. The WIOA Performance Management, Information, and Reporting System includes only those elements that are required by statute or are a necessary component of the calculation of performance indicators or report items. While the Departments recognize that the data requirements are potentially burdensome, the Departments have made every effort to minimize the burden as much as possible. Additionally, the Departments recognize concerns regarding clarification about data collection for several of the primary indicators of performance and the burden of collection and management of data on common performance accountability requirements, as well as ensuring consistency in reporting across programs. The Departments recognize that State agencies will be faced with the challenges and burden of implementing the new requirements and responsibilities imposed by WIOA, including revising their management information systems. The Departments are working together to provide both joint and program-specific guidance and technical assistance to assist States in implementing these changes. The ETA will also issue an agency-specific reporting handbook for the PIRL along with guidance.

Comments: A few commenters discussed the use of supplemental data (*i.e.*, a proxy for wage records that do not exist) in the context of the median earnings performance indicator. Specifically, two commenters expressed opposition to the use of supplemental data for the median wage indicator, commenting that under WIA reporting, any wage-related measure relied exclusively on wage records. Another commenter remarked that the collection of supplemental data on wages is burdensome. Other commenters recommended that calculation of median earnings should not permit the utilization of supplemental data, but should rely solely on quarterly wage records.

Departments' Response: The Departments considered the concerns expressed by commenters regarding the possible burden and reliability of supplemental data and follow-up methods to report on the median wage indicator. However, the Departments have concluded that in order to hold States accountable for employment and earnings outcomes of all program participants, States will be allowed to collect and verify supplemental wage information to demonstrate employment outcomes in the 2nd and 4th quarters after exit in those instances where wage records are not available. Using supplemental data ensures that programs may track participants even if those participants' employment and wage information is not contained in the State's quarterly wage record system. If a State uses supplemental information to report on the employment rate indicators, the State must also use supplemental information to report on the median earnings indicator. States that elect not to use supplemental data and follow-up methods are expected to include participants who do not have the necessary data points to complete a wage record match in the denominator of the calculation. Those individuals would be counted as failures on the three employment indicators. In some programs, follow-up procedures have already been established and have been used historically to supplement wage record matching. The Departments conclude that allowing States to use supplemental follow-up methods for individuals who are self-employed, do not provide a valid SSN, or other specified reasons will provide a more comprehensive picture of program performance. The Departments will issue joint guidance to define further what constitutes acceptable forms of supplemental data and follow-up methods.

Comments: Many commenters discussed the credential attainment rate indicator, several of whom commented on the calculation methodology. In particular, three commenters said the proposed methodology for calculating the credential attainment rate would overlook the progress and accomplishments of students who enter adult education programs with high school credentials. A commenter remarked that if the denominator for the credential attainment indicator includes all participants, it would serve as a disincentive to co-enrollment; however, if it only includes participants in training, it would create a disincentive for widespread access to training. Two commenters stated that the proposed calculation of the credential rate denominator would create a negative incentive and serve to steer low-skilled individuals away from training services. Another commenter suggested that only participants who received training services should be counted in this indicator. Still another commenter urged the Departments to design this indicator to prevent counting a participant more than once. Two commenters recommended that secondary and postsecondary results be separated for the calculation of the credential attainment rate indicator. Some commenters requested clarification on various aspects of the credential attainment rate indicator. Three commenters asked the Departments to clarify what would constitute a certificate. A commenter requested that the Departments provide clear definitions for the terms "recognized postsecondary credentials" and "industry recognized credentials." Similarly, two other commenters suggested that the Departments provide guidance on this issue. Another commenter recommended that clarification be provided regarding how far in the past a date of enrollment in education or training may be to count for purposes of this indicator. Two commenters requested clarification regarding whether Adult Basic Education (ABE) participation in classes at the ninth grade equivalent or higher would count as enrollment in secondary education. A different commenter requested additional information regarding the counting of participants who obtain multiple credentials during the same program year. A couple of commenters requested clarification about what services would qualify as a participant having received training for the purpose of the credential attainment rate. Finally, two commenters asked whether the credential obtained must be based on WIOA-funded services and provided by an ETP.

Departments' Response: The Departments understand the concerns expressed by many commenters about whether the credential attainment rate indicator includes all participants of any core program. The credential attainment rate indicator focuses on participants who are enrolled in an education or training program because the purpose of the indicator is to measure performance related to attainment of credentials received as a result of successful participation in these programs; therefore, it would not be reasonable to measure credential attainment against a universe that

includes other individuals who are seeking critical WIOA services other than a credential. The final regulations, as well as the final WIOA Joint Performance ICR, will make clear that this indicator measures the percentage of those participants enrolled in an education or training program (excluding those in OJT and customized training) who obtained a recognized postsecondary credential or a secondary school diploma, or its recognized equivalent, during participation in or within 1 year after exit from the program. Moreover, a participant who has obtained a secondary school diploma or its recognized equivalent is only included in the percentage of participants who obtained a secondary school diploma or recognized equivalent if the participant is also employed or is enrolled in an education or training program leading to a recognized postsecondary credential within 1 year after exit from the program. This WIOA Joint Performance ICR has been revised accordingly such that the postsecondary portion of the credential attainment rate denominator includes only those postsecondary exiters in an education or training program. Postsecondary exiters in on-the-job training and customized training are excluded from the credential attainment rate indicator because the Departments recognize that those trainings do not typically lead to a credential.

A "recognized postsecondary credential" is defined in WIOA sec. 3(52) as "a credential consisting of an industry-recognized certificate or certification, a certificate of completion of an apprenticeship, a license recognized by the State involved or Federal Government, or an associate or baccalaureate degree." The Departments will issue joint guidance that further defines what constitutes an acceptable credential for the credential attainment rate numerator, including guidance regarding an acceptable industry-recognized certificate or certification and definitions for each type of credential. The Departments have not provided a threshold for participation in education or training programs for inclusion in the indicator. The Departments will provide further program-specific guidance on what constitutes education or training for inclusion in the credential attainment rate indicator, for purposes of the core programs. The credential obtained is not required to be WIOA-funded or based on services provided by an eligible training provider. There is no reason to capture the date training concluded. The credential indicator is calculated based on those in education or training at any point in the program or within 1 year after exiting the program, regardless of whether the training ended.

Because WIOA sec. 116(b)(2) specifies the percentage of participants who obtain a recognized postsecondary credential or secondary school diploma or its recognized equivalent in a single indicator, the Departments will not separate secondary and postsecondary credential attainment into two separate indicators. Any acceptable credential attained during the program or within 1 year following program exit counts toward the credential attainment rate indicator. The PIRL records outcomes regarding this indicator in the following manner.

First, for participants enrolled in a postsecondary education or training program (other than OJT and customized training), PIRL 1811, Most Recent Date Enrolled in Education or Training Program Leading to a Recognized Postsecondary Credential or Employment During the Program, records enrollment. Participants enrolled in such a program are included in the denominator for calculating outcomes for this indicator. PIRL 1801, Date Attained Recognized Credential, records the date on which an individual attained a recognized credential, and PIRL 1800, Type of Recognized Credential, records the type of recognized credential attained. The Departments note that PIRL 1801 (formerly PIRL 1705) has been renamed as suggested by a commenter. Participants are included as successes in the numerator of this indicator if at least one recognized credential is earned either during participation in the program or within 1 year (*i.e.*, four quarters) after exit from the program. A participant counts in the denominator and numerator only one time regardless of how many credentials a "participant" attains prior to an "exit." However, if a "participant" "exits" more than once in a program year and attains a credential prior to each exit, the program will report the credential attained prior to each exit. The Departments note that participants who enter a program with a secondary school credential are counted as a success on this indicator if they earn a postsecondary credential during participation in the program or within 1 year after exit from the program.

Second, for participants who attain a secondary school diploma or its recognized equivalent, PIRL 1401, Enrolled in a Secondary Education Program, records enrollment. ABE participation in classes at the ninth grade equivalent or higher will count as enrollment in secondary education. Participants enrolled in such a program are included in the denominator for calculating outcomes regarding this indicator. As stated above, PIRL 1801, Date Attained Recognized Credential, records the date on which an individual attained a recognized credential, and PIRL 1800, Type of Recognized Credential, records the type of recognized credential attained, including high school diploma or equivalency. WIOA sec. 116(b)(2)(A)(iii) requires that program participants who obtain a secondary school diploma or its recognized equivalent shall be included in the percentage counted as meeting the criterion only if such participants have obtained or retained employment or are in an education or training program leading to a recognized postsecondary credential within 1 year after exit from the program. To that end, PIRL 1406, Date Enrolled in a Post Exit Education or Training Program, records the date of post-exit enrollment in such a program. Participants are included as successes in the numerator of this indicator if, during the program or within 1 year after exit from the program, they are enrolled in a post-exit education or training program (PIRL 1406), attain a recognized postsecondary credential (PIRL 1800), or obtain or retain employment (PIRL 1600, PIRL 1602, PIRL 1604, PIRL 1606). In the final WIOA Joint Performance ICR, those participants who are receiving adult education services while incarcerated will not count in the employment retention, earnings, credential attainment, or effectiveness of serving employers indicators. These individuals will only be counted, for performance calculation purposes, in the measurable skill gains indicator. The Departments recognize burden concerns for tracking credential attainment. WIOA requires the collection and reporting of the credential attainment rate indicator for all core programs, except for the Employment Service program, authorized under the Wagner-Peyser Act as amended by title III of WIOA (*see* WIOA sec. 116(b)(2)(A)(i)). The Departments will provide guidance and technical assistance for tracking and reporting credential attainment.

Comments: A few commenters expressed concern that a participant may only be in the denominator once but may be in the numerator multiple times, thereby disproportionately affecting the indicator. Commenters suggested that the measurable skill gains report templates be aligned with the

reporting instructions and designed so that a participant is not counted multiple times. Another recommended that the Departments revise the reporting period to include a reasonable lag period, which would provide participants with a reasonable opportunity to achieve a gain. Three commenters suggested that participants who receive educational or training services while incarcerated or institutionalized be included in the measurable skill gains performance indicator in order to avoid a disincentive to serve these populations. However, a commenter remarked that institutionalized individuals should be excluded from the indicator because they will not likely be able to continue in secondary or postsecondary education. A commenter requested clarification on the inclusion of incarcerated individuals in this indicator. One commenter stated that the program year timeline does not align with the performance needs of the participant and would result in an underestimation of the true rate of skill gains. The commenter also contended that if a participant is receiving services under multiple programs, the individual could be counted multiple times, creating an incentive to recruit and promote providers offering short-term trainings with easily achieved milestones.

Departments' Response: The performance calculation for the measurable skill gains indicator is the same as it is for all other indicators. If a participant exits a program more than once in a program year and achieves measurable skill gains prior to exiting each time, then that participant could achieve more than one measurable skill gain in a program year. A participant may achieve more than one measurable skill gain prior to each exit, but only one gain per exit will be counted in the performance calculations. If a participant is co-enrolled in multiple core programs and meets the definition of participant for each of the multiple programs in which the participant is enrolled, the participant would count in each program's indicators of performance, including the measurable skill gains indicator.

The Departments will provide program-specific guidance and technical assistance to define the types of services and trainings that constitute "an education or training program that leads to a recognized postsecondary credential or employment". Individuals not in the types of programs specified will not be included in the measurable skill gains indicator.

The Departments recognize the concern raised by commenters that the program year timeline may not provide participants with reasonable opportunity to achieve a gain, particularly when a participant enters the program late in a program year. Therefore, the Departments considered whether a minimum time threshold should be incorporated into the measurable skill gains indicator. However, the Departments have concluded that given the diversity of participant needs and program services, imposing a time period by which progress is to be documented would be somewhat arbitrary and difficult. Such practice could result in excluding a number of participants from performance accountability reporting requirements, even if those participants achieve a gain under one of the measures of progress. The Departments note that the negotiations process can and should take into account enrollment patterns and lower baseline data when establishing negotiated levels of performance for the measurable skill gains indicator.

All participant outcomes, regardless of whether achieved at the end of the reporting period in which a participant enrolled or in the next reporting period, will count as positive outcomes for the program. The Departments are concerned about incentivizing behavior that discourages service providers from enrolling disconnected youth, in particular, when they first approach programs, or that purposefully attempts to focus service on individuals who are more likely to obtain a positive outcome. The Departments emphasize that programs must not delay enrollment or prohibit participants from entering a program late in the program year.

It is not the Departments' intent to exclude incarcerated individuals from the measurable skill gains indicator. The PIRL includes a code value for incarcerated participants in PIRL 923, Other Reasons for Exit (formerly PIRL 971, Exclusionary Reasons). This element is used to exclude incarcerated participants who are enrolled in adult education from all performance indicators except for the measurable skill gains indicator if they remain incarcerated at program exit. The Departments recognize that some programs (*i.e.*, the youth and adult education programs) offer educational services to incarcerated individuals, and participants may make interim progress or other gains in secondary or postsecondary education. The final information collection specifies that the purpose of the code values specific to incarcerated participants is to exclude incarcerated individuals from the performance calculations for the employment indicators (employment in 2nd and 4th quarter after exit, median wages, and effectiveness in serving employers) and the credential attainment indicator, but not to exclude them from performance calculations for the measurable skill gains indicator. This means that programs that serve incarcerated individuals would be held accountable for the measurable skill gains indicator.

Comments: Regarding the burden of collecting data for measurable skill gains, commenters stated that the performance indicator would be too burdensome to collect for adult and dislocated worker programs. Commenters also inquired how frequently the data used to calculate this indicator need to be collected. One commenter remarked that it has not tracked the data required to calculate measurable skill gains and it would be burdensome to gather this information retroactively. A commenter emphasized the need for guidance regarding measurable skill gains. Another commenter requested that guidance for the indicator consider skills beyond typical quantifiable measures, using the NFJP model as a basis, which includes developing detailed custom training plans for each participant. One commenter inquired whether local areas will be required to implement a standard measure or test of proficiency and whether there will be technical assistance to operationalize the real-time recording of proficiency levels. This commenter compared the potential challenges of the measurable skill gains indicator for local areas to the challenges experienced under the WIA literacy/numeracy gains common measure. One commenter supported the proposal to phase in the implementation of the measurable skill gains indicator and suggested that grade point average (GPA) be used as a method to measure and document skill gains.

Departments' Response: The Departments recognize burden concerns for States due to the changes in the performance reporting requirements; however, WIOA sec. 116(b)(2)(A)(i) requires that the measurable skill gains indicator apply across all core programs, except for the Wagner-Peyser Act Employment Service program, in order to assess the effectiveness of States and local areas in achieving positive outcomes for individuals served by those programs. Therefore, the implementation of the measurable skill gains indicator cannot be phased in and States are required to begin collecting

data for this indicator in PY 2016. Having said this, the Departments recognize that some programs will not be able to collect data and report on all indicators immediately. The Departments will provide program-specific guidance as appropriate.

In order to address the various comments and questions received regarding the measurable skill gains indicator, the Departments will provide program guidance and technical assistance regarding each core program in WIOA titles I, II, and IV to further clarify the measurable skill gains indicator. The Departments have concluded, however, that additional types of documented progress for determining whether a participant has achieved measurable skill gains beyond the five types set forth in final § 677.155(a)(1)(v) will not be included. The Departments note the five gain types included in the regulation and the WIOA Joint Performance ICR share a level of rigor and provide enough flexibility to allow for the commenters' recommended option.

The Departments acknowledge the suggestion to use GPA as a method to measure skill gains. The Departments reiterate that, as stated above, both the Final Rule at § 677.155(a)(1)(v) and the WIOA Joint Performance ICR will define only five standardized ways States can measure and document participants' measurable skill gains. The Departments note, however, that GPA may be reflected in PIRL 1807 (former PIRL 1801) and PIRL 1808 (former PIRL 1801). Each of these elements records measurable skill gains as documented by a transcript or report card for either secondary or postsecondary education for a sufficient number of credit hours to show that a participant is meeting the State unit's academic standards.

Comments: A commenter suggested that measurable skill gains should include attainment of competencies to stay abreast of innovative educational practices; secondary and postsecondary education should be measured separately to enhance precision and clarity of the indicator; and interim progress should be achieved after attainment of 12 rather than 24 credit hours. Another commenter inquired as to what is considered an adequate rate of measurable skill gains for part-time students.

Departments' Response: The Departments acknowledge the suggestion to include attainment of competencies to stay abreast of innovative educational practices but have not added measures beyond the five standardized ways for documenting measurable skill gains in § 677.155(a)(1)(v) and the WIOA Joint Performance ICR. In regard to the comment related to measuring secondary and postsecondary education separately, the Departments will not separate secondary and postsecondary credential attainment into two separate indicators of performance because WIOA specifies the percentage of students who obtain a recognized postsecondary credential or secondary school diploma as a single indicator of performance for the performance accountability measures. However, the Departments note that it is important to capture data on students who achieve a high school diploma or its recognized equivalent, as well as a recognized postsecondary credential; therefore, both will be included in one indicator for performance accountability purposes (as indicated by the "Credential Attainment Rate" tab in the WIOA Statewide Performance Report Template), but programs will be able to collect data on achievement of both types of credentials, as appropriate, in PIRL 1800 (former PIRL 1700), which records Type of Recognized Credential attained. The Departments conclude that for the measurable skill gains indicator, the multiple gain types proposed are rigorous and provide flexibility to allow for gains to be captured in a variety of ways. While commenters may be concerned about how the Departments will adjust for variation among States in gains for clients enrolled in longer-term postsecondary programs, the Departments note that participants would have the opportunity for success in the transcript type gain, which would allow a program to record a gain for such participants in every year. Furthermore, the statistical adjustment model is designed to compensate for these variations in the consideration of levels of performance, thereby compensating for State-to-State variances in the length of postsecondary education. The Departments will not weigh performance indicators based on degree of program difficulty. The Departments emphasize that programs may not purposefully attempt to focus service on individuals perceived as more likely to obtain a positive outcome, or selectively enroll participants in programs in which positive outcomes on these indicators are perceived as more likely, but for which such enrollment is not in the best interest of the participants.

Lastly, the Departments recognize concerns regarding credit hours for interim progress. In the NPRM, the Departments proposed a measure requiring a transcript or report card for 1 academic year or for 24 credit hours. The Departments agree with the concern that a transcript for 1 academic year or 24 credit hours is too onerous for part-time students and have changed this measure to require that the transcript or report card reflect a sufficient number of credit hours to show a participant is achieving the State unit's academic standards. This change will be reflected in the Joint WIOA Final Rule at § 677.155(a)(1)(v)(C), which will document progress through receipt of a secondary or postsecondary transcript or report card for a sufficient number of credit hours that shows a participant is meeting the State unit's academic standards. The Departments anticipate that, for participants in postsecondary education, a sufficient number of credit hours would be at least 12 hours per semester or, for part-time students, a total of at least 12 hours over the course of two completed consecutive semesters during the program year that shows a participant is achieving the State unit's academic standards (or the equivalent for other than credit-hour programs).

Comments: A commenter recommended that the Departments implement processes in data collection and reporting that are sensitive to diverse populations. Specifically, this commenter pointed out that the significant barriers for some students (especially those at the lowest literacy levels or non-native English speakers) are often not taken into consideration when developing measures to track goals and student performance. Another commenter suggested that special programming efforts may require new regulations or exceptions to existing regulations. Other commenters recommended that special priority populations, including "low-level learners", be reported as separate cohorts and suggested that the reporting methods take into consideration the more difficult process for data collection to follow up with these populations.

Departments' Response: The Departments acknowledge the recommendation to implement processes for data collection and reporting that are sensitive to special populations with barriers to employment. The Departments recognize that, given the diversity of participant needs and program services, the State agencies will be faced with the challenges and burden of implementing the new requirements and responsibilities imposed by WIOA, including the challenges associated with revising the management information systems to collect information on diverse populations.

However, for consistency purposes in reporting, the Departments will not implement additional exceptions to these final regulations. The Departments have provided rules to accommodate certain exceptional circumstances. For example, criminal offenders in correctional facilities are not included in employment and earnings indicators or the credential attainment rate indicator if they remain incarcerated at program exit, since they do not have the same opportunity to engage in unsubsidized employment or postsecondary education as do others in the general population. Likewise, participants who score at low levels of literacy are not included in credential attainment rate indicators unless they are enrolled in programs that provide instruction at or above the ninth grade level. These measures provide a reasonable approach to providing accountability while acknowledging the needs of vulnerable populations.

Comments: Multiple commenters provided feedback on two basic approaches to compiling the information necessary for a compliant ETP performance report that would achieve the stated objective of maximizing the value of the template for stakeholders. In the first approach, grantees would complete the ETP performance reports and make them available using the proposed template. Under that approach, one commenter favored grantees completing and making available the information using the proposed template, reasoning that it would give States the flexibility to compile and reconcile their own data. Commenters in another State agreed this approach would maximize the value of the report for local use. One commenter said that its State does not collect program level data for its large public institutions as part of the criteria to be an ETP, but the commenter recommended that program level data should be reported for those who provide training to participants in the WIOA adult and dislocated worker programs. In the second approach, grantees would send the necessary aggregate data to the Department, which would then compile, format and display the data.

One commenter favored this approach because it would increase the likelihood that reporting would be consistent, which would facilitate analysis and comparison. Another commenter suggested that, because each State has different access rights to information, the burden on States could be drastically reduced if WIOA partners could submit their reports to their Federal reporting agency that is then responsible for consolidating the information. Another commenter requested that DOL not specify the manner in which ETP performance reports are filed, reasoning that it would be easier for State agencies to run data required by the template rather than requiring ETPs to modify their systems to capture all the information required by the report. A commenter agreed that much of the information in the ETP report could be more efficiently provided by State and local governments—notably one-stop caseworkers—rather than ETPs, which have little or no access to some of the data. Commenters in another State remarked that local areas collect and track information for the ETP performance report constantly and stated that transferring the data to a centralized point for display to the public seems unnecessary and burdensome. Some commenters supported flexibility and urged the Departments not to mandate a method for filing reports, allowing either of the two approaches: grantees complete the ETP performance reports using a template and provide the Departments with the appropriate location of the report, or grantees send the necessary aggregate data to the Departments where the data could be compiled, formatted and displayed in a standardized user-friendly template and made available as required by WIOA sec. 116(d)(6)(B).

Departments' Response: WIOA sec. 116(d)(1) requires the Secretary of Labor, in conjunction with the Secretary of Education, to develop a template for performance reports to be used by States, Local WDBs, and ETPs for reporting on outcomes achieved by participants in the six core programs. The statute further requires that these templates for performance reports be designed in a manner that reflects the need to maximize the value of these templates for workers, job seekers, employers, local elected officials, State officials, Federal policy-makers, and other key stakeholders. Ultimately, as required by WIOA sec. 116(d)(6), the State must make available, in an easily understandable format, the performance reports for the ETPs. Based on review and consideration of the comments, the Departments have concluded that the standardization of the submission approach would lead to the best results in terms of data quality and will be providing submission details in a separate publication.

Comments: Many commenters expressed concern regarding the level of burden to ETPs for collecting the required data. Comments on burden pertained to required data elements as well as the data required for WIOA and non-WIOA students in particular. Some of these commenters recommended that the Departments lessen the burden by providing States the flexibility to develop ETP reporting requirements specifically for the elements related to wage data. One commenter acknowledged the data collection challenge for some ETPs but asserted it was important to have data on all students in order to help WIOA participants make informed decisions when selecting a training program. Another commenter remarked that it would be challenging to track down students to identify information as needed. A State agency expressed concern that ETPs would incur substantial burden to modify their systems to track and report data specific to WIOA participants. Another commenter said it is unlikely all providers will be able to collect the required data, so there may be data gaps for non-WIOA participants. A commenter expressed concern that the ETP performance report would not encourage entities other than colleges to participate in training because the data collection would seem intrusive to smaller facilities. This commenter also stated that collecting detailed program level data would be ineffective due to the small number of enrollments in training programs. Other commenters expressed similar concerns that data collection for the ETP performance report would seem intrusive to smaller training facilities and that information and documentation for low-income and younger clients would be difficult. Another commenter stated that disaggregated reports would be largely blank due to the relatively small number of participants and the need to maintain confidentiality.

Departments' Response: The Departments acknowledge the commenters' concerns and recognize the need to identify effective data collection strategies. However, the Departments have no authority to reduce the ETP reporting requirements set forth in WIOA sec. 116(d)(4), which mandate the collection of specific information for WIOA participants and for all individuals engaged in a program of study (or equivalent) for each such program of study provided by each eligible training provider, as outlined in the final regulations at § 677.230(a). The Departments recognize concerns expressed regarding the level of burden to ETPs for collecting the required data. In particular, WIOA sec. 116(d)(4)(A) requires information specifying the levels of performance achieved, for all

individuals engaged in a program of study, with respect to the primary indicators of performance for employment, earnings, and credential attainment. Moreover, WIOA sec. 116(d)(4)(B) requires the total number of individuals exiting from a program of study. Finally, WIOA secs. 116(d)(4)(C)–(F) require additional information regarding participant counts, participant exits, average cost per participant, and number of participants with barriers to employment as described in the proposed definitions.

In addition, the Departments have concluded that States are permitted to use ITAs for out-of-school WIOA youth participants ages 18 to 24, as provided in the DOL WIOA Final Rule at 20 CFR 681.550. For the purpose of the annual ETP performance report, WIOA out-of-school youth, ages 18 to 24, participating in a program of study using an ITA are reported in both the ETP performance report as well as in the State and Local annual reports. Because WIOA sec. 116(d)(4) does not describe such youth, the Departments note that when such youth are reported in the ETP performance reports, their performance is reported using the same performance indicators as prescribed for WIOA adult and dislocated worker participants (*i.e.,* the primary indicators of performance specified under WIOA sec. 116(b)(2)(A)(i)), which will be further specified in implementing regulations at § 677.155(a)(1)(i) through (vi). Using the same metrics for out-of-school youth using ITAs as well as for other WIOA participants and individuals in a course of study (or equivalent) minimizes the burden on ETPs. The Departments note that such youth are excluded from the required reporting identified at § 677.230(a)(1)(i) through (iii), but are included in the counts required by (a)(2) through (a)(4). The Departments further note that such youth are additionally reported on in the State and Local annual reports in accordance with §§ 677.155(d), 677.160, and 677.205 as described in those sections. The Departments will provide additional guidance on the treatment of these out-of-school youth using ITAs through the information collection process and in guidance. Therefore, for purposes of reporting on the ETP performance report, references to the adult and dislocated worker programs under title I of the WIOA adult program include out-of-school WIOA youth ages 18 to 24 participating in a program of study using an ITA.

The Departments have concluded that the WIOA Joint Performance ICR is in line with WIOA sec. 116(d) and will not reduce the number of required elements in the ETP reporting template. The Departments recognize the contribution of ETPs that may serve smaller populations and acknowledge that suppression standards may limit data, but have concluded that the WIOA Joint Performance ICR aligns with WIOA sec. 116. The Departments also recognize the interest in establishing processes for accessing wage related data. The Departments will provide additional information on the parameters of the collection and reporting of this information through the associated ICR and program specific guidance.

Comments: Regarding the PIRL, multiple commenters addressed the use of unique identifiers for program participants. A commenter requested clarification regarding how States would match unique identifiers when not using SSNs. Similarly, three commenters asked whether all core programs would be required to use the same unique identifier for a participant. Other commenters requested that the Departments clarify if the unique identifier must be an SSN. Another commenter recommended that a method for implementing a unique identifier be identified and phased in over time in order to allow States time to develop the necessary data collection systems. One commenter remarked that its core programs are not interconnected and would be unable to share unique identifiers.

Departments' Response: The unique identifier is not required to be an SSN. However, wage matching with the State UI system will be impossible for any participant for whom an SSN is not available. In those circumstances, programs will need to rely on supplemental follow-up methods for determining wages at 2nd quarter and 4th quarter following program exit. State VR agencies use a unique identifier now and the VR program may be a resource for other core programs when developing such a system. The Departments understand that many State data systems for Education and Labor programs are not interconnected. There is no requirement to share a common data system. Having separate systems does not preclude matching data to identify employment outcomes.

Comments: Commenters also discussed cultural barriers to employment. Four commenters urged the Departments to define cultural barriers clearly. Similarly, two commenters recommended that the Departments provide a less subjective definition of cultural barriers to allow for more consistency in the data. Another commenter suggested that the definition of cultural barriers be expanded to include limited English abilities. Two commenters stated that PIRL 705 identifies both displaced homemaker and cultural barriers. A commenter expressed opposition to tracking cultural barriers, reasoning this could alienate populations it should be serving and create liability for discrimination-based lawsuits. Similarly, another commenter expressed concern about posing this question without appearing discriminatory. Two commenters opposed collecting information on cultural barriers, stating that it is subjective and adds no significant value. Another commenter asked whether cultural barriers should be identified by the participant. One commenter recommended that the service providers, rather than the participant, be responsible for identifying cultural barriers. However, another commenter suggested only substantial, self-identified cultural barriers should be reported. Still another commenter contended that PIRL 705 is defined using a lesser standard than WIOA, which references a substantial cultural barrier. Two commenters requested that the Departments provide guidance indicating how to collect data on cultural barriers. A commenter suggested that participants may be unaware of the cultural barriers to employment that they face, making the data inaccurate.

Departments' Response: The statute identifies "individuals who are English language learners, individuals who have low levels of literacy and individuals facing substantial cultural barriers" as three categories of an "individual with a barrier to employment." These three categories are treated as separate data elements in the PIRL because both individuals who are English language learners and individuals with low levels of literacy are elements that are required to be used in the statistical adjustment model, while the data element for individuals who are facing substantial cultural barriers is not required to be used in the model. The Departments understand that the determination of cultural barriers is highly subjective and have provided a definition that allows a program to base the designation on a participant's self-perception as to whether his or her attitudes, beliefs, customs, or practices pose a hindrance to employment.

Comments: Five commenters expressed concern and requested clarification about the discrepancies between the PIRL and RSA–911. For example, a commenter stated that the RSA–911 does not currently collect PIRL 1802 (Date of Most Recent

Measurable Skill Gains: Training Milestone) or PIRL 1803 (Date of Most Recent Measurable Skill Gains: Skills Progression). Another commenter recommended that the Departments align the PIRL and RSA–911 definitions and reporting options for PIRL data elements 1800 through 1804. Similarly, another commenter suggested that the Departments align the PIRL and RSA–911 or provide a crosswalk between the two sets of data elements.

Departments' Response: The Departments note the RSA–911 ICR was published prior to the proposed WIOA Joint Performance ICR, which includes the PIRL. Therefore, the RSA–911 did not reflect all of the changes necessary to align with the PIRL. The final RSA–911 ICR will include new and/or revised data elements and definitions as necessary to provide alignment with the PIRL. In addition, RSA–911 data will be submitted quarterly in order to align reporting under the VR program, which operates on a Federal fiscal year basis, to the reporting of performance on a program year basis as required under these regulations.

Comments: Two commenters expressed concern that the PIRL is centered on DOL programs and is difficult for other core programs to use. A commenter said that it is unclear which programs are responsible for the transmission of the PIRL, or if each core program should submit the report separately. A commenter said that a combined core PIRL would be duplicative if States are required to submit quarterly and annual reports as well.

Departments' Response: Individual core programs will submit data through each core program's information collection. The entity that will submit this data will vary by State based on the level of data integration. The Departments strongly encourage States to improve data integration across programs. The purpose of this collection is to specify the elements that are required to be reported by all core programs and align the definitions of the different data elements across the core programs, thereby ensuring consistency and comparability of the data among all core programs and States. The Departments note that, for the programs that require submissions of quarterly and annual reports, the information obtained through this collection will be part of these quarterly and annual reports and not a duplication of those reports.

Comments: A number of stakeholders submitted comments on the burden estimates for the State performance report template, noting that the costs are underestimated. In particular, commenters suggested that the time to collect data should be more than 15 minutes per response. Commenters also cited the burden to obtain information that is not currently available, including the requirement to track individuals after program exit and the need to monitor data quality. A commenter enumerated significant IT time and costs, including more frequent reporting and integration with partnering agencies, to implement the required changes. Another commenter remarked that staff time spent on these activities results in fewer direct services to program participants. A commenter asked for clarification about reporting for multiple years and possible duplication for co-enrolled participants, commenting that enhancing the quality, utility, and clarity of the information collected would reduce the burden on those who must respond. Another commenter requested that an effort be made to utilize any existing Federal and State databases that already contain some of the WIOA-required data elements that need to be collected. One commenter suggested that the Departments develop a standardized application or supplemental form that includes fields for applicants to self-report the required data elements.

Departments' Response: The Departments acknowledge that an increase in the burden estimate is necessary to reflect more accurately the costs in time and resources to begin collecting, validating, and reporting new requirements under WIOA's new reporting system, particularly for the VR program. As such, the burden estimates in the RIA section of this Joint WIOA Final Rule (see section V.A), as well as the tables in section 12 of the Supporting Statement for the WIOA Joint Performance ICR (which cover burden estimates) have been modified . For example, in response to comments, RSA has revised its methodology for estimating burden related to new data collection requirements in order to more accurately reflect needed State investments in personnel, time, and other resources.

The Departments also understand the increased administrative burden for follow up and the collection of new statutorily required data under WIOA, such as cost per WIOA participant served (*see* WIOA sec. 116(d)(2)(F), which requires the State performance report to include "the average cost per participant of those participants who received career and training services, respectively, during the most recent program year and the three preceding program years"). The Departments made every effort to provide a comprehensive estimate of the costs incurred by programs, State agencies, and all other stakeholders in adhering to all WIOA requirements and will provide direction on issues such as identifying clients without SSNs, streamlining processes and eliminating duplication, timelines for integration, alignment of the RSA–911 with the WIOA PIRL, and best practices for providing optimal initial and follow-up services to participants in subsequent guidance. Also, the Departments agree with the commenter that the enhanced use of technology in the data collection and reporting process will result in greater efficiencies and reduced burden for States and local programs. With regard to the commenter's other concerns about data sharing among the core partners, the Departments are currently working on additional guidance to facilitate that process. The burden estimate for the collection and reporting of data was updated in the issuance of the final WIOA Joint Performance ICR to more accurately reflect the time staff spent obtaining and entering the required data elements.

States may use existing databases to assist in obtaining the required data elements provided the data sharing meets the required statutory and regulatory privacy requirements. However, States remain responsible for ensuring the accuracy and timely submission of required data elements. States are not prohibited from developing a standardized form that would allow individuals to self-report data, apart from information that is necessary for the program to receive Federal funds.

Comments: Several commenters provided input on the definition of participant and/or participation period. The majority of commenters expressed opposition to establishing a new exit date for an individual who has exited and returned within the same program year. A few commenters stated that the proposed exit methodology will increase the implementation burden while producing less informative data. Another commenter mentioned that the proposal to combine multiple periods of participation (POPs) when a participant exits more than once in a program year would reduce the reliability of quarterly reports, increase the burden to manage programs, and decrease the effectiveness of the statistical adjustment model. A few other commenters said that implementing the definition of "exit" as proposed would require modifications to case management systems. A commenter suggested that the definition of "exiter" remain the same as under

WIA. This commenter also remarked that the definition of "exiter" as proposed in the WIOA Joint Performance ICR would provide an accurate count of participants in a program year for participant and "exiter" measures, but would potentially duplicate participants in primary performance outcome measures. A commenter remarked that the proposed definitions of "participant" and "exit" would require a rolling system for reporting, but it is not clear how this could be done accurately to track performance.

Departments' Response: The Departments acknowledge the commenters' many concerns and suggestions related to the Departments' proposed approach to participation and exit for individuals who exit more than once in the same program year. To respond to these concerns, the Departments have altered the approach to unique participants that was published in the proposed WIOA Joint Performance ICR. For performance reporting purposes, States should report participants separately for each time the participant exits the program, with the period of time the participant received services prior to exiting sometimes commonly called a "POP." In addition, States should provide to the Departments, for each of the WIOA titles I and II core programs, and the VR program, a unique identifier that stays the same across multiple POP for the same participant, but not necessarily the same identifier across different programs if the participant receives services from multiple programs in the same program year. The Departments will use this unique identifier to calculate a count of unique participants in each program for each State, which will be reported on the State Performance Reporting Template. The performance measures will be calculated using the "exits" (*i.e.,* POP), which the Departments conclude will incentivize the provision of the most effective and appropriate service delivery strategy regardless of how many previous POP an individual has had. The Departments will provide further guidance and technical assistance to implement this in order to ensure a consistent approach that facilitates comparability across programs.

Core programs administered by ETA already utilize a "rolling four quarter methodology" for quarterly reporting. In other words, for each data element, the most recent four quarters worth of data are reported (which will be different for different data elements due to the timing of the availability of the data). ETA will continue utilizing this approach, which adjusts for seasonality and which allows 1 year of data to be reported on any given quarterly report.

Comments: Several commenters discussed the collection of data pertaining to barriers to employment. A few commenters said that collecting the data on barriers of employment would be challenging and burdensome. Similarly, a commenter stated that the collection of this data would increase the burden more than the value it would provide and asked how the Departments plan to communicate the results of the data to local areas. Another commenter stated that the proposed data on barriers to be collected is unnecessary. A few commenters requested clarification on barriers to employment. In particular, one of these commenters asked whether it is expected to collect data on all barriers to employment for each client. Another commenter requested clarification on how data on barriers to employment would be collected. A different commenter suggested the Departments confirm that a participant may be reported in multiple categories for barriers to employment.

Departments' Response: WIOA sec. 116 requires a statewide report that includes a breakout by those with barriers to employment. The WIOA Joint Performance ICR provides information about the barriers to employment that must be collected and how these data will be collected. Additional information on how these categories are populated can be found in the PIRL and Statewide Annual Report Specifications.

Comments: Some Commenters pointed out that every barrier to employment should not have to require documentation to be validated. Two commenters asked whether PIRL 802 (formerly PIRL 702) determining "Low Income", would apply to adult education participants and whether supporting documentation from the participant would be required. Similarly, another commenter said that describing artificial barriers for ex-offenders is a poor word choice for describing their barriers to employment.

Departments' Response: WIOA specifies new reporting requirements, including data reporting related to barriers to employment. The definition of an "individual with a barrier to employment" encompasses mandatory populations. Low income and ex-offenders are just two of the populations included in the definition, representing barriers to employment that must be collected for purposes of the performance accountability system under WIOA. The Departments recognize the importance of ensuring that individuals with barriers to employment receive services, and the Departments recognize that States may experience challenges with this data collection. The Departments intend to issue joint- and program-specific guidance and technical assistance to provide further clarification on each employment barrier, how the data should be collected, and necessary documentation for each barrier.

Unified or Combined State Plan and Plan Modifications Under the Workforce Innovation and Opportunity Act, Wagner-Peyser WIOA Title I Programs, and Vocational Rehabilitation Adult Education

Agency: DOL–ETA.

Title of Collection: Unified or Combined State Plan and Plan Modifications under the Workforce Innovation and Opportunity Act, Wagner-Peyser WIOA Title I Programs, and Vocational Rehabilitation Adult Education.

Type of Review: Revision.

OMB Control Number: 1205–0522.

Affected Public: State, Local, and Tribal Governments.

Obligation to Respond: Required to obtain or maintain benefits (WIOA, secs. 102 and 103).

Total Estimated Number of Respondents Annually: 38.

Total Estimated Number of Annual Responses: 38.

Frequency of Responses: On Occasion.

Total Estimated Annual Time Burden: 8,136 hours.

Total Estimated Annual Other Costs Burden: $0.

Regulations Sections: DOL programs—20 CFR 652.211, 653.107(d), 653.109(d), 676.105, 676.110, 676.115, 676.120, 676.135, 676,140, 676.145, 677.230, 678.310, 678.405, 678.750(a), 681.400(a)(1), 681.410(b)(2), 682.100, 683.115. ED programs—34 CFR parts 361, 462 and 463.

ICR Approval Status: Not yet approved.

Overview and Response to Comments Received

Overview: WIOA requires each State to submit either a Unified or Combined State Plan that fosters strategic alignment of the six core programs, which include the adult, dislocated worker, youth, Wagner-Peyser Act Employment Service, AEFLA, and VR programs. The Departments have interpreted "State," in this context, to include the outlying areas of Guam, American Samoa, Northern Mariana Islands, the U.S. Virgin Islands, and, as applicable, the Republic of Palau. This

means that each of the outlying areas must submit a Unified or Combined State Plan, in accordance with secs. 102 and 103 of WIOA, just as any State does. The Unified or Combined State Plan requirements improve service integration and ensure that the public workforce system is industry-relevant and responds to the economic needs of the State and successfully matches employers with skilled workers. The Unified or Combined State Plan describes how the State will develop and implement a unified and integrated service delivery system rather than separately discuss the State's approach to operating each core program individually. This information collection implements secs. 102 and 103 of WIOA.

While each State, at a minimum, must submit a Unified State Plan covering the six core programs, sec. 103 of WIOA permits a State to submit a Combined State Plan that includes the six core programs plus one or more additional Combined State Plan partner programs listed in sec. 103(a)(2) of WIOA. If the State chooses to include one or more Combined State Plan partner programs, its Combined State Plan must include all of the common planning elements contained in the Unified State Plan and an additional element describing how the State will coordinate the additional Combined State Plan partner programs with the six core programs (WIOA sec. 103(b)(3)).

Comments: One commenter recommended that State Plans require a labor market analysis.

Departments' Response: Although the Departments agree with the comment, no change to the WIOA State Plan ICR is needed because it already requires a labor market analysis consistent with sec. 102(b)(1) of WIOA.

Comments: Another commenter expressed concern that the trucking industry may struggle to secure "in-demand" recognition in many States unless a State's obligations are further clarified under section II of the Draft Unified and Combined State Plan Requirements document.

Departments' Response: The Departments decline to change the WIOA State Plan ICR in response to this comment because States are encouraged to use a variety of accurate, reliable, and timely labor market information on which to base their analyses in the State Plan. The use of a variety of labor market information allows States to reliably determine "in-demand" labor market needs, including for the trucking industry.

Comments: Several commenters provided input on section II(a)(1)(A)(iii), in which commenters proposed that States include an assessment of the employment needs of employers in certain industries and sectors, including a description of the knowledge, skills, abilities, and credentials and licenses required for employers. The commenters also recommended replacing "credentials and licenses" with "recognized postsecondary credentials."

Departments' Response: The Departments conclude that it was appropriate to keep "credentials and licenses" rather than narrowing the meaning of term by replacing it with "postsecondary credentials" since it is a broad term that allows maximum flexibility to States to determine their needs and the WIOA State Plan ICR already requires States to include "recognized postsecondary credentials."

Comments: A commenter stated that when assessing the needs of employers, it would be beneficial to collect information on whether these various employers are subject to sec. 503 of the Rehabilitation Act.

Departments' Response: The Departments decline to change the WIOA State Plan ICR because it is not the appropriate vehicle for collecting information on whether employers are subject to sec. 503 of the Rehabilitation Act.

Comments: Some commenters noted that section II(a)(1)(B) would be an appropriate opportunity to include labor force participation rates for persons with disabilities, including youth and veterans with disabilities.

Departments' Response: The Departments agree that understanding labor force participation rates is important and revised the collection instrument in section II(a)(1)(B)(i) to include labor force participation rates.

Comments: A commenter suggested that States collect information concerning the numbers of individuals with disabilities who are working in segregated work environments ("sheltered workshops") and who are employed under a 14c waiver (receiving sub-minimum wage).

Departments' Response: The Departments decline to change the WIOA State Plan ICR in response to this comment because the change is not necessary. Section 101(a)(14) of the Rehabilitation Act of 1973, as amended by title IV of WIOA, requires the VR agencies to conduct a semiannual review and re-evaluation of individuals served by the VR program who are employed in sheltered settings or at subminimum wage. The semiannual reviews must be conducted for the first 2 years of the individual's employment and annually thereafter. Furthermore, the VR services portion of the Unified or Combined State Plan contains an assurance that the State VR agency will report information generated under sec. 101(a)(14) to the Administrator of the Wage and Hour Division of DOL.

Comments: Another commenter proposed that knowledge and familiarity with English be included in the analysis of the current workforce and that each Plan include a strategy for addressing the adult education and family literacy needs of the incumbent workforce.

Departments' Response: The Departments agree that such analysis and strategies should be included and expect States to provide a strategy for addressing the needs of individuals with limited English proficiency. Since the WIOA State Plan ICR already requires this as written, no change is needed.

Comments: A commenter cited an increase in State and Federal policies aimed at increasing employment for individuals with disabilities and encouraged States to examine whether or not their particular State is under any of these policies, which would help determine future labor market trends and give further direction on increasing employment for individuals with disabilities.

Departments' Response: The Departments decline to require an examination of State policies as a way to understand their possible impact on employment for individuals with disabilities since it goes beyond what the State is required to do under WIOA for purposes of the State Plan and may be more appropriate for a formal study.

Comments: Another commenter explicitly urged that financial literacy be included as a component of education. Specifically, the commenter said that there should be an assessment of financial literacy skills as part of the assessment of education and skills level.

Departments' Response: The Departments agree that financial literacy plays a significant role in a person's overall success, and that the WIOA State Plan ICR, as written, permits States to identify what skills gaps exist in their State, including a lack of financial literacy. States are encouraged to look at financial literacy as a possible need of their population, but the Departments decline to itemize every kind of skill that could be included in an assessment of education and skill level in the WIOA State Plan ICR.

Comments: Several commenters asked for clarification on what is meant by "skill gaps."

Departments' Response: Determining "current gaps," "projected gaps," and "projected education and skills of the workforce" is within the State's purview, and each State has flexibility to identify what skills gaps or mismatches exist in the State.

Comments: A commenter said innovative partnerships with entities such as faith- and community-based organizations should be included in the analysis of the State's workforce development, education, and training activities in section II(a)(2)(A) and section III(a)(2)(c).

Departments' Response: The Departments agree and made a change to the WIOA State Plan ICR by adding a footnote clarifying that the phrase "workforce development activities" could include a wide variety of programs, including human services, faith- and community-based organizations, and educational institutions.

Comments: A commenter asserted that the requirements for the workforce development, activities should include reporting on, and not only an assessment of, activities offered and to what extent those activities are both physically and programmatically accessible to job seekers with disabilities.

Departments' Response: The Departments decline to change the WIOA State Plan ICR in response to this comment because it is more appropriate to identify the extent to which these activities are accessible during monitoring than through the State Plan. Sections V.7 and V.10 require States to comply with physical and programmatic accessibility requirements of WIOA sec. 188 and the Americans with Disabilities Act of 1990.

Comments: A commenter said the State's strategic goal should be a guiding rather than prescriptive document, providing overall direction and supporting Local WDBs in developing strategies best suited to their local economies.

Departments' Response: The Departments decline to change the WIOA State Plan ICR because it is within the Governor's discretion to decide how broad the vision should be for the State; however, engagement of the Local WDBs is required under sec. 101(d) of WIOA in the development of the State Plan.

Comments: Several commenters took issue with the use of the term "sector strategies" in section (II)(c)(1) and suggested that the language be refined.

Departments' Response: The Departments agree and changed the WIOA State Plan ICR to refer to "industry or sector partnerships" and to align more closely with the statutory language, including WIOA sec. 101(d)(3)(B) and (D). Also, statutory references were added for the definitions of "career pathway" and "in-demand industry sector or occupation" to provide additional clarity concerning this requirement.

Comments: Some commenters requested career pathways and sector strategies be addressed in State Plans and requested further definition of career pathways. Another commenter requested that State Plans include descriptions about credentialing and integrating credentialing with sector partnerships.

Departments' Response: The Departments decline to change the WIOA State Plan ICR in response to these comments. The WIOA State Plan ICR already includes requirements for the State to describe both its sector and career pathways strategy in section (II)(c), so it already supports the inclusion of credentialing and its integration with sector and career pathways strategies. Although the Departments did not revise the WIOA State Plan ICR to include definitions of "career pathways" and "sector partnerships," the Departments did add statutory citations for the definitions of those terms.

Comments: Commenters said the language of section (II)(c)(2) is more detailed than the requirements under WIOA sec. 102(b)(1)(E), which the commenters said only references the alignment between core programs and "other resources available to the State."

Departments' Response: The Departments agree with this comment, and section IV has been revised in the WIOA State Plan ICR to require a description of the joint planning and coordination among the core programs and with other required partners and other programs and activities included in the Unified or Combined State Plan.

Comments: A commenter said the Departments should clarify the intended "gaps" mentioned in the final sentence of section II(c)(2).

Departments' Response: The Departments clarify the meaning in the final sentence of section (II)(c)(2) by changing the word "gaps" to "weaknesses" and by adding a reference to section II(a)(2) to explain what analysis should be taken into account for this requirement. However, the Departments decline to add a reference to section II(a)(1)(B)(iv), since the requirement is specifically regarding the strengthening of workforce development activities.

Comments: A commenter stated that State strategy should unify wrap-around services across programs.

Departments' Response: The Departments decline to change the WIOA State Plan ICR in response to this comment, since section III(a)(2)(C) of the WIOA State Plan ICR already requires coordination of supportive services (wrap-around services) among programs.

Comments: Another commenter recommended amending language, which clarifies that States can and should be coordinating and aligning services across programs in a manner that achieves the goals of industry and sector partnerships. The same commenter recommended strengthening the language to clarify that the description required is not limited to direct employer services, but should also include any other programs and activities that will support service delivery to employers.

Departments' Response: The Departments concur with this suggestion to reinforce the importance of industry and sector partnerships and have amended the requirement. With respect to the comment concerning service delivery to employers, the Departments conclude that the language is sufficient as originally written to include both direct and indirect services to employers.

Comments: A commenter was unclear as to the source of the requirement that the State outline additional strategies for coordinating "services to employers."

Departments' Response: The Departments conclude that both the State and local governments are partners in developing strategies for serving employers. Using the authority WIOA grants to the Secretaries to add additional operational planning elements as appropriate, the Departments chose to include a requirement around serving employers since they are a critical customer.

Comments: Several commenters supported extending the requirement to cover a broader range of providers than community colleges and area career and technical education (CTE) schools, but noted that there is no formal definition of the term "education and training providers" under WIOA.

Departments' Response: The Departments agree with this comment and revised section III(a)(2) of the WIOA State Plan ICR to include in section III(a)(2)(E) a separate requirement for engagement with community colleges and career and technical education schools as required by sec. 102(b)(2)(B)(iv) of WIOA. The Departments included in section

III(a)(2)(F) a separate element for engagement with other education and training providers because such coordination is necessary to have a successful strategy for the provision of services.

Comments: A commenter requested that the listed examples in section III(a)(2)(E) include community rehabilitation organizations (CROs). The commenter noted that frequently individuals with disabilities enter into CROs after completing high school, and these CROs are tasked with teaching individuals with disabilities job skills with the expectation of acquiring employment in the community.

Departments' Response: The Departments decline to change the WIOA State Plan ICR in response to this comment because CROs are not solely education/training entities. Nevertheless, States may address CROs in their plans.

Comments: A commenter suggested adding a subsection to section III(b) of the WIOA State Plan ICR that includes a description of proposed benchmarks for the negotiated amounts and/or percentages that each one-stop partner that is a unit of State government will contribute to the local one-stop delivery system costs. The commenter said that including this element will provide for better coordination and more transparency in the negotiation of shared costs.

Departments' Response: The Departments concur that the inclusion of information on one-stop partner cost sharing arrangements in the State Plan will provide for better coordination and more transparency in the negotiation of shared costs. However, the Departments anticipate that States will not be ready to provide their guidelines in the initial Unified or Combined State Plans that take effect July 1, 2016. Instead, the Departments revised section III(b)(2) of the WIOA State Plan ICR to require information about the State's process for developing guidelines and benchmarks in the initial Unified or Combined State Plan, and require the guidelines when the State submits a modification to its State Plan in PY 2018.

Comments: Another commenter recommended emphasizing the role of local and regional planning in establishing appropriate assessment standards.

Departments' Response: The Departments concur with the comment with minor modifications and made a change to the WIOA State Plan ICR. The Departments amended the requirement that "such State assessments should take into account local and regional planning goals," and also added "broken down by State and local area."

Comments: A commenter agreed with the importance of the assessment of core programs and one-stop partner programs based on accountability measures, but asserted that not all core programs currently collect the same performance information. The commenter requested clarification on what constitutes previous assessment results for the preceding 2 years, noting that there may not be a formal assessment available in States that were previously granted waivers of the requirement to conduct evaluations under WIA. The commenter also requested clarification on what constitutes elements required to be included in the assessments for the other core programs.

Departments' Response: The Departments agree and made a change to the WIOA State Plan ICR as a result of this comment. The previous 2-year period referenced in sec. 116 of WIOA and in section III(b)(4) of the WIOA State Plan ICR should be implemented for the first time at the 2-year plan modification cycle because assessments of WIOA programs will not be available before that time. Therefore, clarifying language has been added.

Comments: Another commenter requested the Departments to require States to provide a description of a clearly defined management reporting structure for State merit staff.

Departments' Response: The Departments decline to change the WIOA State Plan ICR in response to this comment because requiring a reporting structure for merit staff imposes an unnecessary burden on States. However, States may elect to develop such a policy and include it in its State Plan.

Comments: A commenter urged the Departments to require that assessments document how each program will ensure not only physical accessibility but programmatic accessibility, including specific examples of how WIOA sec. 188 regulations are being met.

Departments' Response: The Departments agree that compliance with physical and programmatic accessibility requirements is critical and have required States to provide how this will be achieved in section III(b)(8) of the WIOA State Plan ICR and through the common assurances in section V. Therefore, a change in the WIOA State Plan ICR is not needed.

Comments: Another commenter supported efforts to improve coordination across programs and recognized that integrated data systems are an important step in achieving this goal. However, the commenter was concerned that achieving this goal will be expensive and challenging for States in light of State budget crises and declining Federal resources. This commenter proposed adding language that clarifies that States are not required to make such efforts.

Departments' Response: The Departments decline to revise the WIOA State Plan ICR not to require States to make efforts to integrate data systems. Under WIOA sec. 101(d)(8), the State WDB is required to assist the Governor with "the development of strategies for aligning technology and data systems across one-stop partner programs to enhance service delivery and improve efficiencies in reporting on performance accountability measures (including the design and implementation of common intake, data collection, case management information, and performance accountability measurement and reporting processes and the incorporation of local input into such design and implementation, to improve coordination of services across one-stop partner programs)" and under WIOA sec. 102(b)(2)(C)(v)(I), the State Plan must explain "how the lead State agencies with responsibility for the administration of the core programs will align and integrate available workforce and education data on core programs, unemployment insurance programs, and education through postsecondary education." Due to these statutory requirements, States must develop a plan for aligning and integrating data systems.

Comments: A commenter indicated that moving to true interoperability and integration of data management systems would likely require substantial outlays of time and money that States may not be able to meet, especially in a time of level or declining Federal resources.

Departments' Response: The Departments decline to change the WIOA State Plan ICR in response to this comment since WIOA requires States to have a plan for aligning and integrating data systems.

Comments: Another commenter said that States should establish a reasonable timeline for data alignment and integration.

Departments' Response: The WIOA State Plan ICR, as written, permits States to establish a "reasonable timeline" as part of their plans for achieving data system alignment and integration. Therefore, a change to the collection is not needed.

Comments: The same commenter also said the Departments and State Plans should both report a *single score* for each of the six performance indicators,

but only after 4 years of WIOA implementation.

Departments' Response: The Departments decline to change the WIOA State Plan ICR in response to this comment. WIOA requires that each State establish levels of performance for each of the indicators of performance for each of the programs.

Comments: A commenter suggested that Veterans Priority of Service (POS) be addressed in the State Plan and that POS should be required for service-connected and non-service connected disabilities.

Departments' Response: The Departments decline to make the requested change because the WIOA State Plan ICR requires States to describe how they implement Veterans POS in their State (see section III(b)(7)). Moreover, under 38 U.S.C. 4215, all veterans, including disabled veterans with both service and non-service connected disabilities, receive POS for all employment and training programs funded in whole or in part by DOL.

Comments: A few commenters requested clarification on the *Addressing the Accessibility of the One-Stop Delivery System for Individuals with Disabilities* requirement in light of a parenthetical sentence at the end of the section indicating that this requirement applies to core programs, rather than the one-stop delivery system partners referenced earlier in the requirement.

Departments' Response: The Departments make a change to section III(b)(8) of the WIOA State Plan ICR as a result of the comment. The Departments concur with the comment that the parenthetical in the proposed WIOA State Plan ICR could create confusion about the requirements of WIOA sec. 188 and so it was removed. WIOA sec. 102(b)(2)(C)(vii) requires that the Unified State Plan contain a description of how one-stop operators and one-stop partners, in addition to core programs, will comply with sec. 188 of WIOA and the applicable provisions of the Americans with Disabilities Act of 1990. Per WIOA sec. 103(b)(1), this information must also be included in any Combined State Plan.

Comments: Some commenters said States should be required to describe the methods used for joint planning and coordination of the core programs, even where the State opts to submit a Unified State Plan rather than a Combined State Plan.

Departments' Response: The Departments concur that discussion of coordination with core programs and one-stop partners is helpful to ensure successful joint planning and coordination for both Unified and Combined State Plans, rather than just the Combined State Plan as had been proposed. To that end, the Departments added specific reference to the Unified State Plan to section IV of the WIOA State Plan ICR.

Comments: A few commenters said the review and approval requirement should be extended to all agencies or entities with responsibility for Combined State Plan partner programs.

Departments' Response: The Departments maintain that the WIOA State Plan ICR as written, and as required by WIOA, provides all programs the opportunity to review and comment on the State Plan. WIOA does not require Combined State Plan partner programs to approve the Combined State Plan prior to its submission.

Comments: A commenter said the State Plan process should also include the expertise and experience of partner organizations that serve individuals with barriers to employment because they are important partners in the public workforce system.

Departments' Response: The Departments concur that the State Plan process should include the expertise and experience of partner organizations that serve individuals with barriers to employment because they are important partners in the public workforce system. To that end, the Departments have added specific mention of organizations serving individuals with barriers to employment to the common assurances in section V(4)(a) of the WIOA State Plan ICR. As such, these organizations are now specifically listed as being among the stakeholders who should have the opportunity to comment on the Unified or Combined State Plan.

Comments: A commenter requested a specific number of days for public comment on the State Plan.

Departments' Response: The Departments decline to set a number of days for public comment because States may use their own discretion in providing a reasonable period of time for public comment. Many States have State laws or regulations that govern the amount of time that must be provided for public comment.

Comments: Another commenter requested clarification on whether there are cost limitations for contributions and whether such contributions shall be factored into infrastructure costs.

Departments' Response: The Departments conclude that the requested information is not appropriate to the WIOA State Plan ICR so no change was made. Further specifics on infrastructure costs are provided in the preamble for the Joint WIOA Final Rule at part 678 and will be provided in future joint guidance.

Comments: A commenter recommended including explicit reference to other people with barriers to employment, including individuals with disabilities, as well as clarification that priority of service to veterans remains in place.

Departments' Response: Section 3(24) of WIOA defines an "individual with a barrier to employment," which includes many different populations. Individuals with disabilities are specifically identified in sec. 3(24)(D) of WIOA. Given the exclusive list of populations contained in that definition, there is no statutory authority for the Departments to add other populations to that definition or to the WIOA State Plan ICR. Requirements for priority of service for veterans remain in place and are covered in section III(b)(7) of the WIOA State Plan ICR.

Comments: Another commenter recommended adding the following Common Assurance: "The State will negotiate in good faith with the Local Boards its portion of the shared costs of the one-stop system, in accordance with WIOA sec. 121, on behalf of all one-stop partners that are units of State government."

Departments' Response: The Departments decline to change the WIOA State Plan ICR in response to this comment. The Departments expect that States will negotiate in good faith with Local WDBs on one-stop cost sharing without requiring an assurance that they will do so.

Comments: A commenter said States should be required to describe how they will meet the statutory requirement to use statewide funds to support local areas by providing information on, and support for, the effective development, convening, and implementation of industry or sector partnerships.

Departments' Response: The Departments decline to change the WIOA State Plan ICR in response to this comment. Other areas of the State Plan requirements provide adequate information on how the State intends to implement sector partnerships, and the Departments have concluded it appropriate to maintain the requirement regarding use of statewide funds broad enough for States to describe a number of uses of those funds, required and allowable.

Comments: Some commenters on 20 CFR 683.130 of the DOL WIOA NPRM were concerned with the Governor's approval of the adult-dislocated worker funds transfer request and whether the Governor would complete the request

timely or would unreasonably deny a request.

Departments' Response: The Departments concur with the comment and added a requirement to include State-developed criteria for transferring adult and dislocated worker funds in the plan in order to provide process transparency to local areas that may request funds transfers.

Comments: A commenter acknowledged the need to differentiate training models enumerated in paragraph (b)(1) from apprenticeships, but said the name "employer-based" is more appropriate than the term "alternative" in reflecting the widespread use of programs.

Departments' Response: The Departments agree that the language in section VI(b)(1) of the WIOA State Plan ICR, which governs program-specific requirements for the adult and dislocated worker programs, should reflect more specifically the training model, and have amended the requirement to replace "alternative" with "work-based" since "work-based" more accurately captures the variety of training models than "employer-based."

Comments: Another commenter suggested requiring a policy on criteria for selecting employers for work-based training.

Departments' Response: The Departments decline to change the WIOA State Plan ICR in response to this comment. Since the Departments require States to address work-based learning approaches, requiring a specific policy on employer criteria is not needed because the description of the State's approach will provide sufficient information and also provide information to stakeholders.

Comments: A commenter said it was unclear whether the description of the Training Provider Eligibility Procedure was for initial eligibility, subsequent eligibility, or both.

Departments' Response: The Departments concur with the commenter that the proposed language was unclear. Therefore, the Departments revised the program-specific requirements in the WIOA State Plan ICR under section VI in subsection (b)(3) for the adult and dislocated worker programs to specify that the State must provide its training provider eligibility procedure for both initial and continued eligibility.

Comments: A commenter asked if it is the intent for the State to describe how the State ensures that all 14 program elements required under the youth program are carried out, or some other objective.

Departments' Response: The Departments agree with the concern and replaced the language in the WIOA State Plan ICR under section VI in subsection (c)(2), thereby offering more clarity.

Comments: Another commenter said WIOA title I, subtitle B should be expanded to include assurance that States have a written publicly available policy that ensures adult program funds provide a priority in the delivery of career and training services to individuals who are basic skills deficient.

Departments' Response: The Departments concur that more information on the implementation of the priority in the use of adult funds for training services and the individualized career services outlined in WIOA sec. 134(c)(2)(A)(xii) would be useful, and have included a new requirement in the WIOA State Plan ICR under section VI in subsection (b)(4) for the adult program to describe how the State will implement and monitor the priority of service provisions for public assistance recipients, other low-income individuals, or individuals who are basic skills deficient in accordance with the requirements of WIOA sec. 134(c)(3)(E), which applies to training services and individualized career services funded by the adult formula program. However, the Departments did not add a requirement that the policy be made publicly available because the State Plan is already required to be made publicly available for comment.

Comments: A commenter submitted a comment related to the priority for use of adult funds stating that DOL should require that State and local planning efforts utilize the most current Census and administrative data available to develop estimates of each priority service population in their planning efforts, and update these data year to year. The commenter stated that these data should be utilized in Federal reviews of State Plans to ensure that system designs and projected investments are equitably targeted to service-priority populations and that they should also be used to benchmark system performance in actual implementation of the priority for the use of adult funds from year to year.

Departments' Response: The Departments decline to change the WIOA State Plan ICR in response to this comment. The Departments maintain that the priority for use of adult funds can be made without the use of Census data, and the approach suggested by the commenter would be overly burdensome for both State and Federal staff.

Comments: Another commenter said use of the term identification of UI eligibility issues does not align with language in WIOA, asserting that there is a fundamental difference between providing assistance in filing for benefits and determining eligibility.

Departments' Response: The Departments made a change to the WIOA State Plan ICR in response to this comment by adding "and referral to UI staff for adjudication" to the WIOA State Plan ICR under section VI in subsection (a)(2) for the Wagner-Peyser Act Employment Service program. The Departments' intention with the language referenced by the commenter was not to de-emphasize reemployment services, but rather to emphasize the importance of enhanced connection between UI and ES/WIOA staff, and reemphasize the importance of providing reemployment services to UI claimants and other unemployed individuals. Both WIOA title I and the Wagner-Peyser Act (as amended by WIOA title III) contain new language regarding how these programs may provide services to UI claimants.

Comments: Numerous commenters requested reintroducing the requirement for SWAs to consult the NFJP grantees as was required in the regulations at 20 CFR 653.107(d).

Departments' Response: In response to this comment, the Departments make a change to the WIOA State Plan ICR under section VI in subsection (e)(4) for the Wagner-Peyser Act Employment Service program because it will foster greater collaboration between the SWAs and the NFJP grantees.

Comments: A few commenters said there appears to be no specific element relating to integrated education and training, as required under WIOA sec. 102(b)(2)(D)(ii)(II)(dd), and recommended that the instrument be amended to include a requirement that States describe how they will fund and support such activities.

Departments' Response: Under section VI of the WIOA State Plan ICR for the AEFLA (title II) program, States have an opportunity to describe in subsection (b) how they will fund eligible providers to establish or operate adult education and literacy activities, including integrated education and training. The Departments make a small clarification to the WIOA State Plan ICR.

Comments: A commenter asked for clarification on whether "eligible agency" as used in the *Aligning of Content Standards* section refers to State agencies, Local WDBs, and/or adult education providers (WIOA, AEFLA, etc.).

Departments' Response: The definition of "eligible agency" for the AEFLA program is located in sec. 203(3) of WIOA.

Comments: A couple of commenters provided input on section (d), *Integrated English Literacy and Civics Education Program.* A commenter expressed concern that the language used in the fourth paragraph of (d) fails to acknowledge the populations enrolled in integrated literacy and civics education courses who are already employed and working towards job advancement and literacy gains. The commenter stated that plans for program design and success should include not only job placement outcomes but also job retention and advancement measures. The other commenter said the Departments should provide flexibility for program operators to determine the appropriate services to meet the needs of individual participants, which may not include workforce preparation and training.

Departments' Response: The Departments delete the paragraph and move it to the AEFLA program certifications and assurances section, where the language outlining the two requirements for design of Integrated English Literacy and Civics Education programs will remain included as part of the assurance. This language expresses the specific requirements for design of these programs in sec. 243(c)(1) and (2) of WIOA.

Comments: A commenter applauded the attention that is given to reporting coordination and collaboration between State VR agencies and relevant entities, specifically inter-agency and inter-department cooperatives.

Departments' Response: No change to the WIOA State Plan ICR is needed as a result of this comment.

Comments: Another commenter suggested that the State should describe the manner in which the designated State agency establishes cooperative agreements with private non-profit VR service providers. The same commenter stated that the instrument should include a reference to employers who are Federal contractors to assist with their compliance with Rehabilitation Act sec. 503 and Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA). The same commenter also stated that the instrument should include a section under (j)(1) for those who are veterans with non-service-connected disabilities on public assistance. Lastly, the same commenter stated that data should be disaggregated by age and disability.

Departments' Response: The Departments decline to change the WIOA State Plan ICR in response to this comment since only those elements described in sec. 101(a) of the Rehabilitation Act are required to be included in the VR services portion of the Unified or Combined State Plan.

Comments: A couple of commenters expressed concern over whether States will be able to meet current State Plan submission deadlines. One commenter expressed concern over limitations for tracking client earnings in the 2nd and 4th quarter due to the lack of data agreements at the Federal level. The other commenter noted that some core partners do not collect the information needed to establish a reasonable baseline of comparison and was uncertain if the requested information needed to complete the table will be available in time to meet the State Plan submission deadline.

Departments' Response: The Departments make a change to the WIOA State Plan ICR in response to these comments by including specific instructions for how to populate the chart for the first 2 years of the plan to account for a lack of data availability.

Comments: A commenter recommended developing crosswalks of substantially similar plan elements and allowing States to respond to program-specific elements through incorporation by reference of responses to the Combined State Plan.

Departments' Response: The Departments decline to change the WIOA State Plan ICR in response to this comment. Although the Departments agree that identical or similar plan provisions relative to required and optional Combined State Plan partner programs may be "integrated" or "synthesized" together in the Combined State Plan document, the Departments decline to develop crosswalks of those elements at this time. However, in responding to a program-specific requirement that may be duplicative of an element addressed in other parts of a Combined State Plan, a State may clearly identify where it thinks it has responded to the requirement in the plan document. If the provision is not so identified, then the Federal task of reviewing the document and rendering a decision on completeness may become a major challenge and burdensome to the State and Federal staff.

Comments: A joint submission from a couple of commenters requested clarification on the use of the term "the State" as it pertains to the inclusion of the Carl D. Perkins Career and Technical Education Act in a Combined State Plan, per the supplemental document entitled, "Supplement to Workforce Innovation and Opportunity Act-program specific." The commenters asserted that the document uses "the State" in lieu of the statutorily required term "the State eligible agency," at least as it pertains to what entity is responsible for the Perkins Act's participation in a Combined State Plan.

Departments' Response: The Departments decline to change the WIOA State Plan ICR in response to this comment. The Departments were not seeking comment on the program-specific elements for the Perkins section of the WIOA State Plan ICR since it is a separately approved data collection.

Comments: A commenter referred to the States' total estimated burden, which is $141,708, and noted that the Federal burden is $240,987. The commenter asserted that, unless the $141,708 value of respondent time is for each of the six core program respondents, the estimated burden for States to fulfill the program-specific requirements for all six core programs appears to be significantly underestimated.

Departments' Response: The Departments concur with the commenter that the burden estimated for the Federal review was overstated relative to the State burden. After further analysis of the burden estimate, the Departments corrected a mathematical error in item #14 that failed to annualize State Plan receipt as was done for the State burden estimate.

Comments: Another commenter stated that the WIOA State Plan ICR provides a reasonable synthesis of the required elements and provides States with sufficient guidance, but certain elements could be strengthened to ensure that States and programs are moving towards true alignment across programs.

Departments' Response: The Departments decline to make a change to the WIOA State Plan ICR because the comment did not suggest one.

Comments: A commenter stated that the draft instrument responds to many of its concerns, but expressed continued reservations that certain State Plan elements may not truly reflect the experiences of, or respond to the needs of, individuals with disabilities.

Departments' Response: The Departments decline to make a change to the WIOA State Plan ICR in response to the comment because the comment did not suggest one.

Comments: Another commenter commended the Departments' collaboration on the instrument but also urged the inclusion of entities that serve individuals with barriers to employment, including immigrants, in outreach and technical assistance efforts.

Departments' Response: The Departments decline to make a change to the WIOA State Plan ICR in response to the comment because the comment did not suggest one.

Comments: A commenter appreciated several elements of the WIOA legislation (*e.g.*, adding adult education as a core program, the bill's emphasis on college and career readiness) and asserted that the need for additional funding has never been greater.

Departments' Response: The Departments decline to make a change to the WIOA State Plan ICR in response to the comment because the comment did not suggest one.

Comments: Another commenter opposed "the program" in general.

Departments' Response: The Departments decline to make a change to the WIOA State Plan ICR in response to the comment because the comment did not suggest one.

Comments: A commenter recommended that certain pages of the SCSEP component related to SCSEP operations be deleted from the SCSEP Combined State Plan requirements.

Departments' Response: The Departments decline to change the WIOA State Plan ICR in response to this comment. The Departments are not seeking comment on these data elements since they are covered by a separate collection number governing the SCSEP data collection.

Comments: A comment that was submitted through the NPRM stated that the State Plan should require evidence-based strategies as outlined in the Job-Driven Training reports.

Departments' Response: The Departments decline to change the WIOA State Plan ICR in response to this comment since the instrument already reflects the content of the job-driven report.

Comments: Another comment that was submitted through the NPRM recommended requiring States to include in the State Plan how they will use measurable skill gains and a list of the measurable skill gains they will use.

Departments' Response: The Departments decline to change the WIOA State Plan ICR in response to this comment since measurable skill gains are addressed in the WIOA Joint Performance ICR.

Comments: The final comment that was submitted through the NPRM requested guidance on the burden of technology upgrades.

Departments' Response: The Departments decline to change the WIOA State Plan ICR in response to this comment but will take it into account for future guidance or technical assistance.

To see a more detailed view of the responses to public comments, refer to item 8 of the supporting statements of the information collections.

E. Executive Order 13132 (Federalism)

E.O. 13132 requires Federal agencies to ensure that the principles of Federalism established by the Framers of our Constitution guide the executive departments and agencies in the formulation and implementation of policies and to further the policies of the Unfunded Mandates Reform Act. Further, agencies must strictly adhere to constitutional principles. Agencies must closely examine the constitutional and statutory authority supporting any action that would limit the policy-making discretion of the States and they must carefully assess the necessity for any such action. To the extent practicable, State and local officials must be consulted before any such action is implemented. Section 3(b) of the E.O. further provides that Federal agencies must implement regulations that have a substantial direct effect only if statutory authority permits the regulation and it is of national significance. The Departments have reviewed the Joint WIOA Final Rule in light of these requirements and have concluded that, with the enactment of WIOA and its clear requirement to publish national implementing regulations, E.O. sec. 3(b) has been reviewed and its requirement satisfied.

Accordingly, the Departments have reviewed this WIOA-required Joint Final Rule and have concluded that the rulemaking has no Federalism implications. The Joint WIOA Final Rule, as noted above, has no substantial direct effects on States, on the relationships between the States, or on the distribution of power and responsibilities among the various levels of government as described by E.O. 13132. Therefore, the Departments have concluded that this Final Rule does not have a sufficient Federalism implication to warrant the preparation of a summary impact statement.

F. Unfunded Mandates Reform Act of 1995

Comments: In response to the NPRM, the Departments received some comments that addressed unfunded mandates. A few commenters asserted that the requirements to collect data and to report performance are unfunded mandates. One of the commenters asserted that the cost in terms of time and technology for integrating individual records across multiple data systems at the State level is very high. Another one of the commenters suggested that the rule included other unfunded mandates, such as sub-minimum wage tracking and pre-employment transition services set-asides. One commenter added that although grant funding will be provided by the Federal government, in some States the grant funds provided for implementation are insufficient to reimburse the States.

Departments' Response: The Departments acknowledge the commenters' concerns and detail the cost burden associated with this Joint WIOA Final Rule in Section V.A (Rulemaking Analyses and Notices). Grant funding is provided annually to all programs authorized under WIOA and that funding will be used to cover the costs of implementing this rule.

With respect to the comments pertaining to requirements under the VR program for the VR agencies to report data regarding individuals employed at subminimum wage and for States to reserve at least 15 percent of their VR allotment to provide pre-employment transition services to students with disabilities, ED provides descriptions of these cost burdens in the RIA of the VR program-specific Final Rule published elsewhere in this issue of the **Federal Register**.

The Unfunded Mandates Reform Act of 1995 directs agencies to assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector. A Federal mandate is any provision in a regulation that imposes an enforceable duty upon State, local, or tribal governments, or imposes a duty upon the private sector that is not voluntary.

WIOA contains specific language supporting employment and training activities for Indian, Alaska Natives, and Native Hawaiian individuals. These program requirements are supported, as is the WIOA workforce development system generally, by Federal formula grant funds and accordingly are not considered unfunded mandates. Similarly, Migrant and Seasonal Farmworker activities are authorized and funded under the WIOA program as was done under the WIA program. The States are mandated to perform certain activities for the Federal government under WIOA and will be reimbursed (grant funding) for the resources required to perform those activities. The same process and grant relationship exists between States and Local WDBs under the WIA program and must continue under the WIOA program as identified in this Final Rule.

WIOA contains language-establishing procedures regarding the eligibility of training providers to receive funds under the WIOA program and contains clear State information collection requirements for eligible training providers (*e.g.*, submission of appropriate, accurate, and timely information). A decision by a private training entity to participate as a provider under the WIOA program is purely voluntary and, therefore, information collection burdens do not impose a duty on the private sector that is not voluntarily assumed.

Following consideration of these factors, the Departments concluded that the Joint WIOA Final Rule contained no unfunded Federal mandates, which are defined in 2 U.S.C. 658(6) to include either a "Federal intergovernmental mandate" or a "Federal private sector mandate."

G. Plain Language

E.O. 12866 and E.O. 13563 require regulations to be written in a manner that is easy to understand.

Comments: An individual had difficulty understanding many of the provisions of the proposal and said that the definitions sounded like the "fine print" of a contract.

Departments' Response: The overall format of these WIOA regulations reflects the Departments' commitment to writing regulations that are reader-friendly. The Departments have attempted to make this Final Rule easy to understand. For example, the regulatory text is presented in a "question and answer" format and organized consistent with WIOA. In consideration of the foregoing, the Departments have concluded that the Departments have drafted this Joint WIOA Final Rule in plain language.

H. Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681) requires the assessment of the impact of this rule on family well-being. A rule that is determined to have a negative effect on families must be supported with an adequate rationale. The Departments have assessed this Joint WIOA Final Rule in light of this requirement and concluded that the Joint Final Rule will not have a negative effect on families.

I. Executive Order 13175 (Indian Tribal Governments)

The Departments reviewed the Joint WIOA Final Rule under the terms of E.O. 13175 and DOL's Tribal Consultation Policy and have concluded the final regulation would have tribal implications as the final regulations have substantial direct effects on one or more Indian tribes, the relationship between the Federal government and Indian tribes, or the distribution of power and responsibilities between the Federal government and Indian tribes. Therefore, as described in the preamble to the NPRM, the Departments carried out several consultations with tribal institutions, including tribal officials, which allowed the tribal officials to provide meaningful and timely input into the Departments' proposals. Additionally, through the Notice and Comment rulemaking process, the Departments received comments on the programs and provisions in WIOA that have tribal implications and the Departments have responded to these comments throughout the preamble to the Final Joint and DOL-only regulations.

In addition to the comments received through its Notice and Comment rulemaking process, the Department of Labor received feedback from the INA community and the public prior to the publication of the NPRM. This feedback was summarized in the NPRM at 80 FR 20626–28.

J. Executive Order 12630 (Government Actions and Interference With Constitutionally Protected Property Rights)

The Departments have concluded that this Joint WIOA Final Rule is not subject to E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, because it does not involve implementation of a policy with takings implications.

K. Executive Order 12988 (Civil Justice Reform)

This Joint WIOA Final Rule was drafted and reviewed in accordance with E.O. 12988, Civil Justice Reform, and the Departments have concluded that the Joint Final Rule will not unduly burden the Federal court system. The Joint WIOA Final Rule was written to minimize litigation and, to the extent feasible, provide a clear legal standard for affected conduct. In addition, the Joint WIOA Final Rule has been reviewed to eliminate drafting errors and ambiguities.

L. Executive Order 13211 (Energy Supply)

This Joint WIOA Final Rule was drafted and reviewed in accordance with E.O. 13211, Energy Supply. The Departments have concluded the Joint WIOA Final Rule will not have a significant adverse effect on the supply, distribution, or use of energy and is not subject to E.O. 13211.

List of Subjects

20 CFR Parts 676, 677, and 678

Employment, Grant programs—labor.

34 CFR Part 361

Administrative practice and procedure, Grant programs—education, Grant programs—social programs, Reporting and recordkeeping requirements, Vocational rehabilitation.

34 CFR Part 463

Adult education, Grant programs—education, Reporting and recordkeeping requirements.

Department of Labor

Employment and Training Administration

20 CFR Chapter V

For the reasons stated in the preamble, ETA amends 20 CFR chapter V as follows:

■ 1. Add part 676 to read as follows:

PART 676—UNIFIED AND COMBINED STATE PLANS UNDER TITLE I OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT

Sec.

676.100 What are the purposes of the Unified and Combined State Plans?
676.105 What are the general requirements for the Unified State Plan?
676.110 What are the program-specific requirements in the Unified State Plan for the adult, dislocated worker, and youth programs authorized under Workforce Innovation and Opportunity Act title I?
676.115 What are the program-specific requirements in the Unified State Plan for the Adult Education and Family Literacy Act program authorized under Workforce Innovation and Opportunity Act title II?
676.120 What are the program-specific requirements in the Unified State Plan for the Employment Service program authorized under the Wagner-Peyser Act, as amended by Workforce Innovation and Opportunity Act title III?
676.125 What are the program-specific requirements in the Unified State Plan for the State Vocational Rehabilitation program authorized under title I of the Rehabilitation Act of 1973, as amended by Workforce Innovation and Opportunity Act title IV?

676.130 What is the development, submission, and approval process of the Unified State Plan?
676.135 What are the requirements for modification of the Unified State Plan?
676.140 What are the general requirements for submitting a Combined State Plan?
676.143 What is the development, submission, and approval process of the Combined State Plan?
676.145 What are the requirements for modifications of the Combined State Plan?

Authority: Secs. 102, 103, and 503, Pub. L. 113–128, 128 Stat. 1425 (Jul. 22, 2014).

§ 676.100 What are the purposes of the Unified and Combined State Plans?

(a) The Unified and Combined State Plans provide the framework for States to outline a strategic vision of, and goals for, how their workforce development systems will achieve the purposes of the Workforce Innovation and Opportunity Act (WIOA).

(b) The Unified and Combined State Plans serve as 4-year action plans to develop, align, and integrate the State's systems and provide a platform to achieve the State's vision and strategic and operational goals. A Unified or Combined State Plan is intended to:

(1) Align, in strategic coordination, the six core programs required in the Unified State Plan pursuant to § 676.105(b), and additional Combined State Plan partner programs that may be part of the Combined State Plan pursuant to § 676.140;

(2) Direct investments in economic, education, and workforce training programs to focus on providing relevant education and training to ensure that individuals, including youth and individuals with barriers to employment, have the skills to compete in the job market and that employers have a ready supply of skilled workers;

(3) Apply strategies for job-driven training consistently across Federal programs; and

(4) Enable economic, education, and workforce partners to build a skilled workforce through innovation in, and alignment of, employment, training, and education programs.

§ 676.105 What are the general requirements for the Unified State Plan?

(a) The Unified State Plan must be submitted in accordance with § 676.130 and WIOA sec. 102(c), as explained in joint planning guidelines issued by the Secretaries of Labor and Education.

(b) The Governor of each State must submit, at a minimum, in accordance with § 676.130, a Unified State Plan to the Secretary of Labor to be eligible to receive funding for the workforce development system's six core programs:

(1) The adult, dislocated worker, and youth programs authorized under subtitle B of title I of WIOA and administered by the U.S. Department of Labor (DOL);

(2) The Adult Education and Family Literacy Act (AEFLA) program authorized under title II of WIOA and administered by the U.S. Department of Education (ED);

(3) The Employment Service program authorized under the Wagner-Peyser Act of 1933, as amended by WIOA title III and administered by DOL; and

(4) The Vocational Rehabilitation program authorized under title I of the Rehabilitation Act of 1973, as amended by title IV of WIOA and administered by ED.

(c) The Unified State Plan must outline the State's 4-year strategy for the core programs described in paragraph (b) of this section and meet the requirements of sec. 102(b) of WIOA, as explained in the joint planning guidelines issued by the Secretaries of Labor and Education.

(d) The Unified State Plan must include strategic and operational planning elements to facilitate the development of an aligned, coordinated, and comprehensive workforce development system. The Unified State Plan must include:

(1) Strategic planning elements that describe the State's strategic vision and goals for preparing an educated and skilled workforce under sec. 102(b)(1) of WIOA. The strategic planning elements must be informed by and include an analysis of the State's economic conditions and employer and workforce needs, including education and skill needs.

(2) Strategies for aligning the core programs and Combined State Plan partner programs as described in § 676.140(d), as well as other resources available to the State, to achieve the strategic vision and goals in accordance with sec. 102(b)(1)(E) of WIOA.

(3) Operational planning elements in accordance with sec. 102(b)(2) of WIOA that support the strategies for aligning the core programs and other resources available to the State to achieve the State's vision and goals and a description of how the State Workforce Development Board (WDB) will implement its functions, in accordance with sec. 101(d) of WIOA. Operational planning elements must include:

(i) A description of how the State strategy will be implemented by each core program's lead State agency;

(ii) State operating systems, including data systems, and policies that will support the implementation of the State's strategy identified in paragraph (d)(1) of this section;

(iii) Program-specific requirements for the core programs required by WIOA sec. 102(b)(2)(D);

(iv) Assurances required by sec. 102(b)(2)(E) of WIOA, including an assurance that the lead State agencies responsible for the administration of the core programs reviewed and commented on the appropriate operational planning of the Unified State Plan and approved the elements as serving the needs of the population served by such programs, and other assurances deemed necessary by the Secretaries of Labor and Education under sec. 102(b)(2)(E)(x) of WIOA;

(v) A description of joint planning and coordination across core programs, required one-stop partner programs, and other programs and activities in the Unified State Plan; and

(vi) Any additional operational planning requirements imposed by the Secretary of Labor or the Secretary of Education under sec. 102(b)(2)(C)(viii) of WIOA.

(e) All of the requirements in this part that apply to States also apply to outlying areas.

§ 676.110 What are the program-specific requirements in the Unified State Plan for the adult, dislocated worker, and youth programs authorized under Workforce Innovation and Opportunity Act title I?

The program-specific requirements for the adult, dislocated worker, and youth programs that must be included in the Unified State Plan are described in sec. 102(b)(2)(D) of WIOA. Additional planning requirements may be explained in joint planning guidelines issued by the Secretaries of Labor and Education.

§ 676.115 What are the program-specific requirements in the Unified State Plan for the Adult Education and Family Literacy Act program authorized under Workforce Innovation and Opportunity Act title II?

The program-specific requirements for the AEFLA program in title II that must be included in the Unified State Plan are described in secs. 102(b)(2)(C) and 102(b)(2)(D)(ii) of WIOA.

(a) With regard to the description required in sec. 102(b)(2)(D)(ii)(I) of WIOA pertaining to content standards, the Unified State Plan must describe how the eligible agency will, by July 1, 2016, align its content standards for adult education with State-adopted challenging academic content standards under the Elementary and Secondary Education Act of 1965, as amended.

(b) With regard to the description required in sec. 102(b)(2)(C)(iv) of WIOA pertaining to the methods and

factors the State will use to distribute funds under the core programs, for title II of WIOA, the Unified State Plan must include—

(1) How the eligible agency will award multi-year grants on a competitive basis to eligible providers in the State; and

(2) How the eligible agency will provide direct and equitable access to funds using the same grant or contract announcement and application procedure.

§ 676.120 What are the program-specific requirements in the Unified State Plan for the Employment Service program authorized under the Wagner-Peyser Act, as amended by Workforce Innovation and Opportunity Act title III?

The Employment Service program authorized under the Wagner-Peyser Act of 1933, as amended by WIOA title III, is subject to requirements in sec. 102(b) of WIOA, including any additional requirements imposed by the Secretary of Labor under secs. 102(b)(2)(C)(viii) and 102(b)(2)(D)(iv) of WIOA, as explained in joint planning guidelines issued by the Secretaries of Labor and Education.

§ 676.125 What are the program-specific requirements in the Unified State Plan for the State Vocational Rehabilitation program authorized under title I of the Rehabilitation Act of 1973, as amended by Workforce Innovation and Opportunity Act title IV?

The program specific-requirements for the vocational rehabilitation services portion of the Unified or Combined State Plan are set forth in sec. 101(a) of the Rehabilitation Act of 1973, as amended. All submission requirements for the vocational rehabilitation services portion of the Unified or Combined State Plan are in addition to the jointly developed strategic and operational content requirements prescribed by sec. 102(b) of WIOA.

§ 676.130 What is the development, submission, and approval process of the Unified State Plan?

(a) The Unified State Plan described in § 676.105 must be submitted in accordance with WIOA sec. 102(c), as explained in joint planning guidelines issued jointly by the Secretaries of Labor and Education.

(b) A State must submit its Unified State Plan to the Secretary of Labor pursuant to a process identified by the Secretary.

(1) The initial Unified State Plan must be submitted no later than 120 days prior to the commencement of the second full program year of WIOA.

(2) Subsequent Unified State Plans must be submitted no later than 120 days prior to the end of the 4-year period covered by a preceding Unified State Plan.

(3) For purposes of paragraph (b) of this section, "program year" means July 1 through June 30 of any year.

(c) The Unified State Plan must be developed with the assistance of the State WDB, as required by § 679.130(a) of this chapter and WIOA sec. 101(d), and must be developed in coordination with administrators with optimum policy-making authority for the core programs and required one-stop partners.

(d) The State must provide an opportunity for public comment on and input into the development of the Unified State Plan prior to its submission.

(1) The opportunity for public comment must include an opportunity for comment by representatives of Local WDBs and chief elected officials, businesses, representatives of labor organizations, community-based organizations, adult education providers, institutions of higher education, other stakeholders with an interest in the services provided by the six core programs, and the general public, including individuals with disabilities.

(2) Consistent with the "Sunshine Provision" of WIOA in sec. 101(g), the State WDB must make information regarding the Unified State Plan available to the public through electronic means and regularly occurring open meetings in accordance with State law. The Unified State Plan must describe the State's process and timeline for ensuring a meaningful opportunity for public comment.

(e) Upon receipt of the Unified State Plan from the State, the Secretary of Labor will ensure that the entire Unified State Plan is submitted to the Secretary of Education pursuant to a process developed by the Secretaries.

(f) The Unified State Plan is subject to the approval of both the Secretary of Labor and the Secretary of Education.

(g) Before the Secretaries of Labor and Education approve the Unified State Plan, the vocational rehabilitation services portion of the Unified State Plan described in WIOA sec. 102(b)(2)(D)(iii) must be approved by the Commissioner of the Rehabilitation Services Administration.

(h) The Secretaries of Labor and Education will review and approve the Unified State Plan within 90 days of receipt by the Secretary of Labor, unless the Secretary of Labor or the Secretary of Education determines in writing within that period that:

(1) The plan is inconsistent with a core program's requirements;

(2) The Unified State Plan is inconsistent with any requirement of sec. 102 of WIOA; or

(3) The plan is incomplete or otherwise insufficient to determine whether it is consistent with a core program's requirements or other requirements of WIOA.

(i) If neither the Secretary of Labor nor the Secretary of Education makes the written determination described in paragraph (h) of this section within 90 days of the receipt by the Secretaries, the Unified State Plan will be considered approved.

§ 676.135 What are the requirements for modification of the Unified State Plan?

(a) In addition to the required modification review set forth in paragraph (b) of this section, a Governor may submit a modification of its Unified State Plan at any time during the 4-year period of the plan.

(b) Modifications are required, at a minimum:

(1) At the end of the first 2-year period of any 4-year State Plan, wherein the State WDB must review the Unified State Plan, and the Governor must submit modifications to the plan to reflect changes in labor market and economic conditions or other factors affecting the implementation of the Unified State Plan;

(2) When changes in Federal or State law or policy substantially affect the strategies, goals, and priorities upon which the Unified State Plan is based;

(3) When there are changes in the statewide vision, strategies, policies, State negotiated levels of performance as described in § 677.170(b) of this chapter, the methodology used to determine local allocation of funds, reorganizations that change the working relationship with system employees, changes in organizational responsibilities, changes to the membership structure of the State WDB or alternative entity, and similar substantial changes to the State's workforce development system.

(c) Modifications to the Unified State Plan are subject to the same public review and comment requirements in § 676.130(d) that apply to the development of the original Unified State Plan.

(d) Unified State Plan modifications must be approved by the Secretaries of Labor and Education, based on the approval standards applicable to the original Unified State Plan under § 676.130. This approval must come after the approval of the Commissioner of the Rehabilitation Services

Administration for modification of any portion of the plan described in sec. 102(b)(2)(D)(iii) of WIOA.

§ 676.140 What are the general requirements for submitting a Combined State Plan?

(a) A State may choose to develop and submit a 4-year Combined State Plan in lieu of the Unified State Plan described in §§ 676.105 through 676.125.

(b) A State that submits a Combined State Plan covering an activity or program described in paragraph (d) of this section that is, in accordance with WIOA sec. 103(c), approved or deemed complete under the law relating to the program will not be required to submit any other plan or application in order to receive Federal funds to carry out the core programs or the program or activities described under paragraph (d) of this section that are covered by the Combined State Plan.

(c) If a State develops a Combined State Plan, it must be submitted in accordance with the process described in § 676.143.

(d) If a State chooses to submit a Combined State Plan, the plan must include the six core programs and one or more of the Combined State Plan partner programs and activities described in sec. 103(a)(2) of WIOA. The Combined State Plan partner programs and activities that may be included in the Combined State Plan are:

(1) Career and technical education programs authorized under the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2301 *et seq.*);

(2) Temporary Assistance for Needy Families or TANF, authorized under part A of title IV of the Social Security Act (42 U.S.C. 601 *et seq.*);

(3) Employment and training programs authorized under sec. 6(d)(4) of the Food and Nutrition Act of 2008 (7 U.S.C. 2015(d)(4));

(4) Work programs authorized under sec. 6(o) of the Food and Nutrition Act of 2008 (7 U.S.C. 2015(o));

(5) Trade adjustment assistance activities under chapter 2 of title II of the Trade Act of 1974 (19 U.S.C. 2271 *et seq.*);

(6) Services for veterans authorized under chapter 41 of title 38 United States Code;

(7) Programs authorized under State unemployment compensation laws (in accordance with applicable Federal law);

(8) Senior Community Service Employment Programs under title V of the Older Americans Act of 1965 (42 U.S.C. 3056 *et seq.*);

(9) Employment and training activities carried out by the Department of Housing and Urban Development (HUD);

(10) Employment and training activities carried out under the Community Services Block Grant Act (42 U.S.C. 9901 *et seq.*); and

(11) Reintegration of offenders programs authorized under sec. 212 of the Second Chance Act of 2007 (42 U.S.C. 17532).

(e) A Combined State Plan must contain:

(1) For the core programs, the information required by sec. 102(b) of WIOA and §§ 676.105 through 676.125, as explained in the joint planning guidelines issued by the Secretaries;

(2) For the Combined State Plan partner programs and activities, except as described in paragraph (h) of this section, the information required by the law authorizing and governing that program to be submitted to the appropriate Secretary, any other applicable legal requirements, and any common planning requirements described in sec. 102(b) of WIOA, as explained in the joint planning guidelines issued by the Secretaries;

(3) A description of the methods used for joint planning and coordination among the core programs, and with the required one-stop partner programs and other programs and activities included in the State Plan; and

(4) An assurance that all of the entities responsible for planning or administering the programs described in the Combined State Plan have had a meaningful opportunity to review and comment on all portions of the plan.

(f) Each Combined State Plan partner program included in the Combined State Plan remains subject to the applicable program-specific requirements of the Federal law and regulations, and any other applicable legal or program requirements, governing the implementation and operation of that program.

(g) For purposes of §§ 676.140 through 676.145 the term "appropriate Secretary" means the head of the Federal agency who exercises either plan or application approval authority for the program or activity under the Federal law authorizing the program or activity or, if there are no planning or application requirements, who exercises administrative authority over the program or activity under that Federal law.

(h) States that include employment and training activities carried out under the Community Services Block Grant (CSBG) Act (42 U.S.C. 9901 *et seq.*) under a Combined State Plan would submit all other required elements of a complete CSBG State Plan directly to the Federal agency that administers the program, according to the requirements of Federal law and regulations.

(i) States that submit employment and training activities carried out by HUD under a Combined State Plan would submit any other required planning documents for HUD programs directly to HUD, according to the requirements of Federal law and regulations.

§ 676.143 What is the development, submission, and approval process of the Combined State Plan?

(a) For purposes of § 676.140(a), if a State chooses to develop a Combined State Plan it must submit the Combined State Plan in accordance with the requirements described below and sec. 103 of WIOA, as explained in the joint planning guidelines issued by the Secretaries of Labor and Education.

(b) The Combined State Plan must be developed with the assistance of the State WDB, as required by § 679.130(a) of this chapter and WIOA sec. 101(d), and must be developed in coordination with administrators with optimum policy-making authority for the core programs and required one-stop partners.

(c) The State must provide an opportunity for public comment on and input into the development of the Combined State Plan prior to its submission.

(1) The opportunity for public comment for the portions of the Combined State Plan that cover the core programs must include an opportunity for comment by representatives of Local WDBs and chief elected officials, businesses, representatives of labor organizations, community-based organizations, adult education providers, institutions of higher education, other stakeholders with an interest in the services provided by the six core programs, and the general public, including individuals with disabilities.

(2) Consistent with the "Sunshine Provision" of WIOA in sec. 101(g), the State WDB must make information regarding the Combined State Plan available to the public through electronic means and regularly occurring open meetings in accordance with State law. The Combined State Plan must describe the State's process and timeline for ensuring a meaningful opportunity for public comment on the portions of the plan covering core programs.

(3) The portions of the plan that cover the Combined State Plan partner programs are subject to any public comment requirements applicable to those programs.

(d) The State must submit to the Secretaries of Labor and Education and to the Secretary of the agency with responsibility for approving the program's plan or deeming it complete under the law governing the program, as part of its Combined State Plan, any plan, application, form, or any other similar document that is required as a condition for the approval of Federal funding under the applicable program or activity. Such submission must occur in accordance with a process identified by the relevant Secretaries in paragraph (a) of this section.

(e) The Combined State Plan will be approved or disapproved in accordance with the requirements of sec. 103(c) of WIOA.

(1) The portion of the Combined State Plan covering programs administered by the Departments of Labor and Education must be reviewed, and approved or disapproved, by the appropriate Secretary within 90 days beginning on the day the Combined State Plan is received by the appropriate Secretary from the State, consistent with paragraph (f) of this section. Before the Secretaries of Labor and Education approve the Combined State Plan, the vocational rehabilitation services portion of the Combined State Plan described in WIOA sec. 102(b)(2)(D)(iii) must be approved by the Commissioner of the Rehabilitation Services Administration.

(2) If an appropriate Secretary other than the Secretary of Labor or the Secretary of Education has authority to approve or deem complete a portion of the Combined State Plan for a program or activity described in § 676.140(d), that portion of the Combined State Plan must be reviewed, and approved, disapproved, or deemed complete, by the appropriate Secretary within 120 days beginning on the day the Combined State Plan is received by the appropriate Secretary from the State consistent with paragraph (f) of this section.

(f) The appropriate Secretaries will review and approve or deem complete the Combined State Plan within 90 or 120 days, as appropriate, as described in paragraph (e) of this section, unless the Secretaries of Labor and Education or appropriate Secretary have determined in writing within that period that:

(1) The Combined State Plan is inconsistent with the requirements of the six core programs or the Federal laws authorizing or applicable to the program or activity involved, including the criteria for approval of a plan or application, or deeming the plan complete, if any, under such law;

(2) The portion of the Combined State Plan describing the six core programs or the program or activity described in paragraph (a) of this section involved does not satisfy the criteria as provided in sec. 102 or 103 of WIOA, as applicable; or

(3) The Combined State Plan is incomplete, or otherwise insufficient to determine whether it is consistent with a core program's requirements, other requirements of WIOA, or the Federal laws authorizing, or applicable to, the program or activity described in § 676.140(d), including the criteria for approval of a plan or application, if any, under such law.

(g) If the Secretary of Labor, the Secretary of Education, or the appropriate Secretary does not make the written determination described in paragraph (f) of this section within the relevant period of time after submission of the Combined State Plan, that portion of the Combined State Plan over which the Secretary has jurisdiction will be considered approved.

(h) The Secretaries of Labor and Education's written determination of approval or disapproval regarding the portion of the plan for the six core programs may be separate from the written determination of approval, disapproval, or completeness of the program-specific requirements of Combined State Plan partner programs and activities described in § 676.140(d) and included in the Combined State Plan.

(i) *Special rule.* In paragraphs (f)(1) and (3) of this section, the term "criteria for approval of a plan or application," with respect to a State or a core program or a program under the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2301 *et seq.*), includes a requirement for agreement between the State and the appropriate Secretaries regarding State performance measures or State performance accountability measures, as the case may be, including levels of performance.

§ 676.145 What are the requirements for modifications of the Combined State Plan?

(a) For the core program portions of the Combined State Plan, modifications are required, at a minimum:

(1) By the end of the first 2-year period of any 4-year State Plan. The State WDB must review the Combined State Plan, and the Governor must submit modifications to the Combined State Plan to reflect changes in labor market and economic conditions or other factors affecting the implementation of the Combined State Plan;

(2) When changes in Federal or State law or policy substantially affect the strategies, goals, and priorities upon which the Combined State Plan is based;

(3) When there are changes in the statewide vision, strategies, policies, State negotiated levels of performance as described in § 677.170(b) of this chapter, the methodology used to determine local allocation of funds, reorganizations that change the working relationship with system employees, changes in organizational responsibilities, changes to the membership structure of the State WDB or alternative entity, and similar substantial changes to the State's workforce development system.

(b) In addition to the required modification review described in paragraph (a)(1) of this section, a State may submit a modification of its Combined State Plan at any time during the 4-year period of the plan.

(c) For any Combined State Plan partner programs and activities described in § 676.140(d) that are included in a State's Combined State Plan, the State—

(1) May decide if the modification requirements under WIOA sec. 102(c)(3) that apply to the core programs will apply to the Combined State Plan partner programs, as long as consistent with any other modification requirements for the programs, or may comply with the requirements applicable to only the particular program or activity; and

(2) Must submit, in accordance with the procedure described in § 676.143, any modification, amendment, or revision required by the Federal law authorizing, or applicable to, the Combined State Plan partner program or activity.

(i) If the underlying programmatic requirements change (*e.g.*, the authorizing statute is reauthorized) for Federal laws authorizing such programs, a State must either modify its Combined State Plan or submit a separate plan to the appropriate Federal agency in accordance with the new Federal law authorizing the Combined State Plan partner program or activity and other legal requirements applicable to such program or activity.

(ii) If the modification, amendment, or revision affects the administration of only that particular Combined State Plan partner program and has no impact on the Combined State Plan as a whole or the integration and administration of the core and other Combined State Plan partner programs at the State level, modifications must be submitted for approval to only the appropriate

Secretary, based on the approval standards applicable to the original Combined State Plan under § 676.143, if the State elects, or in accordance with the procedures and requirements applicable to the particular Combined State Plan partner program.

(3) A State also may amend its Combined State Plan to add a Combined State Plan partner program or activity described in § 676.140(d).

(d) Modifications of the Combined State Plan are subject to the same public review and comment requirements that apply to the development of the original Combined State Plan as described in § 676.143(c) except that, if the modification, amendment, or revision affects the administration of a particular Combined State Plan partner program and has no impact on the Combined State Plan as a whole or the integration and administration of the core and other Combined State Plan partner programs at the State level, a State may comply instead with the procedures and requirements applicable to the particular Combined State Plan partner program.

(e) Modifications for the core program portions of the Combined State Plan must be approved by the Secretaries of Labor and Education, based on the approval standards applicable to the original Combined State Plan under § 676.143. This approval must come after the approval of the Commissioner of the Rehabilitation Services Administration for modification of any portion of the Combined State Plan described in sec. 102(b)(2)(D)(iii) of WIOA.

■ 2. Add part 677 to read as follows:

PART 677—PERFORMANCE ACCOUNTABILITY UNDER TITLE I OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT

Sec.

677.150 What definitions apply to Workforce Innovation and Opportunity Act performance accountability provisions?

Subpart A—State Indicators of Performance for Core Programs

677.155 What are the primary indicators of performance under the Workforce Innovation and Opportunity Act?
677.160 What information is required for State performance reports?
677.165 May a State establish additional indicators of performance?
677.170 How are State levels of performance for primary indicators established?
677.175 What responsibility do States have to use quarterly wage record information for performance accountability?

Subpart B—Sanctions for State Performance and the Provision of Technical Assistance

677.180 When is a State subject to a financial sanction under the Workforce Innovation and Opportunity Act?
677.185 When are sanctions applied for a State's failure to submit an annual performance report?
677.190 When are sanctions applied for failure to achieve adjusted levels of performance?
677.195 What should States expect when a sanction is applied to the Governor's Reserve Allotment?
677.200 What other administrative actions will be applied to States' performance requirements?

Subpart C—Local Performance Accountability for Workforce Innovation and Opportunity Act Title I Programs

677.205 What performance indicators apply to local areas and what information must be included in local area performance reports?
677.210 How are local performance levels established?

Subpart D—Incentives and Sanctions for Local Performance for Workforce Innovation and Opportunity Act Title I Programs

677.215 Under what circumstances are local areas eligible for State Incentive Grants?
677.220 Under what circumstances may a corrective action or sanction be applied to local areas for poor performance?
677.225 Under what circumstances may local areas appeal a reorganization plan?

Subpart E—Eligible Training Provider Performance for Workforce Innovation and Opportunity Act Title I Programs

677.230 What information is required for the eligible training provider performance reports?

Subpart F—Performance Reporting Administrative Requirements

677.235 What are the reporting requirements for individual records for core Workforce Innovation and Opportunity Act (WIOA) title I programs; the Wagner-Peyser Act Employment Service program, as amended by WIOA title III; and the Vocational Rehabilitation program authorized under title I of the Rehabilitation Act of 1973, as amended by WIOA title IV?
677.240 What are the requirements for data validation of State annual performance reports?

Authority: Secs. 116, 189, and 503 of Pub. L. 113–128, 128 Stat. 1425 (Jul. 22, 2014).

§ 677.150 What definitions apply to Workforce Innovation and Opportunity Act performance accountability provisions?

(a) *Participant.* A reportable individual who has received services other than the services described in paragraph (a)(3) of this section, after satisfying all applicable programmatic requirements for the provision of services, such as eligibility determination.

(1) For the Vocational Rehabilitation (VR) program, a participant is a reportable individual who has an approved and signed Individualized Plan for Employment (IPE) and has begun to receive services.

(2) For the Workforce Innovation and Opportunity Act (WIOA) title I youth program, a participant is a reportable individual who has satisfied all applicable program requirements for the provision of services, including eligibility determination, an objective assessment, and development of an individual service strategy, and received 1 of the 14 WIOA youth program elements identified in sec. 129(c)(2) of WIOA.

(3) The following individuals are not participants:

(i) Individuals in an Adult Education and Family Literacy Act (AEFLA) program who have not completed at least 12 contact hours;

(ii) Individuals who only use the self-service system.

(A) Subject to paragraph (a)(3)(ii)(B) of this section, self-service occurs when individuals independently access any workforce development system program's information and activities in either a physical location, such as a one-stop center resource room or partner agency, or remotely via the use of electronic technologies.

(B) Self-service does not uniformly apply to all virtually accessed services. For example, virtually accessed services that provide a level of support beyond independent job or information seeking on the part of an individual would not qualify as self-service.

(iii) Individuals who receive information-only services or activities, which provide readily available information that does not require an assessment by a staff member of the individual's skills, education, or career objectives.

(4) Programs must include participants in their performance calculations.

(b) *Reportable individual.* An individual who has taken action that demonstrates an intent to use program services and who meets specific reporting criteria of the program, including:

(1) Individuals who provide identifying information;

(2) Individuals who only use the self-service system; or

(3) Individuals who only receive information-only services or activities.

(c) *Exit.* As defined for the purpose of performance calculations, exit is the

point after which a participant who has received services through any program meets the following criteria:

(1) For the adult, dislocated worker, and youth programs authorized under WIOA title I, the AEFLA program authorized under WIOA title II, and the Employment Service program authorized under the Wagner-Peyser Act, as amended by WIOA title III, exit date is the last date of service.

(i) The last day of service cannot be determined until at least 90 days have elapsed since the participant last received services; services do not include self-service, information-only services or activities, or follow-up services. This also requires that there are no plans to provide the participant with future services.

(ii) [Reserved].

(2)(i) For the VR program authorized under title I of the Rehabilitation Act of 1973, as amended by WIOA title IV (VR program):

(A) The participant's record of service is closed in accordance with 34 CFR 361.56 because the participant has achieved an employment outcome; or

(B) The participant's service record is closed because the individual has not achieved an employment outcome or the individual has been determined ineligible after receiving services in accordance with 34 CFR 361.43.

(ii) Notwithstanding any other provision of this section, a participant will not be considered as meeting the definition of exit from the VR program if the participant's service record is closed because the participant has achieved a supported employment outcome in an integrated setting but not in competitive integrated employment.

(3)(i) A State may implement a common exit policy for all or some of the core programs in WIOA title I and the Employment Service program authorized under the Wagner-Peyser Act, as amended by WIOA title III, and any additional required partner program(s) listed in sec. 121(b)(1)(B) of WIOA that is under the authority of the U.S. Department of Labor (DOL).

(ii) If a State chooses to implement a common exit policy, the policy must require that a participant is exited only when all of the criteria in paragraph (c)(1) of this section are met for the WIOA title I core programs and the Employment Service program authorized under the Wagner-Peyser Act, as amended by WIOA title III, as well as any additional required partner programs listed in sec. 121(b)(1)(B) of WIOA under the authority of DOL to which the common exit policy applies in which the participant is enrolled.

(d) *State.* For purposes of this part, other than in regard to sanctions or the statistical adjustment model, all references to "State" include the outlying areas of American Samoa, Guam, Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, and, as applicable, the Republic of Palau.

Subpart A—State Indicators of Performance for Core Programs

§ 677.155 What are the primary indicators of performance under the Workforce Innovation and Opportunity Act?

(a) All States submitting either a Unified or Combined State Plan under §§ 676.130 and 676.143 of this chapter, must propose expected levels of performance for each of the primary indicators of performance for the adult, dislocated worker, and youth programs authorized under WIOA title I; the AEFLA program authorized under WIOA title II; the Employment Service program authorized under the Wagner-Peyser Act, as amended by WIOA title III; and the VR program authorized under title I of the Rehabilitation Act of 1973, as amended by WIOA title IV.

(1) *Primary indicators of performance.* The six primary indicators of performance for the adult and dislocated worker programs, the AEFLA program, and the VR program are:

(i) The percentage of participants who are in unsubsidized employment during the second quarter after exit from the program;

(ii) The percentage of participants who are in unsubsidized employment during the fourth quarter after exit from the program;

(iii) Median earnings of participants who are in unsubsidized employment during the second quarter after exit from the program;

(iv)(A) The percentage of those participants enrolled in an education or training program (excluding those in on-the-job training [OJT] and customized training) who attained a recognized postsecondary credential or a secondary school diploma, or its recognized equivalent, during participation in or within 1 year after exit from the program.

(B) A participant who has attained a secondary school diploma or its recognized equivalent is included in the percentage of participants who have attained a secondary school diploma or recognized equivalent only if the participant also is employed or is enrolled in an education or training program leading to a recognized postsecondary credential within 1 year after exit from the program;

(v) The percentage of participants who, during a program year, are in an education or training program that leads to a recognized postsecondary credential or employment and who are achieving measurable skill gains, defined as documented academic, technical, occupational, or other forms of progress, towards such a credential or employment. Depending upon the type of education or training program, documented progress is defined as one of the following:

(A) Documented achievement of at least one educational functioning level of a participant who is receiving instruction below the postsecondary education level;

(B) Documented attainment of a secondary school diploma or its recognized equivalent;

(C) Secondary or postsecondary transcript or report card for a sufficient number of credit hours that shows a participant is meeting the State unit's academic standards;

(D) Satisfactory or better progress report, towards established milestones, such as completion of OJT or completion of 1 year of an apprenticeship program or similar milestones, from an employer or training provider who is providing training; or

(E) Successful passage of an exam that is required for a particular occupation or progress in attaining technical or occupational skills as evidenced by trade-related benchmarks such as knowledge-based exams.

(vi) Effectiveness in serving employers.

(2) *Participants.* For purposes of the primary indicators of performance in paragraph (a)(1) of this section, "participant" will have the meaning given to it in § 677.150(a), except that—

(i) For purposes of determining program performance levels under indicators set forth in paragraphs (a)(1)(i) through (iv) and (vi) of this section, a "participant" does not include a participant who received services under sec. 225 of WIOA and exits such program while still in a correctional institution as defined in sec. 225(e)(1) of WIOA; and

(ii) The Secretaries of Labor and Education may, as needed and consistent with the Paperwork Reduction Act (PRA), make further determinations as to the participants to be included in calculating program performance levels for purposes of any of the performance indicators set forth in paragraph (a)(1) of this section.

(b) The primary indicators in paragraphs (a)(1)(i) through (iii) and (vi) of this section apply to the Employment

Service program authorized under the Wagner-Peyser Act, as amended by WIOA title III.

(c) For the youth program authorized under WIOA title I, the primary indicators are:

(1) Percentage of participants who are in education or training activities, or in unsubsidized employment, during the second quarter after exit from the program;

(2) Percentage of participants in education or training activities, or in unsubsidized employment, during the fourth quarter after exit from the program;

(3) Median earnings of participants who are in unsubsidized employment during the second quarter after exit from the program;

(4) The percentage of those participants enrolled in an education or training program (excluding those in OJT and customized training) who obtained a recognized postsecondary credential or a secondary school diploma, or its recognized equivalent, during participation in or within 1 year after exit from the program, except that a participant who has attained a secondary school diploma or its recognized equivalent is included as having attained a secondary school diploma or recognized equivalent only if the participant is also employed or is enrolled in an education or training program leading to a recognized postsecondary credential within 1 year from program exit;

(5) The percentage of participants who during a program year, are in an education or training program that leads to a recognized postsecondary credential or employment and who are achieving measurable skill gains, defined as documented academic, technical, occupational or other forms of progress towards such a credential or employment. Depending upon the type of education or training program, documented progress is defined as one of the following:

(i) Documented achievement of at least one educational functioning level of a participant who is receiving instruction below the postsecondary education level;

(ii) Documented attainment of a secondary school diploma or its recognized equivalent;

(iii) Secondary or postsecondary transcript or report card for a sufficient number of credit hours that shows a participant is achieving the State unit's academic standards;

(iv) Satisfactory or better progress report, towards established milestones, such as completion of OJT or completion of 1 year of an apprenticeship program or similar milestones, from an employer or training provider who is providing training; or

(v) Successful passage of an exam that is required for a particular occupation or progress in attaining technical or occupational skills as evidenced by trade-related benchmarks such as knowledge-based exams.

(6) Effectiveness in serving employers.

§ 677.160 What information is required for State performance reports?

(a) The State performance report required by sec. 116(d)(2) of WIOA must be submitted annually using a template the Departments of Labor and Education will disseminate, and must provide, at a minimum, information on the actual performance levels achieved consistent with § 677.175 with respect to:

(1) The total number of participants served, and the total number of participants who exited each of the core programs identified in sec. 116(b)(3)(A)(ii) of WIOA, including disaggregated counts of those who participated in and exited a core program, by:

(i) Individuals with barriers to employment as defined in WIOA sec. 3(24); and

(ii) Co-enrollment in any of the programs in WIOA sec. 116(b)(3)(A)(ii).

(2) Information on the performance levels achieved for the primary indicators of performance for all of the core programs identified in § 677.155 including disaggregated levels for:

(i) Individuals with barriers to employment as defined in WIOA sec. 3(24);

(ii) Age;

(iii) Sex; and

(iv) Race and ethnicity.

(3) The total number of participants who received career services and the total number of participants who exited from career services for the most recent program year and the 3 preceding program years, and the total number of participants who received training services and the total number of participants who exited from training services for the most recent program year and the 3 preceding program years, as applicable to the program;

(4) Information on the performance levels achieved for the primary indicators of performance consistent with § 677.155 for career services and training services for the most recent program year and the 3 preceding program years, as applicable to the program;

(5) The percentage of participants in a program who attained unsubsidized employment related to the training received (often referred to as training-related employment) through WIOA title I, subtitle B programs;

(6) The amount of funds spent on career services and the amount of funds spent on training services for the most recent program year and the 3 preceding program years, as applicable to the program;

(7) The average cost per participant for those participants who received career services and training services, respectively, during the most recent program year and the 3 preceding program years, as applicable to the program;

(8) The percentage of a State's annual allotment under WIOA sec. 132(b) that the State spent on administrative costs; and

(9) Information that facilitates comparisons of programs with programs in other States.

(10) For WIOA title I programs, a State performance narrative, which, for States in which a local area is implementing a pay-for-performance contracting strategy, at a minimum provides:

(i) A description of pay-for-performance contract strategies being used for programs;

(ii) The performance of service providers entering into contracts for such strategies, measured against the levels of performance specified in the contracts for such strategies; and

(iii) An evaluation of the design of the programs and performance strategies and, when available, the satisfaction of employers and participants who received services under such strategies.

(b) The disaggregation of data for the State performance report must be done in compliance with WIOA sec. 116(d)(6)(C).

(c) The State performance reports must include a mechanism of electronic access to the State's local area and eligible training provider (ETP) performance reports.

(d) States must comply with these requirements from sec. 116 of WIOA as explained in joint guidance issued by the Departments of Labor and Education, which may include information on reportable individuals as determined by the Secretaries of Labor and Education.

§ 677.165 May a State establish additional indicators of performance?

States may identify additional indicators of performance for the six core programs. If a State does so, these indicators must be included in the Unified or Combined State Plan.

§ 677.170 How are State levels of performance for primary indicators established?

(a) A State must submit in the State Plan expected levels of performance on the primary indicators of performance for each core program as required by sec. 116(b)(3)(A)(iii) of WIOA as explained in joint guidance issued by the Secretaries of Labor and Education.

(1) The initial State Plan submitted under WIOA must contain expected levels of performance for the first 2 years of the State Plan.

(2) States must submit expected levels of performance for the third and fourth year of the State Plan before the third program year consistent with §§ 676.135 and 676.145 of this chapter.

(b) States must reach agreement on levels of performance with the Secretaries of Labor and Education for each indicator for each core program. These are the negotiated levels of performance. The negotiated levels must be based on the following factors:

(1) How the negotiated levels of performance compare with State levels of performance established for other States;

(2) The application of an objective statistical model established by the Secretaries of Labor and Education, subject to paragraph (d) of this section;

(3) How the negotiated levels promote continuous improvement in performance based on the primary indicators and ensure optimal return on investment of Federal funds; and

(4) The extent to which the negotiated levels assist the State in meeting the performance goals established by the Secretaries of Labor and Education for the core programs in accordance with the Government Performance and Results Act of 1993, as amended.

(c) An objective statistical adjustment model will be developed and disseminated by the Secretaries of Labor and Education. The model will be based on:

(1) Differences among States in actual economic conditions, including but not limited to unemployment rates and job losses or gains in particular industries; and

(2) The characteristics of participants, including but not limited to:

(i) Indicators of poor work history;

(ii) Lack of work experience;

(iii) Lack of educational or occupational skills attainment;

(iv) Dislocation from high-wage and high-benefit employment;

(v) Low levels of literacy;

(vi) Low levels of English proficiency;

(vii) Disability status;

(viii) Homelessness;

(ix) Ex-offender status; and

(x) Welfare dependency.

(d) The objective statistical adjustment model developed under paragraph (c) of this section will be:

(1) Applied to the core programs' primary indicators upon availability of data which are necessary to populate the model and apply the model to the local core programs;

(2) Subject to paragraph (d)(1) of this section, used before the beginning of a program year in order to reach agreement on State negotiated levels for the upcoming program year; and

(3) Subject to paragraph (d)(1) of this section, used to revise negotiated levels at the end of a program year based on actual economic conditions and characteristics of participants served, consistent with sec. 116(b)(3)(A)(vii) of WIOA.

(e) The negotiated levels revised at the end of the program year, based on the statistical adjustment model, are the adjusted levels of performance.

(f) States must comply with these requirements from sec. 116 of WIOA as explained in joint guidance issued by the Departments of Labor and Education.

§ 677.175 What responsibility do States have to use quarterly wage record information for performance accountability?

(a)(1) States must, consistent with State laws, use quarterly wage record information in measuring a State's performance on the primary indicators of performance outlined in § 677.155 and a local area's performance on the primary indicators of performance identified in § 677.205.

(2) The use of social security numbers from participants and such other information as is necessary to measure the progress of those participants through quarterly wage record information is authorized.

(3) To the extent that quarterly wage records are not available for a participant, States may use other information as is necessary to measure the progress of those participants through methods other than quarterly wage record information.

(b) "Quarterly wage record information" means intrastate and interstate wages paid to an individual, the social security number (or numbers, if more than one) of the individual, and the name, address, State, and the Federal employer identification number of the employer paying the wages to the individual.

(c) The Governor may designate a State agency (or appropriate State entity) to assist in carrying out the performance reporting requirements for WIOA core programs and ETPs. The Governor or such agency (or appropriate State entity) is responsible for:

(1) Facilitating data matches;

(2) Data quality reliability; and

(3) Protection against disaggregation that would violate applicable privacy standards.

Subpart B—Sanctions for State Performance and the Provision of Technical Assistance

§ 677.180 When is a State subject to a financial sanction under the Workforce Innovation and Opportunity Act?

A State will be subject to financial sanction under WIOA sec. 116(f) if it fails to:

(a) Submit the State annual performance report required under WIOA sec. 116(d)(2); or

(b) Meet adjusted levels of performance for the primary indicators of performance in accordance with sec. 116(f) of WIOA.

§ 677.185 When are sanctions applied for a State's failure to submit an annual performance report?

(a) Sanctions will be applied when a State fails to submit the State annual performance report required under sec. 116(d)(2) of WIOA. A State fails to report if the State either:

(1) Does not submit a State annual performance report by the date for timely submission set in performance reporting guidance; or

(2) Submits a State annual performance report by the date for timely submission, but the report is incomplete.

(b) Sanctions will not be applied if the reporting failure is due to exceptional circumstances outside of the State's control. Exceptional circumstances may include, but are not limited to:

(1) Natural disasters;

(2) Unexpected personnel transitions; and

(3) Unexpected technology related issues.

(c) In the event that a State may not be able to submit a complete and accurate performance report by the deadline for timely reporting:

(1) The State must notify the Secretary of Labor or Secretary of Education as soon as possible, but no later than 30 days prior to the established deadline for submission, of a potential impact on the State's ability to submit its State annual performance report in order to not be considered failing to report.

(2) In circumstances where unexpected events occur less than 30 days before the established deadline for submission of the State annual performance reports, the Secretaries of

Labor and Education will review requests for extending the reporting deadline in accordance with the Departments of Labor and Education's procedures that will be established in guidance.

§ 677.190 When are sanctions applied for failure to achieve adjusted levels of performance?

(a) States' negotiated levels of performance will be adjusted through the application of the statistical adjustment model established under § 677.170 to account for actual economic conditions experienced during a program year and characteristics of participants, annually at the close of each program year.

(b) Any State that fails to meet adjusted levels of performance for the primary indicators of performance outlined in § 677.155 for any year will receive technical assistance, including assistance in the development of a performance improvement plan provided by the Secretary of Labor or Secretary of Education.

(c) Whether a State has failed to meet adjusted levels of performance will be determined using the following three criteria:

(1) The overall State program score, which is expressed as the percent achieved, compares the actual results achieved by a core program on the primary indicators of performance to the adjusted levels of performance for that core program. The average of the percentages achieved of the adjusted level of performance for each of the primary indicators by a core program will constitute the overall State program score.

(2) However, until all indicators for the core program have at least 2 years of complete data, the overall State program score will be based on a comparison of the actual results achieved to the adjusted level of performance for each of the primary indicators that have at least 2 years of complete data for that program;

(3) The overall State indicator score, which is expressed as the percent achieved, compares the actual results achieved on a primary indicator of performance by all core programs in a State to the adjusted levels of performance for that primary indicator. The average of the percentages achieved of the adjusted level of performance by all of the core programs on that indicator will constitute the overall State indicator score.

(4) However, until all indicators for the State have at least 2 years of complete data, the overall State indicator score will be based on a comparison of the actual results achieved to the adjusted level of performance for each of the primary indicators that have at least 2 years of complete data in a State.

(5) The individual indicator score, which is expressed as the percent achieved, compares the actual results achieved by each core program on each of the individual primary indicators to the adjusted levels of performance for each of the program's primary indicators of performance.

(d) A performance failure occurs when:

(1) Any overall State program score or overall State indicator score falls below 90 percent for the program year; or

(2) Any of the States' individual indicator scores fall below 50 percent for the program year.

(e) Sanctions based on performance failure will be applied to States if, for 2 consecutive years, the State fails to meet:

(1) 90 percent of the overall State program score for the same core program;

(2) 90 percent of the overall State indicator score for the same primary indicator; or

(3) 50 percent of the same indicator score for the same program.

§ 677.195 What should States expect when a sanction is applied to the Governor's Reserve Allotment?

(a) The Secretaries of Labor and Education will reduce the Governor's Reserve Allotment by five percent of the maximum available amount for the immediately succeeding program year if:

(1) The State fails to submit the State annual performance reports as required under WIOA sec. 116(d)(2), as defined in § 677.185;

(2) The State fails to meet State adjusted levels of performance for the same primary performance indicator(s) under either § 677.190(d)(1) for the second consecutive year as defined in § 677.190; or

(3) The State's score on the same indicator for the same program falls below 50 percent under § 677.190(d)(2) for the second consecutive year as defined in § 677.190.

(b) If the State fails under paragraphs (a)(1) and either (a)(2) or (3) of this section in the same program year, the Secretaries of Labor and Education will reduce the Governor's Reserve Allotment by 10 percent of the maximum available amount for the immediately succeeding program year.

(c) If a State's Governor's Reserve Allotment is reduced:

(1) The reduced amount will not be returned to the State in the event that the State later improves performance or submits its annual performance report; and

(2) The Governor's Reserve will continue to be set at the reduced level in each subsequent year until the Secretary of Labor or the Secretary of Education, depending on which program is impacted, determines that the State met the State adjusted levels of performance for the applicable primary performance indicators and has submitted all of the required performance reports.

(d) A State may request review of a sanction the Secretary of Labor imposes in accordance with the provisions of § 683.800 of this chapter.

§ 677.200 What other administrative actions will be applied to States' performance requirements?

(a) In addition to sanctions for failure to report or failure to meet adjusted levels of performance, States will be subject to administrative actions in the case of poor performance.

(b) States' performance achievement on the individual primary indicators will be assessed in addition to the overall State program score and overall State indicator score. Based on this assessment, as clarified and explained in guidance, for performance on any individual primary indicator, the Secretary of Labor or the Secretary of Education will require the State to establish a performance risk plan to address continuous improvement on the individual primary indicator.

Subpart C—Local Performance Accountability for Workforce Innovation and Opportunity Act Title I Programs

§ 677.205 What performance indicators apply to local areas and what information must be included in local area performance reports?

(a) Each local area in a State under WIOA title I is subject to the same primary indicators of performance for the core programs for WIOA title I under § 677.155(a)(1) and (c) that apply to the State.

(b) In addition to the indicators described in paragraph (a) of this section, under § 677.165, the Governor may apply additional indicators of performance to local areas in the State.

(c) States must annually make local area performance reports available to the public using a template that the Departments of Labor and Education will disseminate in guidance, including by electronic means. The State must provide electronic access to the public local area performance report in its annual State performance report.

(d) The local area performance report must include:

(1) The actual results achieved under § 677.155 and the information required under § 677.160(a);

(2) The percentage of a local area's allotment under WIOA secs. 128(b) and 133(b) that the local area spent on administrative costs; and

(3) Other information that facilitates comparisons of programs with programs in other local areas (or planning regions if the local area is part of a planning region).

(e) The disaggregation of data for the local area performance report must be done in compliance with WIOA sec. 116(d)(6)(C).

(f) States must comply with any requirements from sec. 116(d)(3) of WIOA as explained in guidance, including the use of the performance reporting template, issued by DOL.

§ 677.210 How are local performance levels established?

(a) The objective statistical adjustment model required under sec. 116(b)(3)(A)(viii) of WIOA and described in § 677.170(c) must be:

(1) Applied to the core programs' primary indicators upon availability of data which are necessary to populate the model and apply the model to the local core programs;

(2) Used in order to reach agreement on local negotiated levels of performance for the upcoming program year; and

(3) Used to establish adjusted levels of performance at the end of a program year based on actual conditions, consistent with WIOA sec. 116(c)(3).

(b) Until all indicators for the core program in a local area have at least 2 years of complete data, the comparison of the actual results achieved to the adjusted levels of performance for each of the primary indicators only will be applied where there are at least 2 years of complete data for that program.

(c) The Governor, Local Workforce Development Board (WDB), and chief elected official must reach agreement on local negotiated levels of performance based on a negotiations process before the start of a program year with the use of the objective statistical model described in paragraph (a) of this section. The negotiations will include a discussion of circumstances not accounted for in the model and will take into account the extent to which the levels promote continuous improvement. The objective statistical model will be applied at the end of the program year based on actual economic conditions and characteristics of the participants served.

(d) The negotiations process described in paragraph (c) of this section must be developed by the Governor and disseminated to all Local WDBs and chief elected officials.

(e) The Local WDBs may apply performance measures to service providers that differ from the performance indicators that apply to the local area. These performance measures must be established after considering:

(1) The established local negotiated levels;

(2) The services provided by each provider; and

(3) The populations the service providers are intended to serve.

Subpart D—Incentives and Sanctions for Local Performance for Workforce Innovation and Opportunity Act Title I Programs

§ 677.215 Under what circumstances are local areas eligible for State Incentive Grants?

(a) The Governor is not required to award local incentive funds, but is authorized to provide incentive grants to local areas for performance on the primary indicators of performance consistent with WIOA sec. 134(a)(3)(A)(xi).

(b) The Governor may use non-Federal funds to create incentives for the Local WDBs to implement pay-for-performance contract strategies for the delivery of training services described in WIOA sec. 134(c)(3) or activities described in WIOA sec. 129(c)(2) in the local areas served by the Local WDBs. Pay-for-performance contract strategies must be implemented in accordance with part 683, subpart E of this chapter and § 677.160.

§ 677.220 Under what circumstances may a corrective action or sanction be applied to local areas for poor performance?

(a) If a local area fails to meet the adjusted levels of performance agreed to under § 677.210 for the primary indicators of performance in the adult, dislocated worker, and youth programs authorized under WIOA title I in any program year, technical assistance must be provided by the Governor or, upon the Governor's request, by the Secretary of Labor.

(1) A State must establish the threshold for failure to meet adjusted levels of performance for a local area before coming to agreement on the negotiated levels of performance for the local area.

(i) A State must establish the adjusted level of performance for a local area, using the statistical adjustment model described in § 677.170(c).

(ii) At least 2 years of complete data on any indicator for any local core program are required in order to establish adjusted levels of performance for a local area.

(2) The technical assistance may include:

(i) Assistance in the development of a performance improvement plan;

(ii) The development of a modified local or regional plan; or

(iii) Other actions designed to assist the local area in improving performance.

(b) If a local area fails to meet the adjusted levels of performance agreed to under § 677.210 for the same primary indicators of performance for the same core program authorized under WIOA title I for a third consecutive program year, the Governor must take corrective actions. The corrective actions must include the development of a reorganization plan under which the Governor:

(1) Requires the appointment and certification of a new Local WDB, consistent with the criteria established under § 679.350 of this chapter;

(2) Prohibits the use of eligible providers and one-stop partners that have been identified as achieving poor levels of performance; or

(3) Takes such other significant actions as the Governor determines are appropriate.

§ 677.225 Under what circumstances may local areas appeal a reorganization plan?

(a) The Local WDB and chief elected official for a local area that is subject to a reorganization plan under WIOA sec. 116(g)(2)(A) may appeal to the Governor to rescind or revise the reorganization plan not later than 30 days after receiving notice of the reorganization plan. The Governor must make a final decision within 30 days after receipt of the appeal.

(b) The Local WDB and chief elected official may appeal the final decision of the Governor to the Secretary of Labor not later than 30 days after receiving the decision from the Governor. Any appeal of the Governor's final decision must be:

(1) Appealed jointly by the Local WDB and chief elected official to the Secretary of Labor under § 683.650 of this chapter; and

(2) Must be submitted by certified mail, return receipt requested, to the Secretary of Labor, U.S. Department of Labor, 200 Constitution Ave. NW., Washington, DC 20210, Attention: ASET. A copy of the appeal must be simultaneously provided to the Governor.

(c) Upon receipt of the joint appeal from the Local WDB and chief elected

official, the Secretary of Labor must make a final decision within 30 days. In making this determination the Secretary of Labor may consider any comments submitted by the Governor in response to the appeals.

(d) The decision by the Governor on the appeal becomes effective at the time it is issued and remains effective unless the Secretary of Labor rescinds or revises the reorganization plan under WIOA sec. 116(g)(2)(C).

Subpart E—Eligible Training Provider Performance for Workforce Innovation and Opportunity Act Title I Programs

§ 677.230 What information is required for the eligible training provider performance reports?

(a) States are required to make available and publish annually using a template the Departments of Labor and Education will disseminate including through electronic means, the ETP performance reports for ETPs who provide services under sec. 122 of WIOA that are described in §§ 680.400 through 680.530 of this chapter. These reports at a minimum must include, consistent with § 677.175 and with respect to each program of study that is eligible to receive funds under WIOA:

(1) The total number of participants as defined by § 677.150(a) who received training services under the adult and dislocated worker programs authorized under WIOA title I for the most recent year and the 3 preceding program years, including:

(i) The number of participants under the adult and dislocated worker programs disaggregated by barriers to employment;

(ii) The number of participants under the adult and dislocated worker programs disaggregated by race, ethnicity, sex, and age;

(iii) The number of participants under the adult and dislocated worker programs disaggregated by the type of training entity for the most recent program year and the 3 preceding program years;

(2) The total number of participants who exit a program of study or its equivalent, including disaggregate counts by the type of training entity during the most recent program year and the 3 preceding program years;

(3) The average cost-per-participant for participants who received training services for the most recent program year and the 3 preceding program years disaggregated by type of training entity;

(4) The total number of individuals exiting from the program of study (or the equivalent) with respect to all individuals engaging in the program of study (or the equivalent); and

(5) The levels of performance achieved for the primary indicators of performance identified in § 677.155(a)(1)(i) through (iv) with respect to all individuals engaging in a program of study (or the equivalent).

(b) Apprenticeship programs registered under the National Apprenticeship Act are not required to submit ETP performance information. If a registered apprenticeship program voluntarily submits performance information to a State, the State must include this information in the report.

(c) The State must provide a mechanism of electronic access to the public ETP performance report in its annual State performance report.

(d) States must comply with any requirements from sec. 116(d)(4) of WIOA as explained in guidance issued by DOL.

(e) The Governor may designate one or more State agencies such as a State Education Agency or other State Educational Authority to assist in overseeing ETP performance and facilitating the production and dissemination of ETP performance reports. These agencies may be the same agencies that are designated as responsible for administering the ETP list as provided under § 680.500 of this chapter. The Governor or such agencies, or authorities, is responsible for:

(1) Facilitating data matches between ETP records and unemployment insurance (UI) wage data in order to produce the report;

(2) The creation and dissemination of the reports as described in paragraphs (a) through (d) of this section;

(3) Coordinating the dissemination of the performance reports with the ETP list and the information required to accompany the list, as provided in § 680.500 of this chapter.

Subpart F—Performance Reporting Administrative Requirements

§ 677.235 What are the reporting requirements for individual records for core Workforce Innovation and Opportunity Act (WIOA) title I programs; the Wagner-Peyser Act Employment Service program, as amended by WIOA title III; and the Vocational Rehabilitation program authorized under title I of the Rehabilitation Act of 1973, as amended by WIOA title IV?

(a) On a quarterly basis, each State must submit to the Secretary of Labor or the Secretary of Education, as appropriate, individual records that include demographic information, information on services received, and information on resulting outcomes, as appropriate, for each reportable individual in either of the following programs administered by the Secretary of Labor or Secretary of Education: A WIOA title I core program; the Employment Service program authorized under the Wagner-Peyser Act, as amended by WIOA title III; or the VR program authorized under title I of the Rehabilitation Act of 1973, as amended by WIOA title IV.

(b) For individual records submitted to the Secretary of Labor, those records may be required to be integrated across all programs administered by the Secretary of Labor in one single file.

(c) States must comply with the requirements of sec. 116(d)(2) of WIOA as explained in guidance issued by the Departments of Labor and Education.

§ 677.240 What are the requirements for data validation of State annual performance reports?

(a) States must establish procedures, consistent with guidelines issued by the Secretary of Labor or the Secretary of Education, to ensure that they submit complete annual performance reports that contain information that is valid and reliable, as required by WIOA sec. 116(d)(5).

(b) If a State fails to meet standards in paragraph (a) of this section as determined by the Secretary of Labor or the Secretary of Education, the appropriate Secretary will provide technical assistance and may require the State to develop and implement corrective actions, which may require the State to provide training for its subrecipients.

(c) The Secretaries of Labor and Education will provide training and technical assistance to States in order to implement this section. States must comply with the requirements of sec. 116(d)(5) of WIOA as explained in guidance.

■ 3. Add part 678 to read as follows:

PART 678—DESCRIPTION OF THE ONE-STOP DELIVERY SYSTEM UNDER TITLE I OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT

Subpart A—General Description of the One-Stop Delivery System

Sec.
678.300 What is the one-stop delivery system?
678.305 What is a comprehensive one-stop center and what must be provided there?
678.310 What is an affiliated site and what must be provided there?
678.315 Can a stand-alone Wagner-Peyser Act Employment Service office be designated as an affiliated one-stop site?
678.320 Are there any requirements for networks of eligible one-stop partners or specialized centers?

Subpart B—One-Stop Partners and the Responsibilities of Partners

678.400 Who are the required one-stop partners?
678.405 Is Temporary Assistance for Needy Families a required one-stop partner?
678.410 What other entities may serve as one-stop partners?
678.415 What entity serves as the one-stop partner for a particular program in the local area?
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678.425 What are the applicable career services that must be provided through the one-stop delivery system by required one-stop partners?
678.430 What are career services?
678.435 What are the business services provided through the one-stop delivery system, and how are they provided?
678.440 When may a fee be charged for the business services in this subpart?

Subpart C—Memorandum of Understanding for the One-Stop Delivery System

678.500 What is the Memorandum of Understanding for the one-stop delivery system and what must be included in the Memorandum of Understanding?
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678.510 How must the Memorandum of Understanding be negotiated?

Subpart D—One-Stop Operators

678.600 Who may operate one-stop centers?
678.605 How is the one-stop operator selected?
678.610 When is the sole-source selection of one-stop operators appropriate, and how is it conducted?
678.615 May an entity currently serving as one-stop operator compete to be a one-stop operator under the procurement requirements of this subpart?
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678.710 How are infrastructure costs funded?
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678.720 What funds are used to pay for infrastructure costs in the local one-stop infrastructure funding mechanism?
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678.750 When and how can a one-stop partner appeal a one-stop infrastructure amount designated by the State under the State infrastructure funding mechanism?
678.755 What are the required elements regarding infrastructure funding that must be included in the one-stop Memorandum of Understanding?
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Subpart F—One-Stop Certification

678.800 How are one-stop centers and one-stop delivery systems certified for effectiveness, physical and programmatic accessibility, and continuous improvement?

Subpart G—Common Identifier

678.900 What is the common identifier to be used by each one-stop delivery system?

Authority: Secs. 503, 107, 121, 134, 189, Pub. L. 113–128, 128 Stat. 1425 (Jul. 22, 2014).

Subpart A—General Description of the One-Stop Delivery System

§ 678.300 What is the one-stop delivery system?

(a) The one-stop delivery system brings together workforce development, educational, and other human resource services in a seamless customer-focused service delivery network that enhances access to the programs' services and improves long-term employment outcomes for individuals receiving assistance. One-stop partners administer separately funded programs as a set of integrated streamlined services to customers.

(b) Title I of the Workforce Innovation and Opportunity Act (WIOA) assigns responsibilities at the local, State, and Federal level to ensure the creation and maintenance of a one-stop delivery system that enhances the range and quality of education and workforce development services that employers and individual customers can access.

(c) The system must include at least one comprehensive physical center in each local area as described in § 678.305.

(d) The system may also have additional arrangements to supplement the comprehensive center. These arrangements include:

(1) An affiliated site or a network of affiliated sites, where one or more partners make programs, services, and activities available, as described in § 678.310;

(2) A network of eligible one-stop partners, as described in §§ 678.400 through 678.410, through which each partner provides one or more of the programs, services, and activities that are linked, physically or technologically, to an affiliated site or access point that assures customers are provided information on the availability of career services, as well as other program services and activities, regardless of where they initially enter the public workforce system in the local area; and

(3) Specialized centers that address specific needs, including those of dislocated workers, youth, or key industry sectors, or clusters.

(e) Required one-stop partner programs must provide access to programs, services, and activities through electronic means if applicable and practicable. This is in addition to providing access to services through the mandatory comprehensive physical one-stop center and any affiliated sites or specialized centers. The provision of programs and services by electronic methods such as Web sites, telephones, or other means must improve the efficiency, coordination, and quality of one-stop partner services. Electronic delivery must not replace access to such services at a comprehensive one-stop center or be a substitute to making services available at an affiliated site if the partner is participating in an

affiliated site. Electronic delivery systems must be in compliance with the nondiscrimination and equal opportunity provisions of WIOA sec. 188 and its implementing regulations at 29 CFR part 38.

(f) The design of the local area's one-stop delivery system must be described in the Memorandum of Understanding (MOU) executed with the one-stop partners, described in § 678.500.

§ 678.305 What is a comprehensive one-stop center and what must be provided there?

(a) A comprehensive one-stop center is a physical location where job seeker and employer customers can access the programs, services, and activities of all required one-stop partners. A comprehensive one-stop center must have at least one title I staff person physically present.

(b) The comprehensive one-stop center must provide:

(1) Career services, described in § 678.430;

(2) Access to training services described in § 680.200 of this chapter;

(3) Access to any employment and training activities carried out under sec. 134(d) of WIOA;

(4) Access to programs and activities carried out by one-stop partners listed in §§ 678.400 through 678.410, including the Employment Service program authorized under the Wagner-Peyser Act, as amended by WIOA title III (Wagner-Peyser Act Employment Service program); and

(5) Workforce and labor market information.

(c) Customers must have access to these programs, services, and activities during regular business days at a comprehensive one-stop center. The Local Workforce Development Board (WDB) may establish other service hours at other times to accommodate the schedules of individuals who work on regular business days. The State WDB will evaluate the hours of access to service as part of the evaluation of effectiveness in the one-stop certification process described in § 678.800(b).

(d) "Access" to each partner program and its services means:

(1) Having a program staff member physically present at the one-stop center;

(2) Having a staff member from a different partner program physically present at the one-stop center appropriately trained to provide information to customers about the programs, services, and activities available through partner programs; or

(3) Making available a direct linkage through technology to program staff who can provide meaningful information or services.

(i) A "direct linkage" means providing direct connection at the one-stop center, within a reasonable time, by phone or through a real-time Web-based communication to a program staff member who can provide program information or services to the customer.

(ii) A "direct linkage" cannot exclusively be providing a phone number or computer Web site or providing information, pamphlets, or materials.

(e) All comprehensive one-stop centers must be physically and programmatically accessible to individuals with disabilities, as described in 29 CFR part 38, the implementing regulations of WIOA sec. 188.

§ 678.310 What is an affiliated site and what must be provided there?

(a) An affiliated site, or affiliate one-stop center, is a site that makes available to job seeker and employer customers one or more of the one-stop partners' programs, services, and activities. An affiliated site does not need to provide access to every required one-stop partner program. The frequency of program staff's physical presence in the affiliated site will be determined at the local level. Affiliated sites are access points in addition to the comprehensive one-stop center(s) in each local area. If used by local areas as a part of the service delivery strategy, affiliate sites must be implemented in a manner that supplements and enhances customer access to services.

(b) As described in § 678.315, Wagner-Peyser Act employment services cannot be a stand-alone affiliated site.

(c) States, in conjunction with the Local WDBs, must examine lease agreements and property holdings throughout the one-stop delivery system in order to use property in an efficient and effective way. Where necessary and appropriate, States and Local WDBs must take expeditious steps to align lease expiration dates with efforts to consolidate one-stop operations into service points where Wagner-Peyser Act employment services are colocated as soon as reasonably possible. These steps must be included in the State Plan.

(d) All affiliated sites must be physically and programmatically accessible to individuals with disabilities, as described in 29 CFR part 38, the implementing regulations of WIOA sec. 188.

§ 678.315 Can a stand-alone Wagner-Peyser Act Employment Service office be designated as an affiliated one-stop site?

(a) Separate stand-alone Wagner-Peyser Act Employment Service offices are not permitted under WIOA, as also described in § 652.202 of this chapter.

(b) If Wagner-Peyser Act employment services are provided at an affiliated site, there must be at least one or more other partners in the affiliated site with a physical presence of combined staff more than 50 percent of the time the center is open. Additionally, the other partner must not be the partner administering local veterans' employment representatives, disabled veterans' outreach program specialists, or unemployment compensation programs. If Wagner-Peyser Act employment services and any of these 3 programs are provided at an affiliated site, an additional partner or partners must have a presence of combined staff in the center more than 50 percent of the time the center is open.

§ 678.320 Are there any requirements for networks of eligible one-stop partners or specialized centers?

Any network of one-stop partners or specialized centers, as described in § 678.300(d)(3), must be connected to the comprehensive one-stop center and any appropriate affiliate one-stop centers, for example, by having processes in place to make referrals to these centers and the partner programs located in them. Wagner-Peyser Act employment services cannot stand alone in a specialized center. Just as described in § 678.315 for an affiliated site, a specialized center must include other programs besides Wagner-Peyser Act employment services, local veterans' employment representatives, disabled veterans' outreach program specialists, and unemployment compensation.

Subpart B—One-Stop Partners and the Responsibilities of Partners

§ 678.400 Who are the required one-stop partners?

(a) Section 121(b)(1)(B) of WIOA identifies the entities that are required partners in the local one-stop delivery systems.

(b) The required partners are the entities responsible for administering the following programs and activities in the local area:

(1) Programs authorized under title I of WIOA, including:

(i) Adults;

(ii) Dislocated workers;

(iii) Youth;

(iv) Job Corps;

(v) YouthBuild;

(vi) Native American programs; and

(vii) Migrant and seasonal farmworker programs;

(2) The Wagner-Peyser Act Employment Service program authorized under the Wagner-Peyser Act (29 U.S.C. 49 *et seq.*), as amended by WIOA title III;

(3) The Adult Education and Family Literacy Act (AEFLA) program authorized under title II of WIOA;

(4) The Vocational Rehabilitation (VR) program authorized under title I of the Rehabilitation Act of 1973 (29 U.S.C. 720 *et seq.*), as amended by WIOA title IV;

(5) The Senior Community Service Employment Program authorized under title V of the Older Americans Act of 1965 (42 U.S.C. 3056 *et seq.*);

(6) Career and technical education programs at the postsecondary level authorized under the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2301 *et seq.*);

(7) Trade Adjustment Assistance activities authorized under chapter 2 of title II of the Trade Act of 1974 (19 U.S.C. 2271 *et seq.*);

(8) Jobs for Veterans State Grants programs authorized under chapter 41 of title 38, U.S.C.;

(9) Employment and training activities carried out under the Community Services Block Grant (42 U.S.C. 9901 *et seq.*);

(10) Employment and training activities carried out by the Department of Housing and Urban Development;

(11) Programs authorized under State unemployment compensation laws (in accordance with applicable Federal law);

(12) Programs authorized under sec. 212 of the Second Chance Act of 2007 (42 U.S.C. 17532); and

(13) Temporary Assistance for Needy Families (TANF) authorized under part A of title IV of the Social Security Act (42 U.S.C. 601 *et seq.*), unless exempted by the Governor under § 678.405(b).

§ 678.405 Is Temporary Assistance for Needy Families a required one-stop partner?

(a) Yes, TANF, authorized under part A of title IV of the Social Security Act (42 U.S.C. 601 *et seq.*), is a required partner.

(b) The Governor may determine that TANF will not be a required partner in the State, or within some specific local areas in the State. In this instance, the Governor must notify the Secretaries of the U.S. Departments of Labor and Health and Human Services in writing of this determination.

(c) In States, or local areas within a State, where the Governor has determined that TANF is not required to be a partner, local TANF programs may still work in collaboration or partnership with the local one-stop centers to deliver employment and training services to the TANF population unless inconsistent with the Governor's direction.

§ 678.410 What other entities may serve as one-stop partners?

(a) Other entities that carry out a workforce development program, including Federal, State, or local programs and programs in the private sector, may serve as additional partners in the one-stop delivery system if the Local WDB and chief elected official(s) approve the entity's participation.

(b) Additional partners may include, but are not limited to:

(1) Employment and training programs administered by the Social Security Administration, including the Ticket to Work and Self-Sufficiency Program established under sec. 1148 of the Social Security Act (42 U.S.C. 1320b-19);

(2) Employment and training programs carried out by the Small Business Administration;

(3) Supplemental Nutrition Assistance Program (SNAP) employment and training programs, authorized under secs. 6(d)(4) and 6(o) of the Food and Nutrition Act of 2008 (7 U.S.C. 2015(d)(4));

(4) Client Assistance Program authorized under sec. 112 of the Rehabilitation Act of 1973 (29 U.S.C. 732);

(5) Programs authorized under the National and Community Service Act of 1990 (42 U.S.C. 12501 *et seq.*); and

(6) Other appropriate Federal, State or local programs, including, but not limited to, employment, education, and training programs provided by public libraries or in the private sector.

§ 678.415 What entity serves as the one-stop partner for a particular program in the local area?

(a) The entity that carries out the program and activities listed in § 678.400 or § 678.410, and therefore serves as the one-stop partner, is the grant recipient, administrative entity, or organization responsible for administering the funds of the specified program in the local area. The term "entity" does not include the service providers that contract with, or are subrecipients of, the local administrative entity. For programs that do not include local administrative entities, the responsible State agency must be the partner. Specific entities for particular programs are identified in paragraphs (b) through (e) of this section. If a program or activity listed in § 678.400 is not carried out in a local area, the requirements relating to a required one-stop partner are not applicable to such program or activity in that local one-stop delivery system.

(b) For title II of WIOA, the entity or agency that carries out the program for the purposes of paragraph (a) of this section is the sole entity or agency in the State or outlying area responsible for administering or supervising policy for adult education and literacy activities in the State or outlying area. The State eligible entity or agency may delegate its responsibilities under paragraph (a) of this section to one or more eligible providers or consortium of eligible providers.

(c) For the VR program, authorized under title I of the Rehabilitation Act of 1973, as amended by WIOA title IV, the entity that carries out the program for the purposes of paragraph (a) of this section is the designated State agencies or designated State units specified under sec. 101(a)(2) of the Rehabilitation Act that is primarily concerned with vocational rehabilitation, or vocational and other rehabilitation, of individuals with disabilities.

(d) Under WIOA title I, the national programs, including Job Corps, the Native American program, YouthBuild, and Migrant and Seasonal Farmworker programs are required one-stop partners. The entity for the Native American program, YouthBuild, and Migrant and Seasonal Farmworker programs is the grantee of those respective programs. The entity for Job Corps is the Job Corps center.

(e) For the Carl D. Perkins Career and Technical Education Act of 2006, the entity that carries out the program for the purposes of paragraph (a) of this section is the eligible recipient or recipients at the postsecondary level, or a consortium of eligible recipients at the postsecondary level in the local area. The eligible recipient at the postsecondary level may also request assistance from the State eligible agency in completing its responsibilities under paragraph (a) of this section.

§ 678.420 What are the roles and responsibilities of the required one-stop partners?

Each required partner must:

(a) Provide access to its programs or activities through the one-stop delivery system, in addition to any other appropriate locations;

(b) Use a portion of funds made available to the partner's program, to the extent consistent with the Federal law authorizing the partner's program and

with Federal cost principles in 2 CFR parts 200 and 2900 (requiring, among other things, that costs are allowable, reasonable, necessary, and allocable), to:

(1) Provide applicable career services; and

(2) Work collaboratively with the State and Local WDBs to establish and maintain the one-stop delivery system. This includes jointly funding the one-stop infrastructure through partner contributions that are based upon:

(i) A reasonable cost allocation methodology by which infrastructure costs are charged to each partner based on proportionate use and relative benefit received;

(ii) Federal cost principles; and

(iii) Any local administrative cost requirements in the Federal law authorizing the partner's program. (This is further described in § 678.700.)

(c) Enter into an MOU with the Local WDB relating to the operation of the one-stop delivery system that meets the requirements of § 678.500(b);

(d) Participate in the operation of the one-stop delivery system consistent with the terms of the MOU, requirements of authorizing laws, the Federal cost principles, and all other applicable legal requirements; and

(e) Provide representation on the State and Local WDBs as required and participate in Board committees as needed.

§ 678.425 What are the applicable career services that must be provided through the one-stop delivery system by required one-stop partners?

(a) The applicable career services to be delivered by required one-stop partners are those services listed in § 678.430 that are authorized to be provided under each partner's program.

(b) One-stop centers provide services to individual customers based on individual needs, including the seamless delivery of multiple services to individual customers. There is no required sequence of services.

§ 678.430 What are career services?

Career services, as identified in sec. 134(c)(2) of WIOA, consist of three types:

(a) Basic career services must be made available and, at a minimum, must include the following services, as consistent with allowable program activities and Federal cost principles:

(1) Determinations of whether the individual is eligible to receive assistance from the adult, dislocated worker, or youth programs;

(2) Outreach, intake (including worker profiling), and orientation to information and other services available through the one-stop delivery system. For the TANF program, States must provide individuals with the opportunity to initiate an application for TANF assistance and non-assistance benefits and services, which could be implemented through the provision of paper application forms or links to the application Web site;

(3) Initial assessment of skill levels including literacy, numeracy, and English language proficiency, as well as aptitudes, abilities (including skills gaps), and supportive services needs;

(4) Labor exchange services, including—

(i) Job search and placement assistance, and, when needed by an individual, career counseling, including—

(A) Provision of information on in-demand industry sectors and occupations (as defined in sec. 3(23) of WIOA); and

(B) Provision of information on nontraditional employment; and

(ii) Appropriate recruitment and other business services on behalf of employers, including information and referrals to specialized business services other than those traditionally offered through the one-stop delivery system;

(5) Provision of referrals to and coordination of activities with other programs and services, including programs and services within the one-stop delivery system and, when appropriate, other workforce development programs;

(6) Provision of workforce and labor market employment statistics information, including the provision of accurate information relating to local, regional, and national labor market areas, including—

(i) Job vacancy listings in labor market areas;

(ii) Information on job skills necessary to obtain the vacant jobs listed; and

(iii) Information relating to local occupations in demand and the earnings, skill requirements, and opportunities for advancement for those jobs;

(7) Provision of performance information and program cost information on eligible providers of education, training, and workforce services by program and type of providers;

(8) Provision of information, in usable and understandable formats and languages, about how the local area is performing on local performance accountability measures, as well as any additional performance information relating to the area's one-stop delivery system;

(9) Provision of information, in usable and understandable formats and languages, relating to the availability of supportive services or assistance, and appropriate referrals to those services and assistance, including: Child care; child support; medical or child health assistance available through the State's Medicaid program and Children's Health Insurance Program; benefits under SNAP; assistance through the earned income tax credit; and assistance under a State program for TANF, and other supportive services and transportation provided through that program;

(10) Provision of information and meaningful assistance to individuals seeking assistance in filing a claim for unemployment compensation.

(i) "Meaningful assistance" means:

(A) Providing assistance on-site using staff who are well-trained in unemployment compensation claims filing and the rights and responsibilities of claimants; or

(B) Providing assistance by phone or via other technology, as long as the assistance is provided by trained and available staff and within a reasonable time.

(ii) The costs associated in providing this assistance may be paid for by the State's unemployment insurance program, or the WIOA adult or dislocated worker programs, or some combination thereof.

(11) Assistance in establishing eligibility for programs of financial aid assistance for training and education programs not provided under WIOA.

(b) Individualized career services must be made available if determined to be appropriate in order for an individual to obtain or retain employment. These services include the following services, as consistent with program requirements and Federal cost principles:

(1) Comprehensive and specialized assessments of the skill levels and service needs of adults and dislocated workers, which may include—

(i) Diagnostic testing and use of other assessment tools; and

(ii) In-depth interviewing and evaluation to identify employment barriers and appropriate employment goals;

(2) Development of an individual employment plan, to identify the employment goals, appropriate achievement objectives, and appropriate combination of services for the participant to achieve his or her employment goals, including the list of, and information about, the eligible training providers (as described in § 680.180 of this chapter);

(3) Group counseling;
(4) Individual counseling;
(5) Career planning;
(6) Short-term pre-vocational services including development of learning skills, communication skills, interviewing skills, punctuality, personal maintenance skills, and professional conduct services to prepare individuals for unsubsidized employment or training;
(7) Internships and work experiences that are linked to careers (as described in § 680.170 of this chapter);
(8) Workforce preparation activities;
(9) Financial literacy services as described in sec. 129(b)(2)(D) of WIOA and § 681.500 of this chapter;
(10) Out-of-area job search assistance and relocation assistance; and
(11) English language acquisition and integrated education and training programs.

(c) Follow-up services must be provided, as appropriate, including: Counseling regarding the workplace, for participants in adult or dislocated worker workforce investment activities who are placed in unsubsidized employment, for up to 12 months after the first day of employment.

(d) In addition to the requirements in paragraph (a)(2) of this section, TANF agencies must identify employment services and related support being provided by the TANF program (within the local area) that qualify as career services and ensure access to them via the local one-stop delivery system.

§ 678.435 What are the business services provided through the one-stop delivery system, and how are they provided?

(a) Certain career services must be made available to local employers, specifically labor exchange activities and labor market information described in § 678.430(a)(4)(ii) and (a)(6). Local areas must establish and develop relationships and networks with large and small employers and their intermediaries. Local areas also must develop, convene, or implement industry or sector partnerships.

(b) Customized business services may be provided to employers, employer associations, or other such organizations. These services are tailored for specific employers and may include:
(1) Customized screening and referral of qualified participants in training services to employers;
(2) Customized services to employers, employer associations, or other such organizations, on employment-related issues;
(3) Customized recruitment events and related services for employers including targeted job fairs;
(4) Human resource consultation services, including but not limited to assistance with:
(i) Writing/reviewing job descriptions and employee handbooks;
(ii) Developing performance evaluation and personnel policies;
(iii) Creating orientation sessions for new workers;
(iv) Honing job interview techniques for efficiency and compliance;
(v) Analyzing employee turnover;
(vi) Creating job accommodations and using assistive technologies; or
(vii) Explaining labor and employment laws to help employers comply with discrimination, wage/hour, and safety/health regulations;
(5) Customized labor market information for specific employers, sectors, industries or clusters; and
(6) Other similar customized services.

(c) Local areas may also provide other business services and strategies that meet the workforce investment needs of area employers, in accordance with partner programs' statutory requirements and consistent with Federal cost principles. These business services may be provided through effective business intermediaries working in conjunction with the Local WDB, or through the use of economic development, philanthropic, and other public and private resources in a manner determined appropriate by the Local WDB and in cooperation with the State. Allowable activities, consistent with each partner's authorized activities, include, but are not limited to:
(1) Developing and implementing industry sector strategies (including strategies involving industry partnerships, regional skills alliances, industry skill panels, and sectoral skills partnerships);
(2) Customized assistance or referral for assistance in the development of a registered apprenticeship program;
(3) Developing and delivering innovative workforce investment services and strategies for area employers, which may include career pathways, skills upgrading, skill standard development and certification for recognized postsecondary credential or other employer use, and other effective initiatives for meeting the workforce investment needs of area employers and workers;
(4) Assistance to area employers in managing reductions in force in coordination with rapid response activities and with strategies for the aversion of layoffs, which may include strategies such as early identification of firms at risk of layoffs, use of feasibility studies to assess the needs of and options for at-risk firms, and the delivery of employment and training activities to address risk factors;
(5) The marketing of business services to appropriate area employers, including small and mid-sized employers; and
(6) Assisting employers with accessing local, State, and Federal tax credits.

(d) All business services and strategies must be reflected in the local plan, described in § 679.560(b)(3) of this chapter.

§ 678.440 When may a fee be charged for the business services in this subpart?

(a) There is no requirement that a fee-for-service be charged to employers.

(b) No fee may be charged for services provided in § 678.435(a).

(c) A fee may be charged for services provided under § 678.435(b) and (c). Services provided under § 678.435(c) may be provided through effective business intermediaries working in conjunction with the Local WDB and may also be provided on a fee-for-service basis or through the leveraging of economic development, philanthropic, and other public and private resources in a manner determined appropriate by the Local WDB. The Local WDB may examine the services provided compared with the assets and resources available within the local one-stop delivery system and through its partners to determine an appropriate cost structure for services, if any.

(d) Any fees earned are recognized as program income and must be expended by the partner in accordance with the partner program's authorizing statute, implementing regulations, and Federal cost principles identified in Uniform Guidance.

Subpart C—Memorandum of Understanding for the One-Stop Delivery System

§ 678.500 What is the Memorandum of Understanding for the one-stop delivery system and what must be included in the Memorandum of Understanding?

(a) The MOU is the product of local discussion and negotiation, and is an agreement developed and executed between the Local WDB and the one-stop partners, with the agreement of the chief elected official and the one-stop partners, relating to the operation of the one-stop delivery system in the local area. Two or more local areas in a region may develop a single joint MOU, if they are in a region that has submitted a regional plan under sec. 106 of WIOA.

(b) The MOU must include:

(1) A description of services to be provided through the one-stop delivery system, including the manner in which the services will be coordinated and delivered through the system;

(2) Agreement on funding the costs of the services and the operating costs of the system, including:

(i) Funding of infrastructure costs of one-stop centers in accordance with §§ 678.700 through 678.755; and

(ii) Funding of the shared services and operating costs of the one-stop delivery system described in § 678.760;

(3) Methods for referring individuals between the one-stop operators and partners for appropriate services and activities;

(4) Methods to ensure that the needs of workers, youth, and individuals with barriers to employment, including individuals with disabilities, are addressed in providing access to services, including access to technology and materials that are available through the one-stop delivery system;

(5) The duration of the MOU and procedures for amending it; and

(6) Assurances that each MOU will be reviewed, and if substantial changes have occurred, renewed, not less than once every 3-year period to ensure appropriate funding and delivery of services.

(c) The MOU may contain any other provisions agreed to by the parties that are consistent with WIOA title I, the authorizing statutes and regulations of one-stop partner programs, and the WIOA regulations.

(d) When fully executed, the MOU must contain the signatures of the Local WDB, one-stop partners, the chief elected official(s), and the time period in which the agreement is effective. The MOU must be updated not less than every 3 years to reflect any changes in the signatory official of the Board, one-stop partners, and chief elected officials, or one-stop infrastructure funding.

(e) If a one-stop partner appeal to the State regarding infrastructure costs, using the process described in § 678.750, results in a change to the one-stop partner's infrastructure cost contributions, the MOU must be updated to reflect the final one-stop partner infrastructure cost contributions.

§ 678.505 Is there a single Memorandum of Understanding for the local area, or must there be different Memoranda of Understanding between the Local Workforce Development Board and each partner?

(a) A single "umbrella" MOU may be developed that addresses the issues relating to the local one-stop delivery system for the Local WDB, chief elected official and all partners. Alternatively, the Local WDB (with agreement of chief elected official) may enter into separate agreements between each partner or groups of partners.

(b) Under either approach, the requirements described in § 678.500 apply. Since funds are generally appropriated annually, the Local WDB may negotiate financial agreements with each partner annually to update funding of services and operating costs of the system under the MOU.

§ 678.510 How must the Memorandum of Understanding be negotiated?

(a) WIOA emphasizes full and effective partnerships between Local WDBs, chief elected officials, and one-stop partners. Local WDBs and partners must enter into good-faith negotiations. Local WDBs, chief elected officials, and one-stop partners may also request assistance from a State agency responsible for administering the partner program, the Governor, State WDB, or other appropriate parties on other aspects of the MOU.

(b) Local WDBs and one-stop partners must establish, in the MOU, how they will fund the infrastructure costs and other shared costs of the one-stop centers. If agreement regarding infrastructure costs is not reached when other sections of the MOU are ready, an interim infrastructure funding agreement may be included instead, as described in § 678.715(c). Once agreement on infrastructure funding is reached, the Local WDB and one-stop partners must amend the MOU to include the infrastructure funding of the one-stop centers. Infrastructure funding is described in detail in subpart E of this part.

(c) The Local WDB must report to the State WDB, Governor, and relevant State agency when MOU negotiations with one-stop partners have reached an impasse.

(1) The Local WDB and partners must document the negotiations and efforts that have taken place in the MOU. The State WDB, one-stop partner programs, and the Governor may consult with the appropriate Federal agencies to address impasse situations related to issues other than infrastructure funding after attempting to address the impasse. Impasses related to infrastructure cost funding must be resolved using the State infrastructure cost funding mechanism described in § 678.730.

(2) The Local WDB must report failure to execute an MOU with a required partner to the Governor, State WDB, and the State agency responsible for administering the partner's program. Additionally, if the State cannot assist the Local WDB in resolving the impasse, the Governor or the State WDB must report the failure to the Secretary of Labor and to the head of any other Federal agency with responsibility for oversight of a partner's program.

Subpart D—One-Stop Operators

§ 678.600 Who may operate one-stop centers?

(a) One-stop operators may be a single entity (public, private, or nonprofit) or a consortium of entities. If the consortium of entities is one of one-stop partners, it must include a minimum of three of the one-stop partners described in § 678.400.

(b) The one-stop operator may operate one or more one-stop centers. There may be more than one one-stop operator in a local area.

(c) The types of entities that may be a one-stop operator include:

(1) An institution of higher education;

(2) An Employment Service State agency established under the Wagner-Peyser Act;

(3) A community-based organization, nonprofit organization, or workforce intermediary;

(4) A private for-profit entity;

(5) A government agency;

(6) A Local WDB, with the approval of the chief elected official and the Governor; or

(7) Another interested organization or entity, which is capable of carrying out the duties of the one-stop operator. Examples may include a local chamber of commerce or other business organization, or a labor organization.

(d) Elementary schools and secondary schools are not eligible as one-stop operators, except that a nontraditional public secondary school such as a night school, adult school, or an area career and technical education school may be selected.

(e) The State and Local WDBs must ensure that, in carrying out WIOA programs and activities, one-stop operators:

(1) Disclose any potential conflicts of interest arising from the relationships of the operators with particular training service providers or other service providers (further discussed in § 679.430 of this chapter);

(2) Do not establish practices that create disincentives to providing services to individuals with barriers to employment who may require longer-term career and training services; and

(3) Comply with Federal regulations and procurement policies relating to the calculation and use of profits, including those at § 683.295 of this chapter, the

Uniform Guidance at 2 CFR part 200, and other applicable regulations and policies.

§ 678.605 How is the one-stop operator selected?

(a) Consistent with paragraphs (b) and (c) of this section, the Local WDB must select the one-stop operator through a competitive process, as required by sec. 121(d)(2)(A) of WIOA, at least once every 4 years. A State may require, or a Local WDB may choose to implement, a competitive selection process more than once every 4 years.

(b) In instances in which a State is conducting the competitive process described in paragraph (a) of this section, the State must follow the same policies and procedures it uses for procurement with non-Federal funds.

(c) All other non-Federal entities, including subrecipients of a State (such as local areas), must use a competitive process based on local procurement policies and procedures and the principles of competitive procurement in the Uniform Guidance set out at 2 CFR 200.318 through 200.326. All references to "noncompetitive proposals" in the Uniform Guidance at 2 CFR 200.320(f) will be read as "sole source procurement" for the purposes of implementing this section.

(d) Entities must prepare written documentation explaining the determination concerning the nature of the competitive process to be followed in selecting a one-stop operator.

§ 678.610 When is the sole-source selection of one-stop operators appropriate, and how is it conducted?

(a) States may select a one-stop operator through sole source selection when allowed under the same policies and procedures used for competitive procurement with non-Federal funds, while other non-Federal entities including subrecipients of a State (such as local areas) may select a one-stop operator through sole selection when consistent with local procurement policies and procedures and the Uniform Guidance set out at 2 CFR 200.320.

(b) In the event that sole source procurement is determined necessary and reasonable, in accordance with § 678.605(c), written documentation must be prepared and maintained concerning the entire process of making such a selection.

(c) Such sole source procurement must include appropriate conflict of interest policies and procedures. These policies and procedures must conform to the specifications in § 679.430 of this chapter for demonstrating internal controls and preventing conflict of interest.

(d) A Local WDB may be selected as a one-stop operator through sole source procurement only with agreement of the chief elected official in the local area and the Governor. The Local WDB must establish sufficient conflict of interest policies and procedures and these policies and procedures must be approved by the Governor.

§ 678.615 May an entity currently serving as one-stop operator compete to be a one-stop operator under the procurement requirements of this subpart?

(a) Local WDBs may compete for and be selected as one-stop operators, as long as appropriate firewalls and conflict of interest policies and procedures are in place. These policies and procedures must conform to the specifications in § 679.430 of this chapter for demonstrating internal controls and preventing conflict of interest.

(b) State and local agencies may compete for and be selected as one-stop operators by the Local WDB, as long as appropriate firewalls and conflict of interest policies and procedures are in place. These policies and procedures must conform to the specifications in § 679.430 of this chapter for demonstrating internal controls and preventing conflict of interest.

(c) In the case of single-area States where the State WDB serves as the Local WDB, the State agency is eligible to compete for and be selected as operator as long as appropriate firewalls and conflict of interest policies are in place and followed for the competition. These policies and procedures must conform to the specifications in § 679.430 of this chapter for demonstrating internal controls and preventing conflicts of interest.

§ 678.620 What is the one-stop operator's role?

(a) At a minimum, the one-stop operator must coordinate the service delivery of required one-stop partners and service providers. Local WDBs may establish additional roles of one-stop operator, including, but not limited to: Coordinating service providers across the one-stop delivery system, being the primary provider of services within the center, providing some of the services within the center, or coordinating service delivery in a multi-center area, which may include affiliated sites. The competition for a one-stop operator must clearly articulate the role of the one-stop operator.

(b)(1) Subject to paragraph (b)(2) of this section, a one-stop operator may not perform the following functions: Convene system stakeholders to assist in the development of the local plan; prepare and submit local plans (as required under sec. 107 of WIOA); be responsible for oversight of itself; manage or significantly participate in the competitive selection process for one-stop operators; select or terminate one-stop operators, career services, and youth providers; negotiate local performance accountability measures; or develop and submit budget for activities of the Local WDB in the local area.

(2) An entity serving as a one-stop operator, that also serves a different role within the one-stop delivery system, may perform some or all of these functions when it is acting in its other role, if it has established sufficient firewalls and conflict of interest policies and procedures. The policies and procedures must conform to the specifications in § 679.430 of this chapter for demonstrating internal controls and preventing conflict of interest.

§ 678.625 Can a one-stop operator also be a service provider?

Yes, but there must be appropriate firewalls in place in regards to the competition, and subsequent oversight, monitoring, and evaluation of performance of the service provider. The operator cannot develop, manage, or conduct the competition of a service provider in which it intends to compete. In cases where an operator is also a service provider, there must be firewalls and internal controls within the operator-service provider entity, as well as specific policies and procedures at the Local WDB level regarding oversight, monitoring, and evaluation of performance of the service provider. The firewalls must conform to the specifications in § 679.430 of this chapter for demonstrating internal controls and preventing conflicts of interest.

§ 678.630 Can State merit staff still work in a one-stop center where the operator is not a governmental entity?

Yes. State merit staff can continue to perform functions and activities in the one-stop center. The Local WDB and one-stop operator must establish a system for management of merit staff in accordance with State policies and procedures. Continued use of State merit staff for the provision of Wagner-Peyser Act services or services from other programs with merit staffing requirements must be included in the competition for and final contract with the one-stop operator when Wagner-Peyser Act services or services from

other programs with merit staffing requirements are being provided.

§ 678.635 What is the compliance date of the provisions of this subpart?

(a) No later than July 1, 2017, one-stop operators selected under the competitive process described in this subpart must be in place and operating the one-stop center.

(b) By November 17, 2016, every Local WDB must demonstrate it is taking steps to prepare for competition of its one-stop operator. This demonstration may include, but is not limited to, market research, requests for information, and conducting a cost and price analysis.

Subpart E—One-Stop Operating Costs

§ 678.700 What are the one-stop infrastructure costs?

(a) Infrastructure costs of one-stop centers are nonpersonnel costs that are necessary for the general operation of the one-stop center, including:

(1) Rental of the facilities;

(2) Utilities and maintenance;

(3) Equipment (including assessment-related products and assistive technology for individuals with disabilities); and

(4) Technology to facilitate access to the one-stop center, including technology used for the center's planning and outreach activities.

(b) Local WDBs may consider common identifier costs as costs of one-stop infrastructure.

(c) Each entity that carries out a program or activities in a local one-stop center, described in §§ 678.400 through 678.410, must use a portion of the funds available for the program and activities to maintain the one-stop delivery system, including payment of the infrastructure costs of one-stop centers. These payments must be in accordance with this subpart; Federal cost principles, which require that all costs must be allowable, reasonable, necessary, and allocable to the program; and all other applicable legal requirements.

§ 678.705 What guidance must the Governor issue regarding one-stop infrastructure funding?

(a) The Governor, after consultation with chief elected officials, the State WDB, and Local WDBs, and consistent with guidance and policies provided by the State WDB, must develop and issue guidance for use by local areas, specifically:

(1) Guidelines for State-administered one-stop partner programs for determining such programs' contributions to a one-stop delivery system, based on such programs' proportionate use of such system, and relative benefit received, consistent with Office of Management and Budget (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, including determining funding for the costs of infrastructure; and

(2) Guidance to assist Local WDBs, chief elected officials, and one-stop partners in local areas in determining equitable and stable methods of funding the costs of infrastructure at one-stop centers based on proportionate use and relative benefit received, and consistent with Federal cost principles contained in the Uniform Guidance at 2 CFR part 200.

(b) The guidance must include:

(1) The appropriate roles of the one-stop partner programs in identifying one-stop infrastructure costs;

(2) Approaches to facilitate equitable and efficient cost allocation that results in a reasonable cost allocation methodology where infrastructure costs are charged to each partner based on its proportionate use of the one-stop centers and relative benefit received, consistent with Federal cost principles at 2 CFR part 200; and

(3) The timelines regarding notification to the Governor for not reaching local agreement and triggering the State funding mechanism described in § 678.730, and timelines for a one-stop partner to submit an appeal in the State funding mechanism.

§ 678.710 How are infrastructure costs funded?

Infrastructure costs are funded either through the local funding mechanism described in § 678.715 or through the State funding mechanism described in § 678.730.

§ 678.715 How are one-stop infrastructure costs funded in the local funding mechanism?

(a) In the local funding mechanism, the Local WDB, chief elected officials, and one-stop partners agree to amounts and methods of calculating amounts each partner will contribute for one-stop infrastructure funding, include the infrastructure funding terms in the MOU, and sign the MOU. The local funding mechanism must meet all of the following requirements:

(1) The infrastructure costs are funded through cash and fairly evaluated non-cash and third-party in-kind partner contributions and include any funding from philanthropic organizations or other private entities, or through other alternative financing options, to provide a stable and equitable funding stream for ongoing one-stop delivery system operations;

(2) Contributions must be negotiated between one-stop partners, chief elected officials, and the Local WDB and the amount to be contributed must be included in the MOU;

(3) The one-stop partner program's proportionate share of funding must be calculated in accordance with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200 based upon a reasonable cost allocation methodology whereby infrastructure costs are charged to each partner in proportion to its use of the one-stop center, relative to benefits received. Such costs must also be allowable, reasonable, necessary, and allocable;

(4) Partner shares must be periodically reviewed and reconciled against actual costs incurred, and adjusted to ensure that actual costs charged to any one-stop partners are proportionate to the use of the one-stop center and relative to the benefit received by the one-stop partners and their respective programs or activities.

(b) In developing the section of the MOU on one-stop infrastructure funding described in § 678.755, the Local WDB and chief elected officials will:

(1) Ensure that the one-stop partners adhere to the guidance identified in § 678.705 on one-stop delivery system infrastructure costs.

(2) Work with one-stop partners to achieve consensus and informally mediate any possible conflicts or disagreements among one-stop partners.

(3) Provide technical assistance to new one-stop partners and local grant recipients to ensure that those entities are informed and knowledgeable of the elements contained in the MOU and the one-stop infrastructure costs arrangement.

(c) The MOU may include an interim infrastructure funding agreement, including as much detail as the Local WDB has negotiated with one-stop partners, if all other parts of the MOU have been negotiated, in order to allow the partner programs to operate in the one-stop centers. The interim infrastructure funding agreement must be finalized within 6 months of when the MOU is signed. If the interim infrastructure funding agreement is not finalized within that timeframe, the Local WDB must notify the Governor, as described in § 678.725.

§ 678.720 What funds are used to pay for infrastructure costs in the local one-stop infrastructure funding mechanism?

(a) In the local funding mechanism, one-stop partner programs may determine what funds they will use to pay for infrastructure costs. The use of these funds must be in accordance with the requirements in this subpart, and with the relevant partner's authorizing statutes and regulations, including, for example, prohibitions against supplanting non-Federal resources, statutory limitations on administrative costs, and all other applicable legal requirements. In the case of partners administering programs authorized by title I of WIOA, these infrastructure costs may be considered program costs. In the case of partners administering adult education and literacy programs authorized by title II of WIOA, these funds must include Federal funds made available for the local administration of adult education and literacy programs authorized by title II of WIOA. These funds may also include non-Federal resources that are cash, in-kind or third-party contributions. In the case of partners administering the Carl D. Perkins Career and Technical Education Act of 2006, funds used to pay for infrastructure costs may include funds available for local administrative expenses, non-Federal resources that are cash, in-kind or third-party contributions, and may include other funds made available by the State.

(b) There are no specific caps on the amount or percent of overall funding a one-stop partner may contribute to fund infrastructure costs under the local funding mechanism, except that contributions for administrative costs may not exceed the amount available for administrative costs under the authorizing statute of the partner program. However, amounts contributed for infrastructure costs must be allowable and based on proportionate use of the one-stop centers and relative benefit received by the partner program, taking into account the total cost of the one-stop infrastructure as well as alternate financing options, and must be consistent with 2 CFR part 200, including the Federal cost principles.

(c) Cash, non-cash, and third-party in-kind contributions may be provided by one-stop partners to cover their proportionate share of infrastructure costs.

(1) Cash contributions are cash funds provided to the Local WDB or its designee by one-stop partners, either directly or by an interagency transfer.

(2) Non-cash contributions are comprised of—

(i) Expenditures incurred by one-stop partners on behalf of the one-stop center; and

(ii) Non-cash contributions or goods or services contributed by a partner program and used by the one-stop center.

(3) Non-cash contributions, especially those set forth in paragraph (c)(2)(ii) of this section, must be valued consistent with 2 CFR 200.306 to ensure they are fairly evaluated and meet the partners' proportionate share.

(4) Third-party in-kind contributions are:

(i) Contributions of space, equipment, technology, non-personnel services, or other like items to support the infrastructure costs associated with one-stop operations, by a non-one-stop partner to support the one-stop center in general, not a specific partner; or

(ii) Contributions by a non-one-stop partner of space, equipment, technology, non-personnel services, or other like items to support the infrastructure costs associated with one-stop operations, to a one-stop partner to support its proportionate share of one-stop infrastructure costs.

(iii) In-kind contributions described in paragraphs (c)(4)(i) and (ii) of this section must be valued consistent with 2 CFR 200.306 and reconciled on a regular basis to ensure they are fairly evaluated and meet the proportionate share of the partner.

(5) All partner contributions, regardless of the type, must be reconciled on a regular basis (*i.e.*, monthly or quarterly), comparing actual expenses incurred to relative benefits received, to ensure each partner program is contributing its proportionate share in accordance with the terms of the MOU.

§ 678.725 What happens if consensus on infrastructure funding is not reached at the local level between the Local Workforce Development Board, chief elected officials, and one-stop partners?

With regard to negotiations for infrastructure funding for Program Year (PY) 2017 and for each subsequent program year thereafter, if the Local WDB, chief elected officials, and one-stop partners do not reach consensus on methods of sufficiently funding local infrastructure through the local funding mechanism in accordance with the Governor's guidance issued under § 678.705 and consistent with the regulations in §§ 678.715 and 678.720, and include that consensus agreement in the signed MOU, then the Local WDB must notify the Governor by the deadline established by the Governor under § 678.705(b)(3). Once notified, the Governor must administer funding through the State funding mechanism, as described in §§ 678.730 through 678.738, for the program year impacted by the local area's failure to reach consensus.

§ 678.730 What is the State one-stop infrastructure funding mechanism?

(a) Consistent with sec. 121(h)(1)(A)(i)(II) of WIOA, if the Local WDB, chief elected official, and one-stop partners in a local area do not reach consensus agreement on methods of sufficiently funding the costs of infrastructure of one-stop centers for a program year, the State funding mechanism is applicable to the local area for that program year.

(b) In the State funding mechanism, the Governor, subject to the limitations in paragraph (c) of this section, determines one-stop partner contributions after consultation with the chief elected officials, Local WDBs, and the State WDB. This determination involves:

(1) The application of a budget for one-stop infrastructure costs as described in § 678.735, based on either agreement reached in the local area negotiations or the State WDB formula outlined in § 678.745;

(2) The determination of each local one-stop partner program's proportionate use of the one-stop delivery system and relative benefit received, consistent with the Uniform Guidance at 2 CFR part 200, including the Federal cost principles, the partner programs' authorizing laws and regulations, and other applicable legal requirements described in § 678.736; and

(3) The calculation of required statewide program caps on contributions to infrastructure costs from one-stop partner programs in areas operating under the State funding mechanism as described in § 678.738.

(c) In certain situations, the Governor does not determine the infrastructure cost contributions for some one-stop partner programs under the State funding mechanism.

(1) The Governor will not determine the contribution amounts for infrastructure funds for Native American program grantees described in part 684 of this chapter. The appropriate portion of funds to be provided by Native American program grantees to pay for one-stop infrastructure must be determined as part of the development of the MOU described in § 678.500 and specified in that MOU.

(2) In States in which the policy-making authority is placed in an entity or official that is independent of the

authority of the Governor with respect to the funds provided for adult education and literacy activities authorized under title II of WIOA, postsecondary career and technical education activities authorized under the Carl D. Perkins Career and Technical Education Act of 2006, or VR services authorized under title I of the Rehabilitation Act of 1973 (other than sec. 112 or part C), as amended by WIOA title IV, the determination of the amount each of the applicable partners must contribute to assist in paying the infrastructure costs of one-stop centers must be made by the official or chief officer of the entity with such authority, in consultation with the Governor.

(d) Any duty, ability, choice, responsibility, or other action otherwise related to the determination of infrastructure costs contributions that is assigned to the Governor in §§ 678.730 through 678.745 also applies to this decision-making process performed by the official or chief officer described in paragraph (c)(2) of this section.

§ 678.731 What are the steps to determine the amount to be paid under the State one-stop infrastructure funding mechanism?

(a) To initiate the State funding mechanism, a Local WDB that has not reached consensus on methods of sufficiently funding local infrastructure through the local funding mechanism as provided in § 678.725 must notify the Governor by the deadline established by the Governor under § 678.705(b)(3).

(b) Once a Local WDB has informed the Governor that no consensus has been reached:

(1) The Local WDB must provide the Governor with local negotiation materials in accordance with § 678.735(a).

(2) The Governor must determine the one-stop center budget by either:

(i) Accepting a budget previously agreed upon by partner programs in the local negotiations, in accordance with § 678.735(b)(1); or

(ii) Creating a budget for the one-stop center using the State WDB formula (described in § 678.745) in accordance with § 678.735(b)(3).

(3) The Governor then must establish a cost allocation methodology to determine the one-stop partner programs' proportionate shares of infrastructure costs, in accordance with § 678.736.

(4)(i) Using the methodology established under paragraph (b)(2)(ii) of this section, and taking into consideration the factors concerning individual partner programs listed in § 678.737(b)(2), the Governor must determine each partner's proportionate share of the infrastructure costs, in accordance with § 678.737(b)(1), and

(ii) In accordance with § 678.730(c), in some instances, the Governor does not determine a partner program's proportionate share of infrastructure funding costs, in which case it must be determined by the entities named in § 678.730(c)(1) and (2).

(5) The Governor must then calculate the statewide caps on the amounts that partner programs may be required to contribute toward infrastructure funding, according to the steps found at § 678.738(a)(1) through (4).

(6) The Governor must ensure that the aggregate total of the infrastructure contributions according to proportionate share required of all local partner programs in local areas under the State funding mechanism do not exceed the cap for that particular program, in accordance with § 678.738(b)(1). If the total does not exceed the cap, the Governor must direct each one-stop partner program to pay the amount determined under § 678.737(a) toward the infrastructure funding costs of the one-stop center. If the total does exceed the cap, then to determine the amount to direct each one-stop program to pay, the Governor may:

(i) Ascertain, in accordance with § 678.738(b)(2)(i), whether the local partner or partners whose proportionate shares are calculated above the individual program caps are willing to voluntarily contribute above the capped amount to equal that program's proportionate share; or

(ii) Choose from the options provided in § 678.738(b)(2)(ii), including having the local area re-enter negotiations to reassess each one-stop partner's proportionate share and make adjustments or identify alternate sources of funding to make up the difference between the capped amount and the proportionate share of infrastructure funding of the one-stop partner.

(7) If none of the solutions given in paragraphs (b)(6)(i) and (ii) of this section prove to be viable, the Governor must reassess the proportionate shares of each one-stop partner so that the aggregate amount attributable to the local partners for each program is less than that program's cap amount. Upon such reassessment, the Governor must direct each one-stop partner program to pay the reassessed amount toward the infrastructure funding costs of the one-stop center.

§ 678.735 How are infrastructure cost budgets for the one-stop centers in a local area determined in the State one-stop infrastructure funding mechanism?

(a) Local WDBs must provide to the Governor appropriate and relevant materials and documents used in the negotiations under the local funding mechanism, including but not limited to: The local WIOA plan, the cost allocation method or methods proposed by the partners to be used in determining proportionate share, the proposed amounts or budget to fund infrastructure, the amount of total partner funds included, the type of funds or non-cash contributions, proposed one-stop center budgets, and any agreed upon or proposed MOUs.

(b)(1) If a local area has reached agreement as to the infrastructure budget for the one-stop centers in the local area, it must provide this budget to the Governor as required by paragraph (a) of this section. If, as a result of the agreed upon infrastructure budget, only the individual programmatic contributions to infrastructure funding based upon proportionate use of the one-stop centers and relative benefit received are at issue, the Governor may accept the budget, from which the Governor must calculate each partner's contribution consistent with the cost allocation methodologies contained in the Uniform Guidance found in 2 CFR part 200, as described in § 678.736.

(2) The Governor may also take into consideration the extent to which the partners in the local area have agreed in determining the proportionate shares, including any agreements reached at the local level by one or more partners, as well as any other element or product of the negotiating process provided to the Governor as required by paragraph (a) of this section.

(3) If a local area has not reached agreement as to the infrastructure budget for the one-stop centers in the local area, or if the Governor determines that the agreed upon budget does not adequately meet the needs of the local area or does not reasonably work within the confines of the local area's resources in accordance with the Governor's one-stop budget guidance (which is required to be issued by WIOA sec. 121(h)(1)(B) and under § 678.705), then, in accordance with § 678.745, the Governor must use the formula developed by the State WDB based on at least the factors required under § 678.745, and any associated weights to determine the local area budget.

§ 678.736 How does the Governor establish a cost allocation methodology used to determine the one-stop partner programs' proportionate shares of infrastructure costs under the State one-stop infrastructure funding mechanism?

Once the appropriate budget is determined for a local area through either method described in § 678.735 (by acceptance of a budget agreed upon in local negotiation or by the Governor applying the formula detailed in § 678.745), the Governor must determine the appropriate cost allocation methodology to be applied to the one-stop partners in such local area, consistent with the Federal cost principles permitted under 2 CFR part 200, to fund the infrastructure budget.

§ 678.737 How are one-stop partner programs' proportionate shares of infrastructure costs determined under the State one-stop infrastructure funding mechanism?

(a) The Governor must direct the one-stop partners in each local area that have not reached agreement under the local funding mechanism to pay what the Governor determines is each partner program's proportionate share of infrastructure funds for that area, subject to the application of the caps described in § 678.738.

(b)(1) The Governor must use the cost allocation methodology—as determined under § 678.736—to determine each partner's proportionate share of the infrastructure costs under the State funding mechanism, subject to considering the factors described in paragraph (b)(2) of this section.

(2) In determining each partner program's proportionate share of infrastructure costs, the Governor must take into account the costs of administration of the one-stop delivery system for purposes not related to one-stop centers for each partner (such as costs associated with maintaining the Local WDB or information technology systems), as well as the statutory requirements for each partner program, the partner program's ability to fulfill such requirements, and all other applicable legal requirements. The Governor may also take into consideration the extent to which the partners in the local area have agreed in determining the proportionate shares, including any agreements reached at the local level by one or more partners, as well as any other materials or documents of the negotiating process, which must be provided to the Governor by the Local WDB and described in § 678.735(a).

§ 678.738 How are statewide caps on the contributions for one-stop infrastructure funding determined in the State one-stop infrastructure funding mechanism?

(a) The Governor must calculate the statewide cap on the contributions for one-stop infrastructure funding required to be provided by each one-stop partner program for those local areas that have not reached agreement. The cap is the amount determined under paragraph (a)(4) of this section, which the Governor derives by:

(1) First, determining the amount resulting from applying the percentage for the corresponding one-stop partner program provided in paragraph (d) of this section to the amount of Federal funds provided to carry out the one-stop partner program in the State for the applicable fiscal year;

(2) Second, selecting a factor (or factors) that reasonably indicates the use of one-stop centers in the State, applying such factor(s) to all local areas in the State, and determining the percentage of such factor(s) applicable to the local areas that reached agreement under the local funding mechanism in the State;

(3) Third, determining the amount resulting from applying the percentage determined in paragraph (a)(2) of this section to the amount determined under paragraph (a)(1) of this section for the one-stop partner program; and

(4) Fourth, determining the amount that results from subtracting the amount determined under paragraph (a)(3) of this section from the amount determined under paragraph (a)(1) of this section. The outcome of this final calculation results in the partner program's cap.

(b)(1) The Governor must ensure that the funds required to be contributed by each partner program in the local areas in the State under the State funding mechanism, in aggregate, do not exceed the statewide cap for each program as determined under paragraph (a) of this section.

(2) If the contributions initially determined under § 678.737 would exceed the applicable cap determined under paragraph (a) of this section, the Governor may:

(i) Ascertain if the one-stop partner whose contribution would otherwise exceed the cap determined under paragraph (a) of this section will voluntarily contribute above the capped amount, so that the total contributions equal that partner's proportionate share. The one-stop partner's contribution must still be consistent with the program's authorizing laws and regulations, the Federal cost principles in 2 CFR part 200, and other applicable legal requirements; or

(ii) Direct or allow the Local WDB, chief elected officials, and one-stop partners to: Re-enter negotiations, as necessary; reduce the infrastructure costs to reflect the amount of funds that are available for such costs without exceeding the cap levels; reassess the proportionate share of each one-stop partner; or identify alternative sources of financing for one-stop infrastructure funding, consistent with the requirement that each one-stop partner pay an amount that is consistent with the proportionate use of the one-stop center and relative benefit received by the partner, the program's authorizing laws and regulations, the Federal cost principles in 2 CFR part 200, and other applicable legal requirements.

(3) If applicable under paragraph (b)(2)(ii) of this section, the Local WDB, chief elected officials, and one-stop partners, after renegotiation, may come to agreement, sign an MOU, and proceed under the local funding mechanism. Such actions do not require the redetermination of the applicable caps under paragraph (a) of this section.

(4) If, after renegotiation, agreement among partners still cannot be reached or alternate financing cannot be identified, the Governor may adjust the specified allocation, in accordance with the amounts available and the limitations described in paragraph (d) of this section. In determining these adjustments, the Governor may take into account information relating to the renegotiation as well as the information described in § 678.735(a).

(c) *Limitations.* Subject to paragraph (a) of this section and in accordance with WIOA sec. 121(h)(2)(D), the following limitations apply to the Governor's calculations of the amount that one-stop partners in local areas that have not reached agreement under the local funding mechanism may be required under § 678.736 to contribute to one-stop infrastructure funding:

(1) *WIOA formula programs and Wagner-Peyser Act Employment Service.* The portion of funds required to be contributed under the WIOA youth, adult, or dislocated worker programs, or under the Wagner-Peyser Act (29 U.S.C. 49 *et seq.*) must not exceed three percent of the amount of the program in the State for a program year.

(2) *Other one-stop partners.* For required one-stop partners other than those specified in paragraphs (c)(1), (3), (5), and (6) of this section, the portion of funds required to be contributed must not exceed 1.5 percent of the amount of Federal funds provided to carry out that program in the State for a fiscal year.

For purposes of the Carl D. Perkins Career and Technical Education Act of 2006, the cap on contributions is determined based on the funds made available by the State for postsecondary level programs and activities under sec. 132 of the Carl D. Perkins Career and Technical Education Act and the amount of funds used by the State under sec. 112(a)(3) of the Perkins Act during the prior year to administer postsecondary level programs and activities, as applicable.

(3) *Vocational rehabilitation.* (i) Within a State, for the entity or entities administering the programs described in WIOA sec. 121(b)(1)(B)(iv) and § 678.400, the allotment is based on the one State Federal fiscal year allotment, even in instances where that allotment is shared between two State agencies, and the cumulative portion of funds required to be contributed must not exceed—

(A) 0.75 percent of the amount of Federal funds provided to carry out such program in the State for Fiscal Year 2016 for purposes of applicability of the State funding mechanism for PY 2017;

(B) 1.0 percent of the amount provided to carry out such program in the State for Fiscal Year 2017 for purposes of applicability of the State funding mechanism for PY 2018;

(C) 1.25 percent of the amount provided to carry out such program in the State for Fiscal Year 2018 for purposes of applicability of the State funding mechanism for PY 2019;

(D) 1.5 percent of the amount provided to carry out such program in the State for Fiscal Year 2019 and following years for purposes of applicability of the State funding mechanism for PY 2020 and subsequent years.

(ii) The limitations set forth in paragraph (d)(3)(i) of this section for any given fiscal year must be based on the final VR allotment to the State in the applicable Federal fiscal year.

(4) *Federal direct spending programs.* For local areas that have not reached a one-stop infrastructure funding agreement by consensus, an entity administering a program funded with direct Federal spending, as defined in sec. 250(c)(8) of the Balanced Budget and Emergency Deficit Control Act of 1985, as in effect on February 15, 2014 (2 U.S.C. 900(c)(8)), must not be required to provide more for infrastructure costs than the amount that the Governor determined (as described in § 678.737).

(5) *TANF programs.* For purposes of TANF, the cap on contributions is determined based on the total Federal TANF funds expended by the State for work, education, and training activities during the prior Federal fiscal year (as reported to the Department of Health and Human Services (HHS) on the quarterly TANF Financial Report form), plus any additional amount of Federal TANF funds that the State TANF agency reasonably determines was expended for administrative costs in connection with these activities but that was separately reported to HHS as an administrative cost. The State's contribution to the one-stop infrastructure must not exceed 1.5 percent of these combined expenditures.

(6) *Community Services Block Grant (CSBG) programs.* For purposes of CSBG, the cap on contributions will be based on the total amount of CSBG funds determined by the State to have been expended by local CSBG-eligible entities for the provision of employment and training activities during the prior Federal fiscal year for which information is available (as reported to HHS on the CSBG Annual Report) and any additional amount that the State CSBG agency reasonably determines was expended for administrative purposes in connection with these activities and was separately reported to HHS as an administrative cost. The State's contribution must not exceed 1.5 percent of these combined expenditures.

(d) For programs for which it is not otherwise feasible to determine the amount of Federal funding used by the program until the end of that program's operational year—because, for example, the funding available for education, employment, and training activities is included within funding for the program that may also be used for other unrelated activities—the determination of the Federal funds provided to carry out the program for a fiscal year under paragraph (a)(1) of this section may be determined by:

(1) The percentage of Federal funds available to the one-stop partner program that were used by the one-stop partner program for education, employment, and training activities in the previous fiscal year for which data are available; and

(2) Applying the percentage determined under paragraph (d)(1) of this section to the total amount of Federal funds available to the one-stop partner program for the fiscal year for which the determination under paragraph (a)(1) of this section applies.

§ 678.740 What funds are used to pay for infrastructure costs in the State one-stop infrastructure funding mechanism?

(a) In the State funding mechanism, infrastructure costs for WIOA title I programs, including Native American Programs described in part 684 of this chapter, may be paid using program funds, administrative funds, or both. Infrastructure costs for the Senior Community Service Employment Program under title V of the Older Americans Act (42 U.S.C. 3056 *et seq.*) may also be paid using program funds, administrative funds, or both.

(b) In the State funding mechanism, infrastructure costs for other required one-stop partner programs (listed in §§ 678.400 through 678.410) are limited to the program's administrative funds, as appropriate.

(c) In the State funding mechanism, infrastructure costs for the adult education program authorized by title II of WIOA must be paid from the funds that are available for local administration and may be paid from funds made available by the State or non-Federal resources that are cash, in-kind, or third-party contributions.

(d) In the State funding mechanism, infrastructure costs for the Carl D. Perkins Career and Technical Education Act of 2006 must be paid from funds available for local administration of postsecondary level programs and activities to eligible recipients or consortia of eligible recipients and may be paid from funds made available by the State or non-Federal resources that are cash, in-kind, or third-party contributions.

§ 678.745 What factors does the State Workforce Development Board use to develop the formula described in Workforce Innovation and Opportunity Act, which is used by the Governor to determine the appropriate one-stop infrastructure budget for each local area operating under the State infrastructure funding mechanism, if no reasonably implementable locally negotiated budget exists?

The State WDB must develop a formula, as described in WIOA sec. 121(h)(3)(B), to be used by the Governor under § 678.735(b)(3) in determining the appropriate budget for the infrastructure costs of one-stop centers in the local areas that do not reach agreement under the local funding mechanism and are, therefore, subject to the State funding mechanism. The formula identifies the factors and corresponding weights for each factor that the Governor must use, which must include: The number of one-stop centers in a local area; the population served by such centers; the services provided by such centers; and any factors relating to the operations of such centers in the local area that the State WDB determines are appropriate. As indicated in § 678.735(b)(1), if the local area has agreed on such a budget,

the Governor may accept that budget in lieu of applying the formula factors.

§ 678.750 When and how can a one-stop partner appeal a one-stop infrastructure amount designated by the State under the State infrastructure funding mechanism?

(a) The Governor must establish a process, described under sec. 121(h)(2)(E) of WIOA, for a one-stop partner administering a program described in §§ 678.400 through 678.410 to appeal the Governor's determination regarding the one-stop partner's portion of funds to be provided for one-stop infrastructure costs. This appeal process must be described in the Unified State Plan.

(b) The appeal may be made on the ground that the Governor's determination is inconsistent with proportionate share requirements in § 678.735(a), the cost contribution limitations in § 678.735(b), the cost contribution caps in § 678.738, consistent with the process described in the State Plan.

(c) The process must ensure prompt resolution of the appeal in order to ensure the funds are distributed in a timely manner, consistent with the requirements of § 683.630 of this chapter.

(d) The one-stop partner must submit an appeal in accordance with State's deadlines for appeals specified in the guidance issued under § 678.705(b)(3), or if the State has not set a deadline, within 21 days from the Governor's determination.

§ 678.755 What are the required elements regarding infrastructure funding that must be included in the one-stop Memorandum of Understanding?

The MOU, fully described in § 678.500, must contain the following information whether the local areas use either the local one-stop or the State funding method:

(a) The period of time in which this infrastructure funding agreement is effective. This may be a different time period than the duration of the MOU.

(b) Identification of an infrastructure and shared services budget that will be periodically reconciled against actual costs incurred and adjusted accordingly to ensure that it reflects a cost allocation methodology that demonstrates how infrastructure costs are charged to each partner in proportion to its use of the one-stop center and relative benefit received, and that complies with 2 CFR part 200 (or any corresponding similar regulation or ruling).

(c) Identification of all one-stop partners, chief elected officials, and Local WDB participating in the infrastructure funding arrangement.

(d) Steps the Local WDB, chief elected officials, and one-stop partners used to reach consensus or an assurance that the local area followed the guidance for the State funding process.

(e) Description of the process to be used among partners to resolve issues during the MOU duration period when consensus cannot be reached.

(f) Description of the periodic modification and review process to ensure equitable benefit among one-stop partners.

§ 678.760 How do one-stop partners jointly fund other shared costs under the Memorandum of Understanding?

(a) In addition to jointly funding infrastructure costs, one-stop partners listed in §§ 678.400 through 678.410 must use a portion of funds made available under their programs' authorizing Federal law (or fairly evaluated in-kind contributions) to pay the additional costs relating to the operation of the one-stop delivery system. These other costs must include applicable career services and may include other costs, including shared services.

(b) For the purposes of paragraph (a) of this section, shared services' costs may include the costs of shared services that are authorized for and may be commonly provided through the one-stop partner programs to any individual, such as initial intake, assessment of needs, appraisal of basic skills, identification of appropriate services to meet such needs, referrals to other one-stop partners, and business services. Shared operating costs may also include shared costs of the Local WDB's functions.

(c) Contributions to the additional costs related to operation of the one-stop delivery system may be cash, non-cash, or third-party in-kind contributions, consistent with how these are described in § 678.720(c).

(d) The shared costs described in paragraph (a) of this section must be allocated according to the proportion of benefit received by each of the partners, consistent with the Federal law authorizing the partner's program, and consistent with all other applicable legal requirements, including Federal cost principles in 2 CFR part 200 (or any corresponding similar regulation or ruling) requiring that costs are allowable, reasonable, necessary, and allocable.

(e) Any shared costs agreed upon by the one-stop partners must be included in the MOU.

Subpart F—One-Stop Certification

§ 678.800 How are one-stop centers and one-stop delivery systems certified for effectiveness, physical and programmatic accessibility, and continuous improvement?

(a) The State WDB, in consultation with chief elected officials and Local WDBs, must establish objective criteria and procedures for Local WDBs to use when certifying one-stop centers.

(1) The State WDB, in consultation with chief elected officials and Local WDBs, must review and update the criteria every 2 years as part of the review and modification of State Plans pursuant to § 676.135 of this chapter.

(2) The criteria must be consistent with the Governor's and State WDB's guidelines, guidance, and policies on infrastructure funding decisions, described in § 678.705. The criteria must evaluate the one-stop centers and one-stop delivery system for effectiveness, including customer satisfaction, physical and programmatic accessibility, and continuous improvement.

(3) When the Local WDB is the one-stop operator as described in § 679.410 of this chapter, the State WDB must certify the one-stop center.

(b) Evaluations of effectiveness must include how well the one-stop center integrates available services for participants and businesses, meets the workforce development needs of participants and the employment needs of local employers, operates in a cost-efficient manner, coordinates services among the one-stop partner programs, and provides access to partner program services to the maximum extent practicable, including providing services outside of regular business hours where there is a workforce need, as identified by the Local WDB. These evaluations must take into account feedback from one-stop customers. They must also include evaluations of how well the one-stop center ensures equal opportunity for individuals with disabilities to participate in or benefit from one-stop center services. These evaluations must include criteria evaluating how well the centers and delivery systems take actions to comply with the disability-related regulations implementing WIOA sec. 188, set forth at 29 CFR part 38. Such actions include, but are not limited to:

(1) Providing reasonable accommodations for individuals with disabilities;

(2) Making reasonable modifications to policies, practices, and procedures where necessary to avoid discrimination against persons with disabilities;

(3) Administering programs in the most integrated setting appropriate;

(4) Communicating with persons with disabilities as effectively as with others;

(5) Providing appropriate auxiliary aids and services, including assistive technology devices and services, where necessary to afford individuals with disabilities an equal opportunity to participate in, and enjoy the benefits of, the program or activity; and

(6) Providing for the physical accessibility of the one-stop center to individuals with disabilities.

(c) Evaluations of continuous improvement must include how well the one-stop center supports the achievement of the negotiated local levels of performance for the indicators of performance for the local area described in sec. 116(b)(2) of WIOA and part 677 of this chapter. Other continuous improvement factors may include a regular process for identifying and responding to technical assistance needs, a regular system of continuing professional staff development, and having systems in place to capture and respond to specific customer feedback.

(d) Local WDBs must assess at least once every 3 years the effectiveness, physical and programmatic accessibility, and continuous improvement of one-stop centers and the one-stop delivery systems using the criteria and procedures developed by the State WDB. The Local WDB may establish additional criteria, or set higher standards for service coordination, than those set by the State criteria. Local WDBs must review and update the criteria every 2 years as part of the Local Plan update process described in § 676.580 of this chapter. Local WDBs must certify one-stop centers in order to be eligible to use infrastructure funds in the State funding mechanism described in § 678.730.

(e) All one-stop centers must comply with applicable physical and programmatic accessibility requirements, as set forth in 29 CFR part 38, the implementing regulations of WIOA sec. 188.

Subpart G—Common Identifier

§ 678.900 What is the common identifier to be used by each one-stop delivery system?

(a) The common one-stop delivery system identifier is "American Job Center."

(b) As of November 17, 2016, each one-stop delivery system must include the "American Job Center" identifier or "a proud partner of the American Job Center network" on all primary electronic resources used by the one-stop delivery system, and on any newly printed, purchased, or created materials.

(c) As of July 1, 2017, each one-stop delivery system must include the "American Job Center" identifier or "a proud partner of the American Job Center network" on all products, programs, activities, services, electronic resources, facilities, and related property and new materials used in the one-stop delivery system.

(d) One-stop partners, States, or local areas may use additional identifiers on their products, programs, activities, services, facilities, and related property and materials.

Department of Education

34 CFR Chapters III and IV

For the reasons stated in the preamble, the Department of Education amends 34 CFR chapters III and IV as follows:

PART 361—STATE VOCATIONAL REHABILITATION SERVICES PROGRAM

■ 4. The authority citation for part 361 continues to read as follows:

Authority: 29 U.S.C. 709(c), unless otherwise noted.

■ 5. Add subpart D to part 361 to read as follows:

Subpart D—Unified and Combined State Plans Under Title I of the Workforce Innovation and Opportunity Act

Sec.

361.100 What are the purposes of the Unified and Combined State Plans?
361.105 What are the general requirements for the Unified State Plan?
361.110 What are the program-specific requirements in the Unified State Plan for the adult, dislocated worker, and youth programs authorized under Workforce Innovation and Opportunity Act title I?
361.115 What are the program-specific requirements in the Unified State Plan for the Adult Education and Family Literacy Act program authorized under Workforce Innovation and Opportunity Act title II?
361.120 What are the program-specific requirements in the Unified State Plan for the Employment Service program authorized under the Wagner-Peyser Act, as amended by Workforce Innovation and Opportunity Act title III?
361.125 What are the program-specific requirements in the Unified State Plan for the State Vocational Rehabilitation program authorized under title I of the Rehabilitation Act of 1973, as amended by Workforce Innovation and Opportunity Act title IV?
361.130 What is the development, submission, and approval process of the Unified State Plan?
361.135 What are the requirements for modification of the Unified State Plan?
361.140 What are the general requirements for submitting a Combined State Plan?
361.143 What is the development, submission, and approval process of the Combined State Plan?
361.145 What are the requirements for modifications of the Combined State Plan?

Authority: Secs. 102, 103, and 503, Pub. L. 113–128, 128 Stat. 1425 (Jul. 22, 2014).

Subpart D—Unified and Combined State Plans Under Title I of the Workforce Innovation and Opportunity Act

§ 361.100 What are the purposes of the Unified and Combined State Plans?

(a) The Unified and Combined State Plans provide the framework for States to outline a strategic vision of, and goals for, how their workforce development systems will achieve the purposes of the Workforce Innovation and Opportunity Act (WIOA).

(b) The Unified and Combined State Plans serve as 4-year action plans to develop, align, and integrate the State's systems and provide a platform to achieve the State's vision and strategic and operational goals. A Unified or Combined State Plan is intended to:

(1) Align, in strategic coordination, the six core programs required in the Unified State Plan pursuant to § 361.105(b), and additional Combined State Plan partner programs that may be part of the Combined State Plan pursuant to § 361.140;

(2) Direct investments in economic, education, and workforce training programs to focus on providing relevant education and training to ensure that individuals, including youth and individuals with barriers to employment, have the skills to compete in the job market and that employers have a ready supply of skilled workers;

(3) Apply strategies for job-driven training consistently across Federal programs; and

(4) Enable economic, education, and workforce partners to build a skilled workforce through innovation in, and alignment of, employment, training, and education programs.

§ 361.105 What are the general requirements for the Unified State Plan?

(a) The Unified State Plan must be submitted in accordance with § 361.130 and WIOA sec. 102(c), as explained in joint planning guidelines issued by the Secretaries of Labor and Education.

(b) The Governor of each State must submit, at a minimum, in accordance with § 361.130, a Unified State Plan to the Secretary of Labor to be eligible to receive funding for the workforce

development system's six core programs:

(1) The adult, dislocated worker, and youth programs authorized under subtitle B of title I of WIOA and administered by the U.S. Department of Labor (DOL);

(2) The Adult Education and Family Literacy Act (AEFLA) program authorized under title II of WIOA and administered by the U.S. Department of Education (ED);

(3) The Employment Service program authorized under the Wagner-Peyser Act of 1933, as amended by WIOA title III and administered by DOL; and

(4) The Vocational Rehabilitation program authorized under title I of the Rehabilitation Act of 1973, as amended by title IV of WIOA and administered by ED.

(c) The Unified State Plan must outline the State's 4-year strategy for the core programs described in paragraph (b) of this section and meet the requirements of sec. 102(b) of WIOA, as explained in the joint planning guidelines issued by the Secretaries of Labor and Education.

(d) The Unified State Plan must include strategic and operational planning elements to facilitate the development of an aligned, coordinated, and comprehensive workforce development system. The Unified State Plan must include:

(1) Strategic planning elements that describe the State's strategic vision and goals for preparing an educated and skilled workforce under sec. 102(b)(1) of WIOA. The strategic planning elements must be informed by and include an analysis of the State's economic conditions and employer and workforce needs, including education and skill needs.

(2) Strategies for aligning the core programs and Combined State Plan partner programs as described in § 361.140(d), as well as other resources available to the State, to achieve the strategic vision and goals in accordance with sec. 102(b)(1)(E) of WIOA.

(3) Operational planning elements in accordance with sec. 102(b)(2) of WIOA that support the strategies for aligning the core programs and other resources available to the State to achieve the State's vision and goals and a description of how the State Workforce Development Board (WDB) will implement its functions, in accordance with sec. 101(d) of WIOA. Operational planning elements must include:

(i) A description of how the State strategy will be implemented by each core program's lead State agency;

(ii) State operating systems, including data systems, and policies that will support the implementation of the State's strategy identified in paragraph (d)(1) of this section;

(iii) Program-specific requirements for the core programs required by WIOA sec. 102(b)(2)(D);

(iv) Assurances required by sec. 102(b)(2)(E) of WIOA, including an assurance that the lead State agencies responsible for the administration of the core programs reviewed and commented on the appropriate operational planning of the Unified State Plan and approved the elements as serving the needs of the population served by such programs, and other assurances deemed necessary by the Secretaries of Labor and Education under sec. 102(b)(2)(E)(x) of WIOA;

(v) A description of joint planning and coordination across core programs, required one-stop partner programs, and other programs and activities in the Unified State Plan; and

(vi) Any additional operational planning requirements imposed by the Secretary of Labor or the Secretary of Education under sec. 102(b)(2)(C)(viii) of WIOA.

(e) All of the requirements in this subpart that apply to States also apply to outlying areas.

§ 361.110 What are the program-specific requirements in the Unified State Plan for the adult, dislocated worker, and youth programs authorized under Workforce Innovation and Opportunity Act title I?

The program-specific requirements for the adult, dislocated worker, and youth programs that must be included in the Unified State Plan are described in sec. 102(b)(2)(D) of WIOA. Additional planning requirements may be explained in joint planning guidelines issued by the Secretaries of Labor and Education.

§ 361.115 What are the program-specific requirements in the Unified State Plan for the Adult Education and Family Literacy Act program authorized under Workforce Innovation and Opportunity Act title II?

The program-specific requirements for the AEFLA program in title II that must be included in the Unified State Plan are described in secs. 102(b)(2)(C) and 102(b)(2)(D)(ii) of WIOA.

(a) With regard to the description required in sec. 102(b)(2)(D)(ii)(I) of WIOA pertaining to content standards, the Unified State Plan must describe how the eligible agency will, by July 1, 2016, align its content standards for adult education with State-adopted challenging academic content standards under the Elementary and Secondary Education Act of 1965, as amended.

(b) With regard to the description required in sec. 102(b)(2)(C)(iv) of WIOA pertaining to the methods and factors the State will use to distribute funds under the core programs, for title II of WIOA, the Unified State Plan must include—

(1) How the eligible agency will award multi-year grants on a competitive basis to eligible providers in the State; and

(2) How the eligible agency will provide direct and equitable access to funds using the same grant or contract announcement and application procedure.

§ 361.120 What are the program-specific requirements in the Unified State Plan for the Employment Service program authorized under the Wagner-Peyser Act, as amended by Workforce Innovation and Opportunity Act title III?

The Employment Service program authorized under the Wagner-Peyser Act of 1933, as amended by WIOA title III, is subject to requirements in sec. 102(b) of WIOA, including any additional requirements imposed by the Secretary of Labor under secs. 102(b)(2)(C)(viii) and 102(b)(2)(D)(iv) of WIOA, as explained in joint planning guidelines issued by the Secretaries of Labor and Education.

§ 361.125 What are the program-specific requirements in the Unified State Plan for the State Vocational Rehabilitation program authorized under title I of the Rehabilitation Act of 1973, as amended by Workforce Innovation and Opportunity Act title IV?

The program specific-requirements for the vocational rehabilitation services portion of the Unified or Combined State Plan are set forth in sec. 101(a) of the Rehabilitation Act of 1973, as amended. All submission requirements for the vocational rehabilitation services portion of the Unified or Combined State Plan are in addition to the jointly developed strategic and operational content requirements prescribed by sec. 102(b) of WIOA.

§ 361.130 What is the development, submission, and approval process of the Unified State Plan?

(a) The Unified State Plan described in § 361.105 must be submitted in accordance with WIOA sec. 102(c), as explained in joint planning guidelines issued jointly by the Secretaries of Labor and Education.

(b) A State must submit its Unified State Plan to the Secretary of Labor pursuant to a process identified by the Secretary.

(1) The initial Unified State Plan must be submitted no later than 120 days prior to the commencement of the second full program year of WIOA.

(2) Subsequent Unified State Plans must be submitted no later than 120

days prior to the end of the 4-year period covered by a preceding Unified State Plan.

(3) For purposes of paragraph (b) of this section, "program year" means July 1 through June 30 of any year.

(c) The Unified State Plan must be developed with the assistance of the State WDB, as required by 20 CFR 679.130(a) and WIOA sec. 101(d), and must be developed in coordination with administrators with optimum policy-making authority for the core programs and required one-stop partners.

(d) The State must provide an opportunity for public comment on and input into the development of the Unified State Plan prior to its submission.

(1) The opportunity for public comment must include an opportunity for comment by representatives of Local WDBs and chief elected officials, businesses, representatives of labor organizations, community-based organizations, adult education providers, institutions of higher education, other stakeholders with an interest in the services provided by the six core programs, and the general public, including individuals with disabilities.

(2) Consistent with the "Sunshine Provision" of WIOA in sec. 101(g), the State WDB must make information regarding the Unified State Plan available to the public through electronic means and regularly occurring open meetings in accordance with State law. The Unified State Plan must describe the State's process and timeline for ensuring a meaningful opportunity for public comment.

(e) Upon receipt of the Unified State Plan from the State, the Secretary of Labor will ensure that the entire Unified State Plan is submitted to the Secretary of Education pursuant to a process developed by the Secretaries.

(f) The Unified State Plan is subject to the approval of both the Secretary of Labor and the Secretary of Education.

(g) Before the Secretaries of Labor and Education approve the Unified State Plan, the vocational rehabilitation services portion of the Unified State Plan described in WIOA sec. 102(b)(2)(D)(iii) must be approved by the Commissioner of the Rehabilitation Services Administration.

(h) The Secretaries of Labor and Education will review and approve the Unified State Plan within 90 days of receipt by the Secretary of Labor, unless the Secretary of Labor or the Secretary of Education determines in writing within that period that:

(1) The plan is inconsistent with a core program's requirements;

(2) The Unified State Plan is inconsistent with any requirement of sec. 102 of WIOA; or

(3) The plan is incomplete or otherwise insufficient to determine whether it is consistent with a core program's requirements or other requirements of WIOA.

(i) If neither the Secretary of Labor nor the Secretary of Education makes the written determination described in paragraph (h) of this section within 90 days of the receipt by the Secretaries, the Unified State Plan will be considered approved.

§ 361.135 What are the requirements for modification of the Unified State Plan?

(a) In addition to the required modification review set forth in paragraph (b) of this section, a Governor may submit a modification of its Unified State Plan at any time during the 4-year period of the plan.

(b) Modifications are required, at a minimum:

(1) At the end of the first 2-year period of any 4-year State Plan, wherein the State WDB must review the Unified State Plan, and the Governor must submit modifications to the plan to reflect changes in labor market and economic conditions or other factors affecting the implementation of the Unified State Plan;

(2) When changes in Federal or State law or policy substantially affect the strategies, goals, and priorities upon which the Unified State Plan is based;

(3) When there are changes in the statewide vision, strategies, policies, State negotiated levels of performance as described in § 361.170(b), the methodology used to determine local allocation of funds, reorganizations that change the working relationship with system employees, changes in organizational responsibilities, changes to the membership structure of the State WDB or alternative entity, and similar substantial changes to the State's workforce development system.

(c) Modifications to the Unified State Plan are subject to the same public review and comment requirements in § 361.130(d) that apply to the development of the original Unified State Plan.

(d) Unified State Plan modifications must be approved by the Secretaries of Labor and Education, based on the approval standards applicable to the original Unified State Plan under § 361.130. This approval must come after the approval of the Commissioner of the Rehabilitation Services Administration for modification of any portion of the plan described in sec. 102(b)(2)(D)(iii) of WIOA.

§ 361.140 What are the general requirements for submitting a Combined State Plan?

(a) A State may choose to develop and submit a 4-year Combined State Plan in lieu of the Unified State Plan described in §§ 361.105 through 361.125.

(b) A State that submits a Combined State Plan covering an activity or program described in paragraph (d) of this section that is, in accordance with WIOA sec. 103(c), approved or deemed complete under the law relating to the program will not be required to submit any other plan or application in order to receive Federal funds to carry out the core programs or the program or activities described under paragraph (d) of this section that are covered by the Combined State Plan.

(c) If a State develops a Combined State Plan, it must be submitted in accordance with the process described in § 361.143.

(d) If a State chooses to submit a Combined State Plan, the plan must include the six core programs and one or more of the Combined State Plan partner programs and activities described in sec. 103(a)(2) of WIOA. The Combined State Plan partner programs and activities that may be included in the Combined State Plan are:

(1) Career and technical education programs authorized under the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2301 *et seq.*);

(2) Temporary Assistance for Needy Families or TANF, authorized under part A of title IV of the Social Security Act (42 U.S.C. 601 *et seq.*);

(3) Employment and training programs authorized under sec. 6(d)(4) of the Food and Nutrition Act of 2008 (7 U.S.C. 2015(d)(4));

(4) Work programs authorized under sec. 6(o) of the Food and Nutrition Act of 2008 (7 U.S.C. 2015(o));

(5) Trade adjustment assistance activities under chapter 2 of title II of the Trade Act of 1974 (19 U.S.C. 2271 *et seq.*);

(6) Services for veterans authorized under chapter 41 of title 38 United States Code;

(7) Programs authorized under State unemployment compensation laws (in accordance with applicable Federal law);

(8) Senior Community Service Employment Programs under title V of the Older Americans Act of 1965 (42 U.S.C. 3056 *et seq.*);

(9) Employment and training activities carried out by the Department of Housing and Urban Development (HUD);

(10) Employment and training activities carried out under the

Community Services Block Grant Act (42 U.S.C. 9901 *et seq.*); and

(11) Reintegration of offenders programs authorized under sec. 212 of the Second Chance Act of 2007 (42 U.S.C. 17532).

(e) A Combined State Plan must contain:

(1) For the core programs, the information required by sec. 102(b) of WIOA and §§ 361.105 through 361.125, as explained in the joint planning guidelines issued by the Secretaries;

(2) For the Combined State Plan partner programs and activities, except as described in paragraph (h) of this section, the information required by the law authorizing and governing that program to be submitted to the appropriate Secretary, any other applicable legal requirements, and any common planning requirements described in sec. 102(b) of WIOA, as explained in the joint planning guidelines issued by the Secretaries;

(3) A description of the methods used for joint planning and coordination among the core programs, and with the required one-stop partner programs and other programs and activities included in the State Plan; and

(4) An assurance that all of the entities responsible for planning or administering the programs described in the Combined State Plan have had a meaningful opportunity to review and comment on all portions of the plan.

(f) Each Combined State Plan partner program included in the Combined State Plan remains subject to the applicable program-specific requirements of the Federal law and regulations, and any other applicable legal or program requirements, governing the implementation and operation of that program.

(g) For purposes of §§ 361.140 through 361.145 the term "appropriate Secretary" means the head of the Federal agency who exercises either plan or application approval authority for the program or activity under the Federal law authorizing the program or activity or, if there are no planning or application requirements, who exercises administrative authority over the program or activity under that Federal law.

(h) States that include employment and training activities carried out under the Community Services Block Grant (CSBG) Act (42 U.S.C. 9901 *et seq.*) under a Combined State Plan would submit all other required elements of a complete CSBG State Plan directly to the Federal agency that administers the program, according to the requirements of Federal law and regulations.

(i) States that submit employment and training activities carried out by HUD under a Combined State Plan would submit any other required planning documents for HUD programs directly to HUD, according to the requirements of Federal law and regulations.

§ 361.143 What is the development, submission, and approval process of the Combined State Plan?

(a) For purposes of § 361.140(a), if a State chooses to develop a Combined State Plan it must submit the Combined State Plan in accordance with the requirements described below and sec. 103 of WIOA, as explained in the joint planning guidelines issued by the Secretaries of Labor and Education.

(b) The Combined State Plan must be developed with the assistance of the State WDB, as required by 20 CFR 679.130(a) and WIOA sec. 101(d), and must be developed in coordination with administrators with optimum policy-making authority for the core programs and required one-stop partners.

(c) The State must provide an opportunity for public comment on and input into the development of the Combined State Plan prior to its submission.

(1) The opportunity for public comment for the portions of the Combined State Plan that cover the core programs must include an opportunity for comment by representatives of Local WDBs and chief elected officials, businesses, representatives of labor organizations, community-based organizations, adult education providers, institutions of higher education, other stakeholders with an interest in the services provided by the six core programs, and the general public, including individuals with disabilities.

(2) Consistent with the "Sunshine Provision" of WIOA in sec. 101(g), the State WDB must make information regarding the Combined State Plan available to the public through electronic means and regularly occurring open meetings in accordance with State law. The Combined State Plan must describe the State's process and timeline for ensuring a meaningful opportunity for public comment on the portions of the plan covering core programs.

(3) The portions of the plan that cover the Combined State Plan partner programs are subject to any public comment requirements applicable to those programs.

(d) The State must submit to the Secretaries of Labor and Education and to the Secretary of the agency with responsibility for approving the program's plan or deeming it complete under the law governing the program, as part of its Combined State Plan, any plan, application, form, or any other similar document that is required as a condition for the approval of Federal funding under the applicable program or activity. Such submission must occur in accordance with a process identified by the relevant Secretaries in paragraph (a) of this section.

(e) The Combined State Plan will be approved or disapproved in accordance with the requirements of sec. 103(c) of WIOA.

(1) The portion of the Combined State Plan covering programs administered by the Departments of Labor and Education must be reviewed, and approved or disapproved, by the appropriate Secretary within 90 days beginning on the day the Combined State Plan is received by the appropriate Secretary from the State, consistent with paragraph (f) of this section. Before the Secretaries of Labor and Education approve the Combined State Plan, the vocational rehabilitation services portion of the Combined State Plan described in WIOA sec. 102(b)(2)(D)(iii) must be approved by the Commissioner of the Rehabilitation Services Administration.

(2) If an appropriate Secretary other than the Secretary of Labor or the Secretary of Education has authority to approve or deem complete a portion of the Combined State Plan for a program or activity described in § 361.140(d), that portion of the Combined State Plan must be reviewed, and approved, disapproved, or deemed complete, by the appropriate Secretary within 120 days beginning on the day the Combined State Plan is received by the appropriate Secretary from the State consistent with paragraph (f) of this section.

(f) The appropriate Secretaries will review and approve or deem complete the Combined State Plan within 90 or 120 days, as appropriate, as described in paragraph (e) of this section, unless the Secretaries of Labor and Education or appropriate Secretary have determined in writing within that period that:

(1) The Combined State Plan is inconsistent with the requirements of the six core programs or the Federal laws authorizing or applicable to the program or activity involved, including the criteria for approval of a plan or application, or deeming the plan complete, if any, under such law;

(2) The portion of the Combined State Plan describing the six core programs or the program or activity described in paragraph (a) of this section involved does not satisfy the criteria as provided

in sec. 102 or 103 of WIOA, as applicable; or

(3) The Combined State Plan is incomplete, or otherwise insufficient to determine whether it is consistent with a core program's requirements, other requirements of WIOA, or the Federal laws authorizing, or applicable to, the program or activity described in § 361.140(d), including the criteria for approval of a plan or application, if any, under such law.

(g) If the Secretary of Labor, the Secretary of Education, or the appropriate Secretary does not make the written determination described in paragraph (f) of this section within the relevant period of time after submission of the Combined State Plan, that portion of the Combined State Plan over which the Secretary has jurisdiction will be considered approved.

(h) The Secretaries of Labor and Education's written determination of approval or disapproval regarding the portion of the plan for the six core programs may be separate from the written determination of approval, disapproval, or completeness of the program-specific requirements of Combined State Plan partner programs and activities described in § 361.140(d) and included in the Combined State Plan.

(i) *Special rule.* In paragraphs (f)(1) and (3) of this section, the term "criteria for approval of a plan or application," with respect to a State or a core program or a program under the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2301 *et seq.*), includes a requirement for agreement between the State and the appropriate Secretaries regarding State performance measures or State performance accountability measures, as the case may be, including levels of performance.

§ 361.145 What are the requirements for modifications of the Combined State Plan?

(a) For the core program portions of the Combined State Plan, modifications are required, at a minimum:

(1) By the end of the first 2-year period of any 4-year State Plan. The State WDB must review the Combined State Plan, and the Governor must submit modifications to the Combined State Plan to reflect changes in labor market and economic conditions or other factors affecting the implementation of the Combined State Plan;

(2) When changes in Federal or State law or policy substantially affect the strategies, goals, and priorities upon which the Combined State Plan is based;

(3) When there are changes in the statewide vision, strategies, policies, State negotiated levels of performance as described in § 361.170(b), the methodology used to determine local allocation of funds, reorganizations that change the working relationship with system employees, changes in organizational responsibilities, changes to the membership structure of the State WDB or alternative entity, and similar substantial changes to the State's workforce development system.

(b) In addition to the required modification review described in paragraph (a)(1) of this section, a State may submit a modification of its Combined State Plan at any time during the 4-year period of the plan.

(c) For any Combined State Plan partner programs and activities described in § 361.140(d) that are included in a State's Combined State Plan, the State—

(1) May decide if the modification requirements under WIOA sec. 102(c)(3) that apply to the core programs will apply to the Combined State Plan partner programs, as long as consistent with any other modification requirements for the programs, or may comply with the requirements applicable to only the particular program or activity; and

(2) Must submit, in accordance with the procedure described in § 361.143, any modification, amendment, or revision required by the Federal law authorizing, or applicable to, the Combined State Plan partner program or activity.

(i) If the underlying programmatic requirements change (*e.g.*, the authorizing statute is reauthorized) for Federal laws authorizing such programs, a State must either modify its Combined State Plan or submit a separate plan to the appropriate Federal agency in accordance with the new Federal law authorizing the Combined State Plan partner program or activity and other legal requirements applicable to such program or activity.

(ii) If the modification, amendment, or revision affects the administration of only that particular Combined State Plan partner program and has no impact on the Combined State Plan as a whole or the integration and administration of the core and other Combined State Plan partner programs at the State level, modifications must be submitted for approval to only the appropriate Secretary, based on the approval standards applicable to the original Combined State Plan under § 361.143, if the State elects, or in accordance with the procedures and requirements applicable to the particular Combined State Plan partner program.

(3) A State also may amend its Combined State Plan to add a Combined State Plan partner program or activity described in § 361.140(d).

(d) Modifications of the Combined State Plan are subject to the same public review and comment requirements that apply to the development of the original Combined State Plan as described in § 361.143(c) except that, if the modification, amendment, or revision affects the administration of a particular Combined State Plan partner program and has no impact on the Combined State Plan as a whole or the integration and administration of the core and other Combined State Plan partner programs at the State level, a State may comply instead with the procedures and requirements applicable to the particular Combined State Plan partner program.

(e) Modifications for the core program portions of the Combined State Plan must be approved by the Secretaries of Labor and Education, based on the approval standards applicable to the original Combined State Plan under § 361.143. This approval must come after the approval of the Commissioner of the Rehabilitation Services Administration for modification of any portion of the Combined State Plan described in sec. 102(b)(2)(D)(iii) of WIOA.

■ 6. Revise subpart E of part 361 to read as follows:

Subpart E—Performance Accountability Under Title I of the Workforce Innovation and Opportunity Act

Sec.

361.150 What definitions apply to Workforce Innovation and Opportunity Act performance accountability provisions?
361.155 What are the primary indicators of performance under the Workforce Innovation and Opportunity Act?
361.160 What information is required for State performance reports?
361.165 May a State establish additional indicators of performance?
361.170 How are State levels of performance for primary indicators established?
361.175 What responsibility do States have to use quarterly wage record information for performance accountability?
361.180 When is a State subject to a financial sanction under the Workforce Innovation and Opportunity Act?
361.185 When are sanctions applied for a State's failure to submit an annual performance report?
361.190 When are sanctions applied for failure to achieve adjusted levels of performance?

361.195 What should States expect when a sanction is applied to the Governor's Reserve Allotment?
361.200 What other administrative actions will be applied to States' performance requirements?
361.205 What performance indicators apply to local areas and what information must be included in local area performance reports?
361.210 How are local performance levels established?
361.215 Under what circumstances are local areas eligible for State Incentive Grants?
361.220 Under what circumstances may a corrective action or sanction be applied to local areas for poor performance?
361.225 Under what circumstances may local areas appeal a reorganization plan?
361.230 What information is required for the eligible training provider performance reports?
361.235 What are the reporting requirements for individual records for core Workforce Innovation and Opportunity Act (WIOA) title I programs; the Wagner-Peyser Act Employment Service program, as amended by WIOA title III; and the Vocational Rehabilitation program authorized under title I of the Rehabilitation Act of 1973, as amended by WIOA title IV?
361.240 What are the requirements for data validation of State annual performance reports?

Authority: Secs. 116, 189, and 503 of Pub. L. 113–128, 128 Stat. 1425 (Jul. 22, 2014).

Subpart E—Performance Accountability Under Title I of the Workforce Innovation and Opportunity Act

§ 361.150 What definitions apply to Workforce Innovation and Opportunity Act performance accountability provisions?

(a) *Participant.* A reportable individual who has received services other than the services described in paragraph (a)(3) of this section, after satisfying all applicable programmatic requirements for the provision of services, such as eligibility determination.

(1) For the Vocational Rehabilitation (VR) program, a participant is a reportable individual who has an approved and signed Individualized Plan for Employment (IPE) and has begun to receive services.

(2) For the Workforce Innovation and Opportunity Act (WIOA) title I youth program, a participant is a reportable individual who has satisfied all applicable program requirements for the provision of services, including eligibility determination, an objective assessment, and development of an individual service strategy, and received 1 of the 14 WIOA youth program elements identified in sec. 129(c)(2) of WIOA.

(3) The following individuals are not participants:

(i) Individuals in an Adult Education and Family Literacy Act (AEFLA) program who have not completed at least 12 contact hours;

(ii) Individuals who only use the self-service system.

(A) Subject to paragraph (a)(3)(ii)(B) of this section, self-service occurs when individuals independently access any workforce development system program's information and activities in either a physical location, such as a one-stop center resource room or partner agency, or remotely via the use of electronic technologies.

(B) Self-service does not uniformly apply to all virtually accessed services. For example, virtually accessed services that provide a level of support beyond independent job or information seeking on the part of an individual would not qualify as self-service.

(iii) Individuals who receive information-only services or activities, which provide readily available information that does not require an assessment by a staff member of the individual's skills, education, or career objectives.

(4) Programs must include participants in their performance calculations.

(b) *Reportable individual.* An individual who has taken action that demonstrates an intent to use program services and who meets specific reporting criteria of the program, including:

(1) Individuals who provide identifying information;

(2) Individuals who only use the self-service system; or

(3) Individuals who only receive information-only services or activities.

(c) *Exit.* As defined for the purpose of performance calculations, exit is the point after which a participant who has received services through any program meets the following criteria:

(1) For the adult, dislocated worker, and youth programs authorized under WIOA title I, the AEFLA program authorized under WIOA title II, and the Employment Service program authorized under the Wagner-Peyser Act, as amended by WIOA title III, exit date is the last date of service.

(i) The last day of service cannot be determined until at least 90 days have elapsed since the participant last received services; services do not include self-service, information-only services or activities, or follow-up services. This also requires that there are no plans to provide the participant with future services.

(ii) [Reserved].

(2)(i) For the VR program authorized under title I of the Rehabilitation Act of 1973, as amended by WIOA title IV (VR program):

(A) The participant's record of service is closed in accordance with § 361.56 because the participant has achieved an employment outcome; or

(B) The participant's service record is closed because the individual has not achieved an employment outcome or the individual has been determined ineligible after receiving services in accordance with § 361.43.

(ii) Notwithstanding any other provision of this section, a participant will not be considered as meeting the definition of exit from the VR program if the participant's service record is closed because the participant has achieved a supported employment outcome in an integrated setting but not in competitive integrated employment.

(3)(i) A State may implement a common exit policy for all or some of the core programs in WIOA title I and the Employment Service program authorized under the Wagner-Peyser Act, as amended by WIOA title III, and any additional required partner program(s) listed in sec. 121(b)(1)(B) of WIOA that is under the authority of the U.S. Department of Labor (DOL).

(ii) If a State chooses to implement a common exit policy, the policy must require that a participant is exited only when all of the criteria in paragraph (c)(1) of this section are met for the WIOA title I core programs and the Employment Service program authorized under the Wagner-Peyser Act, as amended by WIOA title III, as well as any additional required partner programs listed in sec. 121(b)(1)(B) of WIOA under the authority of DOL to which the common exit policy applies in which the participant is enrolled.

(d) *State.* For purposes of this part, other than in regard to sanctions or the statistical adjustment model, all references to "State" include the outlying areas of American Samoa, Guam, Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, and, as applicable, the Republic of Palau.

§ 361.155 What are the primary indicators of performance under the Workforce Innovation and Opportunity Act?

(a) All States submitting either a Unified or Combined State Plan under §§ 361.130 and 361.143, must propose expected levels of performance for each of the primary indicators of performance for the adult, dislocated worker, and youth programs authorized under WIOA title I; the AEFLA program authorized under WIOA title II; the Employment

Service program authorized under the Wagner-Peyser Act, as amended by WIOA title III; and the VR program authorized under title I of the Rehabilitation Act of 1973, as amended by WIOA title IV.

(1) *Primary indicators of performance.* The six primary indicators of performance for the adult and dislocated worker programs, the AEFLA program, and the VR program are:

(i) The percentage of participants who are in unsubsidized employment during the second quarter after exit from the program;

(ii) The percentage of participants who are in unsubsidized employment during the fourth quarter after exit from the program;

(iii) Median earnings of participants who are in unsubsidized employment during the second quarter after exit from the program;

(iv)(A) The percentage of those participants enrolled in an education or training program (excluding those in on-the-job training [OJT] and customized training) who attained a recognized postsecondary credential or a secondary school diploma, or its recognized equivalent, during participation in or within 1 year after exit from the program.

(B) A participant who has attained a secondary school diploma or its recognized equivalent is included in the percentage of participants who have attained a secondary school diploma or recognized equivalent only if the participant also is employed or is enrolled in an education or training program leading to a recognized postsecondary credential within 1 year after exit from the program;

(v) The percentage of participants who, during a program year, are in an education or training program that leads to a recognized postsecondary credential or employment and who are achieving measurable skill gains, defined as documented academic, technical, occupational, or other forms of progress, towards such a credential or employment. Depending upon the type of education or training program, documented progress is defined as one of the following:

(A) Documented achievement of at least one educational functioning level of a participant who is receiving instruction below the postsecondary education level;

(B) Documented attainment of a secondary school diploma or its recognized equivalent;

(C) Secondary or postsecondary transcript or report card for a sufficient number of credit hours that shows a participant is meeting the State unit's academic standards;

(D) Satisfactory or better progress report, towards established milestones, such as completion of OJT or completion of 1 year of an apprenticeship program or similar milestones, from an employer or training provider who is providing training; or

(E) Successful passage of an exam that is required for a particular occupation or progress in attaining technical or occupational skills as evidenced by trade-related benchmarks such as knowledge-based exams.

(vi) Effectiveness in serving employers.

(2) *Participants.* For purposes of the primary indicators of performance in paragraph (a)(1) of this section, "participant" will have the meaning given to it in § 361.150(a), except that—

(i) For purposes of determining program performance levels under indicators set forth in paragraphs (a)(1)(i) through (iv) and (vi) of this section, a "participant" does not include a participant who received services under sec. 225 of WIOA and exits such program while still in a correctional institution as defined in sec. 225(e)(1) of WIOA; and

(ii) The Secretaries of Labor and Education may, as needed and consistent with the Paperwork Reduction Act (PRA), make further determinations as to the participants to be included in calculating program performance levels for purposes of any of the performance indicators set forth in paragraph (a)(1) of this section.

(b) The primary indicators in paragraphs (a)(1)(i) through (iii) and (vi) of this section apply to the Employment Service program authorized under the Wagner-Peyser Act, as amended by WIOA title III.

(c) For the youth program authorized under WIOA title I, the primary indicators are:

(1) Percentage of participants who are in education or training activities, or in unsubsidized employment, during the second quarter after exit from the program;

(2) Percentage of participants in education or training activities, or in unsubsidized employment, during the fourth quarter after exit from the program;

(3) Median earnings of participants who are in unsubsidized employment during the second quarter after exit from the program;

(4) The percentage of those participants enrolled in an education or training program (excluding those in OJT and customized training) who obtained a recognized postsecondary credential or a secondary school diploma, or its recognized equivalent, during participation in or within 1 year after exit from the program, except that a participant who has attained a secondary school diploma or its recognized equivalent is included as having attained a secondary school diploma or recognized equivalent only if the participant is also employed or is enrolled in an education or training program leading to a recognized postsecondary credential within 1 year from program exit;

(5) The percentage of participants who during a program year, are in an education or training program that leads to a recognized postsecondary credential or employment and who are achieving measurable skill gains, defined as documented academic, technical, occupational or other forms of progress towards such a credential or employment. Depending upon the type of education or training program, documented progress is defined as one of the following:

(i) Documented achievement of at least one educational functioning level of a participant who is receiving instruction below the postsecondary education level;

(ii) Documented attainment of a secondary school diploma or its recognized equivalent;

(iii) Secondary or postsecondary transcript or report card for a sufficient number of credit hours that shows a participant is achieving the State unit's academic standards;

(iv) Satisfactory or better progress report, towards established milestones, such as completion of OJT or completion of 1 year of an apprenticeship program or similar milestones, from an employer or training provider who is providing training; or

(v) Successful passage of an exam that is required for a particular occupation or progress in attaining technical or occupational skills as evidenced by trade-related benchmarks such as knowledge-based exams.

(6) Effectiveness in serving employers.

§ 361.160 What information is required for State performance reports?

(a) The State performance report required by sec. 116(d)(2) of WIOA must be submitted annually using a template the Departments of Labor and Education will disseminate, and must provide, at a minimum, information on the actual performance levels achieved consistent with § 361.175 with respect to:

(1) The total number of participants served, and the total number of

participants who exited each of the core programs identified in sec. 116(b)(3)(A)(ii) of WIOA, including disaggregated counts of those who participated in and exited a core program, by:

(i) Individuals with barriers to employment as defined in WIOA sec. 3(24); and

(ii) Co-enrollment in any of the programs in WIOA sec. 116(b)(3)(A)(ii).

(2) Information on the performance levels achieved for the primary indicators of performance for all of the core programs identified in § 361.155 including disaggregated levels for:

(i) Individuals with barriers to employment as defined in WIOA sec. 3(24);

(ii) Age;

(iii) Sex; and

(iv) Race and ethnicity.

(3) The total number of participants who received career services and the total number of participants who exited from career services for the most recent program year and the 3 preceding program years, and the total number of participants who received training services and the total number of participants who exited from training services for the most recent program year and the 3 preceding program years, as applicable to the program;

(4) Information on the performance levels achieved for the primary indicators of performance consistent with § 361.155 for career services and training services for the most recent program year and the 3 preceding program years, as applicable to the program;

(5) The percentage of participants in a program who attained unsubsidized employment related to the training received (often referred to as training-related employment) through WIOA title I, subtitle B programs;

(6) The amount of funds spent on career services and the amount of funds spent on training services for the most recent program year and the 3 preceding program years, as applicable to the program;

(7) The average cost per participant for those participants who received career services and training services, respectively, during the most recent program year and the 3 preceding program years, as applicable to the program;

(8) The percentage of a State's annual allotment under WIOA sec. 132(b) that the State spent on administrative costs; and

(9) Information that facilitates comparisons of programs with programs in other States.

(10) For WIOA title I programs, a State performance narrative, which, for States in which a local area is implementing a pay-for-performance contracting strategy, at a minimum provides:

(i) A description of pay-for-performance contract strategies being used for programs;

(ii) The performance of service providers entering into contracts for such strategies, measured against the levels of performance specified in the contracts for such strategies; and

(iii) An evaluation of the design of the programs and performance strategies and, when available, the satisfaction of employers and participants who received services under such strategies.

(b) The disaggregation of data for the State performance report must be done in compliance with WIOA sec. 116(d)(6)(C).

(c) The State performance reports must include a mechanism of electronic access to the State's local area and eligible training provider (ETP) performance reports.

(d) States must comply with these requirements from sec. 116 of WIOA as explained in joint guidance issued by the Departments of Labor and Education, which may include information on reportable individuals as determined by the Secretaries of Labor and Education.

§ 361.165 May a State establish additional indicators of performance?

States may identify additional indicators of performance for the six core programs. If a State does so, these indicators must be included in the Unified or Combined State Plan.

§ 361.170 How are State levels of performance for primary indicators established?

(a) A State must submit in the State Plan expected levels of performance on the primary indicators of performance for each core program as required by sec. 116(b)(3)(A)(iii) of WIOA as explained in joint guidance issued by the Secretaries of Labor and Education.

(1) The initial State Plan submitted under WIOA must contain expected levels of performance for the first 2 years of the State Plan.

(2) States must submit expected levels of performance for the third and fourth year of the State Plan before the third program year consistent with §§ 361.135 and 361.145.

(b) States must reach agreement on levels of performance with the Secretaries of Labor and Education for each indicator for each core program. These are the negotiated levels of performance. The negotiated levels must be based on the following factors:

(1) How the negotiated levels of performance compare with State levels of performance established for other States;

(2) The application of an objective statistical model established by the Secretaries of Labor and Education, subject to paragraph (d) of this section;

(3) How the negotiated levels promote continuous improvement in performance based on the primary indicators and ensure optimal return on investment of Federal funds; and

(4) The extent to which the negotiated levels assist the State in meeting the performance goals established by the Secretaries of Labor and Education for the core programs in accordance with the Government Performance and Results Act of 1993, as amended.

(c) An objective statistical adjustment model will be developed and disseminated by the Secretaries of Labor and Education. The model will be based on:

(1) Differences among States in actual economic conditions, including but not limited to unemployment rates and job losses or gains in particular industries; and

(2) The characteristics of participants, including but not limited to:

(i) Indicators of poor work history;

(ii) Lack of work experience;

(iii) Lack of educational or occupational skills attainment;

(iv) Dislocation from high-wage and high-benefit employment;

(v) Low levels of literacy;

(vi) Low levels of English proficiency;

(vii) Disability status;

(viii) Homelessness;

(ix) Ex-offender status; and

(x) Welfare dependency.

(d) The objective statistical adjustment model developed under paragraph (c) of this section will be:

(1) Applied to the core programs' primary indicators upon availability of data which are necessary to populate the model and apply the model to the local core programs;

(2) Subject to paragraph (d)(1) of this section, used before the beginning of a program year in order to reach agreement on State negotiated levels for the upcoming program year; and

(3) Subject to paragraph (d)(1) of this section, used to revise negotiated levels at the end of a program year based on actual economic conditions and characteristics of participants served, consistent with sec. 116(b)(3)(A)(vii) of WIOA.

(e) The negotiated levels revised at the end of the program year, based on the statistical adjustment model, are the adjusted levels of performance.

(f) States must comply with these requirements from sec. 116 of WIOA as

explained in joint guidance issued by the Departments of Labor and Education.

§ 361.175 What responsibility do States have to use quarterly wage record information for performance accountability?

(a)(1) States must, consistent with State laws, use quarterly wage record information in measuring a State's performance on the primary indicators of performance outlined in § 361.155 and a local area's performance on the primary indicators of performance identified in § 361.205.

(2) The use of social security numbers from participants and such other information as is necessary to measure the progress of those participants through quarterly wage record information is authorized.

(3) To the extent that quarterly wage records are not available for a participant, States may use other information as is necessary to measure the progress of those participants through methods other than quarterly wage record information.

(b) "Quarterly wage record information" means intrastate and interstate wages paid to an individual, the social security number (or numbers, if more than one) of the individual, and the name, address, State, and the Federal employer identification number of the employer paying the wages to the individual.

(c) The Governor may designate a State agency (or appropriate State entity) to assist in carrying out the performance reporting requirements for WIOA core programs and ETPs. The Governor or such agency (or appropriate State entity) is responsible for:

(1) Facilitating data matches;

(2) Data quality reliability; and

(3) Protection against disaggregation that would violate applicable privacy standards.

§ 361.180 When is a State subject to a financial sanction under the Workforce Innovation and Opportunity Act?

A State will be subject to financial sanction under WIOA sec. 116(f) if it fails to:

(a) Submit the State annual performance report required under WIOA sec. 116(d)(2); or

(b) Meet adjusted levels of performance for the primary indicators of performance in accordance with sec. 116(f) of WIOA.

§ 361.185 When are sanctions applied for a State's failure to submit an annual performance report?

(a) Sanctions will be applied when a State fails to submit the State annual performance report required under sec. 116(d)(2) of WIOA. A State fails to report if the State either:

(1) Does not submit a State annual performance report by the date for timely submission set in performance reporting guidance; or

(2) Submits a State annual performance report by the date for timely submission, but the report is incomplete.

(b) Sanctions will not be applied if the reporting failure is due to exceptional circumstances outside of the State's control. Exceptional circumstances may include, but are not limited to:

(1) Natural disasters;

(2) Unexpected personnel transitions; and

(3) Unexpected technology related issues.

(c) In the event that a State may not be able to submit a complete and accurate performance report by the deadline for timely reporting:

(1) The State must notify the Secretary of Labor or Secretary of Education as soon as possible, but no later than 30 days prior to the established deadline for submission, of a potential impact on the State's ability to submit its State annual performance report in order to not be considered failing to report.

(2) In circumstances where unexpected events occur less than 30 days before the established deadline for submission of the State annual performance reports, the Secretaries of Labor and Education will review requests for extending the reporting deadline in accordance with the Departments of Labor and Education's procedures that will be established in guidance.

§ 361.190 When are sanctions applied for failure to achieve adjusted levels of performance?

(a) States' negotiated levels of performance will be adjusted through the application of the statistical adjustment model established under § 361.170 to account for actual economic conditions experienced during a program year and characteristics of participants, annually at the close of each program year.

(b) Any State that fails to meet adjusted levels of performance for the primary indicators of performance outlined in § 361.155 for any year will receive technical assistance, including assistance in the development of a performance improvement plan provided by the Secretary of Labor or Secretary of Education.

(c) Whether a State has failed to meet adjusted levels of performance will be determined using the following three criteria:

(1) The overall State program score, which is expressed as the percent achieved, compares the actual results achieved by a core program on the primary indicators of performance to the adjusted levels of performance for that core program. The average of the percentages achieved of the adjusted level of performance for each of the primary indicators by a core program will constitute the overall State program score.

(2) However, until all indicators for the core program have at least 2 years of complete data, the overall State program score will be based on a comparison of the actual results achieved to the adjusted level of performance for each of the primary indicators that have at least 2 years of complete data for that program;

(3) The overall State indicator score, which is expressed as the percent achieved, compares the actual results achieved on a primary indicator of performance by all core programs in a State to the adjusted levels of performance for that primary indicator. The average of the percentages achieved of the adjusted level of performance by all of the core programs on that indicator will constitute the overall State indicator score.

(4) However, until all indicators for the State have at least 2 years of complete data, the overall State indicator score will be based on a comparison of the actual results achieved to the adjusted level of performance for each of the primary indicators that have at least 2 years of complete data in a State.

(5) The individual indicator score, which is expressed as the percent achieved, compares the actual results achieved by each core program on each of the individual primary indicators to the adjusted levels of performance for each of the program's primary indicators of performance.

(d) A performance failure occurs when:

(1) Any overall State program score or overall State indicator score falls below 90 percent for the program year; or

(2) Any of the States' individual indicator scores fall below 50 percent for the program year.

(e) Sanctions based on performance failure will be applied to States if, for 2 consecutive years, the State fails to meet:

(1) 90 percent of the overall State program score for the same core program;

(2) 90 percent of the overall State indicator score for the same primary indicator; or

(3) 50 percent of the same indicator score for the same program.

§ 361.195 What should States expect when a sanction is applied to the Governor's Reserve Allotment?

(a) The Secretaries of Labor and Education will reduce the Governor's Reserve Allotment by five percent of the maximum available amount for the immediately succeeding program year if:

(1) The State fails to submit the State annual performance reports as required under WIOA sec. 116(d)(2), as defined in § 361.185;

(2) The State fails to meet State adjusted levels of performance for the same primary performance indicator(s) under either § 361.190(d)(1) for the second consecutive year as defined in § 361.190; or

(3) The State's score on the same indicator for the same program falls below 50 percent under § 361.190(d)(2) for the second consecutive year as defined in § 361.190.

(b) If the State fails under paragraphs (a)(1) and either (a)(2) or (3) of this section in the same program year, the Secretaries of Labor and Education will reduce the Governor's Reserve Allotment by 10 percent of the maximum available amount for the immediately succeeding program year.

(c) If a State's Governor's Reserve Allotment is reduced:

(1) The reduced amount will not be returned to the State in the event that the State later improves performance or submits its annual performance report; and

(2) The Governor's Reserve will continue to be set at the reduced level in each subsequent year until the Secretary of Labor or the Secretary of Education, depending on which program is impacted, determines that the State met the State adjusted levels of performance for the applicable primary performance indicators and has submitted all of the required performance reports.

(d) A State may request review of a sanction the Secretary of Labor imposes in accordance with the provisions of 20 CFR 683.800.

§ 361.200 What other administrative actions will be applied to States' performance requirements?

(a) In addition to sanctions for failure to report or failure to meet adjusted levels of performance, States will be subject to administrative actions in the case of poor performance.

(b) States' performance achievement on the individual primary indicators will be assessed in addition to the overall State program score and overall State indicator score. Based on this assessment, as clarified and explained in guidance, for performance on any individual primary indicator, the Secretary of Labor or the Secretary of Education will require the State to establish a performance risk plan to address continuous improvement on the individual primary indicator.

§ 361.205 What performance indicators apply to local areas and what information must be included in local area performance reports?

(a) Each local area in a State under WIOA title I is subject to the same primary indicators of performance for the core programs for WIOA title I under § 361.155(a)(1) and (c) that apply to the State.

(b) In addition to the indicators described in paragraph (a) of this section, under § 361.165, the Governor may apply additional indicators of performance to local areas in the State.

(c) States must annually make local area performance reports available to the public using a template that the Departments of Labor and Education will disseminate in guidance, including by electronic means. The State must provide electronic access to the public local area performance report in its annual State performance report.

(d) The local area performance report must include:

(1) The actual results achieved under § 361.155 and the information required under § 361.160(a);

(2) The percentage of a local area's allotment under WIOA secs. 128(b) and 133(b) that the local area spent on administrative costs; and

(3) Other information that facilitates comparisons of programs with programs in other local areas (or planning regions if the local area is part of a planning region).

(e) The disaggregation of data for the local area performance report must be done in compliance with WIOA sec. 116(d)(6)(C).

(f) States must comply with any requirements from sec. 116(d)(3) of WIOA as explained in guidance, including the use of the performance reporting template, issued by DOL.

§ 361.210 How are local performance levels established?

(a) The objective statistical adjustment model required under sec. 116(b)(3)(A)(viii) of WIOA and described in § 361.170(c) must be:

(1) Applied to the core programs' primary indicators upon availability of data which are necessary to populate the model and apply the model to the local core programs;

(2) Used in order to reach agreement on local negotiated levels of performance for the upcoming program year; and

(3) Used to establish adjusted levels of performance at the end of a program year based on actual conditions, consistent with WIOA sec. 116(c)(3).

(b) Until all indicators for the core program in a local area have at least 2 years of complete data, the comparison of the actual results achieved to the adjusted levels of performance for each of the primary indicators only will be applied where there are at least 2 years of complete data for that program.

(c) The Governor, Local Workforce Development Board (WDB), and chief elected official must reach agreement on local negotiated levels of performance based on a negotiations process before the start of a program year with the use of the objective statistical model described in paragraph (a) of this section. The negotiations will include a discussion of circumstances not accounted for in the model and will take into account the extent to which the levels promote continuous improvement. The objective statistical model will be applied at the end of the program year based on actual economic conditions and characteristics of the participants served.

(d) The negotiations process described in paragraph (c) of this section must be developed by the Governor and disseminated to all Local WDBs and chief elected officials.

(e) The Local WDBs may apply performance measures to service providers that differ from the performance indicators that apply to the local area. These performance measures must be established after considering:

(1) The established local negotiated levels;

(2) The services provided by each provider; and

(3) The populations the service providers are intended to serve.

§ 361.215 Under what circumstances are local areas eligible for State Incentive Grants?

(a) The Governor is not required to award local incentive funds, but is authorized to provide incentive grants to local areas for performance on the primary indicators of performance consistent with WIOA sec. 134(a)(3)(A)(xi).

(b) The Governor may use non-Federal funds to create incentives for the Local WDBs to implement pay-for-performance contract strategies for the delivery of training services described in WIOA sec. 134(c)(3) or activities described in WIOA sec. 129(c)(2) in the

local areas served by the Local WDBs. Pay-for-performance contract strategies must be implemented in accordance with 20 CFR part 683, subpart E and § 361.160.

§ 361.220 Under what circumstances may a corrective action or sanction be applied to local areas for poor performance?

(a) If a local area fails to meet the adjusted levels of performance agreed to under § 361.210 for the primary indicators of performance in the adult, dislocated worker, and youth programs authorized under WIOA title I in any program year, technical assistance must be provided by the Governor or, upon the Governor's request, by the Secretary of Labor.

(1) A State must establish the threshold for failure to meet adjusted levels of performance for a local area before coming to agreement on the negotiated levels of performance for the local area.

(i) A State must establish the adjusted level of performance for a local area, using the statistical adjustment model described in § 361.170(c).

(ii) At least 2 years of complete data on any indicator for any local core program are required in order to establish adjusted levels of performance for a local area.

(2) The technical assistance may include:

(i) Assistance in the development of a performance improvement plan;

(ii) The development of a modified local or regional plan; or

(iii) Other actions designed to assist the local area in improving performance.

(b) If a local area fails to meet the adjusted levels of performance agreed to under § 361.210 for the same primary indicators of performance for the same core program authorized under WIOA title I for a third consecutive program year, the Governor must take corrective actions. The corrective actions must include the development of a reorganization plan under which the Governor:

(1) Requires the appointment and certification of a new Local WDB, consistent with the criteria established under 20 CFR 679.350;

(2) Prohibits the use of eligible providers and one-stop partners that have been identified as achieving poor levels of performance; or

(3) Takes such other significant actions as the Governor determines are appropriate.

§ 361.225 Under what circumstances may local areas appeal a reorganization plan?

(a) The Local WDB and chief elected official for a local area that is subject to a reorganization plan under WIOA sec. 116(g)(2)(A) may appeal to the Governor to rescind or revise the reorganization plan not later than 30 days after receiving notice of the reorganization plan. The Governor must make a final decision within 30 days after receipt of the appeal.

(b) The Local WDB and chief elected official may appeal the final decision of the Governor to the Secretary of Labor not later than 30 days after receiving the decision from the Governor. Any appeal of the Governor's final decision must be:

(1) Appealed jointly by the Local WDB and chief elected official to the Secretary of Labor under 20 CFR 683.650; and

(2) Must be submitted by certified mail, return receipt requested, to the Secretary of Labor, U.S. Department of Labor, 200 Constitution Ave. NW., Washington, DC 20210, Attention: ASET. A copy of the appeal must be simultaneously provided to the Governor.

(c) Upon receipt of the joint appeal from the Local WDB and chief elected official, the Secretary of Labor must make a final decision within 30 days. In making this determination the Secretary of Labor may consider any comments submitted by the Governor in response to the appeals.

(d) The decision by the Governor on the appeal becomes effective at the time it is issued and remains effective unless the Secretary of Labor rescinds or revises the reorganization plan under WIOA sec. 116(g)(2)(C).

§ 361.230 What information is required for the eligible training provider performance reports?

(a) States are required to make available and publish annually using a template the Departments of Labor and Education will disseminate including through electronic means, the ETP performance reports for ETPs who provide services under sec. 122 of WIOA that are described in 20 CFR 680.400 through 680.530. These reports at a minimum must include, consistent with § 361.175 and with respect to each program of study that is eligible to receive funds under WIOA:

(1) The total number of participants as defined by § 361.150(a) who received training services under the adult and dislocated worker programs authorized under WIOA title I for the most recent year and the 3 preceding program years, including:

(i) The number of participants under the adult and dislocated worker programs disaggregated by barriers to employment;

(ii) The number of participants under the adult and dislocated worker programs disaggregated by race, ethnicity, sex, and age;

(iii) The number of participants under the adult and dislocated worker programs disaggregated by the type of training entity for the most recent program year and the 3 preceding program years;

(2) The total number of participants who exit a program of study or its equivalent, including disaggregate counts by the type of training entity during the most recent program year and the 3 preceding program years;

(3) The average cost-per-participant for participants who received training services for the most recent program year and the 3 preceding program years disaggregated by type of training entity;

(4) The total number of individuals exiting from the program of study (or the equivalent) with respect to all individuals engaging in the program of study (or the equivalent); and

(5) The levels of performance achieved for the primary indicators of performance identified in § 361.155(a)(1)(i) through (iv) with respect to all individuals engaging in a program of study (or the equivalent).

(b) Apprenticeship programs registered under the National Apprenticeship Act are not required to submit ETP performance information. If a registered apprenticeship program voluntarily submits performance information to a State, the State must include this information in the report.

(c) The State must provide a mechanism of electronic access to the public ETP performance report in its annual State performance report.

(d) States must comply with any requirements from sec. 116(d)(4) of WIOA as explained in guidance issued by DOL.

(e) The Governor may designate one or more State agencies such as a State Education Agency or other State Educational Authority to assist in overseeing ETP performance and facilitating the production and dissemination of ETP performance reports. These agencies may be the same agencies that are designated as responsible for administering the ETP list as provided under 20 CFR 680.500. The Governor or such agencies, or authorities, is responsible for:

(1) Facilitating data matches between ETP records and unemployment insurance (UI) wage data in order to produce the report;

(2) The creation and dissemination of the reports as described in paragraphs (a) through (d) of this section;

(3) Coordinating the dissemination of the performance reports with the ETP list and the information required to accompany the list, as provided in 20 CFR 680.500.

§ 361.235 What are the reporting requirements for individual records for core Workforce Innovation and Opportunity Act (WIOA) title I programs; the Wagner-Peyser Act Employment Service program, as amended by WIOA title III; and the Vocational Rehabilitation program authorized under title I of the Rehabilitation Act of 1973, as amended by WIOA title IV?

(a) On a quarterly basis, each State must submit to the Secretary of Labor or the Secretary of Education, as appropriate, individual records that include demographic information, information on services received, and information on resulting outcomes, as appropriate, for each reportable individual in either of the following programs administered by the Secretary of Labor or Secretary of Education: A WIOA title I core program; the Employment Service program authorized under the Wagner-Peyser Act, as amended by WIOA title III; or the VR program authorized under title I of the Rehabilitation Act of 1973, as amended by WIOA title IV.

(b) For individual records submitted to the Secretary of Labor, those records may be required to be integrated across all programs administered by the Secretary of Labor in one single file.

(c) States must comply with the requirements of sec. 116(d)(2) of WIOA as explained in guidance issued by the Departments of Labor and Education.

§ 361.240 What are the requirements for data validation of State annual performance reports?

(a) States must establish procedures, consistent with guidelines issued by the Secretary of Labor or the Secretary of Education, to ensure that they submit complete annual performance reports that contain information that is valid and reliable, as required by WIOA sec. 116(d)(5).

(b) If a State fails to meet standards in paragraph (a) of this section as determined by the Secretary of Labor or the Secretary of Education, the appropriate Secretary will provide technical assistance and may require the State to develop and implement corrective actions, which may require the State to provide training for its subrecipients.

(c) The Secretaries of Labor and Education will provide training and technical assistance to States in order to implement this section. States must comply with the requirements of sec. 116(d)(5) of WIOA as explained in guidance.

■ 7. Add subpart F to part 361 to read as follows:

Subpart F—Description of the One-Stop Delivery System Under Title I of the Workforce Innovation and Opportunity Act

Sec.

361.300 What is the one-stop delivery system?
361.305 What is a comprehensive one-stop center and what must be provided there?
361.310 What is an affiliated site and what must be provided there?
361.315 Can a stand-alone Wagner-Peyser Act Employment Service office be designated as an affiliated one-stop site?
361.320 Are there any requirements for networks of eligible one-stop partners or specialized centers?
361.400 Who are the required one-stop partners?
361.405 Is Temporary Assistance for Needy Families a required one-stop partner?
361.410 What other entities may serve as one-stop partners?
361.415 What entity serves as the one-stop partner for a particular program in the local area?
361.420 What are the roles and responsibilities of the required one-stop partners?
361.425 What are the applicable career services that must be provided through the one-stop delivery system by required one-stop partners?
361.430 What are career services?
361.435 What are the business services provided through the one-stop delivery system, and how are they provided?
361.440 When may a fee be charged for the business services in this subpart?
361.500 What is the Memorandum of Understanding for the one-stop delivery system and what must be included in the Memorandum of Understanding?
361.505 Is there a single Memorandum of Understanding for the local area, or must there be different Memoranda of Understanding between the Local Workforce Development Board and each partner?
361.510 How must the Memorandum of Understanding be negotiated?
361.600 Who may operate one-stop centers?
361.605 How is the one-stop operator selected?
361.610 When is the sole-source selection of one-stop operators appropriate, and how is it conducted?
361.615 May an entity currently serving as one-stop operator compete to be a one-stop operator under the procurement requirements of this subpart?
361.620 What is the one-stop operator's role?
361.625 Can a one-stop operator also be a service provider?
361.630 Can State merit staff still work in a one-stop center where the operator is not a governmental entity?
361.635 What is the compliance date of the provisions of this subpart?
361.700 What are the one-stop infrastructure costs?
361.705 What guidance must the Governor issue regarding one-stop infrastructure funding?
361.710 How are infrastructure costs funded?
361.715 How are one-stop infrastructure costs funded in the local funding mechanism?
361.720 What funds are used to pay for infrastructure costs in the local one-stop infrastructure funding mechanism?
361.725 What happens if consensus on infrastructure funding is not reached at the local level between the Local Workforce Development Board, chief elected officials, and one-stop partners?
361.730 What is the State one-stop infrastructure funding mechanism?
361.731 What are the steps to determine the amount to be paid under the State one-stop infrastructure funding mechanism?
361.735 How are infrastructure cost budgets for the one-stop centers in a local area determined in the State one-stop infrastructure funding mechanism?
361.736 How does the Governor establish a cost allocation methodology used to determine the one-stop partner programs' proportionate shares of infrastructure costs under the State one-stop infrastructure funding mechanism?
361.737 How are one-stop partner programs' proportionate shares of infrastructure costs determined under the State one-stop infrastructure funding mechanism?
361.738 How are statewide caps on the contributions for one-stop infrastructure funding determined in the State one-stop infrastructure funding mechanism?
361.740 What funds are used to pay for infrastructure costs in the State one-stop infrastructure funding mechanism?
361.745 What factors does the State Workforce Development Board use to develop the formula described in Workforce Innovation and Opportunity Act, which is used by the Governor to determine the appropriate one-stop infrastructure budget for each local area operating under the State infrastructure funding mechanism, if no reasonably implementable locally negotiated budget exists?
361.750 When and how can a one-stop partner appeal a one-stop infrastructure amount designated by the State under the State infrastructure funding mechanism?
361.755 What are the required elements regarding infrastructure funding that must be included in the one-stop Memorandum of Understanding?
361.760 How do one-stop partners jointly fund other shared costs under the Memorandum of Understanding?
361.800 How are one-stop centers and one-stop delivery systems certified for effectiveness, physical and programmatic accessibility, and continuous improvement?
361.900 What is the common identifier to be used by each one-stop delivery system?

Authority: Secs. 503, 107, 121, 134, 189, Pub. L. 113–128, 128 Stat. 1425 (Jul. 22, 2014).

Subpart F—Description of the One-Stop Delivery System Under Title I of the Workforce Innovation and Opportunity Act

§ 361.300 What is the one-stop delivery system?

(a) The one-stop delivery system brings together workforce development, educational, and other human resource services in a seamless customer-focused service delivery network that enhances access to the programs' services and improves long-term employment outcomes for individuals receiving assistance. One-stop partners administer separately funded programs as a set of integrated streamlined services to customers.

(b) Title I of the Workforce Innovation and Opportunity Act (WIOA) assigns responsibilities at the local, State, and Federal level to ensure the creation and maintenance of a one-stop delivery system that enhances the range and quality of education and workforce development services that employers and individual customers can access.

(c) The system must include at least one comprehensive physical center in each local area as described in § 361.305.

(d) The system may also have additional arrangements to supplement the comprehensive center. These arrangements include:

(1) An affiliated site or a network of affiliated sites, where one or more partners make programs, services, and activities available, as described in § 361.310;

(2) A network of eligible one-stop partners, as described in §§ 361.400 through 361.410, through which each partner provides one or more of the programs, services, and activities that are linked, physically or technologically, to an affiliated site or access point that assures customers are provided information on the availability of career services, as well as other program services and activities, regardless of where they initially enter the public workforce system in the local area; and

(3) Specialized centers that address specific needs, including those of dislocated workers, youth, or key industry sectors, or clusters.

(e) Required one-stop partner programs must provide access to programs, services, and activities through electronic means if applicable and practicable. This is in addition to providing access to services through the mandatory comprehensive physical one-stop center and any affiliated sites or specialized centers. The provision of programs and services by electronic methods such as Web sites, telephones, or other means must improve the efficiency, coordination, and quality of one-stop partner services. Electronic delivery must not replace access to such services at a comprehensive one-stop center or be a substitute to making services available at an affiliated site if the partner is participating in an affiliated site. Electronic delivery systems must be in compliance with the nondiscrimination and equal opportunity provisions of WIOA sec. 188 and its implementing regulations at 29 CFR part 38.

(f) The design of the local area's one-stop delivery system must be described in the Memorandum of Understanding (MOU) executed with the one-stop partners, described in § 361.500.

§ 361.305 What is a comprehensive one-stop center and what must be provided there?

(a) A comprehensive one-stop center is a physical location where job seeker and employer customers can access the programs, services, and activities of all required one-stop partners. A comprehensive one-stop center must have at least one title I staff person physically present.

(b) The comprehensive one-stop center must provide:

(1) Career services, described in § 361.430;

(2) Access to training services described in 20 CFR 680.200;

(3) Access to any employment and training activities carried out under sec. 134(d) of WIOA;

(4) Access to programs and activities carried out by one-stop partners listed in §§ 361.400 through 361.410, including the Employment Service program authorized under the Wagner-Peyser Act, as amended by WIOA title III (Wagner-Peyser Act Employment Service program); and

(5) Workforce and labor market information.

(c) Customers must have access to these programs, services, and activities during regular business days at a comprehensive one-stop center. The Local Workforce Development Board (WDB) may establish other service hours at other times to accommodate the schedules of individuals who work on regular business days. The State WDB will evaluate the hours of access to service as part of the evaluation of effectiveness in the one-stop certification process described in § 361.800(b).

(d) "Access" to each partner program and its services means:

(1) Having a program staff member physically present at the one-stop center;

(2) Having a staff member from a different partner program physically present at the one-stop center appropriately trained to provide information to customers about the programs, services, and activities available through partner programs; or

(3) Making available a direct linkage through technology to program staff who can provide meaningful information or services.

(i) A "direct linkage" means providing direct connection at the one-stop center, within a reasonable time, by phone or through a real-time Web-based communication to a program staff member who can provide program information or services to the customer.

(ii) A "direct linkage" cannot exclusively be providing a phone number or computer Web site or providing information, pamphlets, or materials.

(e) All comprehensive one-stop centers must be physically and programmatically accessible to individuals with disabilities, as described in 29 CFR part 38, the implementing regulations of WIOA sec. 188.

§ 361.310 What is an affiliated site and what must be provided there?

(a) An affiliated site, or affiliate one-stop center, is a site that makes available to job seeker and employer customers one or more of the one-stop partners' programs, services, and activities. An affiliated site does not need to provide access to every required one-stop partner program. The frequency of program staff's physical presence in the affiliated site will be determined at the local level. Affiliated sites are access points in addition to the comprehensive one-stop center(s) in each local area. If used by local areas as a part of the service delivery strategy, affiliate sites must be implemented in a manner that supplements and enhances customer access to services.

(b) As described in § 361.315, Wagner-Peyser Act employment services cannot be a stand-alone affiliated site.

(c) States, in conjunction with the Local WDBs, must examine lease agreements and property holdings throughout the one-stop delivery system in order to use property in an efficient and effective way. Where necessary and appropriate, States and Local WDBs must take expeditious steps to align lease expiration dates with efforts to consolidate one-stop operations into service points where Wagner-Peyser Act employment services are colocated as soon as reasonably possible. These steps must be included in the State Plan.

(d) All affiliated sites must be physically and programmatically accessible to individuals with disabilities, as described in 29 CFR part 38, the implementing regulations of WIOA sec. 188.

§ 361.315 Can a stand-alone Wagner-Peyser Act Employment Service office be designated as an affiliated one-stop site?

(a) Separate stand-alone Wagner-Peyser Act Employment Service offices are not permitted under WIOA, as also described in 20 CFR 652.202.

(b) If Wagner-Peyser Act employment services are provided at an affiliated site, there must be at least one or more other partners in the affiliated site with a physical presence of combined staff more than 50 percent of the time the center is open. Additionally, the other partner must not be the partner administering local veterans' employment representatives, disabled veterans' outreach program specialists, or unemployment compensation programs. If Wagner-Peyser Act employment services and any of these 3 programs are provided at an affiliated site, an additional partner or partners must have a presence of combined staff in the center more than 50 percent of the time the center is open.

§ 361.320 Are there any requirements for networks of eligible one-stop partners or specialized centers?

Any network of one-stop partners or specialized centers, as described in § 361.300(d)(3), must be connected to the comprehensive one-stop center and any appropriate affiliate one-stop centers, for example, by having processes in place to make referrals to these centers and the partner programs located in them. Wagner-Peyser Act employment services cannot stand alone in a specialized center. Just as described in § 361.315 for an affiliated site, a specialized center must include other programs besides Wagner-Peyser Act employment services, local veterans' employment representatives, disabled veterans' outreach program specialists, and unemployment compensation.

§ 361.400 Who are the required one-stop partners?

(a) Section 121(b)(1)(B) of WIOA identifies the entities that are required partners in the local one-stop delivery systems.

(b) The required partners are the entities responsible for administering the following programs and activities in the local area:

(1) Programs authorized under title I of WIOA, including:

(i) Adults;

(ii) Dislocated workers;

(iii) Youth;

(iv) Job Corps;

(v) YouthBuild;

(vi) Native American programs; and

(vii) Migrant and seasonal farmworker programs;

(2) The Wagner-Peyser Act Employment Service program authorized under the Wagner-Peyser Act (29 U.S.C. 49 *et seq.*), as amended by WIOA title III;

(3) The Adult Education and Family Literacy Act (AEFLA) program authorized under title II of WIOA;

(4) The Vocational Rehabilitation (VR) program authorized under title I of the Rehabilitation Act of 1973 (29 U.S.C. 720 *et seq.*), as amended by WIOA title IV;

(5) The Senior Community Service Employment Program authorized under title V of the Older Americans Act of 1965 (42 U.S.C. 3056 *et seq.*);

(6) Career and technical education programs at the postsecondary level authorized under the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2301 *et seq.*);

(7) Trade Adjustment Assistance activities authorized under chapter 2 of title II of the Trade Act of 1974 (19 U.S.C. 2271 *et seq.*);

(8) Jobs for Veterans State Grants programs authorized under chapter 41 of title 38, U.S.C.;

(9) Employment and training activities carried out under the Community Services Block Grant (42 U.S.C. 9901 *et seq.*);

(10) Employment and training activities carried out by the Department of Housing and Urban Development;

(11) Programs authorized under State unemployment compensation laws (in accordance with applicable Federal law);

(12) Programs authorized under sec. 212 of the Second Chance Act of 2007 (42 U.S.C. 17532); and

(13) Temporary Assistance for Needy Families (TANF) authorized under part A of title IV of the Social Security Act (42 U.S.C. 601 *et seq.*), unless exempted by the Governor under § 361.405(b).

§ 361.405 Is Temporary Assistance for Needy Families a required one-stop partner?

(a) Yes, TANF, authorized under part A of title IV of the Social Security Act (42 U.S.C. 601 *et seq.*), is a required partner.

(b) The Governor may determine that TANF will not be a required partner in the State, or within some specific local areas in the State. In this instance, the Governor must notify the Secretaries of the U.S. Departments of Labor and Health and Human Services in writing of this determination.

(c) In States, or local areas within a State, where the Governor has determined that TANF is not required to be a partner, local TANF programs may still work in collaboration or partnership with the local one-stop centers to deliver employment and training services to the TANF population unless inconsistent with the Governor's direction.

§ 361.410 What other entities may serve as one-stop partners?

(a) Other entities that carry out a workforce development program, including Federal, State, or local programs and programs in the private sector, may serve as additional partners in the one-stop delivery system if the Local WDB and chief elected official(s) approve the entity's participation.

(b) Additional partners may include, but are not limited to:

(1) Employment and training programs administered by the Social Security Administration, including the Ticket to Work and Self-Sufficiency Program established under sec. 1148 of the Social Security Act (42 U.S.C. 1320b–19);

(2) Employment and training programs carried out by the Small Business Administration;

(3) Supplemental Nutrition Assistance Program (SNAP) employment and training programs, authorized under secs. 6(d)(4) and 6(o) of the Food and Nutrition Act of 2008 (7 U.S.C. 2015(d)(4));

(4) Client Assistance Program authorized under sec. 112 of the Rehabilitation Act of 1973 (29 U.S.C. 732);

(5) Programs authorized under the National and Community Service Act of 1990 (42 U.S.C. 12501 *et seq.*); and

(6) Other appropriate Federal, State or local programs, including, but not limited to, employment, education, and training programs provided by public libraries or in the private sector.

§ 361.415 What entity serves as the one-stop partner for a particular program in the local area?

(a) The entity that carries out the program and activities listed in § 361.400 or § 361.410, and therefore serves as the one-stop partner, is the grant recipient, administrative entity, or organization responsible for administering the funds of the specified program in the local area. The term "entity" does not include the service providers that contract with, or are subrecipients of, the local administrative entity. For programs that do not include local administrative entities, the responsible State agency

must be the partner. Specific entities for particular programs are identified in paragraphs (b) through (e) of this section. If a program or activity listed in § 361.400 is not carried out in a local area, the requirements relating to a required one-stop partner are not applicable to such program or activity in that local one-stop delivery system.

(b) For title II of WIOA, the entity or agency that carries out the program for the purposes of paragraph (a) of this section is the sole entity or agency in the State or outlying area responsible for administering or supervising policy for adult education and literacy activities in the State or outlying area. The State eligible entity or agency may delegate its responsibilities under paragraph (a) of this section to one or more eligible providers or consortium of eligible providers.

(c) For the VR program, authorized under title I of the Rehabilitation Act of 1973, as amended by WIOA title IV, the entity that carries out the program for the purposes of paragraph (a) of this section is the designated State agencies or designated State units specified under sec. 101(a)(2) of the Rehabilitation Act that is primarily concerned with vocational rehabilitation, or vocational and other rehabilitation, of individuals with disabilities.

(d) Under WIOA title I, the national programs, including Job Corps, the Native American program, YouthBuild, and Migrant and Seasonal Farmworker programs are required one-stop partners. The entity for the Native American program, YouthBuild, and Migrant and Seasonal Farmworker programs is the grantee of those respective programs. The entity for Job Corps is the Job Corps center.

(e) For the Carl D. Perkins Career and Technical Education Act of 2006, the entity that carries out the program for the purposes of paragraph (a) of this section is the eligible recipient or recipients at the postsecondary level, or a consortium of eligible recipients at the postsecondary level in the local area. The eligible recipient at the postsecondary level may also request assistance from the State eligible agency in completing its responsibilities under paragraph (a) of this section.

§ 361.420 What are the roles and responsibilities of the required one-stop partners?

Each required partner must:

(a) Provide access to its programs or activities through the one-stop delivery system, in addition to any other appropriate locations;

(b) Use a portion of funds made available to the partner's program, to the extent consistent with the Federal law authorizing the partner's program and with Federal cost principles in 2 CFR parts 200 and 3474 (requiring, among other things, that costs are allowable, reasonable, necessary, and allocable), to:

(1) Provide applicable career services; and

(2) Work collaboratively with the State and Local WDBs to establish and maintain the one-stop delivery system. This includes jointly funding the one-stop infrastructure through partner contributions that are based upon:

(i) A reasonable cost allocation methodology by which infrastructure costs are charged to each partner based on proportionate use and relative benefit received;

(ii) Federal cost principles; and

(iii) Any local administrative cost requirements in the Federal law authorizing the partner's program. (This is further described in § 361.700.)

(c) Enter into an MOU with the Local WDB relating to the operation of the one-stop delivery system that meets the requirements of § 361.500(b);

(d) Participate in the operation of the one-stop delivery system consistent with the terms of the MOU, requirements of authorizing laws, the Federal cost principles, and all other applicable legal requirements; and

(e) Provide representation on the State and Local WDBs as required and participate in Board committees as needed.

§ 361.425 What are the applicable career services that must be provided through the one-stop delivery system by required one-stop partners?

(a) The applicable career services to be delivered by required one-stop partners are those services listed in § 361.430 that are authorized to be provided under each partner's program.

(b) One-stop centers provide services to individual customers based on individual needs, including the seamless delivery of multiple services to individual customers. There is no required sequence of services.

§ 361.430 What are career services?

Career services, as identified in sec. 134(c)(2) of WIOA, consist of three types:

(a) Basic career services must be made available and, at a minimum, must include the following services, as consistent with allowable program activities and Federal cost principles:

(1) Determinations of whether the individual is eligible to receive assistance from the adult, dislocated worker, or youth programs;

(2) Outreach, intake (including worker profiling), and orientation to information and other services available through the one-stop delivery system. For the TANF program, States must provide individuals with the opportunity to initiate an application for TANF assistance and non-assistance benefits and services, which could be implemented through the provision of paper application forms or links to the application Web site;

(3) Initial assessment of skill levels including literacy, numeracy, and English language proficiency, as well as aptitudes, abilities (including skills gaps), and supportive services needs;

(4) Labor exchange services, including—

(i) Job search and placement assistance, and, when needed by an individual, career counseling, including—

(A) Provision of information on in-demand industry sectors and occupations (as defined in sec. 3(23) of WIOA); and

(B) Provision of information on nontraditional employment; and

(ii) Appropriate recruitment and other business services on behalf of employers, including information and referrals to specialized business services other than those traditionally offered through the one-stop delivery system;

(5) Provision of referrals to and coordination of activities with other programs and services, including programs and services within the one-stop delivery system and, when appropriate, other workforce development programs;

(6) Provision of workforce and labor market employment statistics information, including the provision of accurate information relating to local, regional, and national labor market areas, including—

(i) Job vacancy listings in labor market areas;

(ii) Information on job skills necessary to obtain the vacant jobs listed; and

(iii) Information relating to local occupations in demand and the earnings, skill requirements, and opportunities for advancement for those jobs;

(7) Provision of performance information and program cost information on eligible providers of education, training, and workforce services by program and type of providers;

(8) Provision of information, in usable and understandable formats and languages, about how the local area is performing on local performance accountability measures, as well as any additional performance information

relating to the area's one-stop delivery system;

(9) Provision of information, in usable and understandable formats and languages, relating to the availability of supportive services or assistance, and appropriate referrals to those services and assistance, including: Child care; child support; medical or child health assistance available through the State's Medicaid program and Children's Health Insurance Program; benefits under SNAP; assistance through the earned income tax credit; and assistance under a State program for TANF, and other supportive services and transportation provided through that program;

(10) Provision of information and meaningful assistance to individuals seeking assistance in filing a claim for unemployment compensation.

(i) "Meaningful assistance" means:

(A) Providing assistance on-site using staff who are well-trained in unemployment compensation claims filing and the rights and responsibilities of claimants; or

(B) Providing assistance by phone or via other technology, as long as the assistance is provided by trained and available staff and within a reasonable time.

(ii) The costs associated in providing this assistance may be paid for by the State's unemployment insurance program, or the WIOA adult or dislocated worker programs, or some combination thereof.

(11) Assistance in establishing eligibility for programs of financial aid assistance for training and education programs not provided under WIOA.

(b) Individualized career services must be made available if determined to be appropriate in order for an individual to obtain or retain employment. These services include the following services, as consistent with program requirements and Federal cost principles:

(1) Comprehensive and specialized assessments of the skill levels and service needs of adults and dislocated workers, which may include—

(i) Diagnostic testing and use of other assessment tools; and

(ii) In-depth interviewing and evaluation to identify employment barriers and appropriate employment goals;

(2) Development of an individual employment plan, to identify the employment goals, appropriate achievement objectives, and appropriate combination of services for the participant to achieve his or her employment goals, including the list of, and information about, the eligible training providers (as described in 20 CFR 680.180);

(3) Group counseling;

(4) Individual counseling;

(5) Career planning;

(6) Short-term pre-vocational services including development of learning skills, communication skills, interviewing skills, punctuality, personal maintenance skills, and professional conduct services to prepare individuals for unsubsidized employment or training;

(7) Internships and work experiences that are linked to careers (as described in 20 CFR 680.170);

(8) Workforce preparation activities;

(9) Financial literacy services as described in sec. 129(b)(2)(D) of WIOA and 20 CFR 681.500;

(10) Out-of-area job search assistance and relocation assistance; and

(11) English language acquisition and integrated education and training programs.

(c) Follow-up services must be provided, as appropriate, including: Counseling regarding the workplace, for participants in adult or dislocated worker workforce investment activities who are placed in unsubsidized employment, for up to 12 months after the first day of employment.

(d) In addition to the requirements in paragraph (a)(2) of this section, TANF agencies must identify employment services and related support being provided by the TANF program (within the local area) that qualify as career services and ensure access to them via the local one-stop delivery system.

§ 361.435 What are the business services provided through the one-stop delivery system, and how are they provided?

(a) Certain career services must be made available to local employers, specifically labor exchange activities and labor market information described in § 361.430(a)(4)(ii) and (a)(6). Local areas must establish and develop relationships and networks with large and small employers and their intermediaries. Local areas also must develop, convene, or implement industry or sector partnerships.

(b) Customized business services may be provided to employers, employer associations, or other such organizations. These services are tailored for specific employers and may include:

(1) Customized screening and referral of qualified participants in training services to employers;

(2) Customized services to employers, employer associations, or other such organizations, on employment-related issues;

(3) Customized recruitment events and related services for employers including targeted job fairs;

(4) Human resource consultation services, including but not limited to assistance with:

(i) Writing/reviewing job descriptions and employee handbooks;

(ii) Developing performance evaluation and personnel policies;

(iii) Creating orientation sessions for new workers;

(iv) Honing job interview techniques for efficiency and compliance;

(v) Analyzing employee turnover;

(vi) Creating job accommodations and using assistive technologies; or

(vii) Explaining labor and employment laws to help employers comply with discrimination, wage/hour, and safety/health regulations;

(5) Customized labor market information for specific employers, sectors, industries or clusters; and

(6) Other similar customized services.

(c) Local areas may also provide other business services and strategies that meet the workforce investment needs of area employers, in accordance with partner programs' statutory requirements and consistent with Federal cost principles. These business services may be provided through effective business intermediaries working in conjunction with the Local WDB, or through the use of economic development, philanthropic, and other public and private resources in a manner determined appropriate by the Local WDB and in cooperation with the State. Allowable activities, consistent with each partner's authorized activities, include, but are not limited to:

(1) Developing and implementing industry sector strategies (including strategies involving industry partnerships, regional skills alliances, industry skill panels, and sectoral skills partnerships);

(2) Customized assistance or referral for assistance in the development of a registered apprenticeship program;

(3) Developing and delivering innovative workforce investment services and strategies for area employers, which may include career pathways, skills upgrading, skill standard development and certification for recognized postsecondary credential or other employer use, and other effective initiatives for meeting the workforce investment needs of area employers and workers;

(4) Assistance to area employers in managing reductions in force in coordination with rapid response activities and with strategies for the aversion of layoffs, which may include

strategies such as early identification of firms at risk of layoffs, use of feasibility studies to assess the needs of and options for at-risk firms, and the delivery of employment and training activities to address risk factors;

(5) The marketing of business services to appropriate area employers, including small and mid-sized employers; and

(6) Assisting employers with accessing local, State, and Federal tax credits.

(d) All business services and strategies must be reflected in the local plan, described in 20 CFR 679.560(b)(3).

§ 361.440 When may a fee be charged for the business services in this subpart?

(a) There is no requirement that a fee-for-service be charged to employers.

(b) No fee may be charged for services provided in § 361.435(a).

(c) A fee may be charged for services provided under § 361.435(b) and (c). Services provided under § 361.435(c) may be provided through effective business intermediaries working in conjunction with the Local WDB and may also be provided on a fee-for-service basis or through the leveraging of economic development, philanthropic, and other public and private resources in a manner determined appropriate by the Local WDB. The Local WDB may examine the services provided compared with the assets and resources available within the local one-stop delivery system and through its partners to determine an appropriate cost structure for services, if any.

(d) Any fees earned are recognized as program income and must be expended by the partner in accordance with the partner program's authorizing statute, implementing regulations, and Federal cost principles identified in Uniform Guidance.

§ 361.500 What is the Memorandum of Understanding for the one-stop delivery system and what must be included in the Memorandum of Understanding?

(a) The MOU is the product of local discussion and negotiation, and is an agreement developed and executed between the Local WDB and the one-stop partners, with the agreement of the chief elected official and the one-stop partners, relating to the operation of the one-stop delivery system in the local area. Two or more local areas in a region may develop a single joint MOU, if they are in a region that has submitted a regional plan under sec. 106 of WIOA.

(b) The MOU must include:

(1) A description of services to be provided through the one-stop delivery system, including the manner in which the services will be coordinated and delivered through the system;

(2) Agreement on funding the costs of the services and the operating costs of the system, including:

(i) Funding of infrastructure costs of one-stop centers in accordance with §§ 361.700 through 361.755; and

(ii) Funding of the shared services and operating costs of the one-stop delivery system described in § 361.760;

(3) Methods for referring individuals between the one-stop operators and partners for appropriate services and activities;

(4) Methods to ensure that the needs of workers, youth, and individuals with barriers to employment, including individuals with disabilities, are addressed in providing access to services, including access to technology and materials that are available through the one-stop delivery system;

(5) The duration of the MOU and procedures for amending it; and

(6) Assurances that each MOU will be reviewed, and if substantial changes have occurred, renewed, not less than once every 3-year period to ensure appropriate funding and delivery of services.

(c) The MOU may contain any other provisions agreed to by the parties that are consistent with WIOA title I, the authorizing statutes and regulations of one-stop partner programs, and the WIOA regulations.

(d) When fully executed, the MOU must contain the signatures of the Local WDB, one-stop partners, the chief elected official(s), and the time period in which the agreement is effective. The MOU must be updated not less than every 3 years to reflect any changes in the signatory official of the Board, one-stop partners, and chief elected officials, or one-stop infrastructure funding.

(e) If a one-stop partner appeal to the State regarding infrastructure costs, using the process described in § 361.750, results in a change to the one-stop partner's infrastructure cost contributions, the MOU must be updated to reflect the final one-stop partner infrastructure cost contributions.

§ 361.505 Is there a single Memorandum of Understanding for the local area, or must there be different Memoranda of Understanding between the Local Workforce Development Board and each partner?

(a) A single "umbrella" MOU may be developed that addresses the issues relating to the local one-stop delivery system for the Local WDB, chief elected official and all partners. Alternatively, the Local WDB (with agreement of chief elected official) may enter into separate agreements between each partner or groups of partners.

(b) Under either approach, the requirements described in § 361.500 apply. Since funds are generally appropriated annually, the Local WDB may negotiate financial agreements with each partner annually to update funding of services and operating costs of the system under the MOU.

§ 361.510 How must the Memorandum of Understanding be negotiated?

(a) WIOA emphasizes full and effective partnerships between Local WDBs, chief elected officials, and one-stop partners. Local WDBs and partners must enter into good-faith negotiations. Local WDBs, chief elected officials, and one-stop partners may also request assistance from a State agency responsible for administering the partner program, the Governor, State WDB, or other appropriate parties on other aspects of the MOU.

(b) Local WDBs and one-stop partners must establish, in the MOU, how they will fund the infrastructure costs and other shared costs of the one-stop centers. If agreement regarding infrastructure costs is not reached when other sections of the MOU are ready, an interim infrastructure funding agreement may be included instead, as described in § 361.715(c). Once agreement on infrastructure funding is reached, the Local WDB and one-stop partners must amend the MOU to include the infrastructure funding of the one-stop centers. Infrastructure funding is described in detail in §§ 361.700 through 361.760.

(c) The Local WDB must report to the State WDB, Governor, and relevant State agency when MOU negotiations with one-stop partners have reached an impasse.

(1) The Local WDB and partners must document the negotiations and efforts that have taken place in the MOU. The State WDB, one-stop partner programs, and the Governor may consult with the appropriate Federal agencies to address impasse situations related to issues other than infrastructure funding after attempting to address the impasse. Impasses related to infrastructure cost funding must be resolved using the State infrastructure cost funding mechanism described in § 361.730.

(2) The Local WDB must report failure to execute an MOU with a required partner to the Governor, State WDB, and the State agency responsible for administering the partner's program. Additionally, if the State cannot assist the Local WDB in resolving the impasse,

the Governor or the State WDB must report the failure to the Secretary of Labor and to the head of any other Federal agency with responsibility for oversight of a partner's program.

§ 361.600 Who may operate one-stop centers?

(a) One-stop operators may be a single entity (public, private, or nonprofit) or a consortium of entities. If the consortium of entities is one of one-stop partners, it must include a minimum of three of the one-stop partners described in § 361.400.

(b) The one-stop operator may operate one or more one-stop centers. There may be more than one one-stop operator in a local area.

(c) The types of entities that may be a one-stop operator include:

(1) An institution of higher education;

(2) An Employment Service State agency established under the Wagner-Peyser Act;

(3) A community-based organization, nonprofit organization, or workforce intermediary;

(4) A private for-profit entity;

(5) A government agency;

(6) A Local WDB, with the approval of the chief elected official and the Governor; or

(7) Another interested organization or entity, which is capable of carrying out the duties of the one-stop operator. Examples may include a local chamber of commerce or other business organization, or a labor organization.

(d) Elementary schools and secondary schools are not eligible as one-stop operators, except that a nontraditional public secondary school such as a night school, adult school, or an area career and technical education school may be selected.

(e) The State and Local WDBs must ensure that, in carrying out WIOA programs and activities, one-stop operators:

(1) Disclose any potential conflicts of interest arising from the relationships of the operators with particular training service providers or other service providers (further discussed in 20 CFR 679.430);

(2) Do not establish practices that create disincentives to providing services to individuals with barriers to employment who may require longer-term career and training services; and

(3) Comply with Federal regulations and procurement policies relating to the calculation and use of profits, including those at 20 CFR 683.295, the Uniform Guidance at 2 CFR part 200, and other applicable regulations and policies.

§ 361.605 How is the one-stop operator selected?

(a) Consistent with paragraphs (b) and (c) of this section, the Local WDB must select the one-stop operator through a competitive process, as required by sec. 121(d)(2)(A) of WIOA, at least once every 4 years. A State may require, or a Local WDB may choose to implement, a competitive selection process more than once every 4 years.

(b) In instances in which a State is conducting the competitive process described in paragraph (a) of this section, the State must follow the same policies and procedures it uses for procurement with non-Federal funds.

(c) All other non-Federal entities, including subrecipients of a State (such as local areas), must use a competitive process based on local procurement policies and procedures and the principles of competitive procurement in the Uniform Guidance set out at 2 CFR 200.318 through 200.326. All references to "noncompetitive proposals" in the Uniform Guidance at 2 CFR 200.320(f) will be read as "sole source procurement" for the purposes of implementing this section.

(d) Entities must prepare written documentation explaining the determination concerning the nature of the competitive process to be followed in selecting a one-stop operator.

§ 361.610 When is the sole-source selection of one-stop operators appropriate, and how is it conducted?

(a) States may select a one-stop operator through sole source selection when allowed under the same policies and procedures used for competitive procurement with non-Federal funds, while other non-Federal entities including subrecipients of a State (such as local areas) may select a one-stop operator through sole selection when consistent with local procurement policies and procedures and the Uniform Guidance set out at 2 CFR 200.320.

(b) In the event that sole source procurement is determined necessary and reasonable, in accordance with § 361.605(c), written documentation must be prepared and maintained concerning the entire process of making such a selection.

(c) Such sole source procurement must include appropriate conflict of interest policies and procedures. These policies and procedures must conform to the specifications in 20 CFR 679.430 for demonstrating internal controls and preventing conflict of interest.

(d) A Local WDB may be selected as a one-stop operator through sole source procurement only with agreement of the chief elected official in the local area and the Governor. The Local WDB must establish sufficient conflict of interest policies and procedures and these policies and procedures must be approved by the Governor.

§ 361.615 May an entity currently serving as one-stop operator compete to be a one-stop operator under the procurement requirements of this subpart?

(a) Local WDBs may compete for and be selected as one-stop operators, as long as appropriate firewalls and conflict of interest policies and procedures are in place. These policies and procedures must conform to the specifications in 20 CFR 679.430 for demonstrating internal controls and preventing conflict of interest.

(b) State and local agencies may compete for and be selected as one-stop operators by the Local WDB, as long as appropriate firewalls and conflict of interest policies and procedures are in place. These policies and procedures must conform to the specifications in 20 CFR 679.430 for demonstrating internal controls and preventing conflict of interest.

(c) In the case of single-area States where the State WDB serves as the Local WDB, the State agency is eligible to compete for and be selected as operator as long as appropriate firewalls and conflict of interest policies are in place and followed for the competition. These policies and procedures must conform to the specifications in 20 CFR 679.430 for demonstrating internal controls and preventing conflicts of interest.

§ 361.620 What is the one-stop operator's role?

(a) At a minimum, the one-stop operator must coordinate the service delivery of required one-stop partners and service providers. Local WDBs may establish additional roles of one-stop operator, including, but not limited to: Coordinating service providers across the one-stop delivery system, being the primary provider of services within the center, providing some of the services within the center, or coordinating service delivery in a multi-center area, which may include affiliated sites. The competition for a one-stop operator must clearly articulate the role of the one-stop operator.

(b)(1) Subject to paragraph (b)(2) of this section, a one-stop operator may not perform the following functions: Convene system stakeholders to assist in the development of the local plan; prepare and submit local plans (as required under sec. 107 of WIOA); be responsible for oversight of itself; manage or significantly participate in

the competitive selection process for one-stop operators; select or terminate one-stop operators, career services, and youth providers; negotiate local performance accountability measures; or develop and submit budget for activities of the Local WDB in the local area.

(2) An entity serving as a one-stop operator, that also serves a different role within the one-stop delivery system, may perform some or all of these functions when it is acting in its other role, if it has established sufficient firewalls and conflict of interest policies and procedures. The policies and procedures must conform to the specifications in 20 CFR 679.430 for demonstrating internal controls and preventing conflict of interest.

§ 361.625 Can a one-stop operator also be a service provider?

Yes, but there must be appropriate firewalls in place in regards to the competition, and subsequent oversight, monitoring, and evaluation of performance of the service provider. The operator cannot develop, manage, or conduct the competition of a service provider in which it intends to compete. In cases where an operator is also a service provider, there must be firewalls and internal controls within the operator-service provider entity, as well as specific policies and procedures at the Local WDB level regarding oversight, monitoring, and evaluation of performance of the service provider. The firewalls must conform to the specifications in 20 CFR 679.430 for demonstrating internal controls and preventing conflicts of interest.

§ 361.630 Can State merit staff still work in a one-stop center where the operator is not a governmental entity?

Yes. State merit staff can continue to perform functions and activities in the one-stop center. The Local WDB and one-stop operator must establish a system for management of merit staff in accordance with State policies and procedures. Continued use of State merit staff for the provision of Wagner-Peyser Act services or services from other programs with merit staffing requirements must be included in the competition for and final contract with the one-stop operator when Wagner-Peyser Act services or services from other programs with merit staffing requirements are being provided.

§ 361.635 What is the compliance date of the provisions of this subpart?

(a) No later than July 1, 2017, one-stop operators selected under the competitive process described in this subpart must be in place and operating the one-stop center.

(b) By November 17, 2016, every Local WDB must demonstrate it is taking steps to prepare for competition of its one-stop operator. This demonstration may include, but is not limited to, market research, requests for information, and conducting a cost and price analysis.

§ 361.700 What are the one-stop infrastructure costs?

(a) Infrastructure costs of one-stop centers are nonpersonnel costs that are necessary for the general operation of the one-stop center, including:

(1) Rental of the facilities;

(2) Utilities and maintenance;

(3) Equipment (including assessment-related products and assistive technology for individuals with disabilities); and

(4) Technology to facilitate access to the one-stop center, including technology used for the center's planning and outreach activities.

(b) Local WDBs may consider common identifier costs as costs of one-stop infrastructure.

(c) Each entity that carries out a program or activities in a local one-stop center, described in §§ 361.400 through 361.410, must use a portion of the funds available for the program and activities to maintain the one-stop delivery system, including payment of the infrastructure costs of one-stop centers. These payments must be in accordance with this subpart; Federal cost principles, which require that all costs must be allowable, reasonable, necessary, and allocable to the program; and all other applicable legal requirements.

§ 361.705 What guidance must the Governor issue regarding one-stop infrastructure funding?

(a) The Governor, after consultation with chief elected officials, the State WDB, and Local WDBs, and consistent with guidance and policies provided by the State WDB, must develop and issue guidance for use by local areas, specifically:

(1) Guidelines for State-administered one-stop partner programs for determining such programs' contributions to a one-stop delivery system, based on such programs' proportionate use of such system, and relative benefit received, consistent with Office of Management and Budget (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, including determining funding for the costs of infrastructure; and

(2) Guidance to assist Local WDBs, chief elected officials, and one-stop partners in local areas in determining equitable and stable methods of funding the costs of infrastructure at one-stop centers based on proportionate use and relative benefit received, and consistent with Federal cost principles contained in the Uniform Guidance at 2 CFR part 200.

(b) The guidance must include:

(1) The appropriate roles of the one-stop partner programs in identifying one-stop infrastructure costs;

(2) Approaches to facilitate equitable and efficient cost allocation that results in a reasonable cost allocation methodology where infrastructure costs are charged to each partner based on its proportionate use of the one-stop centers and relative benefit received, consistent with Federal cost principles at 2 CFR part 200; and

(3) The timelines regarding notification to the Governor for not reaching local agreement and triggering the State funding mechanism described in § 361.730, and timelines for a one-stop partner to submit an appeal in the State funding mechanism.

§ 361.710 How are infrastructure costs funded?

Infrastructure costs are funded either through the local funding mechanism described in § 361.715 or through the State funding mechanism described in § 361.730.

§ 361.715 How are one-stop infrastructure costs funded in the local funding mechanism?

(a) In the local funding mechanism, the Local WDB, chief elected officials, and one-stop partners agree to amounts and methods of calculating amounts each partner will contribute for one-stop infrastructure funding, include the infrastructure funding terms in the MOU, and sign the MOU. The local funding mechanism must meet all of the following requirements:

(1) The infrastructure costs are funded through cash and fairly evaluated non-cash and third-party in-kind partner contributions and include any funding from philanthropic organizations or other private entities, or through other alternative financing options, to provide a stable and equitable funding stream for ongoing one-stop delivery system operations;

(2) Contributions must be negotiated between one-stop partners, chief elected officials, and the Local WDB and the amount to be contributed must be included in the MOU;

(3) The one-stop partner program's proportionate share of funding must be calculated in accordance with the Uniform Administrative Requirements,

Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200 based upon a reasonable cost allocation methodology whereby infrastructure costs are charged to each partner in proportion to its use of the one-stop center, relative to benefits received. Such costs must also be allowable, reasonable, necessary, and allocable;

(4) Partner shares must be periodically reviewed and reconciled against actual costs incurred, and adjusted to ensure that actual costs charged to any one-stop partners are proportionate to the use of the one-stop center and relative to the benefit received by the one-stop partners and their respective programs or activities.

(b) In developing the section of the MOU on one-stop infrastructure funding described in § 361.755, the Local WDB and chief elected officials will:

(1) Ensure that the one-stop partners adhere to the guidance identified in § 361.705 on one-stop delivery system infrastructure costs.

(2) Work with one-stop partners to achieve consensus and informally mediate any possible conflicts or disagreements among one-stop partners.

(3) Provide technical assistance to new one-stop partners and local grant recipients to ensure that those entities are informed and knowledgeable of the elements contained in the MOU and the one-stop infrastructure costs arrangement.

(c) The MOU may include an interim infrastructure funding agreement, including as much detail as the Local WDB has negotiated with one-stop partners, if all other parts of the MOU have been negotiated, in order to allow the partner programs to operate in the one-stop centers. The interim infrastructure funding agreement must be finalized within 6 months of when the MOU is signed. If the interim infrastructure funding agreement is not finalized within that timeframe, the Local WDB must notify the Governor, as described in § 361.725.

§ 361.720 What funds are used to pay for infrastructure costs in the local one-stop infrastructure funding mechanism?

(a) In the local funding mechanism, one-stop partner programs may determine what funds they will use to pay for infrastructure costs. The use of these funds must be in accordance with the requirements in this subpart, and with the relevant partner's authorizing statutes and regulations, including, for example, prohibitions against supplanting non-Federal resources, statutory limitations on administrative costs, and all other applicable legal requirements. In the case of partners administering programs authorized by title I of WIOA, these infrastructure costs may be considered program costs. In the case of partners administering adult education and literacy programs authorized by title II of WIOA, these funds must include Federal funds made available for the local administration of adult education and literacy programs authorized by title II of WIOA. These funds may also include non-Federal resources that are cash, in-kind or third-party contributions. In the case of partners administering the Carl D. Perkins Career and Technical Education Act of 2006, funds used to pay for infrastructure costs may include funds available for local administrative expenses, non-Federal resources that are cash, in-kind or third-party contributions, and may include other funds made available by the State.

(b) There are no specific caps on the amount or percent of overall funding a one-stop partner may contribute to fund infrastructure costs under the local funding mechanism, except that contributions for administrative costs may not exceed the amount available for administrative costs under the authorizing statute of the partner program. However, amounts contributed for infrastructure costs must be allowable and based on proportionate use of the one-stop centers and relative benefit received by the partner program, taking into account the total cost of the one-stop infrastructure as well as alternate financing options, and must be consistent with 2 CFR part 200, including the Federal cost principles.

(c) Cash, non-cash, and third-party in-kind contributions may be provided by one-stop partners to cover their proportionate share of infrastructure costs.

(1) Cash contributions are cash funds provided to the Local WDB or its designee by one-stop partners, either directly or by an interagency transfer.

(2) Non-cash contributions are comprised of—

(i) Expenditures incurred by one-stop partners on behalf of the one-stop center; and

(ii) Non-cash contributions or goods or services contributed by a partner program and used by the one-stop center.

(3) Non-cash contributions, especially those set forth in paragraph (c)(2)(ii) of this section, must be valued consistent with 2 CFR 200.306 to ensure they are fairly evaluated and meet the partners' proportionate share.

(4) Third-party in-kind contributions are:

(i) Contributions of space, equipment, technology, non-personnel services, or other like items to support the infrastructure costs associated with one-stop operations, by a non-one-stop partner to support the one-stop center in general, not a specific partner; or

(ii) Contributions by a non-one-stop partner of space, equipment, technology, non-personnel services, or other like items to support the infrastructure costs associated with one-stop operations, to a one-stop partner to support its proportionate share of one-stop infrastructure costs.

(iii) In-kind contributions described in paragraphs (c)(4)(i) and (ii) of this section must be valued consistent with 2 CFR 200.306 and reconciled on a regular basis to ensure they are fairly evaluated and meet the proportionate share of the partner.

(5) All partner contributions, regardless of the type, must be reconciled on a regular basis (*i.e.*, monthly or quarterly), comparing actual expenses incurred to relative benefits received, to ensure each partner program is contributing its proportionate share in accordance with the terms of the MOU.

§ 361.725 What happens if consensus on infrastructure funding is not reached at the local level between the Local Workforce Development Board, chief elected officials, and one-stop partners?

With regard to negotiations for infrastructure funding for Program Year (PY) 2017 and for each subsequent program year thereafter, if the Local WDB, chief elected officials, and one-stop partners do not reach consensus on methods of sufficiently funding local infrastructure through the local funding mechanism in accordance with the Governor's guidance issued under § 361.705 and consistent with the regulations in §§ 361.715 and 361.720, and include that consensus agreement in the signed MOU, then the Local WDB must notify the Governor by the deadline established by the Governor under § 361.705(b)(3). Once notified, the Governor must administer funding through the State funding mechanism, as described in §§ 361.730 through 361.738, for the program year impacted by the local area's failure to reach consensus.

§ 361.730 What is the State one-stop infrastructure funding mechanism?

(a) Consistent with sec. 121(h)(1)(A)(i)(II) of WIOA, if the Local WDB, chief elected official, and one-stop partners in a local area do not reach consensus agreement on methods of sufficiently funding the costs of infrastructure of one-stop centers for a

program year, the State funding mechanism is applicable to the local area for that program year.

(b) In the State funding mechanism, the Governor, subject to the limitations in paragraph (c) of this section, determines one-stop partner contributions after consultation with the chief elected officials, Local WDBs, and the State WDB. This determination involves:

(1) The application of a budget for one-stop infrastructure costs as described in § 361.735, based on either agreement reached in the local area negotiations or the State WDB formula outlined in § 361.745;

(2) The determination of each local one-stop partner program's proportionate use of the one-stop delivery system and relative benefit received, consistent with the Uniform Guidance at 2 CFR part 200, including the Federal cost principles, the partner programs' authorizing laws and regulations, and other applicable legal requirements described in § 361.736; and

(3) The calculation of required statewide program caps on contributions to infrastructure costs from one-stop partner programs in areas operating under the State funding mechanism as described in § 361.738.

(c) In certain situations, the Governor does not determine the infrastructure cost contributions for some one-stop partner programs under the State funding mechanism.

(1) The Governor will not determine the contribution amounts for infrastructure funds for Native American program grantees described in 20 CFR part 684. The appropriate portion of funds to be provided by Native American program grantees to pay for one-stop infrastructure must be determined as part of the development of the MOU described in § 361.500 and specified in that MOU.

(2) In States in which the policy-making authority is placed in an entity or official that is independent of the authority of the Governor with respect to the funds provided for adult education and literacy activities authorized under title II of WIOA, postsecondary career and technical education activities authorized under the Carl D. Perkins Career and Technical Education Act of 2006, or VR services authorized under title I of the Rehabilitation Act of 1973 (other than sec. 112 or part C), as amended by WIOA title IV, the determination of the amount each of the applicable partners must contribute to assist in paying the infrastructure costs of one-stop centers must be made by the official or chief officer of the entity with such authority, in consultation with the Governor.

(d) Any duty, ability, choice, responsibility, or other action otherwise related to the determination of infrastructure costs contributions that is assigned to the Governor in §§ 361.730 through 361.745 also applies to this decision-making process performed by the official or chief officer described in paragraph (c)(2) of this section.

§ 361.731 What are the steps to determine the amount to be paid under the State one-stop infrastructure funding mechanism?

(a) To initiate the State funding mechanism, a Local WDB that has not reached consensus on methods of sufficiently funding local infrastructure through the local funding mechanism as provided in § 361.725 must notify the Governor by the deadline established by the Governor under § 361.705(b)(3).

(b) Once a Local WDB has informed the Governor that no consensus has been reached:

(1) The Local WDB must provide the Governor with local negotiation materials in accordance with § 361.735(a).

(2) The Governor must determine the one-stop center budget by either:

(i) Accepting a budget previously agreed upon by partner programs in the local negotiations, in accordance with § 361.735(b)(1); or

(ii) Creating a budget for the one-stop center using the State WDB formula (described in § 361.745) in accordance with § 361.735(b)(3).

(3) The Governor then must establish a cost allocation methodology to determine the one-stop partner programs' proportionate shares of infrastructure costs, in accordance with § 361.736.

(4)(i) Using the methodology established under paragraph (b)(2)(ii) of this section, and taking into consideration the factors concerning individual partner programs listed in § 361.737(b)(2), the Governor must determine each partner's proportionate share of the infrastructure costs, in accordance with § 361.737(b)(1), and

(ii) In accordance with § 361.730(c), in some instances, the Governor does not determine a partner program's proportionate share of infrastructure funding costs, in which case it must be determined by the entities named in § 361.730(c)(1) and (2).

(5) The Governor must then calculate the statewide caps on the amounts that partner programs may be required to contribute toward infrastructure funding, according to the steps found at § 361.738(a)(1) through (4).

(6) The Governor must ensure that the aggregate total of the infrastructure contributions according to proportionate share required of all local partner programs in local areas under the State funding mechanism do not exceed the cap for that particular program, in accordance with § 361.738(b)(1). If the total does not exceed the cap, the Governor must direct each one-stop partner program to pay the amount determined under § 361.737(a) toward the infrastructure funding costs of the one-stop center. If the total does exceed the cap, then to determine the amount to direct each one-stop program to pay, the Governor may:

(i) Ascertain, in accordance with § 361.738(b)(2)(i), whether the local partner or partners whose proportionate shares are calculated above the individual program caps are willing to voluntarily contribute above the capped amount to equal that program's proportionate share; or

(ii) Choose from the options provided in § 361.738(b)(2)(ii), including having the local area re-enter negotiations to reassess each one-stop partner's proportionate share and make adjustments or identify alternate sources of funding to make up the difference between the capped amount and the proportionate share of infrastructure funding of the one-stop partner.

(7) If none of the solutions given in paragraphs (b)(6)(i) and (ii) of this section prove to be viable, the Governor must reassess the proportionate shares of each one-stop partner so that the aggregate amount attributable to the local partners for each program is less than that program's cap amount. Upon such reassessment, the Governor must direct each one-stop partner program to pay the reassessed amount toward the infrastructure funding costs of the one-stop center.

§ 361.735 How are infrastructure cost budgets for the one-stop centers in a local area determined in the State one-stop infrastructure funding mechanism?

(a) Local WDBs must provide to the Governor appropriate and relevant materials and documents used in the negotiations under the local funding mechanism, including but not limited to: the local WIOA plan, the cost allocation method or methods proposed by the partners to be used in determining proportionate share, the proposed amounts or budget to fund infrastructure, the amount of total partner funds included, the type of funds or non-cash contributions, proposed one-stop center budgets, and any agreed upon or proposed MOUs.

(b)(1) If a local area has reached agreement as to the infrastructure budget for the one-stop centers in the

local area, it must provide this budget to the Governor as required by paragraph (a) of this section. If, as a result of the agreed upon infrastructure budget, only the individual programmatic contributions to infrastructure funding based upon proportionate use of the one-stop centers and relative benefit received are at issue, the Governor may accept the budget, from which the Governor must calculate each partner's contribution consistent with the cost allocation methodologies contained in the Uniform Guidance found in 2 CFR part 200, as described in § 361.736.

(2) The Governor may also take into consideration the extent to which the partners in the local area have agreed in determining the proportionate shares, including any agreements reached at the local level by one or more partners, as well as any other element or product of the negotiating process provided to the Governor as required by paragraph (a) of this section.

(3) If a local area has not reached agreement as to the infrastructure budget for the one-stop centers in the local area, or if the Governor determines that the agreed upon budget does not adequately meet the needs of the local area or does not reasonably work within the confines of the local area's resources in accordance with the Governor's one-stop budget guidance (which is required to be issued by WIOA sec. 121(h)(1)(B) and under § 361.705), then, in accordance with § 361.745, the Governor must use the formula developed by the State WDB based on at least the factors required under § 361.745, and any associated weights to determine the local area budget.

§ 361.736 How does the Governor establish a cost allocation methodology used to determine the one-stop partner programs' proportionate shares of infrastructure costs under the State one-stop infrastructure funding mechanism?

Once the appropriate budget is determined for a local area through either method described in § 361.735 (by acceptance of a budget agreed upon in local negotiation or by the Governor applying the formula detailed in § 361.745), the Governor must determine the appropriate cost allocation methodology to be applied to the one-stop partners in such local area, consistent with the Federal cost principles permitted under 2 CFR part 200, to fund the infrastructure budget.

§ 361.737 How are one-stop partner programs' proportionate shares of infrastructure costs determined under the State one-stop infrastructure funding mechanism?

(a) The Governor must direct the one-stop partners in each local area that have not reached agreement under the local funding mechanism to pay what the Governor determines is each partner program's proportionate share of infrastructure funds for that area, subject to the application of the caps described in § 361.738.

(b)(1) The Governor must use the cost allocation methodology—as determined under § 361.736—to determine each partner's proportionate share of the infrastructure costs under the State funding mechanism, subject to considering the factors described in paragraph (b)(2) of this section.

(2) In determining each partner program's proportionate share of infrastructure costs, the Governor must take into account the costs of administration of the one-stop delivery system for purposes not related to one-stop centers for each partner (such as costs associated with maintaining the Local WDB or information technology systems), as well as the statutory requirements for each partner program, the partner program's ability to fulfill such requirements, and all other applicable legal requirements. The Governor may also take into consideration the extent to which the partners in the local area have agreed in determining the proportionate shares, including any agreements reached at the local level by one or more partners, as well as any other materials or documents of the negotiating process, which must be provided to the Governor by the Local WDB and described in § 361.735(a).

§ 361.738 How are statewide caps on the contributions for one-stop infrastructure funding determined in the State one-stop infrastructure funding mechanism?

(a) The Governor must calculate the statewide cap on the contributions for one-stop infrastructure funding required to be provided by each one-stop partner program for those local areas that have not reached agreement. The cap is the amount determined under paragraph (a)(4) of this section, which the Governor derives by:

(1) First, determining the amount resulting from applying the percentage for the corresponding one-stop partner program provided in paragraph (d) of this section to the amount of Federal funds provided to carry out the one-stop partner program in the State for the applicable fiscal year;

(2) Second, selecting a factor (or factors) that reasonably indicates the use of one-stop centers in the State, applying such factor(s) to all local areas in the State, and determining the percentage of such factor(s) applicable to the local areas that reached agreement under the local funding mechanism in the State;

(3) Third, determining the amount resulting from applying the percentage determined in paragraph (a)(2) of this section to the amount determined under paragraph (a)(1) of this section for the one-stop partner program; and

(4) Fourth, determining the amount that results from subtracting the amount determined under paragraph (a)(3) of this section from the amount determined under paragraph (a)(1) of this section. The outcome of this final calculation results in the partner program's cap.

(b)(1) The Governor must ensure that the funds required to be contributed by each partner program in the local areas in the State under the State funding mechanism, in aggregate, do not exceed the statewide cap for each program as determined under paragraph (a) of this section.

(2) If the contributions initially determined under § 361.737 would exceed the applicable cap determined under paragraph (a) of this section, the Governor may:

(i) Ascertain if the one-stop partner whose contribution would otherwise exceed the cap determined under paragraph (a) of this section will voluntarily contribute above the capped amount, so that the total contributions equal that partner's proportionate share. The one-stop partner's contribution must still be consistent with the program's authorizing laws and regulations, the Federal cost principles in 2 CFR part 200, and other applicable legal requirements; or

(ii) Direct or allow the Local WDB, chief elected officials, and one-stop partners to: Re-enter negotiations, as necessary; reduce the infrastructure costs to reflect the amount of funds that are available for such costs without exceeding the cap levels; reassess the proportionate share of each one-stop partner; or identify alternative sources of financing for one-stop infrastructure funding, consistent with the requirement that each one-stop partner pay an amount that is consistent with the proportionate use of the one-stop center and relative benefit received by the partner, the program's authorizing laws and regulations, the Federal cost principles in 2 CFR part 200, and other applicable legal requirements.

(3) If applicable under paragraph (b)(2)(ii) of this section, the Local WDB, chief elected officials, and one-stop partners, after renegotiation, may come to agreement, sign an MOU, and proceed under the local funding mechanism. Such actions do not require the redetermination of the applicable caps under paragraph (a) of this section.

(4) If, after renegotiation, agreement among partners still cannot be reached or alternate financing cannot be identified, the Governor may adjust the specified allocation, in accordance with the amounts available and the limitations described in paragraph (d) of this section. In determining these adjustments, the Governor may take into account information relating to the renegotiation as well as the information described in § 361.735(a).

(c) *Limitations.* Subject to paragraph (a) of this section and in accordance with WIOA sec. 121(h)(2)(D), the following limitations apply to the Governor's calculations of the amount that one-stop partners in local areas that have not reached agreement under the local funding mechanism may be required under § 361.736 to contribute to one-stop infrastructure funding:

(1) *WIOA formula programs and Wagner-Peyser Act Employment Service.* The portion of funds required to be contributed under the WIOA youth, adult, or dislocated worker programs, or under the Wagner-Peyser Act (29 U.S.C. 49 *et seq.*) must not exceed three percent of the amount of the program in the State for a program year.

(2) *Other one-stop partners.* For required one-stop partners other than those specified in paragraphs (c)(1), (3), (5), and (6) of this section, the portion of funds required to be contributed must not exceed 1.5 percent of the amount of Federal funds provided to carry out that program in the State for a fiscal year. For purposes of the Carl D. Perkins Career and Technical Education Act of 2006, the cap on contributions is determined based on the funds made available by the State for postsecondary level programs and activities under sec. 132 of the Carl D. Perkins Career and Technical Education Act and the amount of funds used by the State under sec. 112(a)(3) of the Perkins Act during the prior year to administer postsecondary level programs and activities, as applicable.

(3) *Vocational rehabilitation.* (i) Within a State, for the entity or entities administering the programs described in WIOA sec. 121(b)(1)(B)(iv) and § 361.400, the allotment is based on the one State Federal fiscal year allotment, even in instances where that allotment is shared between two State agencies, and the cumulative portion of funds required to be contributed must not exceed—

(A) 0.75 percent of the amount of Federal funds provided to carry out such program in the State for Fiscal Year 2016 for purposes of applicability of the State funding mechanism for PY 2017;

(B) 1.0 percent of the amount provided to carry out such program in the State for Fiscal Year 2017 for purposes of applicability of the State funding mechanism for PY 2018;

(C) 1.25 percent of the amount provided to carry out such program in the State for Fiscal Year 2018 for purposes of applicability of the State funding mechanism for PY 2019;

(D) 1.5 percent of the amount provided to carry out such program in the State for Fiscal Year 2019 and following years for purposes of applicability of the State funding mechanism for PY 2020 and subsequent years.

(ii) The limitations set forth in paragraph (d)(3)(i) of this section for any given fiscal year must be based on the final VR allotment to the State in the applicable Federal fiscal year.

(4) *Federal direct spending programs.* For local areas that have not reached a one-stop infrastructure funding agreement by consensus, an entity administering a program funded with direct Federal spending, as defined in sec. 250(c)(8) of the Balanced Budget and Emergency Deficit Control Act of 1985, as in effect on February 15, 2014 (2 U.S.C. 900(c)(8)), must not be required to provide more for infrastructure costs than the amount that the Governor determined (as described in § 361.737).

(5) *TANF programs.* For purposes of TANF, the cap on contributions is determined based on the total Federal TANF funds expended by the State for work, education, and training activities during the prior Federal fiscal year (as reported to the Department of Health and Human Services (HHS) on the quarterly TANF Financial Report form), plus any additional amount of Federal TANF funds that the State TANF agency reasonably determines was expended for administrative costs in connection with these activities but that was separately reported to HHS as an administrative cost. The State's contribution to the one-stop infrastructure must not exceed 1.5 percent of these combined expenditures.

(6) *Community Services Block Grant (CSBG) programs.* For purposes of CSBG, the cap on contributions will be based on the total amount of CSBG funds determined by the State to have been expended by local CSBG-eligible entities for the provision of employment and training activities during the prior Federal fiscal year for which information is available (as reported to HHS on the CSBG Annual Report) and any additional amount that the State CSBG agency reasonably determines was expended for administrative purposes in connection with these activities and was separately reported to HHS as an administrative cost. The State's contribution must not exceed 1.5 percent of these combined expenditures.

(d) For programs for which it is not otherwise feasible to determine the amount of Federal funding used by the program until the end of that program's operational year—because, for example, the funding available for education, employment, and training activities is included within funding for the program that may also be used for other unrelated activities—the determination of the Federal funds provided to carry out the program for a fiscal year under paragraph (a)(1) of this section may be determined by:

(1) The percentage of Federal funds available to the one-stop partner program that were used by the one-stop partner program for education, employment, and training activities in the previous fiscal year for which data are available; and

(2) Applying the percentage determined under paragraph (d)(1) of this section to the total amount of Federal funds available to the one-stop partner program for the fiscal year for which the determination under paragraph (a)(1) of this section applies.

§ 361.740 What funds are used to pay for infrastructure costs in the State one-stop infrastructure funding mechanism?

(a) In the State funding mechanism, infrastructure costs for WIOA title I programs, including Native American Programs described in 20 CFR part 684, may be paid using program funds, administrative funds, or both. Infrastructure costs for the Senior Community Service Employment Program under title V of the Older Americans Act (42 U.S.C. 3056 *et seq.*) may also be paid using program funds, administrative funds, or both.

(b) In the State funding mechanism, infrastructure costs for other required one-stop partner programs (listed in §§ 361.400 through 361.410) are limited to the program's administrative funds, as appropriate.

(c) In the State funding mechanism, infrastructure costs for the adult education program authorized by title II of WIOA must be paid from the funds that are available for local

administration and may be paid from funds made available by the State or non-Federal resources that are cash, in-kind, or third-party contributions.

(d) In the State funding mechanism, infrastructure costs for the Carl D. Perkins Career and Technical Education Act of 2006 must be paid from funds available for local administration of postsecondary level programs and activities to eligible recipients or consortia of eligible recipients and may be paid from funds made available by the State or non-Federal resources that are cash, in-kind, or third-party contributions.

§ 361.745 What factors does the State Workforce Development Board use to develop the formula described in Workforce Innovation and Opportunity Act, which is used by the Governor to determine the appropriate one-stop infrastructure budget for each local area operating under the State infrastructure funding mechanism, if no reasonably implementable locally negotiated budget exists?

The State WDB must develop a formula, as described in WIOA sec. 121(h)(3)(B), to be used by the Governor under § 361.735(b)(3) in determining the appropriate budget for the infrastructure costs of one-stop centers in the local areas that do not reach agreement under the local funding mechanism and are, therefore, subject to the State funding mechanism. The formula identifies the factors and corresponding weights for each factor that the Governor must use, which must include: The number of one-stop centers in a local area; the population served by such centers; the services provided by such centers; and any factors relating to the operations of such centers in the local area that the State WDB determines are appropriate. As indicated in § 361.735(b)(1), if the local area has agreed on such a budget, the Governor may accept that budget in lieu of applying the formula factors.

§ 361.750 When and how can a one-stop partner appeal a one-stop infrastructure amount designated by the State under the State infrastructure funding mechanism?

(a) The Governor must establish a process, described under sec. 121(h)(2)(E) of WIOA, for a one-stop partner administering a program described in §§ 361.400 through 361.410 to appeal the Governor's determination regarding the one-stop partner's portion of funds to be provided for one-stop infrastructure costs. This appeal process must be described in the Unified State Plan.

(b) The appeal may be made on the ground that the Governor's determination is inconsistent with proportionate share requirements in § 361.735(a), the cost contribution limitations in § 361.735(b), the cost contribution caps in § 361.738, consistent with the process described in the State Plan.

(c) The process must ensure prompt resolution of the appeal in order to ensure the funds are distributed in a timely manner, consistent with the requirements of 20 CFR 683.630.

(d) The one-stop partner must submit an appeal in accordance with State's deadlines for appeals specified in the guidance issued under § 361.705(b)(3), or if the State has not set a deadline, within 21 days from the Governor's determination.

§ 361.755 What are the required elements regarding infrastructure funding that must be included in the one-stop Memorandum of Understanding?

The MOU, fully described in § 361.500, must contain the following information whether the local areas use either the local one-stop or the State funding method:

(a) The period of time in which this infrastructure funding agreement is effective. This may be a different time period than the duration of the MOU.

(b) Identification of an infrastructure and shared services budget that will be periodically reconciled against actual costs incurred and adjusted accordingly to ensure that it reflects a cost allocation methodology that demonstrates how infrastructure costs are charged to each partner in proportion to its use of the one-stop center and relative benefit received, and that complies with 2 CFR part 200 (or any corresponding similar regulation or ruling).

(c) Identification of all one-stop partners, chief elected officials, and Local WDB participating in the infrastructure funding arrangement.

(d) Steps the Local WDB, chief elected officials, and one-stop partners used to reach consensus or an assurance that the local area followed the guidance for the State funding process.

(e) Description of the process to be used among partners to resolve issues during the MOU duration period when consensus cannot be reached.

(f) Description of the periodic modification and review process to ensure equitable benefit among one-stop partners.

§ 361.760 How do one-stop partners jointly fund other shared costs under the Memorandum of Understanding?

(a) In addition to jointly funding infrastructure costs, one-stop partners listed in §§ 361.400 through 361.410 must use a portion of funds made available under their programs' authorizing Federal law (or fairly evaluated in-kind contributions) to pay the additional costs relating to the operation of the one-stop delivery system. These other costs must include applicable career services and may include other costs, including shared services.

(b) For the purposes of paragraph (a) of this section, shared services' costs may include the costs of shared services that are authorized for and may be commonly provided through the one-stop partner programs to any individual, such as initial intake, assessment of needs, appraisal of basic skills, identification of appropriate services to meet such needs, referrals to other one-stop partners, and business services. Shared operating costs may also include shared costs of the Local WDB's functions.

(c) Contributions to the additional costs related to operation of the one-stop delivery system may be cash, non-cash, or third-party in-kind contributions, consistent with how these are described in § 361.720(c).

(d) The shared costs described in paragraph (a) of this section must be allocated according to the proportion of benefit received by each of the partners, consistent with the Federal law authorizing the partner's program, and consistent with all other applicable legal requirements, including Federal cost principles in 2 CFR part 200 (or any corresponding similar regulation or ruling) requiring that costs are allowable, reasonable, necessary, and allocable.

(e) Any shared costs agreed upon by the one-stop partners must be included in the MOU.

§ 361.800 How are one-stop centers and one-stop delivery systems certified for effectiveness, physical and programmatic accessibility, and continuous improvement?

(a) The State WDB, in consultation with chief elected officials and Local WDBs, must establish objective criteria and procedures for Local WDBs to use when certifying one-stop centers.

(1) The State WDB, in consultation with chief elected officials and Local WDBs, must review and update the criteria every 2 years as part of the review and modification of State Plans pursuant to § 361.135.

(2) The criteria must be consistent with the Governor's and State WDB's guidelines, guidance, and policies on infrastructure funding decisions, described in § 361.705. The criteria must evaluate the one-stop centers and one-stop delivery system for effectiveness, including customer satisfaction, physical and programmatic

accessibility, and continuous improvement.

(3) When the Local WDB is the one-stop operator as described in 20 CFR 679.410, the State WDB must certify the one-stop center.

(b) Evaluations of effectiveness must include how well the one-stop center integrates available services for participants and businesses, meets the workforce development needs of participants and the employment needs of local employers, operates in a cost-efficient manner, coordinates services among the one-stop partner programs, and provides access to partner program services to the maximum extent practicable, including providing services outside of regular business hours where there is a workforce need, as identified by the Local WDB. These evaluations must take into account feedback from one-stop customers. They must also include evaluations of how well the one-stop center ensures equal opportunity for individuals with disabilities to participate in or benefit from one-stop center services. These evaluations must include criteria evaluating how well the centers and delivery systems take actions to comply with the disability-related regulations implementing WIOA sec. 188, set forth at 29 CFR part 38. Such actions include, but are not limited to:

(1) Providing reasonable accommodations for individuals with disabilities;

(2) Making reasonable modifications to policies, practices, and procedures where necessary to avoid discrimination against persons with disabilities;

(3) Administering programs in the most integrated setting appropriate;

(4) Communicating with persons with disabilities as effectively as with others;

(5) Providing appropriate auxiliary aids and services, including assistive technology devices and services, where necessary to afford individuals with disabilities an equal opportunity to participate in, and enjoy the benefits of, the program or activity; and

(6) Providing for the physical accessibility of the one-stop center to individuals with disabilities.

(c) Evaluations of continuous improvement must include how well the one-stop center supports the achievement of the negotiated local levels of performance for the indicators of performance for the local area described in sec. 116(b)(2) of WIOA and part 361. Other continuous improvement factors may include a regular process for identifying and responding to technical assistance needs, a regular system of continuing professional staff development, and having systems in place to capture and respond to specific customer feedback.

(d) Local WDBs must assess at least once every 3 years the effectiveness, physical and programmatic accessibility, and continuous improvement of one-stop centers and the one-stop delivery systems using the criteria and procedures developed by the State WDB. The Local WDB may establish additional criteria, or set higher standards for service coordination, than those set by the State criteria. Local WDBs must review and update the criteria every 2 years as part of the Local Plan update process described in § 361.580. Local WDBs must certify one-stop centers in order to be eligible to use infrastructure funds in the State funding mechanism described in § 361.730.

(e) All one-stop centers must comply with applicable physical and programmatic accessibility requirements, as set forth in 29 CFR part 38, the implementing regulations of WIOA sec. 188.

§ 361.900 What is the common identifier to be used by each one-stop delivery system?

(a) The common one-stop delivery system identifier is "American Job Center."

(b) As of November 17, 2016, each one-stop delivery system must include the "American Job Center" identifier or "a proud partner of the American Job Center network" on all primary electronic resources used by the one-stop delivery system, and on any newly printed, purchased, or created materials.

(c) As of July 1, 2017, each one-stop delivery system must include the "American Job Center" identifier or "a proud partner of the American Job Center network" on all products, programs, activities, services, electronic resources, facilities, and related property and new materials used in the one-stop delivery system.

(d) One-stop partners, States, or local areas may use additional identifiers on their products, programs, activities, services, facilities, and related property and materials.

PART 463—ADULT EDUCATION AND FAMILY LITERACY ACT

■ 8. The authority citation for part 463 continues to read as follows:

Authority: 29 U.S.C. 102 and 103, unless otherwise noted.

■ 9. Add subpart H to part 463, as added elsewhere in this issue of the **Federal Register**, to read as follows:

Subpart H—Unified and Combined State Plans Under Title I of the Workforce Innovation and Opportunity Act

Sec.

463.100 What are the purposes of the Unified and Combined State Plans?
463.105 What are the general requirements for the Unified State Plan?
463.110 What are the program-specific requirements in the Unified State Plan for the adult, dislocated worker, and youth programs authorized under Workforce Innovation and Opportunity Act title I?
463.115 What are the program-specific requirements in the Unified State Plan for the Adult Education and Family Literacy Act program authorized under Workforce Innovation and Opportunity Act title II?
463.120 What are the program-specific requirements in the Unified State Plan for the Employment Service program authorized under the Wagner-Peyser Act, as amended by Workforce Innovation and Opportunity Act title III?
463.125 What are the program-specific requirements in the Unified State Plan for the State Vocational Rehabilitation program authorized under title I of the Rehabilitation Act of 1973, as amended by Workforce Innovation and Opportunity Act title IV?
463.130 What is the development, submission, and approval process of the Unified State Plan?
463.135 What are the requirements for modification of the Unified State Plan?
463.140 What are the general requirements for submitting a Combined State Plan?
463.143 What is the development, submission, and approval process of the Combined State Plan?
463.145 What are the requirements for modifications of the Combined State Plan?

Authority: Secs. 102, 103, and 503, Pub. L. 113–128, 128 Stat. 1425 (Jul. 22, 2014).

Subpart H—Unified and Combined State Plans Under Title I of the Workforce Innovation and Opportunity Act

§ 463.100 What are the purposes of the Unified and Combined State Plans?

(a) The Unified and Combined State Plans provide the framework for States to outline a strategic vision of, and goals for, how their workforce development systems will achieve the purposes of the Workforce Innovation and Opportunity Act (WIOA).

(b) The Unified and Combined State Plans serve as 4-year action plans to develop, align, and integrate the State's systems and provide a platform to achieve the State's vision and strategic and operational goals. A Unified or Combined State Plan is intended to:

(1) Align, in strategic coordination, the six core programs required in the Unified State Plan pursuant to

§ 463.105(b), and additional Combined State Plan partner programs that may be part of the Combined State Plan pursuant to § 463.140;

(2) Direct investments in economic, education, and workforce training programs to focus on providing relevant education and training to ensure that individuals, including youth and individuals with barriers to employment, have the skills to compete in the job market and that employers have a ready supply of skilled workers;

(3) Apply strategies for job-driven training consistently across Federal programs; and

(4) Enable economic, education, and workforce partners to build a skilled workforce through innovation in, and alignment of, employment, training, and education programs.

§ 463.105 What are the general requirements for the Unified State Plan?

(a) The Unified State Plan must be submitted in accordance with § 463.130 and WIOA sec. 102(c), as explained in joint planning guidelines issued by the Secretaries of Labor and Education.

(b) The Governor of each State must submit, at a minimum, in accordance with § 463.130, a Unified State Plan to the Secretary of Labor to be eligible to receive funding for the workforce development system's six core programs:

(1) The adult, dislocated worker, and youth programs authorized under subtitle B of title I of WIOA and administered by the U.S. Department of Labor (DOL);

(2) The Adult Education and Family Literacy Act (AEFLA) program authorized under title II of WIOA and administered by the U.S. Department of Education (ED);

(3) The Employment Service program authorized under the Wagner-Peyser Act of 1933, as amended by WIOA title III and administered by DOL; and

(4) The Vocational Rehabilitation program authorized under title I of the Rehabilitation Act of 1973, as amended by title IV of WIOA and administered by ED.

(c) The Unified State Plan must outline the State's 4-year strategy for the core programs described in paragraph (b) of this section and meet the requirements of sec. 102(b) of WIOA, as explained in the joint planning guidelines issued by the Secretaries of Labor and Education.

(d) The Unified State Plan must include strategic and operational planning elements to facilitate the development of an aligned, coordinated, and comprehensive workforce development system. The Unified State Plan must include:

(1) Strategic planning elements that describe the State's strategic vision and goals for preparing an educated and skilled workforce under sec. 102(b)(1) of WIOA. The strategic planning elements must be informed by and include an analysis of the State's economic conditions and employer and workforce needs, including education and skill needs.

(2) Strategies for aligning the core programs and Combined State Plan partner programs as described in § 463.140(d), as well as other resources available to the State, to achieve the strategic vision and goals in accordance with sec. 102(b)(1)(E) of WIOA.

(3) Operational planning elements in accordance with sec. 102(b)(2) of WIOA that support the strategies for aligning the core programs and other resources available to the State to achieve the State's vision and goals and a description of how the State Workforce Development Board (WDB) will implement its functions, in accordance with sec. 101(d) of WIOA. Operational planning elements must include:

(i) A description of how the State strategy will be implemented by each core program's lead State agency;

(ii) State operating systems, including data systems, and policies that will support the implementation of the State's strategy identified in paragraph (d)(1) of this section;

(iii) Program-specific requirements for the core programs required by WIOA sec. 102(b)(2)(D);

(iv) Assurances required by sec. 102(b)(2)(E) of WIOA, including an assurance that the lead State agencies responsible for the administration of the core programs reviewed and commented on the appropriate operational planning of the Unified State Plan and approved the elements as serving the needs of the population served by such programs, and other assurances deemed necessary by the Secretaries of Labor and Education under sec. 102(b)(2)(E)(x) of WIOA;

(v) A description of joint planning and coordination across core programs, required one-stop partner programs, and other programs and activities in the Unified State Plan; and

(vi) Any additional operational planning requirements imposed by the Secretary of Labor or the Secretary of Education under sec. 102(b)(2)(C)(viii) of WIOA.

(e) All of the requirements in this subpart that apply to States also apply to outlying areas.

§ 463.110 What are the program-specific requirements in the Unified State Plan for the adult, dislocated worker, and youth programs authorized under Workforce Innovation and Opportunity Act title I?

The program-specific requirements for the adult, dislocated worker, and youth programs that must be included in the Unified State Plan are described in sec. 102(b)(2)(D) of WIOA. Additional planning requirements may be explained in joint planning guidelines issued by the Secretaries of Labor and Education.

§ 463.115 What are the program-specific requirements in the Unified State Plan for the Adult Education and Family Literacy Act program authorized under Workforce Innovation and Opportunity Act title II?

The program-specific requirements for the AEFLA program in title II that must be included in the Unified State Plan are described in secs. 102(b)(2)(C) and 102(b)(2)(D)(ii) of WIOA.

(a) With regard to the description required in sec. 102(b)(2)(D)(ii)(I) of WIOA pertaining to content standards, the Unified State Plan must describe how the eligible agency will, by July 1, 2016, align its content standards for adult education with State-adopted challenging academic content standards under the Elementary and Secondary Education Act of 1965, as amended.

(b) With regard to the description required in sec. 102(b)(2)(C)(iv) of WIOA pertaining to the methods and factors the State will use to distribute funds under the core programs, for title II of WIOA, the Unified State Plan must include—

(1) How the eligible agency will award multi-year grants on a competitive basis to eligible providers in the State; and

(2) How the eligible agency will provide direct and equitable access to funds using the same grant or contract announcement and application procedure.

§ 463.120 What are the program-specific requirements in the Unified State Plan for the Employment Service program authorized under the Wagner-Peyser Act, as amended by Workforce Innovation and Opportunity Act title III?

The Employment Service program authorized under the Wagner-Peyser Act of 1933, as amended by WIOA title III, is subject to requirements in sec. 102(b) of WIOA, including any additional requirements imposed by the Secretary of Labor under secs. 102(b)(2)(C)(viii) and 102(b)(2)(D)(iv) of WIOA, as explained in joint planning guidelines issued by the Secretaries of Labor and Education.

§ 463.125 What are the program-specific requirements in the Unified State Plan for the State Vocational Rehabilitation program authorized under title I of the Rehabilitation Act of 1973, as amended by Workforce Innovation and Opportunity Act title IV?

The program specific-requirements for the vocational rehabilitation services portion of the Unified or Combined State Plan are set forth in sec. 101(a) of the Rehabilitation Act of 1973, as amended. All submission requirements for the vocational rehabilitation services portion of the Unified or Combined State Plan are in addition to the jointly developed strategic and operational content requirements prescribed by sec. 102(b) of WIOA.

§ 463.130 What is the development, submission, and approval process of the Unified State Plan?

(a) The Unified State Plan described in § 463.105 must be submitted in accordance with WIOA sec. 102(c), as explained in joint planning guidelines issued jointly by the Secretaries of Labor and Education.

(b) A State must submit its Unified State Plan to the Secretary of Labor pursuant to a process identified by the Secretary.

(1) The initial Unified State Plan must be submitted no later than 120 days prior to the commencement of the second full program year of WIOA.

(2) Subsequent Unified State Plans must be submitted no later than 120 days prior to the end of the 4-year period covered by a preceding Unified State Plan.

(3) For purposes of paragraph (b) of this section, "program year" means July 1 through June 30 of any year.

(c) The Unified State Plan must be developed with the assistance of the State WDB, as required by 20 CFR 679.130(a) and WIOA sec. 101(d), and must be developed in coordination with administrators with optimum policy-making authority for the core programs and required one-stop partners.

(d) The State must provide an opportunity for public comment on and input into the development of the Unified State Plan prior to its submission.

(1) The opportunity for public comment must include an opportunity for comment by representatives of Local WDBs and chief elected officials, businesses, representatives of labor organizations, community-based organizations, adult education providers, institutions of higher education, other stakeholders with an interest in the services provided by the six core programs, and the general public, including individuals with disabilities.

(2) Consistent with the "Sunshine Provision" of WIOA in sec. 101(g), the State WDB must make information regarding the Unified State Plan available to the public through electronic means and regularly occurring open meetings in accordance with State law. The Unified State Plan must describe the State's process and timeline for ensuring a meaningful opportunity for public comment.

(e) Upon receipt of the Unified State Plan from the State, the Secretary of Labor will ensure that the entire Unified State Plan is submitted to the Secretary of Education pursuant to a process developed by the Secretaries.

(f) The Unified State Plan is subject to the approval of both the Secretary of Labor and the Secretary of Education.

(g) Before the Secretaries of Labor and Education approve the Unified State Plan, the vocational rehabilitation services portion of the Unified State Plan described in WIOA sec. 102(b)(2)(D)(iii) must be approved by the Commissioner of the Rehabilitation Services Administration.

(h) The Secretaries of Labor and Education will review and approve the Unified State Plan within 90 days of receipt by the Secretary of Labor, unless the Secretary of Labor or the Secretary of Education determines in writing within that period that:

(1) The plan is inconsistent with a core program's requirements;

(2) The Unified State Plan is inconsistent with any requirement of sec. 102 of WIOA; or

(3) The plan is incomplete or otherwise insufficient to determine whether it is consistent with a core program's requirements or other requirements of WIOA.

(i) If neither the Secretary of Labor nor the Secretary of Education makes the written determination described in paragraph (h) of this section within 90 days of the receipt by the Secretaries, the Unified State Plan will be considered approved.

§ 463.135 What are the requirements for modification of the Unified State Plan?

(a) In addition to the required modification review set forth in paragraph (b) of this section, a Governor may submit a modification of its Unified State Plan at any time during the 4-year period of the plan.

(b) Modifications are required, at a minimum:

(1) At the end of the first 2-year period of any 4-year State Plan, wherein the State WDB must review the Unified State Plan, and the Governor must submit modifications to the plan to reflect changes in labor market and economic conditions or other factors affecting the implementation of the Unified State Plan;

(2) When changes in Federal or State law or policy substantially affect the strategies, goals, and priorities upon which the Unified State Plan is based;

(3) When there are changes in the statewide vision, strategies, policies, State negotiated levels of performance as described in § 463.170(b), the methodology used to determine local allocation of funds, reorganizations that change the working relationship with system employees, changes in organizational responsibilities, changes to the membership structure of the State WDB or alternative entity, and similar substantial changes to the State's workforce development system.

(c) Modifications to the Unified State Plan are subject to the same public review and comment requirements in § 463.130(d) that apply to the development of the original Unified State Plan.

(d) Unified State Plan modifications must be approved by the Secretaries of Labor and Education, based on the approval standards applicable to the original Unified State Plan under § 463.130. This approval must come after the approval of the Commissioner of the Rehabilitation Services Administration for modification of any portion of the plan described in sec. 102(b)(2)(D)(iii) of WIOA.

§ 463.140 What are the general requirements for submitting a Combined State Plan?

(a) A State may choose to develop and submit a 4-year Combined State Plan in lieu of the Unified State Plan described in §§ 463.105 through 463.125.

(b) A State that submits a Combined State Plan covering an activity or program described in paragraph (d) of this section that is, in accordance with WIOA sec. 103(c), approved or deemed complete under the law relating to the program will not be required to submit any other plan or application in order to receive Federal funds to carry out the core programs or the program or activities described under paragraph (d) of this section that are covered by the Combined State Plan.

(c) If a State develops a Combined State Plan, it must be submitted in accordance with the process described in § 463.143.

(d) If a State chooses to submit a Combined State Plan, the plan must include the six core programs and one or more of the Combined State Plan partner programs and activities described in sec. 103(a)(2) of WIOA. The Combined State Plan partner programs

and activities that may be included in the Combined State Plan are:

(1) Career and technical education programs authorized under the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2301 *et seq.*);

(2) Temporary Assistance for Needy Families or TANF, authorized under part A of title IV of the Social Security Act (42 U.S.C. 601 *et seq.*);

(3) Employment and training programs authorized under sec. 6(d)(4) of the Food and Nutrition Act of 2008 (7 U.S.C. 2015(d)(4));

(4) Work programs authorized under sec. 6(o) of the Food and Nutrition Act of 2008 (7 U.S.C. 2015(o));

(5) Trade adjustment assistance activities under chapter 2 of title II of the Trade Act of 1974 (19 U.S.C. 2271 *et seq.*);

(6) Services for veterans authorized under chapter 41 of title 38 United States Code;

(7) Programs authorized under State unemployment compensation laws (in accordance with applicable Federal law);

(8) Senior Community Service Employment Programs under title V of the Older Americans Act of 1965 (42 U.S.C. 3056 *et seq.*);

(9) Employment and training activities carried out by the Department of Housing and Urban Development (HUD);

(10) Employment and training activities carried out under the Community Services Block Grant Act (42 U.S.C. 9901 *et seq.*); and

(11) Reintegration of offenders programs authorized under sec. 212 of the Second Chance Act of 2007 (42 U.S.C. 17532).

(e) A Combined State Plan must contain:

(1) For the core programs, the information required by sec. 102(b) of WIOA and §§ 463.105 through 463.125, as explained in the joint planning guidelines issued by the Secretaries;

(2) For the Combined State Plan partner programs and activities, except as described in paragraph (h) of this section, the information required by the law authorizing and governing that program to be submitted to the appropriate Secretary, any other applicable legal requirements, and any common planning requirements described in sec. 102(b) of WIOA, as explained in the joint planning guidelines issued by the Secretaries;

(3) A description of the methods used for joint planning and coordination among the core programs, and with the required one-stop partner programs and other programs and activities included in the State Plan; and

(4) An assurance that all of the entities responsible for planning or administering the programs described in the Combined State Plan have had a meaningful opportunity to review and comment on all portions of the plan.

(f) Each Combined State Plan partner program included in the Combined State Plan remains subject to the applicable program-specific requirements of the Federal law and regulations, and any other applicable legal or program requirements, governing the implementation and operation of that program.

(g) For purposes of §§ 463.140 through 463.145 the term "appropriate Secretary" means the head of the Federal agency who exercises either plan or application approval authority for the program or activity under the Federal law authorizing the program or activity or, if there are no planning or application requirements, who exercises administrative authority over the program or activity under that Federal law.

(h) States that include employment and training activities carried out under the Community Services Block Grant (CSBG) Act (42 U.S.C. 9901 *et seq.*) under a Combined State Plan would submit all other required elements of a complete CSBG State Plan directly to the Federal agency that administers the program, according to the requirements of Federal law and regulations.

(i) States that submit employment and training activities carried out by HUD under a Combined State Plan would submit any other required planning documents for HUD programs directly to HUD, according to the requirements of Federal law and regulations.

§ 463.143 What is the development, submission, and approval process of the Combined State Plan?

(a) For purposes of § 463.140(a), if a State chooses to develop a Combined State Plan it must submit the Combined State Plan in accordance with the requirements described below and sec. 103 of WIOA, as explained in the joint planning guidelines issued by the Secretaries of Labor and Education.

(b) The Combined State Plan must be developed with the assistance of the State WDB, as required by 20 CFR 679.130(a) and WIOA sec. 101(d), and must be developed in coordination with administrators with optimum policy-making authority for the core programs and required one-stop partners.

(c) The State must provide an opportunity for public comment on and input into the development of the Combined State Plan prior to its submission.

(1) The opportunity for public comment for the portions of the Combined State Plan that cover the core programs must include an opportunity for comment by representatives of Local WDBs and chief elected officials, businesses, representatives of labor organizations, community-based organizations, adult education providers, institutions of higher education, other stakeholders with an interest in the services provided by the six core programs, and the general public, including individuals with disabilities.

(2) Consistent with the "Sunshine Provision" of WIOA in sec. 101(g), the State WDB must make information regarding the Combined State Plan available to the public through electronic means and regularly occurring open meetings in accordance with State law. The Combined State Plan must describe the State's process and timeline for ensuring a meaningful opportunity for public comment on the portions of the plan covering core programs.

(3) The portions of the plan that cover the Combined State Plan partner programs are subject to any public comment requirements applicable to those programs.

(d) The State must submit to the Secretaries of Labor and Education and to the Secretary of the agency with responsibility for approving the program's plan or deeming it complete under the law governing the program, as part of its Combined State Plan, any plan, application, form, or any other similar document that is required as a condition for the approval of Federal funding under the applicable program or activity. Such submission must occur in accordance with a process identified by the relevant Secretaries in paragraph (a) of this section.

(e) The Combined State Plan will be approved or disapproved in accordance with the requirements of sec. 103(c) of WIOA.

(1) The portion of the Combined State Plan covering programs administered by the Departments of Labor and Education must be reviewed, and approved or disapproved, by the appropriate Secretary within 90 days beginning on the day the Combined State Plan is received by the appropriate Secretary from the State, consistent with paragraph (f) of this section. Before the Secretaries of Labor and Education approve the Combined State Plan, the vocational rehabilitation services portion of the Combined State Plan described in WIOA sec. 102(b)(2)(D)(iii) must be approved by the Commissioner

of the Rehabilitation Services Administration.

(2) If an appropriate Secretary other than the Secretary of Labor or the Secretary of Education has authority to approve or deem complete a portion of the Combined State Plan for a program or activity described in § 463.140(d), that portion of the Combined State Plan must be reviewed, and approved, disapproved, or deemed complete, by the appropriate Secretary within 120 days beginning on the day the Combined State Plan is received by the appropriate Secretary from the State consistent with paragraph (f) of this section.

(f) The appropriate Secretaries will review and approve or deem complete the Combined State Plan within 90 or 120 days, as appropriate, as described in paragraph (e) of this section, unless the Secretaries of Labor and Education or appropriate Secretary have determined in writing within that period that:

(1) The Combined State Plan is inconsistent with the requirements of the six core programs or the Federal laws authorizing or applicable to the program or activity involved, including the criteria for approval of a plan or application, or deeming the plan complete, if any, under such law;

(2) The portion of the Combined State Plan describing the six core programs or the program or activity described in paragraph (a) of this section involved does not satisfy the criteria as provided in sec. 102 or 103 of WIOA, as applicable; or

(3) The Combined State Plan is incomplete, or otherwise insufficient to determine whether it is consistent with a core program's requirements, other requirements of WIOA, or the Federal laws authorizing, or applicable to, the program or activity described in § 463.140(d), including the criteria for approval of a plan or application, if any, under such law.

(g) If the Secretary of Labor, the Secretary of Education, or the appropriate Secretary does not make the written determination described in paragraph (f) of this section within the relevant period of time after submission of the Combined State Plan, that portion of the Combined State Plan over which the Secretary has jurisdiction will be considered approved.

(h) The Secretaries of Labor and Education's written determination of approval or disapproval regarding the portion of the plan for the six core programs may be separate from the written determination of approval, disapproval, or completeness of the program-specific requirements of Combined State Plan partner programs and activities described in § 463.140(d) and included in the Combined State Plan.

(i) *Special rule.* In paragraphs (f)(1) and (3) of this section, the term "criteria for approval of a plan or application," with respect to a State or a core program or a program under the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2301 *et seq.*), includes a requirement for agreement between the State and the appropriate Secretaries regarding State performance measures or State performance accountability measures, as the case may be, including levels of performance.

§ 463.145 What are the requirements for modifications of the Combined State Plan?

(a) For the core program portions of the Combined State Plan, modifications are required, at a minimum:

(1) By the end of the first 2-year period of any 4-year State Plan. The State WDB must review the Combined State Plan, and the Governor must submit modifications to the Combined State Plan to reflect changes in labor market and economic conditions or other factors affecting the implementation of the Combined State Plan;

(2) When changes in Federal or State law or policy substantially affect the strategies, goals, and priorities upon which the Combined State Plan is based;

(3) When there are changes in the statewide vision, strategies, policies, State negotiated levels of performance as described in § 463.170(b), the methodology used to determine local allocation of funds, reorganizations that change the working relationship with system employees, changes in organizational responsibilities, changes to the membership structure of the State WDB or alternative entity, and similar substantial changes to the State's workforce development system.

(b) In addition to the required modification review described in paragraph (a)(1) of this section, a State may submit a modification of its Combined State Plan at any time during the 4-year period of the plan.

(c) For any Combined State Plan partner programs and activities described in § 463.140(d) that are included in a State's Combined State Plan, the State—

(1) May decide if the modification requirements under WIOA sec. 102(c)(3) that apply to the core programs will apply to the Combined State Plan partner programs, as long as consistent with any other modification requirements for the programs, or may comply with the requirements applicable to only the particular program or activity; and

(2) Must submit, in accordance with the procedure described in § 463.143, any modification, amendment, or revision required by the Federal law authorizing, or applicable to, the Combined State Plan partner program or activity.

(i) If the underlying programmatic requirements change (*e.g.*, the authorizing statute is reauthorized) for Federal laws authorizing such programs, a State must either modify its Combined State Plan or submit a separate plan to the appropriate Federal agency in accordance with the new Federal law authorizing the Combined State Plan partner program or activity and other legal requirements applicable to such program or activity.

(ii) If the modification, amendment, or revision affects the administration of only that particular Combined State Plan partner program and has no impact on the Combined State Plan as a whole or the integration and administration of the core and other Combined State Plan partner programs at the State level, modifications must be submitted for approval to only the appropriate Secretary, based on the approval standards applicable to the original Combined State Plan under § 463.143, if the State elects, or in accordance with the procedures and requirements applicable to the particular Combined State Plan partner program.

(3) A State also may amend its Combined State Plan to add a Combined State Plan partner program or activity described in § 463.140(d).

(d) Modifications of the Combined State Plan are subject to the same public review and comment requirements that apply to the development of the original Combined State Plan as described in § 463.143(c) except that, if the modification, amendment, or revision affects the administration of a particular Combined State Plan partner program and has no impact on the Combined State Plan as a whole or the integration and administration of the core and other Combined State Plan partner programs at the State level, a State may comply instead with the procedures and requirements applicable to the particular Combined State Plan partner program.

(e) Modifications for the core program portions of the Combined State Plan must be approved by the Secretaries of Labor and Education, based on the approval standards applicable to the original Combined State Plan under § 463.143. This approval must come after the approval of the Commissioner of the Rehabilitation Services

Administration for modification of any portion of the Combined State Plan described in sec. 102(b)(2)(D)(iii) of WIOA.

■ 10. Add subpart I to part 463, as added elsewhere in this issue of the **Federal Register**, to read as follows:

Subpart I—Performance Accountability Under Title I of the Workforce Innovation and Opportunity Act

Sec.

463.150 What definitions apply to Workforce Innovation and Opportunity Act performance accountability provisions?
463.155 What are the primary indicators of performance under the Workforce Innovation and Opportunity Act?
463.160 What information is required for State performance reports?
463.165 May a State establish additional indicators of performance?
463.170 How are State levels of performance for primary indicators established?
463.175 What responsibility do States have to use quarterly wage record information for performance accountability?
463.180 When is a State subject to a financial sanction under the Workforce Innovation and Opportunity Act?
463.185 When are sanctions applied for a State's failure to submit an annual performance report?
463.190 When are sanctions applied for failure to achieve adjusted levels of performance?
463.195 What should States expect when a sanction is applied to the Governor's Reserve Allotment?
463.200 What other administrative actions will be applied to States' performance requirements?
463.205 What performance indicators apply to local areas and what information must be included in local area performance reports?
463.210 How are local performance levels established?
463.215 Under what circumstances are local areas eligible for State Incentive Grants?
463.220 Under what circumstances may a corrective action or sanction be applied to local areas for poor performance?
463.225 Under what circumstances may local areas appeal a reorganization plan?
463.230 What information is required for the eligible training provider performance reports?
463.235 What are the reporting requirements for individual records for core Workforce Innovation and Opportunity Act (WIOA) title I programs; the Wagner-Peyser Act Employment Service program, as amended by WIOA title III; and the Vocational Rehabilitation program authorized under title I of the Rehabilitation Act of 1973, as amended by WIOA title IV?
463.240 What are the requirements for data validation of State annual performance reports?

Authority: Secs. 116, 189, and 503 of Pub. L. 113–128, 128 Stat. 1425 (Jul. 22, 2014).

Subpart I—Performance Accountability Under Title I of the Workforce Innovation and Opportunity Act

§ 463.150 What definitions apply to Workforce Innovation and Opportunity Act performance accountability provisions?

(a) *Participant.* A reportable individual who has received services other than the services described in paragraph (a)(3) of this section, after satisfying all applicable programmatic requirements for the provision of services, such as eligibility determination.

(1) For the Vocational Rehabilitation (VR) program, a participant is a reportable individual who has an approved and signed Individualized Plan for Employment (IPE) and has begun to receive services.

(2) For the Workforce Innovation and Opportunity Act (WIOA) title I youth program, a participant is a reportable individual who has satisfied all applicable program requirements for the provision of services, including eligibility determination, an objective assessment, and development of an individual service strategy, and received 1 of the 14 WIOA youth program elements identified in sec. 129(c)(2) of WIOA.

(3) The following individuals are not participants:

(i) Individuals in an Adult Education and Family Literacy Act (AEFLA) program who have not completed at least 12 contact hours;

(ii) Individuals who only use the self-service system.

(A) Subject to paragraph (a)(3)(ii)(B) of this section, self-service occurs when individuals independently access any workforce development system program's information and activities in either a physical location, such as a one-stop center resource room or partner agency, or remotely via the use of electronic technologies.

(B) Self-service does not uniformly apply to all virtually accessed services. For example, virtually accessed services that provide a level of support beyond independent job or information seeking on the part of an individual would not qualify as self-service.

(iii) Individuals who receive information-only services or activities, which provide readily available information that does not require an assessment by a staff member of the individual's skills, education, or career objectives.

(4) Programs must include participants in their performance calculations.

(b) *Reportable individual.* An individual who has taken action that demonstrates an intent to use program services and who meets specific reporting criteria of the program, including:

(1) Individuals who provide identifying information;

(2) Individuals who only use the self-service system; or

(3) Individuals who only receive information-only services or activities.

(c) *Exit.* As defined for the purpose of performance calculations, exit is the point after which a participant who has received services through any program meets the following criteria:

(1) For the adult, dislocated worker, and youth programs authorized under WIOA title I, the AEFLA program authorized under WIOA title II, and the Employment Service program authorized under the Wagner-Peyser Act, as amended by WIOA title III, exit date is the last date of service.

(i) The last day of service cannot be determined until at least 90 days have elapsed since the participant last received services; services do not include self-service, information-only services or activities, or follow-up services. This also requires that there are no plans to provide the participant with future services.

(ii) [Reserved].

(2)(i) For the VR program authorized under title I of the Rehabilitation Act of 1973, as amended by WIOA title IV (VR program):

(A) The participant's record of service is closed in accordance with § 463.56 because the participant has achieved an employment outcome; or

(B) The participant's service record is closed because the individual has not achieved an employment outcome or the individual has been determined ineligible after receiving services in accordance with § 463.43.

(ii) Notwithstanding any other provision of this section, a participant will not be considered as meeting the definition of exit from the VR program if the participant's service record is closed because the participant has achieved a supported employment outcome in an integrated setting but not in competitive integrated employment.

(3)(i) A State may implement a common exit policy for all or some of the core programs in WIOA title I and the Employment Service program authorized under the Wagner-Peyser Act, as amended by WIOA title III, and any additional required partner program(s) listed in sec. 121(b)(1)(B) of WIOA that is under the authority of the U.S. Department of Labor (DOL).

(ii) If a State chooses to implement a common exit policy, the policy must require that a participant is exited only

when all of the criteria in paragraph (c)(1) of this section are met for the WIOA title I core programs and the Employment Service program authorized under the Wagner-Peyser Act, as amended by WIOA title III, as well as any additional required partner programs listed in sec. 121(b)(1)(B) of WIOA under the authority of DOL to which the common exit policy applies in which the participant is enrolled.

(d) *State.* For purposes of this part, other than in regard to sanctions or the statistical adjustment model, all references to "State" include the outlying areas of American Samoa, Guam, Commonwealth of the Northern Mariana Islands, the U.S. Virgin Islands, and, as applicable, the Republic of Palau.

§ 463.155 What are the primary indicators of performance under the Workforce Innovation and Opportunity Act?

(a) All States submitting either a Unified or Combined State Plan under §§ 463.130 and 463.143, must propose expected levels of performance for each of the primary indicators of performance for the adult, dislocated worker, and youth programs authorized under WIOA title I; the AEFLA program authorized under WIOA title II; the Employment Service program authorized under the Wagner-Peyser Act, as amended by WIOA title III; and the VR program authorized under title I of the Rehabilitation Act of 1973, as amended by WIOA title IV.

(1) *Primary indicators of performance.* The six primary indicators of performance for the adult and dislocated worker programs, the AEFLA program, and the VR program are:

(i) The percentage of participants who are in unsubsidized employment during the second quarter after exit from the program;

(ii) The percentage of participants who are in unsubsidized employment during the fourth quarter after exit from the program;

(iii) Median earnings of participants who are in unsubsidized employment during the second quarter after exit from the program;

(iv)(A) The percentage of those participants enrolled in an education or training program (excluding those in on-the-job training [OJT] and customized training) who attained a recognized postsecondary credential or a secondary school diploma, or its recognized equivalent, during participation in or within 1 year after exit from the program.

(B) A participant who has attained a secondary school diploma or its recognized equivalent is included in the percentage of participants who have attained a secondary school diploma or recognized equivalent only if the participant also is employed or is enrolled in an education or training program leading to a recognized postsecondary credential within 1 year after exit from the program;

(v) The percentage of participants who, during a program year, are in an education or training program that leads to a recognized postsecondary credential or employment and who are achieving measurable skill gains, defined as documented academic, technical, occupational, or other forms of progress, towards such a credential or employment. Depending upon the type of education or training program, documented progress is defined as one of the following:

(A) Documented achievement of at least one educational functioning level of a participant who is receiving instruction below the postsecondary education level;

(B) Documented attainment of a secondary school diploma or its recognized equivalent;

(C) Secondary or postsecondary transcript or report card for a sufficient number of credit hours that shows a participant is meeting the State unit's academic standards;

(D) Satisfactory or better progress report, towards established milestones, such as completion of OJT or completion of 1 year of an apprenticeship program or similar milestones, from an employer or training provider who is providing training; or

(E) Successful passage of an exam that is required for a particular occupation or progress in attaining technical or occupational skills as evidenced by trade-related benchmarks such as knowledge-based exams.

(vi) Effectiveness in serving employers.

(2) *Participants.* For purposes of the primary indicators of performance in paragraph (a)(1) of this section, "participant" will have the meaning given to it in § 463.150(a), except that—

(i) For purposes of determining program performance levels under indicators set forth in paragraphs (a)(1)(i) through (iv) and (vi) of this section, a "participant" does not include a participant who received services under sec. 225 of WIOA and exits such program while still in a correctional institution as defined in sec. 225(e)(1) of WIOA; and

(ii) The Secretaries of Labor and Education may, as needed and consistent with the Paperwork Reduction Act (PRA), make further determinations as to the participants to be included in calculating program performance levels for purposes of any of the performance indicators set forth in paragraph (a)(1) of this section.

(b) The primary indicators in paragraphs (a)(1)(i) through (iii) and (vi) of this section apply to the Employment Service program authorized under the Wagner-Peyser Act, as amended by WIOA title III.

(c) For the youth program authorized under WIOA title I, the primary indicators are:

(1) Percentage of participants who are in education or training activities, or in unsubsidized employment, during the second quarter after exit from the program;

(2) Percentage of participants in education or training activities, or in unsubsidized employment, during the fourth quarter after exit from the program;

(3) Median earnings of participants who are in unsubsidized employment during the second quarter after exit from the program;

(4) The percentage of those participants enrolled in an education or training program (excluding those in OJT and customized training) who obtained a recognized postsecondary credential or a secondary school diploma, or its recognized equivalent, during participation in or within 1 year after exit from the program, except that a participant who has attained a secondary school diploma or its recognized equivalent is included as having attained a secondary school diploma or recognized equivalent only if the participant is also employed or is enrolled in an education or training program leading to a recognized postsecondary credential within 1 year from program exit;

(5) The percentage of participants who during a program year, are in an education or training program that leads to a recognized postsecondary credential or employment and who are achieving measurable skill gains, defined as documented academic, technical, occupational or other forms of progress towards such a credential or employment. Depending upon the type of education or training program, documented progress is defined as one of the following:

(i) Documented achievement of at least one educational functioning level of a participant who is receiving instruction below the postsecondary education level;

(ii) Documented attainment of a secondary school diploma or its recognized equivalent;

(iii) Secondary or postsecondary transcript or report card for a sufficient number of credit hours that shows a participant is achieving the State unit's academic standards;

(iv) Satisfactory or better progress report, towards established milestones, such as completion of OJT or completion of 1 year of an apprenticeship program or similar milestones, from an employer or training provider who is providing training; or

(v) Successful passage of an exam that is required for a particular occupation or progress in attaining technical or occupational skills as evidenced by trade-related benchmarks such as knowledge-based exams.

(6) Effectiveness in serving employers.

§ 463.160 What information is required for State performance reports?

(a) The State performance report required by sec. 116(d)(2) of WIOA must be submitted annually using a template the Departments of Labor and Education will disseminate, and must provide, at a minimum, information on the actual performance levels achieved consistent with § 463.175 with respect to:

(1) The total number of participants served, and the total number of participants who exited each of the core programs identified in sec. 116(b)(3)(A)(ii) of WIOA, including disaggregated counts of those who participated in and exited a core program, by:

(i) Individuals with barriers to employment as defined in WIOA sec. 3(24); and

(ii) Co-enrollment in any of the programs in WIOA sec. 116(b)(3)(A)(ii).

(2) Information on the performance levels achieved for the primary indicators of performance for all of the core programs identified in § 463.155 including disaggregated levels for:

(i) Individuals with barriers to employment as defined in WIOA sec. 3(24);

(ii) Age;

(iii) Sex; and

(iv) Race and ethnicity.

(3) The total number of participants who received career services and the total number of participants who exited from career services for the most recent program year and the 3 preceding program years, and the total number of participants who received training services and the total number of participants who exited from training services for the most recent program year and the 3 preceding program years, as applicable to the program;

(4) Information on the performance levels achieved for the primary indicators of performance consistent with § 463.155 for career services and training services for the most recent program year and the 3 preceding program years, as applicable to the program;

(5) The percentage of participants in a program who attained unsubsidized employment related to the training received (often referred to as training-related employment) through WIOA title I, subtitle B programs;

(6) The amount of funds spent on career services and the amount of funds spent on training services for the most recent program year and the 3 preceding program years, as applicable to the program;

(7) The average cost per participant for those participants who received career services and training services, respectively, during the most recent program year and the 3 preceding program years, as applicable to the program;

(8) The percentage of a State's annual allotment under WIOA sec. 132(b) that the State spent on administrative costs; and

(9) Information that facilitates comparisons of programs with programs in other States.

(10) For WIOA title I programs, a State performance narrative, which, for States in which a local area is implementing a pay-for-performance contracting strategy, at a minimum provides:

(i) A description of pay-for-performance contract strategies being used for programs;

(ii) The performance of service providers entering into contracts for such strategies, measured against the levels of performance specified in the contracts for such strategies; and

(iii) An evaluation of the design of the programs and performance strategies and, when available, the satisfaction of employers and participants who received services under such strategies.

(b) The disaggregation of data for the State performance report must be done in compliance with WIOA sec. 116(d)(6)(C).

(c) The State performance reports must include a mechanism of electronic access to the State's local area and eligible training provider (ETP) performance reports.

(d) States must comply with these requirements from sec. 116 of WIOA as explained in joint guidance issued by the Departments of Labor and Education, which may include information on reportable individuals as determined by the Secretaries of Labor and Education.

§ 463.165 May a State establish additional indicators of performance?

States may identify additional indicators of performance for the six core programs. If a State does so, these indicators must be included in the Unified or Combined State Plan.

§ 463.170 How are State levels of performance for primary indicators established?

(a) A State must submit in the State Plan expected levels of performance on the primary indicators of performance for each core program as required by sec. 116(b)(3)(A)(iii) of WIOA as explained in joint guidance issued by the Secretaries of Labor and Education.

(1) The initial State Plan submitted under WIOA must contain expected levels of performance for the first 2 years of the State Plan.

(2) States must submit expected levels of performance for the third and fourth year of the State Plan before the third program year consistent with §§ 463.135 and 463.145.

(b) States must reach agreement on levels of performance with the Secretaries of Labor and Education for each indicator for each core program. These are the negotiated levels of performance. The negotiated levels must be based on the following factors:

(1) How the negotiated levels of performance compare with State levels of performance established for other States;

(2) The application of an objective statistical model established by the Secretaries of Labor and Education, subject to paragraph (d) of this section;

(3) How the negotiated levels promote continuous improvement in performance based on the primary indicators and ensure optimal return on investment of Federal funds; and

(4) The extent to which the negotiated levels assist the State in meeting the performance goals established by the Secretaries of Labor and Education for the core programs in accordance with the Government Performance and Results Act of 1993, as amended.

(c) An objective statistical adjustment model will be developed and disseminated by the Secretaries of Labor and Education. The model will be based on:

(1) Differences among States in actual economic conditions, including but not limited to unemployment rates and job losses or gains in particular industries; and

(2) The characteristics of participants, including but not limited to:

(i) Indicators of poor work history;

(ii) Lack of work experience;

(iii) Lack of educational or occupational skills attainment;

(iv) Dislocation from high-wage and high-benefit employment;
(v) Low levels of literacy;
(vi) Low levels of English proficiency;
(vii) Disability status;
(viii) Homelessness;
(ix) Ex-offender status; and
(x) Welfare dependency.

(d) The objective statistical adjustment model developed under paragraph (c) of this section will be:

(1) Applied to the core programs' primary indicators upon availability of data which are necessary to populate the model and apply the model to the local core programs;

(2) Subject to paragraph (d)(1) of this section, used before the beginning of a program year in order to reach agreement on State negotiated levels for the upcoming program year; and

(3) Subject to paragraph (d)(1) of this section, used to revise negotiated levels at the end of a program year based on actual economic conditions and characteristics of participants served, consistent with sec. 116(b)(3)(A)(vii) of WIOA.

(e) The negotiated levels revised at the end of the program year, based on the statistical adjustment model, are the adjusted levels of performance.

(f) States must comply with these requirements from sec. 116 of WIOA as explained in joint guidance issued by the Departments of Labor and Education.

§ 463.175 What responsibility do States have to use quarterly wage record information for performance accountability?

(a)(1) States must, consistent with State laws, use quarterly wage record information in measuring a State's performance on the primary indicators of performance outlined in § 463.155 and a local area's performance on the primary indicators of performance identified in § 463.205.

(2) The use of social security numbers from participants and such other information as is necessary to measure the progress of those participants through quarterly wage record information is authorized.

(3) To the extent that quarterly wage records are not available for a participant, States may use other information as is necessary to measure the progress of those participants through methods other than quarterly wage record information.

(b) "Quarterly wage record information" means intrastate and interstate wages paid to an individual, the social security number (or numbers, if more than one) of the individual, and the name, address, State, and the Federal employer identification number of the employer paying the wages to the individual.

(c) The Governor may designate a State agency (or appropriate State entity) to assist in carrying out the performance reporting requirements for WIOA core programs and ETPs. The Governor or such agency (or appropriate State entity) is responsible for:

(1) Facilitating data matches;

(2) Data quality reliability; and

(3) Protection against disaggregation that would violate applicable privacy standards.

§ 463.180 When is a State subject to a financial sanction under the Workforce Innovation and Opportunity Act?

A State will be subject to financial sanction under WIOA sec. 116(f) if it fails to:

(a) Submit the State annual performance report required under WIOA sec. 116(d)(2); or

(b) Meet adjusted levels of performance for the primary indicators of performance in accordance with sec. 116(f) of WIOA.

§ 463.185 When are sanctions applied for a State's failure to submit an annual performance report?

(a) Sanctions will be applied when a State fails to submit the State annual performance report required under sec. 116(d)(2) of WIOA. A State fails to report if the State either:

(1) Does not submit a State annual performance report by the date for timely submission set in performance reporting guidance; or

(2) Submits a State annual performance report by the date for timely submission, but the report is incomplete.

(b) Sanctions will not be applied if the reporting failure is due to exceptional circumstances outside of the State's control. Exceptional circumstances may include, but are not limited to:

(1) Natural disasters;

(2) Unexpected personnel transitions; and

(3) Unexpected technology related issues.

(c) In the event that a State may not be able to submit a complete and accurate performance report by the deadline for timely reporting:

(1) The State must notify the Secretary of Labor or Secretary of Education as soon as possible, but no later than 30 days prior to the established deadline for submission, of a potential impact on the State's ability to submit its State annual performance report in order to not be considered failing to report.

(2) In circumstances where unexpected events occur less than 30 days before the established deadline for submission of the State annual performance reports, the Secretaries of Labor and Education will review requests for extending the reporting deadline in accordance with the Departments of Labor and Education's procedures that will be established in guidance.

§ 463.190 When are sanctions applied for failure to achieve adjusted levels of performance?

(a) States' negotiated levels of performance will be adjusted through the application of the statistical adjustment model established under § 463.170 to account for actual economic conditions experienced during a program year and characteristics of participants, annually at the close of each program year.

(b) Any State that fails to meet adjusted levels of performance for the primary indicators of performance outlined in § 463.155 for any year will receive technical assistance, including assistance in the development of a performance improvement plan provided by the Secretary of Labor or Secretary of Education.

(c) Whether a State has failed to meet adjusted levels of performance will be determined using the following three criteria:

(1) The overall State program score, which is expressed as the percent achieved, compares the actual results achieved by a core program on the primary indicators of performance to the adjusted levels of performance for that core program. The average of the percentages achieved of the adjusted level of performance for each of the primary indicators by a core program will constitute the overall State program score.

(2) However, until all indicators for the core program have at least 2 years of complete data, the overall State program score will be based on a comparison of the actual results achieved to the adjusted level of performance for each of the primary indicators that have at least 2 years of complete data for that program;

(3) The overall State indicator score, which is expressed as the percent achieved, compares the actual results achieved on a primary indicator of performance by all core programs in a State to the adjusted levels of performance for that primary indicator. The average of the percentages achieved of the adjusted level of performance by all of the core programs on that indicator will constitute the overall State indicator score.

(4) However, until all indicators for the State have at least 2 years of complete data, the overall State indicator score will be based on a comparison of the actual results achieved to the adjusted level of performance for each of the primary indicators that have at least 2 years of complete data in a State.

(5) The individual indicator score, which is expressed as the percent achieved, compares the actual results achieved by each core program on each of the individual primary indicators to the adjusted levels of performance for each of the program's primary indicators of performance.

(d) A performance failure occurs when:

(1) Any overall State program score or overall State indicator score falls below 90 percent for the program year; or

(2) Any of the States' individual indicator scores fall below 50 percent for the program year.

(e) Sanctions based on performance failure will be applied to States if, for 2 consecutive years, the State fails to meet:

(1) 90 percent of the overall State program score for the same core program;

(2) 90 percent of the overall State indicator score for the same primary indicator; or

(3) 50 percent of the same indicator score for the same program.

§ 463.195 What should States expect when a sanction is applied to the Governor's Reserve Allotment?

(a) The Secretaries of Labor and Education will reduce the Governor's Reserve Allotment by five percent of the maximum available amount for the immediately succeeding program year if:

(1) The State fails to submit the State annual performance reports as required under WIOA sec. 116(d)(2), as defined in § 463.185;

(2) The State fails to meet State adjusted levels of performance for the same primary performance indicator(s) under either § 463.190(d)(1) for the second consecutive year as defined in § 463.190; or

(3) The State's score on the same indicator for the same program falls below 50 percent under § 463.190(d)(2) for the second consecutive year as defined in § 463.190.

(b) If the State fails under paragraphs (a)(1) and either (a)(2) or (3) of this section in the same program year, the Secretaries of Labor and Education will reduce the Governor's Reserve Allotment by 10 percent of the maximum available amount for the immediately succeeding program year.

(c) If a State's Governor's Reserve Allotment is reduced:

(1) The reduced amount will not be returned to the State in the event that the State later improves performance or submits its annual performance report; and

(2) The Governor's Reserve will continue to be set at the reduced level in each subsequent year until the Secretary of Labor or the Secretary of Education, depending on which program is impacted, determines that the State met the State adjusted levels of performance for the applicable primary performance indicators and has submitted all of the required performance reports.

(d) A State may request review of a sanction the Secretary of Labor imposes in accordance with the provisions of 20 CFR 683.800.

§ 463.200 What other administrative actions will be applied to States' performance requirements?

(a) In addition to sanctions for failure to report or failure to meet adjusted levels of performance, States will be subject to administrative actions in the case of poor performance.

(b) States' performance achievement on the individual primary indicators will be assessed in addition to the overall State program score and overall State indicator score. Based on this assessment, as clarified and explained in guidance, for performance on any individual primary indicator, the Secretary of Labor or the Secretary of Education will require the State to establish a performance risk plan to address continuous improvement on the individual primary indicator.

§ 463.205 What performance indicators apply to local areas and what information must be included in local area performance reports?

(a) Each local area in a State under WIOA title I is subject to the same primary indicators of performance for the core programs for WIOA title I under § 463.155(a)(1) and (c) that apply to the State.

(b) In addition to the indicators described in paragraph (a) of this section, under § 463.165, the Governor may apply additional indicators of performance to local areas in the State.

(c) States must annually make local area performance reports available to the public using a template that the Departments of Labor and Education will disseminate in guidance, including by electronic means. The State must provide electronic access to the public local area performance report in its annual State performance report.

(d) The local area performance report must include:

(1) The actual results achieved under § 463.155 and the information required under § 463.160(a);

(2) The percentage of a local area's allotment under WIOA secs. 128(b) and 133(b) that the local area spent on administrative costs; and

(3) Other information that facilitates comparisons of programs with programs in other local areas (or planning regions if the local area is part of a planning region).

(e) The disaggregation of data for the local area performance report must be done in compliance with WIOA sec. 116(d)(6)(C).

(f) States must comply with any requirements from sec. 116(d)(3) of WIOA as explained in guidance, including the use of the performance reporting template, issued by DOL.

§ 463.210 How are local performance levels established?

(a) The objective statistical adjustment model required under sec. 116(b)(3)(A)(viii) of WIOA and described in § 463.170(c) must be:

(1) Applied to the core programs' primary indicators upon availability of data which are necessary to populate the model and apply the model to the local core programs;

(2) Used in order to reach agreement on local negotiated levels of performance for the upcoming program year; and

(3) Used to establish adjusted levels of performance at the end of a program year based on actual conditions, consistent with WIOA sec. 116(c)(3).

(b) Until all indicators for the core program in a local area have at least 2 years of complete data, the comparison of the actual results achieved to the adjusted levels of performance for each of the primary indicators only will be applied where there are at least 2 years of complete data for that program.

(c) The Governor, Local Workforce Development Board (WDB), and chief elected official must reach agreement on local negotiated levels of performance based on a negotiations process before the start of a program year with the use of the objective statistical model described in paragraph (a) of this section. The negotiations will include a discussion of circumstances not accounted for in the model and will take into account the extent to which the levels promote continuous improvement. The objective statistical model will be applied at the end of the program year based on actual economic conditions and characteristics of the participants served.

(d) The negotiations process described in paragraph (c) of this section must be developed by the Governor and disseminated to all Local WDBs and chief elected officials.

(e) The Local WDBs may apply performance measures to service providers that differ from the performance indicators that apply to the local area. These performance measures must be established after considering:

(1) The established local negotiated levels;

(2) The services provided by each provider; and

(3) The populations the service providers are intended to serve.

§ 463.215 Under what circumstances are local areas eligible for State Incentive Grants?

(a) The Governor is not required to award local incentive funds, but is authorized to provide incentive grants to local areas for performance on the primary indicators of performance consistent with WIOA sec. 134(a)(3)(A)(xi).

(b) The Governor may use non-Federal funds to create incentives for the Local WDBs to implement pay-for-performance contract strategies for the delivery of training services described in WIOA sec. 134(c)(3) or activities described in WIOA sec. 129(c)(2) in the local areas served by the Local WDBs. Pay-for-performance contract strategies must be implemented in accordance with 20 CFR part 683, subpart E and § 463.160.

§ 463.220 Under what circumstances may a corrective action or sanction be applied to local areas for poor performance?

(a) If a local area fails to meet the adjusted levels of performance agreed to under § 463.210 for the primary indicators of performance in the adult, dislocated worker, and youth programs authorized under WIOA title I in any program year, technical assistance must be provided by the Governor or, upon the Governor's request, by the Secretary of Labor.

(1) A State must establish the threshold for failure to meet adjusted levels of performance for a local area before coming to agreement on the negotiated levels of performance for the local area.

(i) A State must establish the adjusted level of performance for a local area, using the statistical adjustment model described in § 463.170(c).

(ii) At least 2 years of complete data on any indicator for any local core program are required in order to establish adjusted levels of performance for a local area.

(2) The technical assistance may include:

(i) Assistance in the development of a performance improvement plan;

(ii) The development of a modified local or regional plan; or

(iii) Other actions designed to assist the local area in improving performance.

(b) If a local area fails to meet the adjusted levels of performance agreed to under § 463.210 for the same primary indicators of performance for the same core program authorized under WIOA title I for a third consecutive program year, the Governor must take corrective actions. The corrective actions must include the development of a reorganization plan under which the Governor:

(1) Requires the appointment and certification of a new Local WDB, consistent with the criteria established under 20 CFR 679.350;

(2) Prohibits the use of eligible providers and one-stop partners that have been identified as achieving poor levels of performance; or

(3) Takes such other significant actions as the Governor determines are appropriate.

§ 463.225 Under what circumstances may local areas appeal a reorganization plan?

(a) The Local WDB and chief elected official for a local area that is subject to a reorganization plan under WIOA sec. 116(g)(2)(A) may appeal to the Governor to rescind or revise the reorganization plan not later than 30 days after receiving notice of the reorganization plan. The Governor must make a final decision within 30 days after receipt of the appeal.

(b) The Local WDB and chief elected official may appeal the final decision of the Governor to the Secretary of Labor not later than 30 days after receiving the decision from the Governor. Any appeal of the Governor's final decision must be:

(1) Appealed jointly by the Local WDB and chief elected official to the Secretary of Labor under 20 CFR 683.650; and

(2) Must be submitted by certified mail, return receipt requested, to the Secretary of Labor, U.S. Department of Labor, 200 Constitution Ave. NW., Washington DC 20210, Attention: ASET. A copy of the appeal must be simultaneously provided to the Governor.

(c) Upon receipt of the joint appeal from the Local WDB and chief elected official, the Secretary of Labor must make a final decision within 30 days. In making this determination the Secretary of Labor may consider any comments submitted by the Governor in response to the appeals.

(d) The decision by the Governor on the appeal becomes effective at the time it is issued and remains effective unless the Secretary of Labor rescinds or revises the reorganization plan under WIOA sec. 116(g)(2)(C).

§ 463.230 What information is required for the eligible training provider performance reports?

(a) States are required to make available and publish annually using a template the Departments of Labor and Education will disseminate including through electronic means, the ETP performance reports for ETPs who provide services under sec. 122 of WIOA that are described in 20 CFR 680.400 through 680.530. These reports at a minimum must include, consistent with § 463.175 and with respect to each program of study that is eligible to receive funds under WIOA:

(1) The total number of participants as defined by § 463.150(a) who received training services under the adult and dislocated worker programs authorized under WIOA title I for the most recent year and the 3 preceding program years, including:

(i) The number of participants under the adult and dislocated worker programs disaggregated by barriers to employment;

(ii) The number of participants under the adult and dislocated worker programs disaggregated by race, ethnicity, sex, and age;

(iii) The number of participants under the adult and dislocated worker programs disaggregated by the type of training entity for the most recent program year and the 3 preceding program years;

(2) The total number of participants who exit a program of study or its equivalent, including disaggregate counts by the type of training entity during the most recent program year and the 3 preceding program years;

(3) The average cost-per-participant for participants who received training services for the most recent program year and the 3 preceding program years disaggregated by type of training entity;

(4) The total number of individuals exiting from the program of study (or the equivalent) with respect to all individuals engaging in the program of study (or the equivalent); and

(5) The levels of performance achieved for the primary indicators of performance identified in § 463.155(a)(1)(i) through (iv) with respect to all individuals engaging in a program of study (or the equivalent).

(b) Apprenticeship programs registered under the National Apprenticeship Act are not required to

submit ETP performance information. If a registered apprenticeship program voluntarily submits performance information to a State, the State must include this information in the report.

(c) The State must provide a mechanism of electronic access to the public ETP performance report in its annual State performance report.

(d) States must comply with any requirements from sec. 116(d)(4) of WIOA as explained in guidance issued by DOL.

(e) The Governor may designate one or more State agencies such as a State Education Agency or other State Educational Authority to assist in overseeing ETP performance and facilitating the production and dissemination of ETP performance reports. These agencies may be the same agencies that are designated as responsible for administering the ETP list as provided under 20 CFR 680.500. The Governor or such agencies, or authorities, is responsible for:

(1) Facilitating data matches between ETP records and unemployment insurance (UI) wage data in order to produce the report;

(2) The creation and dissemination of the reports as described in paragraphs (a) through (d) of this section;

(3) Coordinating the dissemination of the performance reports with the ETP list and the information required to accompany the list, as provided in 20 CFR 680.500.

§ 463.235 What are the reporting requirements for individual records for core Workforce Innovation and Opportunity Act (WIOA) title I programs; the Wagner-Peyser Act Employment Service program, as amended by WIOA title III; and the Vocational Rehabilitation program authorized under title I of the Rehabilitation Act of 1973, as amended by WIOA title IV?

(a) On a quarterly basis, each State must submit to the Secretary of Labor or the Secretary of Education, as appropriate, individual records that include demographic information, information on services received, and information on resulting outcomes, as appropriate, for each reportable individual in either of the following programs administered by the Secretary of Labor or Secretary of Education: A WIOA title I core program; the Employment Service program authorized under the Wagner-Peyser Act, as amended by WIOA title III; or the VR program authorized under title I of the Rehabilitation Act of 1973, as amended by WIOA title IV.

(b) For individual records submitted to the Secretary of Labor, those records may be required to be integrated across all programs administered by the Secretary of Labor in one single file.

(c) States must comply with the requirements of sec. 116(d)(2) of WIOA as explained in guidance issued by the Departments of Labor and Education.

§ 463.240 What are the requirements for data validation of State annual performance reports?

(a) States must establish procedures, consistent with guidelines issued by the Secretary of Labor or the Secretary of Education, to ensure that they submit complete annual performance reports that contain information that is valid and reliable, as required by WIOA sec. 116(d)(5).

(b) If a State fails to meet standards in paragraph (a) of this section as determined by the Secretary of Labor or the Secretary of Education, the appropriate Secretary will provide technical assistance and may require the State to develop and implement corrective actions, which may require the State to provide training for its subrecipients.

(c) The Secretaries of Labor and Education will provide training and technical assistance to States in order to implement this section. States must comply with the requirements of sec. 116(d)(5) of WIOA as explained in guidance.

■ 11. Add subpart J to part 463, as added elsewhere in this issue of the **Federal Register**, to read as follows:

Subpart J—Description of the One-Stop Delivery System Under Title I of the Workforce Innovation and Opportunity Act

Sec.

463.300 What is the one-stop delivery system?
463.305 What is a comprehensive one-stop center and what must be provided there?
463.310 What is an affiliated site and what must be provided there?
463.315 Can a stand-alone Wagner-Peyser Act Employment Service office be designated as an affiliated one-stop site?
463.320 Are there any requirements for networks of eligible one-stop partners or specialized centers?
463.400 Who are the required one-stop partners?
463.405 Is Temporary Assistance for Needy Families a required one-stop partner?
463.410 What other entities may serve as one-stop partners?
463.415 What entity serves as the one-stop partner for a particular program in the local area?
463.420 What are the roles and responsibilities of the required one-stop partners?
463.425 What are the applicable career services that must be provided through the one-stop delivery system by required one-stop partners?
463.430 What are career services?
463.435 What are the business services provided through the one-stop delivery system, and how are they provided?
463.440 When may a fee be charged for the business services in this subpart?
463.500 What is the Memorandum of Understanding for the one-stop delivery system and what must be included in the Memorandum of Understanding?
463.505 Is there a single Memorandum of Understanding for the local area, or must there be different Memoranda of Understanding between the Local Workforce Development Board and each partner?
463.510 How must the Memorandum of Understanding be negotiated?
463.600 Who may operate one-stop centers?
463.605 How is the one-stop operator selected?
463.610 When is the sole-source selection of one-stop operators appropriate, and how is it conducted?
463.615 May an entity currently serving as one-stop operator compete to be a one-stop operator under the procurement requirements of this subpart?
463.620 What is the one-stop operator's role?
463.625 Can a one-stop operator also be a service provider?
463.630 Can State merit staff still work in a one-stop center where the operator is not a governmental entity?
463.635 What is the compliance date of the provisions of this subpart?
463.700 What are the one-stop infrastructure costs?
463.705 What guidance must the Governor issue regarding one-stop infrastructure funding?
463.710 How are infrastructure costs funded?
463.715 How are one-stop infrastructure costs funded in the local funding mechanism?
463.720 What funds are used to pay for infrastructure costs in the local one-stop infrastructure funding mechanism?
463.725 What happens if consensus on infrastructure funding is not reached at the local level between the Local Workforce Development Board, chief elected officials, and one-stop partners?
463.730 What is the State one-stop infrastructure funding mechanism?
463.731 What are the steps to determine the amount to be paid under the State one-stop infrastructure funding mechanism?
463.735 How are infrastructure cost budgets for the one-stop centers in a local area determined in the State one-stop infrastructure funding mechanism?
463.736 How does the Governor establish a cost allocation methodology used to determine the one-stop partner programs' proportionate shares of infrastructure costs under the State one-stop infrastructure funding mechanism?
463.737 How are one-stop partner programs' proportionate shares of infrastructure costs determined under the State one-stop infrastructure funding mechanism?
463.738 How are statewide caps on the contributions for one-stop infrastructure

funding determined in the State one-stop infrastructure funding mechanism?
463.740 What funds are used to pay for infrastructure costs in the State one-stop infrastructure funding mechanism?
463.745 What factors does the State Workforce Development Board use to develop the formula described in Workforce Innovation and Opportunity Act, which is used by the Governor to determine the appropriate one-stop infrastructure budget for each local area operating under the State infrastructure funding mechanism, if no reasonably implementable locally negotiated budget exists?
463.750 When and how can a one-stop partner appeal a one-stop infrastructure amount designated by the State under the State infrastructure funding mechanism?
463.755 What are the required elements regarding infrastructure funding that must be included in the one-stop Memorandum of Understanding?
463.760 How do one-stop partners jointly fund other shared costs under the Memorandum of Understanding?
463.800 How are one-stop centers and one-stop delivery systems certified for effectiveness, physical and programmatic accessibility, and continuous improvement?
463.900 What is the common identifier to be used by each one-stop delivery system?

Authority: Secs. 503, 107, 121, 134, 189, Pub. L. 113–128, 128 Stat. 1425 (Jul. 22, 2014).

Subpart J—Description of the One-Stop Delivery System Under Title I of the Workforce Innovation and Opportunity Act

§ 463.300 What is the one-stop delivery system?

(a) The one-stop delivery system brings together workforce development, educational, and other human resource services in a seamless customer-focused service delivery network that enhances access to the programs' services and improves long-term employment outcomes for individuals receiving assistance. One-stop partners administer separately funded programs as a set of integrated streamlined services to customers.

(b) Title I of the Workforce Innovation and Opportunity Act (WIOA) assigns responsibilities at the local, State, and Federal level to ensure the creation and maintenance of a one-stop delivery system that enhances the range and quality of education and workforce development services that employers and individual customers can access.

(c) The system must include at least one comprehensive physical center in each local area as described in § 463.305.

(d) The system may also have additional arrangements to supplement the comprehensive center. These arrangements include:

(1) An affiliated site or a network of affiliated sites, where one or more partners make programs, services, and activities available, as described in § 463.310;

(2) A network of eligible one-stop partners, as described in §§ 463.400 through 463.410, through which each partner provides one or more of the programs, services, and activities that are linked, physically or technologically, to an affiliated site or access point that assures customers are provided information on the availability of career services, as well as other program services and activities, regardless of where they initially enter the public workforce system in the local area; and

(3) Specialized centers that address specific needs, including those of dislocated workers, youth, or key industry sectors, or clusters.

(e) Required one-stop partner programs must provide access to programs, services, and activities through electronic means if applicable and practicable. This is in addition to providing access to services through the mandatory comprehensive physical one-stop center and any affiliated sites or specialized centers. The provision of programs and services by electronic methods such as Web sites, telephones, or other means must improve the efficiency, coordination, and quality of one-stop partner services. Electronic delivery must not replace access to such services at a comprehensive one-stop center or be a substitute to making services available at an affiliated site if the partner is participating in an affiliated site. Electronic delivery systems must be in compliance with the nondiscrimination and equal opportunity provisions of WIOA sec. 188 and its implementing regulations at 29 CFR part 38.

(f) The design of the local area's one-stop delivery system must be described in the Memorandum of Understanding (MOU) executed with the one-stop partners, described in § 463.500.

§ 463.305 What is a comprehensive one-stop center and what must be provided there?

(a) A comprehensive one-stop center is a physical location where job seeker and employer customers can access the programs, services, and activities of all required one-stop partners. A comprehensive one-stop center must have at least one title I staff person physically present.

(b) The comprehensive one-stop center must provide:

(1) Career services, described in § 463.430;

(2) Access to training services described in 20 CFR 680.200;

(3) Access to any employment and training activities carried out under sec. 134(d) of WIOA;

(4) Access to programs and activities carried out by one-stop partners listed in §§ 463.400 through 463.410, including the Employment Service program authorized under the Wagner-Peyser Act, as amended by WIOA title III (Wagner-Peyser Act Employment Service program); and

(5) Workforce and labor market information.

(c) Customers must have access to these programs, services, and activities during regular business days at a comprehensive one-stop center. The Local Workforce Development Board (WDB) may establish other service hours at other times to accommodate the schedules of individuals who work on regular business days. The State WDB will evaluate the hours of access to service as part of the evaluation of effectiveness in the one-stop certification process described in § 463.800(b).

(d) "Access" to each partner program and its services means:

(1) Having a program staff member physically present at the one-stop center;

(2) Having a staff member from a different partner program physically present at the one-stop center appropriately trained to provide information to customers about the programs, services, and activities available through partner programs; or

(3) Making available a direct linkage through technology to program staff who can provide meaningful information or services.

(i) A "direct linkage" means providing direct connection at the one-stop center, within a reasonable time, by phone or through a real-time Web-based communication to a program staff member who can provide program information or services to the customer.

(ii) A "direct linkage" cannot exclusively be providing a phone number or computer Web site or providing information, pamphlets, or materials.

(e) All comprehensive one-stop centers must be physically and programmatically accessible to individuals with disabilities, as described in 29 CFR part 38, the implementing regulations of WIOA sec. 188.

§ 463.310 What is an affiliated site and what must be provided there?

(a) An affiliated site, or affiliate one-stop center, is a site that makes available to job seeker and employer customers one or more of the one-stop partners' programs, services, and activities. An affiliated site does not need to provide access to every required one-stop partner program. The frequency of program staff's physical presence in the affiliated site will be determined at the local level. Affiliated sites are access points in addition to the comprehensive one-stop center(s) in each local area. If used by local areas as a part of the service delivery strategy, affiliate sites must be implemented in a manner that supplements and enhances customer access to services.

(b) As described in § 463.315, Wagner-Peyser Act employment services cannot be a stand-alone affiliated site.

(c) States, in conjunction with the Local WDBs, must examine lease agreements and property holdings throughout the one-stop delivery system in order to use property in an efficient and effective way. Where necessary and appropriate, States and Local WDBs must take expeditious steps to align lease expiration dates with efforts to consolidate one-stop operations into service points where Wagner-Peyser Act employment services are colocated as soon as reasonably possible. These steps must be included in the State Plan.

(d) All affiliated sites must be physically and programmatically accessible to individuals with disabilities, as described in 29 CFR part 38, the implementing regulations of WIOA sec. 188.

§ 463.315 Can a stand-alone Wagner-Peyser Act Employment Service office be designated as an affiliated one-stop site?

(a) Separate stand-alone Wagner-Peyser Act Employment Service offices are not permitted under WIOA, as also described in 20 CFR 652.202.

(b) If Wagner-Peyser Act employment services are provided at an affiliated site, there must be at least one or more other partners in the affiliated site with a physical presence of combined staff more than 50 percent of the time the center is open. Additionally, the other partner must not be the partner administering local veterans' employment representatives, disabled veterans' outreach program specialists, or unemployment compensation programs. If Wagner-Peyser Act employment services and any of these 3 programs are provided at an affiliated site, an additional partner or partners must have a presence of combined staff in the center more than 50 percent of the time the center is open.

§ 463.320 Are there any requirements for networks of eligible one-stop partners or specialized centers?

Any network of one-stop partners or specialized centers, as described in § 463.300(d)(3), must be connected to the comprehensive one-stop center and any appropriate affiliate one-stop centers, for example, by having processes in place to make referrals to these centers and the partner programs located in them. Wagner-Peyser Act employment services cannot stand alone in a specialized center. Just as described in § 463.315 for an affiliated site, a specialized center must include other programs besides Wagner-Peyser Act employment services, local veterans' employment representatives, disabled veterans' outreach program specialists, and unemployment compensation.

§ 463.400 Who are the required one-stop partners?

(a) Section 121(b)(1)(B) of WIOA identifies the entities that are required partners in the local one-stop delivery systems.

(b) The required partners are the entities responsible for administering the following programs and activities in the local area:

(1) Programs authorized under title I of WIOA, including:

(i) Adults;

(ii) Dislocated workers;

(iii) Youth;

(iv) Job Corps;

(v) YouthBuild;

(vi) Native American programs; and

(vii) Migrant and seasonal farmworker programs;

(2) The Wagner-Peyser Act Employment Service program authorized under the Wagner-Peyser Act (29 U.S.C. 49 *et seq.*), as amended by WIOA title III;

(3) The Adult Education and Family Literacy Act (AEFLA) program authorized under title II of WIOA;

(4) The Vocational Rehabilitation (VR) program authorized under title I of the Rehabilitation Act of 1973 (29 U.S.C. 720 *et seq.*), as amended by WIOA title IV;

(5) The Senior Community Service Employment Program authorized under title V of the Older Americans Act of 1965 (42 U.S.C. 3056 *et seq.*);

(6) Career and technical education programs at the postsecondary level authorized under the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2301 *et seq.*);

(7) Trade Adjustment Assistance activities authorized under chapter 2 of title II of the Trade Act of 1974 (19 U.S.C. 2271 *et seq.*);

(8) Jobs for Veterans State Grants programs authorized under chapter 41 of title 38, U.S.C.;

(9) Employment and training activities carried out under the Community Services Block Grant (42 U.S.C. 9901 *et seq.*);

(10) Employment and training activities carried out by the Department of Housing and Urban Development;

(11) Programs authorized under State unemployment compensation laws (in accordance with applicable Federal law);

(12) Programs authorized under sec. 212 of the Second Chance Act of 2007 (42 U.S.C. 17532); and

(13) Temporary Assistance for Needy Families (TANF) authorized under part A of title IV of the Social Security Act (42 U.S.C. 601 *et seq.*), unless exempted by the Governor under § 463.405(b).

§ 463.405 Is Temporary Assistance for Needy Families a required one-stop partner?

(a) Yes, TANF, authorized under part A of title IV of the Social Security Act (42 U.S.C. 601 *et seq.*), is a required partner.

(b) The Governor may determine that TANF will not be a required partner in the State, or within some specific local areas in the State. In this instance, the Governor must notify the Secretaries of the U.S. Departments of Labor and Health and Human Services in writing of this determination.

(c) In States, or local areas within a State, where the Governor has determined that TANF is not required to be a partner, local TANF programs may still work in collaboration or partnership with the local one-stop centers to deliver employment and training services to the TANF population unless inconsistent with the Governor's direction.

§ 463.410 What other entities may serve as one-stop partners?

(a) Other entities that carry out a workforce development program, including Federal, State, or local programs and programs in the private sector, may serve as additional partners in the one-stop delivery system if the Local WDB and chief elected official(s) approve the entity's participation.

(b) Additional partners may include, but are not limited to:

(1) Employment and training programs administered by the Social Security Administration, including the Ticket to Work and Self-Sufficiency Program established under sec. 1148 of the Social Security Act (42 U.S.C. 1320b–19);

(2) Employment and training programs carried out by the Small Business Administration;

(3) Supplemental Nutrition Assistance Program (SNAP) employment and training programs, authorized under secs. 6(d)(4) and 6(o) of the Food and Nutrition Act of 2008 (7 U.S.C. 2015(d)(4));

(4) Client Assistance Program authorized under sec. 112 of the Rehabilitation Act of 1973 (29 U.S.C. 732);

(5) Programs authorized under the National and Community Service Act of 1990 (42 U.S.C. 12501 *et seq.*); and

(6) Other appropriate Federal, State or local programs, including, but not limited to, employment, education, and training programs provided by public libraries or in the private sector.

§ 463.415 What entity serves as the one-stop partner for a particular program in the local area?

(a) The entity that carries out the program and activities listed in § 463.400 or § 463.410, and therefore serves as the one-stop partner, is the grant recipient, administrative entity, or organization responsible for administering the funds of the specified program in the local area. The term "entity" does not include the service providers that contract with, or are subrecipients of, the local administrative entity. For programs that do not include local administrative entities, the responsible State agency must be the partner. Specific entities for particular programs are identified in paragraphs (b) through (e) of this section. If a program or activity listed in § 463.400 is not carried out in a local area, the requirements relating to a required one-stop partner are not applicable to such program or activity in that local one-stop delivery system.

(b) For title II of WIOA, the entity or agency that carries out the program for the purposes of paragraph (a) of this section is the sole entity or agency in the State or outlying area responsible for administering or supervising policy for adult education and literacy activities in the State or outlying area. The State eligible entity or agency may delegate its responsibilities under paragraph (a) of this section to one or more eligible providers or consortium of eligible providers.

(c) For the VR program, authorized under title I of the Rehabilitation Act of 1973, as amended by WIOA title IV, the entity that carries out the program for the purposes of paragraph (a) of this section is the designated State agencies or designated State units specified under sec. 101(a)(2) of the Rehabilitation Act that is primarily concerned with vocational rehabilitation, or vocational and other rehabilitation, of individuals with disabilities.

(d) Under WIOA title I, the national programs, including Job Corps, the Native American program, YouthBuild, and Migrant and Seasonal Farmworker programs are required one-stop partners. The entity for the Native American program, YouthBuild, and Migrant and Seasonal Farmworker programs is the grantee of those respective programs. The entity for Job Corps is the Job Corps center.

(e) For the Carl D. Perkins Career and Technical Education Act of 2006, the entity that carries out the program for the purposes of paragraph (a) of this section is the eligible recipient or recipients at the postsecondary level, or a consortium of eligible recipients at the postsecondary level in the local area. The eligible recipient at the postsecondary level may also request assistance from the State eligible agency in completing its responsibilities under paragraph (a) of this section.

§ 463.420 What are the roles and responsibilities of the required one-stop partners?

Each required partner must:

(a) Provide access to its programs or activities through the one-stop delivery system, in addition to any other appropriate locations;

(b) Use a portion of funds made available to the partner's program, to the extent consistent with the Federal law authorizing the partner's program and with Federal cost principles in 2 CFR parts 200 and 3474 (requiring, among other things, that costs are allowable, reasonable, necessary, and allocable), to:

(1) Provide applicable career services; and

(2) Work collaboratively with the State and Local WDBs to establish and maintain the one-stop delivery system. This includes jointly funding the one-stop infrastructure through partner contributions that are based upon:

(i) A reasonable cost allocation methodology by which infrastructure costs are charged to each partner based on proportionate use and relative benefit received;

(ii) Federal cost principles; and

(iii) Any local administrative cost requirements in the Federal law authorizing the partner's program. (This is further described in § 463.700.)

(c) Enter into an MOU with the Local WDB relating to the operation of the one-stop delivery system that meets the requirements of § 463.500(b);

(d) Participate in the operation of the one-stop delivery system consistent with the terms of the MOU, requirements of authorizing laws, the Federal cost principles, and all other applicable legal requirements; and

(e) Provide representation on the State and Local WDBs as required and participate in Board committees as needed.

§ 463.425 What are the applicable career services that must be provided through the one-stop delivery system by required one-stop partners?

(a) The applicable career services to be delivered by required one-stop partners are those services listed in § 463.430 that are authorized to be provided under each partner's program.

(b) One-stop centers provide services to individual customers based on individual needs, including the seamless delivery of multiple services to individual customers. There is no required sequence of services.

§ 463.430 What are career services?

Career services, as identified in sec. 134(c)(2) of WIOA, consist of three types:

(a) Basic career services must be made available and, at a minimum, must include the following services, as consistent with allowable program activities and Federal cost principles:

(1) Determinations of whether the individual is eligible to receive assistance from the adult, dislocated worker, or youth programs;

(2) Outreach, intake (including worker profiling), and orientation to information and other services available through the one-stop delivery system. For the TANF program, States must provide individuals with the opportunity to initiate an application for TANF assistance and non-assistance benefits and services, which could be implemented through the provision of paper application forms or links to the application Web site;

(3) Initial assessment of skill levels including literacy, numeracy, and English language proficiency, as well as aptitudes, abilities (including skills gaps), and supportive services needs;

(4) Labor exchange services, including—

(i) Job search and placement assistance, and, when needed by an individual, career counseling, including—

(A) Provision of information on in-demand industry sectors and occupations (as defined in sec. 3(23) of WIOA); and

(B) Provision of information on nontraditional employment; and

(ii) Appropriate recruitment and other business services on behalf of

employers, including information and referrals to specialized business services other than those traditionally offered through the one-stop delivery system;

(5) Provision of referrals to and coordination of activities with other programs and services, including programs and services within the one-stop delivery system and, when appropriate, other workforce development programs;

(6) Provision of workforce and labor market employment statistics information, including the provision of accurate information relating to local, regional, and national labor market areas, including—

(i) Job vacancy listings in labor market areas;

(ii) Information on job skills necessary to obtain the vacant jobs listed; and

(iii) Information relating to local occupations in demand and the earnings, skill requirements, and opportunities for advancement for those jobs;

(7) Provision of performance information and program cost information on eligible providers of education, training, and workforce services by program and type of providers;

(8) Provision of information, in usable and understandable formats and languages, about how the local area is performing on local performance accountability measures, as well as any additional performance information relating to the area's one-stop delivery system;

(9) Provision of information, in usable and understandable formats and languages, relating to the availability of supportive services or assistance, and appropriate referrals to those services and assistance, including: Child care; child support; medical or child health assistance available through the State's Medicaid program and Children's Health Insurance Program; benefits under SNAP; assistance through the earned income tax credit; and assistance under a State program for TANF, and other supportive services and transportation provided through that program;

(10) Provision of information and meaningful assistance to individuals seeking assistance in filing a claim for unemployment compensation.

(i) "Meaningful assistance" means:

(A) Providing assistance on-site using staff who are well-trained in unemployment compensation claims filing and the rights and responsibilities of claimants; or

(B) Providing assistance by phone or via other technology, as long as the assistance is provided by trained and available staff and within a reasonable time.

(ii) The costs associated in providing this assistance may be paid for by the State's unemployment insurance program, or the WIOA adult or dislocated worker programs, or some combination thereof.

(11) Assistance in establishing eligibility for programs of financial aid assistance for training and education programs not provided under WIOA.

(b) Individualized career services must be made available if determined to be appropriate in order for an individual to obtain or retain employment. These services include the following services, as consistent with program requirements and Federal cost principles:

(1) Comprehensive and specialized assessments of the skill levels and service needs of adults and dislocated workers, which may include—

(i) Diagnostic testing and use of other assessment tools; and

(ii) In-depth interviewing and evaluation to identify employment barriers and appropriate employment goals;

(2) Development of an individual employment plan, to identify the employment goals, appropriate achievement objectives, and appropriate combination of services for the participant to achieve his or her employment goals, including the list of, and information about, the eligible training providers (as described in 20 CFR 680.180);

(3) Group counseling;

(4) Individual counseling;

(5) Career planning;

(6) Short-term pre-vocational services including development of learning skills, communication skills, interviewing skills, punctuality, personal maintenance skills, and professional conduct services to prepare individuals for unsubsidized employment or training;

(7) Internships and work experiences that are linked to careers (as described in 20 CFR 680.170);

(8) Workforce preparation activities;

(9) Financial literacy services as described in sec. 129(b)(2)(D) of WIOA and 20 CFR 681.500;

(10) Out-of-area job search assistance and relocation assistance; and

(11) English language acquisition and integrated education and training programs.

(c) Follow-up services must be provided, as appropriate, including: Counseling regarding the workplace, for participants in adult or dislocated worker workforce investment activities who are placed in unsubsidized employment, for up to 12 months after the first day of employment.

(d) In addition to the requirements in paragraph (a)(2) of this section, TANF agencies must identify employment services and related support being provided by the TANF program (within the local area) that qualify as career services and ensure access to them via the local one-stop delivery system.

§ 463.435 What are the business services provided through the one-stop delivery system, and how are they provided?

(a) Certain career services must be made available to local employers, specifically labor exchange activities and labor market information described in § 463.430(a)(4)(ii) and (a)(6). Local areas must establish and develop relationships and networks with large and small employers and their intermediaries. Local areas also must develop, convene, or implement industry or sector partnerships.

(b) Customized business services may be provided to employers, employer associations, or other such organizations. These services are tailored for specific employers and may include:

(1) Customized screening and referral of qualified participants in training services to employers;

(2) Customized services to employers, employer associations, or other such organizations, on employment-related issues;

(3) Customized recruitment events and related services for employers including targeted job fairs;

(4) Human resource consultation services, including but not limited to assistance with:

(i) Writing/reviewing job descriptions and employee handbooks;

(ii) Developing performance evaluation and personnel policies;

(iii) Creating orientation sessions for new workers;

(iv) Honing job interview techniques for efficiency and compliance;

(v) Analyzing employee turnover;

(vi) Creating job accommodations and using assistive technologies; or

(vii) Explaining labor and employment laws to help employers comply with discrimination, wage/hour, and safety/health regulations;

(5) Customized labor market information for specific employers, sectors, industries or clusters; and

(6) Other similar customized services.

(c) Local areas may also provide other business services and strategies that meet the workforce investment needs of area employers, in accordance with partner programs' statutory requirements and consistent with

Federal cost principles. These business services may be provided through effective business intermediaries working in conjunction with the Local WDB, or through the use of economic development, philanthropic, and other public and private resources in a manner determined appropriate by the Local WDB and in cooperation with the State. Allowable activities, consistent with each partner's authorized activities, include, but are not limited to:

(1) Developing and implementing industry sector strategies (including strategies involving industry partnerships, regional skills alliances, industry skill panels, and sectoral skills partnerships);

(2) Customized assistance or referral for assistance in the development of a registered apprenticeship program;

(3) Developing and delivering innovative workforce investment services and strategies for area employers, which may include career pathways, skills upgrading, skill standard development and certification for recognized postsecondary credential or other employer use, and other effective initiatives for meeting the workforce investment needs of area employers and workers;

(4) Assistance to area employers in managing reductions in force in coordination with rapid response activities and with strategies for the aversion of layoffs, which may include strategies such as early identification of firms at risk of layoffs, use of feasibility studies to assess the needs of and options for at-risk firms, and the delivery of employment and training activities to address risk factors;

(5) The marketing of business services to appropriate area employers, including small and mid-sized employers; and

(6) Assisting employers with accessing local, State, and Federal tax credits.

(d) All business services and strategies must be reflected in the local plan, described in 20 CFR 679.560(b)(3).

§ 463.440 When may a fee be charged for the business services in this subpart?

(a) There is no requirement that a fee-for-service be charged to employers.

(b) No fee may be charged for services provided in § 463.435(a).

(c) A fee may be charged for services provided under § 463.435(b) and (c). Services provided under § 463.435(c) may be provided through effective business intermediaries working in conjunction with the Local WDB and may also be provided on a fee-for-service basis or through the leveraging of economic development, philanthropic, and other public and private resources in a manner determined appropriate by the Local WDB. The Local WDB may examine the services provided compared with the assets and resources available within the local one-stop delivery system and through its partners to determine an appropriate cost structure for services, if any.

(d) Any fees earned are recognized as program income and must be expended by the partner in accordance with the partner program's authorizing statute, implementing regulations, and Federal cost principles identified in Uniform Guidance.

§ 463.500 What is the Memorandum of Understanding for the one-stop delivery system and what must be included in the Memorandum of Understanding?

(a) The MOU is the product of local discussion and negotiation, and is an agreement developed and executed between the Local WDB and the one-stop partners, with the agreement of the chief elected official and the one-stop partners, relating to the operation of the one-stop delivery system in the local area. Two or more local areas in a region may develop a single joint MOU, if they are in a region that has submitted a regional plan under sec. 106 of WIOA.

(b) The MOU must include:

(1) A description of services to be provided through the one-stop delivery system, including the manner in which the services will be coordinated and delivered through the system;

(2) Agreement on funding the costs of the services and the operating costs of the system, including:

(i) Funding of infrastructure costs of one-stop centers in accordance with §§ 463.700 through 463.755; and

(ii) Funding of the shared services and operating costs of the one-stop delivery system described in § 463.760;

(3) Methods for referring individuals between the one-stop operators and partners for appropriate services and activities;

(4) Methods to ensure that the needs of workers, youth, and individuals with barriers to employment, including individuals with disabilities, are addressed in providing access to services, including access to technology and materials that are available through the one-stop delivery system;

(5) The duration of the MOU and procedures for amending it; and

(6) Assurances that each MOU will be reviewed, and if substantial changes have occurred, renewed, not less than once every 3-year period to ensure appropriate funding and delivery of services.

(c) The MOU may contain any other provisions agreed to by the parties that are consistent with WIOA title I, the authorizing statutes and regulations of one-stop partner programs, and the WIOA regulations.

(d) When fully executed, the MOU must contain the signatures of the Local WDB, one-stop partners, the chief elected official(s), and the time period in which the agreement is effective. The MOU must be updated not less than every 3 years to reflect any changes in the signatory official of the Board, one-stop partners, and chief elected officials, or one-stop infrastructure funding.

(e) If a one-stop partner appeal to the State regarding infrastructure costs, using the process described in § 463.750, results in a change to the one-stop partner's infrastructure cost contributions, the MOU must be updated to reflect the final one-stop partner infrastructure cost contributions.

§ 463.505 Is there a single Memorandum of Understanding for the local area, or must there be different Memoranda of Understanding between the Local Workforce Development Board and each partner?

(a) A single "umbrella" MOU may be developed that addresses the issues relating to the local one-stop delivery system for the Local WDB, chief elected official and all partners. Alternatively, the Local WDB (with agreement of chief elected official) may enter into separate agreements between each partner or groups of partners.

(b) Under either approach, the requirements described in § 463.500 apply. Since funds are generally appropriated annually, the Local WDB may negotiate financial agreements with each partner annually to update funding of services and operating costs of the system under the MOU.

§ 463.510 How must the Memorandum of Understanding be negotiated?

(a) WIOA emphasizes full and effective partnerships between Local WDBs, chief elected officials, and one-stop partners. Local WDBs and partners must enter into good-faith negotiations. Local WDBs, chief elected officials, and one-stop partners may also request assistance from a State agency responsible for administering the partner program, the Governor, State WDB, or other appropriate parties on other aspects of the MOU.

(b) Local WDBs and one-stop partners must establish, in the MOU, how they will fund the infrastructure costs and other shared costs of the one-stop centers. If agreement regarding infrastructure costs is not reached when

other sections of the MOU are ready, an interim infrastructure funding agreement may be included instead, as described in § 463.715(c). Once agreement on infrastructure funding is reached, the Local WDB and one-stop partners must amend the MOU to include the infrastructure funding of the one-stop centers. Infrastructure funding is described in detail in §§ 463.700 through 463.760.

(c) The Local WDB must report to the State WDB, Governor, and relevant State agency when MOU negotiations with one-stop partners have reached an impasse.

(1) The Local WDB and partners must document the negotiations and efforts that have taken place in the MOU. The State WDB, one-stop partner programs, and the Governor may consult with the appropriate Federal agencies to address impasse situations related to issues other than infrastructure funding after attempting to address the impasse. Impasses related to infrastructure cost funding must be resolved using the State infrastructure cost funding mechanism described in § 463.730.

(2) The Local WDB must report failure to execute an MOU with a required partner to the Governor, State WDB, and the State agency responsible for administering the partner's program. Additionally, if the State cannot assist the Local WDB in resolving the impasse, the Governor or the State WDB must report the failure to the Secretary of Labor and to the head of any other Federal agency with responsibility for oversight of a partner's program.

§ 463.600 Who may operate one-stop centers?

(a) One-stop operators may be a single entity (public, private, or nonprofit) or a consortium of entities. If the consortium of entities is one of one-stop partners, it must include a minimum of three of the one-stop partners described in § 463.400.

(b) The one-stop operator may operate one or more one-stop centers. There may be more than one one-stop operator in a local area.

(c) The types of entities that may be a one-stop operator include:

(1) An institution of higher education;

(2) An Employment Service State agency established under the Wagner-Peyser Act;

(3) A community-based organization, nonprofit organization, or workforce intermediary;

(4) A private for-profit entity;

(5) A government agency;

(6) A Local WDB, with the approval of the chief elected official and the Governor; or

(7) Another interested organization or entity, which is capable of carrying out the duties of the one-stop operator. Examples may include a local chamber of commerce or other business organization, or a labor organization.

(d) Elementary schools and secondary schools are not eligible as one-stop operators, except that a nontraditional public secondary school such as a night school, adult school, or an area career and technical education school may be selected.

(e) The State and Local WDBs must ensure that, in carrying out WIOA programs and activities, one-stop operators:

(1) Disclose any potential conflicts of interest arising from the relationships of the operators with particular training service providers or other service providers (further discussed in 20 CFR 679.430);

(2) Do not establish practices that create disincentives to providing services to individuals with barriers to employment who may require longer-term career and training services; and

(3) Comply with Federal regulations and procurement policies relating to the calculation and use of profits, including those at 20 CFR 683.295, the Uniform Guidance at 2 CFR part 200, and other applicable regulations and policies.

§ 463.605 How is the one-stop operator selected?

(a) Consistent with paragraphs (b) and (c) of this section, the Local WDB must select the one-stop operator through a competitive process, as required by sec. 121(d)(2)(A) of WIOA, at least once every 4 years. A State may require, or a Local WDB may choose to implement, a competitive selection process more than once every 4 years.

(b) In instances in which a State is conducting the competitive process described in paragraph (a) of this section, the State must follow the same policies and procedures it uses for procurement with non-Federal funds.

(c) All other non-Federal entities, including subrecipients of a State (such as local areas), must use a competitive process based on local procurement policies and procedures and the principles of competitive procurement in the Uniform Guidance set out at 2 CFR 200.318 through 200.326. All references to "noncompetitive proposals" in the Uniform Guidance at 2 CFR 200.320(f) will be read as "sole source procurement" for the purposes of implementing this section.

(d) Entities must prepare written documentation explaining the determination concerning the nature of the competitive process to be followed in selecting a one-stop operator.

§ 463.610 When is the sole-source selection of one-stop operators appropriate, and how is it conducted?

(a) States may select a one-stop operator through sole source selection when allowed under the same policies and procedures used for competitive procurement with non-Federal funds, while other non-Federal entities including subrecipients of a State (such as local areas) may select a one-stop operator through sole selection when consistent with local procurement policies and procedures and the Uniform Guidance set out at 2 CFR 200.320.

(b) In the event that sole source procurement is determined necessary and reasonable, in accordance with § 463.605(c), written documentation must be prepared and maintained concerning the entire process of making such a selection.

(c) Such sole source procurement must include appropriate conflict of interest policies and procedures. These policies and procedures must conform to the specifications in 20 CFR 679.430 for demonstrating internal controls and preventing conflict of interest.

(d) A Local WDB may be selected as a one-stop operator through sole source procurement only with agreement of the chief elected official in the local area and the Governor. The Local WDB must establish sufficient conflict of interest policies and procedures and these policies and procedures must be approved by the Governor.

§ 463.615 May an entity currently serving as one-stop operator compete to be a one-stop operator under the procurement requirements of this subpart?

(a) Local WDBs may compete for and be selected as one-stop operators, as long as appropriate firewalls and conflict of interest policies and procedures are in place. These policies and procedures must conform to the specifications in 20 CFR 679.430 for demonstrating internal controls and preventing conflict of interest.

(b) State and local agencies may compete for and be selected as one-stop operators by the Local WDB, as long as appropriate firewalls and conflict of interest policies and procedures are in place. These policies and procedures must conform to the specifications in 20 CFR 679.430 for demonstrating internal controls and preventing conflict of interest.

(c) In the case of single-area States where the State WDB serves as the Local WDB, the State agency is eligible to compete for and be selected as operator

as long as appropriate firewalls and conflict of interest policies are in place and followed for the competition. These policies and procedures must conform to the specifications in 20 CFR 679.430 for demonstrating internal controls and preventing conflicts of interest.

§ 463.620 What is the one-stop operator's role?

(a) At a minimum, the one-stop operator must coordinate the service delivery of required one-stop partners and service providers. Local WDBs may establish additional roles of one-stop operator, including, but not limited to: Coordinating service providers across the one-stop delivery system, being the primary provider of services within the center, providing some of the services within the center, or coordinating service delivery in a multi-center area, which may include affiliated sites. The competition for a one-stop operator must clearly articulate the role of the one-stop operator.

(b)(1) Subject to paragraph (b)(2) of this section, a one-stop operator may not perform the following functions: Convene system stakeholders to assist in the development of the local plan; prepare and submit local plans (as required under sec. 107 of WIOA); be responsible for oversight of itself; manage or significantly participate in the competitive selection process for one-stop operators; select or terminate one-stop operators, career services, and youth providers; negotiate local performance accountability measures; or develop and submit budget for activities of the Local WDB in the local area.

(2) An entity serving as a one-stop operator, that also serves a different role within the one-stop delivery system, may perform some or all of these functions when it is acting in its other role, if it has established sufficient firewalls and conflict of interest policies and procedures. The policies and procedures must conform to the specifications in 20 CFR 679.430 for demonstrating internal controls and preventing conflict of interest.

§ 463.625 Can a one-stop operator also be a service provider?

Yes, but there must be appropriate firewalls in place in regards to the competition, and subsequent oversight, monitoring, and evaluation of performance of the service provider. The operator cannot develop, manage, or conduct the competition of a service provider in which it intends to compete. In cases where an operator is also a service provider, there must be firewalls and internal controls within the operator-service provider entity, as well as specific policies and procedures at the Local WDB level regarding oversight, monitoring, and evaluation of performance of the service provider. The firewalls must conform to the specifications in 20 CFR 679.430 for demonstrating internal controls and preventing conflicts of interest.

§ 463.630 Can State merit staff still work in a one-stop center where the operator is not a governmental entity?

Yes. State merit staff can continue to perform functions and activities in the one-stop center. The Local WDB and one-stop operator must establish a system for management of merit staff in accordance with State policies and procedures. Continued use of State merit staff for the provision of Wagner-Peyser Act services or services from other programs with merit staffing requirements must be included in the competition for and final contract with the one-stop operator when Wagner-Peyser Act services or services from other programs with merit staffing requirements are being provided.

§ 463.635 What is the compliance date of the provisions of this subpart?

(a) No later than July 1, 2017, one-stop operators selected under the competitive process described in this subpart must be in place and operating the one-stop center.

(b) By November 17, 2016, every Local WDB must demonstrate it is taking steps to prepare for competition of its one-stop operator. This demonstration may include, but is not limited to, market research, requests for information, and conducting a cost and price analysis.

§ 463.700 What are the one-stop infrastructure costs?

(a) Infrastructure costs of one-stop centers are nonpersonnel costs that are necessary for the general operation of the one-stop center, including:

(1) Rental of the facilities;

(2) Utilities and maintenance;

(3) Equipment (including assessment-related products and assistive technology for individuals with disabilities); and

(4) Technology to facilitate access to the one-stop center, including technology used for the center's planning and outreach activities.

(b) Local WDBs may consider common identifier costs as costs of one-stop infrastructure.

(c) Each entity that carries out a program or activities in a local one-stop center, described in §§ 463.400 through 463.410, must use a portion of the funds available for the program and activities to maintain the one-stop delivery system, including payment of the infrastructure costs of one-stop centers. These payments must be in accordance with this subpart; Federal cost principles, which require that all costs must be allowable, reasonable, necessary, and allocable to the program; and all other applicable legal requirements.

§ 463.705 What guidance must the Governor issue regarding one-stop infrastructure funding?

(a) The Governor, after consultation with chief elected officials, the State WDB, and Local WDBs, and consistent with guidance and policies provided by the State WDB, must develop and issue guidance for use by local areas, specifically:

(1) Guidelines for State-administered one-stop partner programs for determining such programs' contributions to a one-stop delivery system, based on such programs' proportionate use of such system, and relative benefit received, consistent with Office of Management and Budget (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, including determining funding for the costs of infrastructure; and

(2) Guidance to assist Local WDBs, chief elected officials, and one-stop partners in local areas in determining equitable and stable methods of funding the costs of infrastructure at one-stop centers based on proportionate use and relative benefit received, and consistent with Federal cost principles contained in the Uniform Guidance at 2 CFR part 200.

(b) The guidance must include:

(1) The appropriate roles of the one-stop partner programs in identifying one-stop infrastructure costs;

(2) Approaches to facilitate equitable and efficient cost allocation that results in a reasonable cost allocation methodology where infrastructure costs are charged to each partner based on its proportionate use of the one-stop centers and relative benefit received, consistent with Federal cost principles at 2 CFR part 200; and

(3) The timelines regarding notification to the Governor for not reaching local agreement and triggering the State funding mechanism described in § 463.730, and timelines for a one-stop partner to submit an appeal in the State funding mechanism.

§ 463.710 How are infrastructure costs funded?

Infrastructure costs are funded either through the local funding mechanism

described in § 463.715 or through the State funding mechanism described in § 463.730.

§ 463.715 How are one-stop infrastructure costs funded in the local funding mechanism?

(a) In the local funding mechanism, the Local WDB, chief elected officials, and one-stop partners agree to amounts and methods of calculating amounts each partner will contribute for one-stop infrastructure funding, include the infrastructure funding terms in the MOU, and sign the MOU. The local funding mechanism must meet all of the following requirements:

(1) The infrastructure costs are funded through cash and fairly evaluated non-cash and third-party in-kind partner contributions and include any funding from philanthropic organizations or other private entities, or through other alternative financing options, to provide a stable and equitable funding stream for ongoing one-stop delivery system operations;

(2) Contributions must be negotiated between one-stop partners, chief elected officials, and the Local WDB and the amount to be contributed must be included in the MOU;

(3) The one-stop partner program's proportionate share of funding must be calculated in accordance with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200 based upon a reasonable cost allocation methodology whereby infrastructure costs are charged to each partner in proportion to its use of the one-stop center, relative to benefits received. Such costs must also be allowable, reasonable, necessary, and allocable;

(4) Partner shares must be periodically reviewed and reconciled against actual costs incurred, and adjusted to ensure that actual costs charged to any one-stop partners are proportionate to the use of the one-stop center and relative to the benefit received by the one-stop partners and their respective programs or activities.

(b) In developing the section of the MOU on one-stop infrastructure funding described in § 463.755, the Local WDB and chief elected officials will:

(1) Ensure that the one-stop partners adhere to the guidance identified in § 463.705 on one-stop delivery system infrastructure costs.

(2) Work with one-stop partners to achieve consensus and informally mediate any possible conflicts or disagreements among one-stop partners.

(3) Provide technical assistance to new one-stop partners and local grant recipients to ensure that those entities are informed and knowledgeable of the elements contained in the MOU and the one-stop infrastructure costs arrangement.

(c) The MOU may include an interim infrastructure funding agreement, including as much detail as the Local WDB has negotiated with one-stop partners, if all other parts of the MOU have been negotiated, in order to allow the partner programs to operate in the one-stop centers. The interim infrastructure funding agreement must be finalized within 6 months of when the MOU is signed. If the interim infrastructure funding agreement is not finalized within that timeframe, the Local WDB must notify the Governor, as described in § 463.725.

§ 463.720 What funds are used to pay for infrastructure costs in the local one-stop infrastructure funding mechanism?

(a) In the local funding mechanism, one-stop partner programs may determine what funds they will use to pay for infrastructure costs. The use of these funds must be in accordance with the requirements in this subpart, and with the relevant partner's authorizing statutes and regulations, including, for example, prohibitions against supplanting non-Federal resources, statutory limitations on administrative costs, and all other applicable legal requirements. In the case of partners administering programs authorized by title I of WIOA, these infrastructure costs may be considered program costs. In the case of partners administering adult education and literacy programs authorized by title II of WIOA, these funds must include Federal funds made available for the local administration of adult education and literacy programs authorized by title II of WIOA. These funds may also include non-Federal resources that are cash, in-kind or third-party contributions. In the case of partners administering the Carl D. Perkins Career and Technical Education Act of 2006, funds used to pay for infrastructure costs may include funds available for local administrative expenses, non-Federal resources that are cash, in-kind or third-party contributions, and may include other funds made available by the State.

(b) There are no specific caps on the amount or percent of overall funding a one-stop partner may contribute to fund infrastructure costs under the local funding mechanism, except that contributions for administrative costs may not exceed the amount available for administrative costs under the authorizing statute of the partner program. However, amounts contributed for infrastructure costs must be allowable and based on proportionate use of the one-stop centers and relative benefit received by the partner program, taking into account the total cost of the one-stop infrastructure as well as alternate financing options, and must be consistent with 2 CFR part 200, including the Federal cost principles.

(c) Cash, non-cash, and third-party in-kind contributions may be provided by one-stop partners to cover their proportionate share of infrastructure costs.

(1) Cash contributions are cash funds provided to the Local WDB or its designee by one-stop partners, either directly or by an interagency transfer.

(2) Non-cash contributions are comprised of—

(i) Expenditures incurred by one-stop partners on behalf of the one-stop center; and

(ii) Non-cash contributions or goods or services contributed by a partner program and used by the one-stop center.

(3) Non-cash contributions, especially those set forth in paragraph (c)(2)(ii) of this section, must be valued consistent with 2 CFR 200.306 to ensure they are fairly evaluated and meet the partners' proportionate share.

(4) Third-party in-kind contributions are:

(i) Contributions of space, equipment, technology, non-personnel services, or other like items to support the infrastructure costs associated with one-stop operations, by a non-one-stop partner to support the one-stop center in general, not a specific partner; or

(ii) Contributions by a non-one-stop partner of space, equipment, technology, non-personnel services, or other like items to support the infrastructure costs associated with one-stop operations, to a one-stop partner to support its proportionate share of one-stop infrastructure costs.

(iii) In-kind contributions described in paragraphs (c)(4)(i) and (ii) of this section must be valued consistent with 2 CFR 200.306 and reconciled on a regular basis to ensure they are fairly evaluated and meet the proportionate share of the partner.

(5) All partner contributions, regardless of the type, must be reconciled on a regular basis (*i.e.*, monthly or quarterly), comparing actual expenses incurred to relative benefits received, to ensure each partner program is contributing its proportionate share in accordance with the terms of the MOU.

§ 463.725 What happens if consensus on infrastructure funding is not reached at the local level between the Local Workforce Development Board, chief elected officials, and one-stop partners?

With regard to negotiations for infrastructure funding for Program Year (PY) 2017 and for each subsequent program year thereafter, if the Local WDB, chief elected officials, and one-stop partners do not reach consensus on methods of sufficiently funding local infrastructure through the local funding mechanism in accordance with the Governor's guidance issued under § 463.705 and consistent with the regulations in §§ 463.715 and 463.720, and include that consensus agreement in the signed MOU, then the Local WDB must notify the Governor by the deadline established by the Governor under § 463.705(b)(3). Once notified, the Governor must administer funding through the State funding mechanism, as described in §§ 463.730 through 463.738, for the program year impacted by the local area's failure to reach consensus.

§ 463.730 What is the State one-stop infrastructure funding mechanism?

(a) Consistent with sec. 121(h)(1)(A)(i)(II) of WIOA, if the Local WDB, chief elected official, and one-stop partners in a local area do not reach consensus agreement on methods of sufficiently funding the costs of infrastructure of one-stop centers for a program year, the State funding mechanism is applicable to the local area for that program year.

(b) In the State funding mechanism, the Governor, subject to the limitations in paragraph (c) of this section, determines one-stop partner contributions after consultation with the chief elected officials, Local WDBs, and the State WDB. This determination involves:

(1) The application of a budget for one-stop infrastructure costs as described in § 463.735, based on either agreement reached in the local area negotiations or the State WDB formula outlined in § 463.745;

(2) The determination of each local one-stop partner program's proportionate use of the one-stop delivery system and relative benefit received, consistent with the Uniform Guidance at 2 CFR part 200, including the Federal cost principles, the partner programs' authorizing laws and regulations, and other applicable legal requirements described in § 463.736; and

(3) The calculation of required statewide program caps on contributions to infrastructure costs from one-stop partner programs in areas operating under the State funding mechanism as described in § 463.738.

(c) In certain situations, the Governor does not determine the infrastructure cost contributions for some one-stop partner programs under the State funding mechanism.

(1) The Governor will not determine the contribution amounts for infrastructure funds for Native American program grantees described in 20 CFR part 684. The appropriate portion of funds to be provided by Native American program grantees to pay for one-stop infrastructure must be determined as part of the development of the MOU described in § 463.500 and specified in that MOU.

(2) In States in which the policy-making authority is placed in an entity or official that is independent of the authority of the Governor with respect to the funds provided for adult education and literacy activities authorized under title II of WIOA, postsecondary career and technical education activities authorized under the Carl D. Perkins Career and Technical Education Act of 2006, or VR services authorized under title I of the Rehabilitation Act of 1973 (other than sec. 112 or part C), as amended by WIOA title IV, the determination of the amount each of the applicable partners must contribute to assist in paying the infrastructure costs of one-stop centers must be made by the official or chief officer of the entity with such authority, in consultation with the Governor.

(d) Any duty, ability, choice, responsibility, or other action otherwise related to the determination of infrastructure costs contributions that is assigned to the Governor in §§ 463.730 through 463.745 also applies to this decision-making process performed by the official or chief officer described in paragraph (c)(2) of this section.

§ 463.731 What are the steps to determine the amount to be paid under the State one-stop infrastructure funding mechanism?

(a) To initiate the State funding mechanism, a Local WDB that has not reached consensus on methods of sufficiently funding local infrastructure through the local funding mechanism as provided in § 463.725 must notify the Governor by the deadline established by the Governor under § 463.705(b)(3).

(b) Once a Local WDB has informed the Governor that no consensus has been reached:

(1) The Local WDB must provide the Governor with local negotiation materials in accordance with § 463.735(a).

(2) The Governor must determine the one-stop center budget by either:

(i) Accepting a budget previously agreed upon by partner programs in the local negotiations, in accordance with § 463.735(b)(1); or

(ii) Creating a budget for the one-stop center using the State WDB formula (described in § 463.745) in accordance with § 463.735(b)(3).

(3) The Governor then must establish a cost allocation methodology to determine the one-stop partner programs' proportionate shares of infrastructure costs, in accordance with § 463.736.

(4)(i) Using the methodology established under paragraph (b)(2)(ii) of this section, and taking into consideration the factors concerning individual partner programs listed in § 463.737(b)(2), the Governor must determine each partner's proportionate share of the infrastructure costs, in accordance with § 463.737(b)(1), and

(ii) In accordance with § 463.730(c), in some instances, the Governor does not determine a partner program's proportionate share of infrastructure funding costs, in which case it must be determined by the entities named in § 463.730(c)(1) and (2).

(5) The Governor must then calculate the statewide caps on the amounts that partner programs may be required to contribute toward infrastructure funding, according to the steps found at § 463.738(a)(1) through (4).

(6) The Governor must ensure that the aggregate total of the infrastructure contributions according to proportionate share required of all local partner programs in local areas under the State funding mechanism do not exceed the cap for that particular program, in accordance with § 463.738(b)(1). If the total does not exceed the cap, the Governor must direct each one-stop partner program to pay the amount determined under § 463.737(a) toward the infrastructure funding costs of the one-stop center. If the total does exceed the cap, then to determine the amount to direct each one-stop program to pay, the Governor may:

(i) Ascertain, in accordance with § 463.738(b)(2)(i), whether the local partner or partners whose proportionate shares are calculated above the individual program caps are willing to voluntarily contribute above the capped amount to equal that program's proportionate share; or

(ii) Choose from the options provided in § 463.738(b)(2)(ii), including having the local area re-enter negotiations to reassess each one-stop partner's proportionate share and make adjustments or identify alternate sources

of funding to make up the difference between the capped amount and the proportionate share of infrastructure funding of the one-stop partner.

(7) If none of the solutions given in paragraphs (b)(6)(i) and (ii) of this section prove to be viable, the Governor must reassess the proportionate shares of each one-stop partner so that the aggregate amount attributable to the local partners for each program is less than that program's cap amount. Upon such reassessment, the Governor must direct each one-stop partner program to pay the reassessed amount toward the infrastructure funding costs of the one-stop center.

§ 463.735 How are infrastructure cost budgets for the one-stop centers in a local area determined in the State one-stop infrastructure funding mechanism?

(a) Local WDBs must provide to the Governor appropriate and relevant materials and documents used in the negotiations under the local funding mechanism, including but not limited to: The local WIOA plan, the cost allocation method or methods proposed by the partners to be used in determining proportionate share, the proposed amounts or budget to fund infrastructure, the amount of total partner funds included, the type of funds or non-cash contributions, proposed one-stop center budgets, and any agreed upon or proposed MOUs.

(b)(1) If a local area has reached agreement as to the infrastructure budget for the one-stop centers in the local area, it must provide this budget to the Governor as required by paragraph (a) of this section. If, as a result of the agreed upon infrastructure budget, only the individual programmatic contributions to infrastructure funding based upon proportionate use of the one-stop centers and relative benefit received are at issue, the Governor may accept the budget, from which the Governor must calculate each partner's contribution consistent with the cost allocation methodologies contained in the Uniform Guidance found in 2 CFR part 200, as described in § 463.736.

(2) The Governor may also take into consideration the extent to which the partners in the local area have agreed in determining the proportionate shares, including any agreements reached at the local level by one or more partners, as well as any other element or product of the negotiating process provided to the Governor as required by paragraph (a) of this section.

(3) If a local area has not reached agreement as to the infrastructure budget for the one-stop centers in the local area, or if the Governor determines that the agreed upon budget does not adequately meet the needs of the local area or does not reasonably work within the confines of the local area's resources in accordance with the Governor's one-stop budget guidance (which is required to be issued by WIOA sec. 121(h)(1)(B) and under § 463.705), then, in accordance with § 463.745, the Governor must use the formula developed by the State WDB based on at least the factors required under § 463.745, and any associated weights to determine the local area budget.

§ 463.736 How does the Governor establish a cost allocation methodology used to determine the one-stop partner programs' proportionate shares of infrastructure costs under the State one-stop infrastructure funding mechanism?

Once the appropriate budget is determined for a local area through either method described in § 463.735 (by acceptance of a budget agreed upon in local negotiation or by the Governor applying the formula detailed in § 463.745), the Governor must determine the appropriate cost allocation methodology to be applied to the one-stop partners in such local area, consistent with the Federal cost principles permitted under 2 CFR part 200, to fund the infrastructure budget.

§ 463.737 How are one-stop partner programs' proportionate shares of infrastructure costs determined under the State one-stop infrastructure funding mechanism?

(a) The Governor must direct the one-stop partners in each local area that have not reached agreement under the local funding mechanism to pay what the Governor determines is each partner program's proportionate share of infrastructure funds for that area, subject to the application of the caps described in § 463.738.

(b)(1) The Governor must use the cost allocation methodology—as determined under § 463.736—to determine each partner's proportionate share of the infrastructure costs under the State funding mechanism, subject to considering the factors described in paragraph (b)(2) of this section.

(2) In determining each partner program's proportionate share of infrastructure costs, the Governor must take into account the costs of administration of the one-stop delivery system for purposes not related to one-stop centers for each partner (such as costs associated with maintaining the Local WDB or information technology systems), as well as the statutory requirements for each partner program, the partner program's ability to fulfill such requirements, and all other applicable legal requirements. The Governor may also take into consideration the extent to which the partners in the local area have agreed in determining the proportionate shares, including any agreements reached at the local level by one or more partners, as well as any other materials or documents of the negotiating process, which must be provided to the Governor by the Local WDB and described in § 463.735(a).

§ 463.738 How are statewide caps on the contributions for one-stop infrastructure funding determined in the State one-stop infrastructure funding mechanism?

(a) The Governor must calculate the statewide cap on the contributions for one-stop infrastructure funding required to be provided by each one-stop partner program for those local areas that have not reached agreement. The cap is the amount determined under paragraph (a)(4) of this section, which the Governor derives by:

(1) First, determining the amount resulting from applying the percentage for the corresponding one-stop partner program provided in paragraph (d) of this section to the amount of Federal funds provided to carry out the one-stop partner program in the State for the applicable fiscal year;

(2) Second, selecting a factor (or factors) that reasonably indicates the use of one-stop centers in the State, applying such factor(s) to all local areas in the State, and determining the percentage of such factor(s) applicable to the local areas that reached agreement under the local funding mechanism in the State;

(3) Third, determining the amount resulting from applying the percentage determined in paragraph (a)(2) of this section to the amount determined under paragraph (a)(1) of this section for the one-stop partner program; and

(4) Fourth, determining the amount that results from subtracting the amount determined under paragraph (a)(3) of this section from the amount determined under paragraph (a)(1) of this section. The outcome of this final calculation results in the partner program's cap.

(b)(1) The Governor must ensure that the funds required to be contributed by each partner program in the local areas in the State under the State funding mechanism, in aggregate, do not exceed the statewide cap for each program as determined under paragraph (a) of this section.

(2) If the contributions initially determined under § 463.737 would exceed the applicable cap determined

under paragraph (a) of this section, the Governor may:

(i) Ascertain if the one-stop partner whose contribution would otherwise exceed the cap determined under paragraph (a) of this section will voluntarily contribute above the capped amount, so that the total contributions equal that partner's proportionate share. The one-stop partner's contribution must still be consistent with the program's authorizing laws and regulations, the Federal cost principles in 2 CFR part 200, and other applicable legal requirements; or

(ii) Direct or allow the Local WDB, chief elected officials, and one-stop partners to: Re-enter negotiations, as necessary; reduce the infrastructure costs to reflect the amount of funds that are available for such costs without exceeding the cap levels; reassess the proportionate share of each one-stop partner; or identify alternative sources of financing for one-stop infrastructure funding, consistent with the requirement that each one-stop partner pay an amount that is consistent with the proportionate use of the one-stop center and relative benefit received by the partner, the program's authorizing laws and regulations, the Federal cost principles in 2 CFR part 200, and other applicable legal requirements.

(3) If applicable under paragraph (b)(2)(ii) of this section, the Local WDB, chief elected officials, and one-stop partners, after renegotiation, may come to agreement, sign an MOU, and proceed under the local funding mechanism. Such actions do not require the redetermination of the applicable caps under paragraph (a) of this section.

(4) If, after renegotiation, agreement among partners still cannot be reached or alternate financing cannot be identified, the Governor may adjust the specified allocation, in accordance with the amounts available and the limitations described in paragraph (d) of this section. In determining these adjustments, the Governor may take into account information relating to the renegotiation as well as the information described in § 463.735(a).

(c) *Limitations.* Subject to paragraph (a) of this section and in accordance with WIOA sec. 121(h)(2)(D), the following limitations apply to the Governor's calculations of the amount that one-stop partners in local areas that have not reached agreement under the local funding mechanism may be required under § 463.736 to contribute to one-stop infrastructure funding:

(1) *WIOA formula programs and Wagner-Peyser Act Employment Service.* The portion of funds required to be contributed under the WIOA youth, adult, or dislocated worker programs, or under the Wagner-Peyser Act (29 U.S.C. 49 *et seq.*) must not exceed three percent of the amount of the program in the State for a program year.

(2) *Other one-stop partners.* For required one-stop partners other than those specified in paragraphs (c)(1), (3), (5), and (6) of this section, the portion of funds required to be contributed must not exceed 1.5 percent of the amount of Federal funds provided to carry out that program in the State for a fiscal year. For purposes of the Carl D. Perkins Career and Technical Education Act of 2006, the cap on contributions is determined based on the funds made available by the State for postsecondary level programs and activities under sec. 132 of the Carl D. Perkins Career and Technical Education Act and the amount of funds used by the State under sec. 112(a)(3) of the Perkins Act during the prior year to administer postsecondary level programs and activities, as applicable.

(3) Vocational Rehabilitation

(i) Within a State, for the entity or entities administering the programs described in WIOA sec. 121(b)(1)(B)(iv) and § 463.400, the allotment is based on the one State Federal fiscal year allotment, even in instances where that allotment is shared between two State agencies, and the cumulative portion of funds required to be contributed must not exceed—

(A) 0.75 percent of the amount of Federal funds provided to carry out such program in the State for Fiscal Year 2016 for purposes of applicability of the State funding mechanism for PY 2017;

(B) 1.0 percent of the amount provided to carry out such program in the State for Fiscal Year 2017 for purposes of applicability of the State funding mechanism for PY 2018;

(C) 1.25 percent of the amount provided to carry out such program in the State for Fiscal Year 2018 for purposes of applicability of the State funding mechanism for PY 2019;

(D) 1.5 percent of the amount provided to carry out such program in the State for Fiscal Year 2019 and following years for purposes of applicability of the State funding mechanism for PY 2020 and subsequent years.

(ii) The limitations set forth in paragraph (d)(3)(i) of this section for any given fiscal year must be based on the final VR allotment to the State in the applicable Federal fiscal year.

(4) *Federal direct spending programs.* For local areas that have not reached a one-stop infrastructure funding agreement by consensus, an entity administering a program funded with direct Federal spending, as defined in sec. 250(c)(8) of the Balanced Budget and Emergency Deficit Control Act of 1985, as in effect on February 15, 2014 (2 U.S.C. 900(c)(8)), must not be required to provide more for infrastructure costs than the amount that the Governor determined (as described in § 463.737).

(5) *TANF programs.* For purposes of TANF, the cap on contributions is determined based on the total Federal TANF funds expended by the State for work, education, and training activities during the prior Federal fiscal year (as reported to the Department of Health and Human Services (HHS) on the quarterly TANF Financial Report form), plus any additional amount of Federal TANF funds that the State TANF agency reasonably determines was expended for administrative costs in connection with these activities but that was separately reported to HHS as an administrative cost. The State's contribution to the one-stop infrastructure must not exceed 1.5 percent of these combined expenditures.

(6) *Community Services Block Grant (CSBG) programs.* For purposes of CSBG, the cap on contributions will be based on the total amount of CSBG funds determined by the State to have been expended by local CSBG-eligible entities for the provision of employment and training activities during the prior Federal fiscal year for which information is available (as reported to HHS on the CSBG Annual Report) and any additional amount that the State CSBG agency reasonably determines was expended for administrative purposes in connection with these activities and was separately reported to HHS as an administrative cost. The State's contribution must not exceed 1.5 percent of these combined expenditures.

(d) For programs for which it is not otherwise feasible to determine the amount of Federal funding used by the program until the end of that program's operational year—because, for example, the funding available for education, employment, and training activities is included within funding for the program that may also be used for other unrelated activities—the determination of the Federal funds provided to carry out the program for a fiscal year under paragraph (a)(1) of this section may be determined by:

(1) The percentage of Federal funds available to the one-stop partner program that were used by the one-stop partner program for education, employment, and training activities in

the previous fiscal year for which data are available; and

(2) Applying the percentage determined under paragraph (d)(1) of this section to the total amount of Federal funds available to the one-stop partner program for the fiscal year for which the determination under paragraph (a)(1) of this section applies.

§ 463.740 What funds are used to pay for infrastructure costs in the State one-stop infrastructure funding mechanism?

(a) In the State funding mechanism, infrastructure costs for WIOA title I programs, including Native American Programs described in 20 CFR part 684, may be paid using program funds, administrative funds, or both. Infrastructure costs for the Senior Community Service Employment Program under title V of the Older Americans Act (42 U.S.C. 3056 *et seq.*) may also be paid using program funds, administrative funds, or both.

(b) In the State funding mechanism, infrastructure costs for other required one-stop partner programs (listed in §§ 463.400 through 463.410) are limited to the program's administrative funds, as appropriate.

(c) In the State funding mechanism, infrastructure costs for the adult education program authorized by title II of WIOA must be paid from the funds that are available for local administration and may be paid from funds made available by the State or non-Federal resources that are cash, in-kind, or third-party contributions.

(d) In the State funding mechanism, infrastructure costs for the Carl D. Perkins Career and Technical Education Act of 2006 must be paid from funds available for local administration of postsecondary level programs and activities to eligible recipients or consortia of eligible recipients and may be paid from funds made available by the State or non-Federal resources that are cash, in-kind, or third-party contributions.

§ 463.745 What factors does the State Workforce Development Board use to develop the formula described in Workforce Innovation and Opportunity Act, which is used by the Governor to determine the appropriate one-stop infrastructure budget for each local area operating under the State infrastructure funding mechanism, if no reasonably implementable locally negotiated budget exists?

The State WDB must develop a formula, as described in WIOA sec. 121(h)(3)(B), to be used by the Governor under § 463.735(b)(3) in determining the appropriate budget for the infrastructure costs of one-stop centers in the local areas that do not reach agreement under the local funding mechanism and are, therefore, subject to the State funding mechanism. The formula identifies the factors and corresponding weights for each factor that the Governor must use, which must include: the number of one-stop centers in a local area; the population served by such centers; the services provided by such centers; and any factors relating to the operations of such centers in the local area that the State WDB determines are appropriate. As indicated in § 463.735(b)(1), if the local area has agreed on such a budget, the Governor may accept that budget in lieu of applying the formula factors.

§ 463.750 When and how can a one-stop partner appeal a one-stop infrastructure amount designated by the State under the State infrastructure funding mechanism?

(a) The Governor must establish a process, described under sec. 121(h)(2)(E) of WIOA, for a one-stop partner administering a program described in §§ 463.400 through 463.410 to appeal the Governor's determination regarding the one-stop partner's portion of funds to be provided for one-stop infrastructure costs. This appeal process must be described in the Unified State Plan.

(b) The appeal may be made on the ground that the Governor's determination is inconsistent with proportionate share requirements in § 463.735(a), the cost contribution limitations in § 463.735(b), the cost contribution caps in § 463.738, consistent with the process described in the State Plan.

(c) The process must ensure prompt resolution of the appeal in order to ensure the funds are distributed in a timely manner, consistent with the requirements of 20 CFR 683.630.

(d) The one-stop partner must submit an appeal in accordance with State's deadlines for appeals specified in the guidance issued under § 463.705(b)(3), or if the State has not set a deadline, within 21 days from the Governor's determination.

§ 463.755 What are the required elements regarding infrastructure funding that must be included in the one-stop Memorandum of Understanding?

The MOU, fully described in § 463.500, must contain the following information whether the local areas use either the local one-stop or the State funding method:

(a) The period of time in which this infrastructure funding agreement is effective. This may be a different time period than the duration of the MOU.

(b) Identification of an infrastructure and shared services budget that will be periodically reconciled against actual costs incurred and adjusted accordingly to ensure that it reflects a cost allocation methodology that demonstrates how infrastructure costs are charged to each partner in proportion to its use of the one-stop center and relative benefit received, and that complies with 2 CFR part 200 (or any corresponding similar regulation or ruling).

(c) Identification of all one-stop partners, chief elected officials, and Local WDB participating in the infrastructure funding arrangement.

(d) Steps the Local WDB, chief elected officials, and one-stop partners used to reach consensus or an assurance that the local area followed the guidance for the State funding process.

(e) Description of the process to be used among partners to resolve issues during the MOU duration period when consensus cannot be reached.

(f) Description of the periodic modification and review process to ensure equitable benefit among one-stop partners.

§ 463.760 How do one-stop partners jointly fund other shared costs under the Memorandum of Understanding?

(a) In addition to jointly funding infrastructure costs, one-stop partners listed in §§ 463.400 through 463.410 must use a portion of funds made available under their programs' authorizing Federal law (or fairly evaluated in-kind contributions) to pay the additional costs relating to the operation of the one-stop delivery system. These other costs must include applicable career services and may include other costs, including shared services.

(b) For the purposes of paragraph (a) of this section, shared services' costs may include the costs of shared services that are authorized for and may be commonly provided through the one-stop partner programs to any individual, such as initial intake, assessment of needs, appraisal of basic skills, identification of appropriate services to meet such needs, referrals to other one-stop partners, and business services. Shared operating costs may also include shared costs of the Local WDB's functions.

(c) Contributions to the additional costs related to operation of the one-stop delivery system may be cash, non-cash, or third-party in-kind contributions, consistent with how these are described in § 463.720(c).

(d) The shared costs described in paragraph (a) of this section must be allocated according to the proportion of benefit received by each of the partners, consistent with the Federal law authorizing the partner's program, and

consistent with all other applicable legal requirements, including Federal cost principles in 2 CFR part 200 (or any corresponding similar regulation or ruling) requiring that costs are allowable, reasonable, necessary, and allocable.

(e) Any shared costs agreed upon by the one-stop partners must be included in the MOU.

§ 463.800 How are one-stop centers and one-stop delivery systems certified for effectiveness, physical and programmatic accessibility, and continuous improvement?

(a) The State WDB, in consultation with chief elected officials and Local WDBs, must establish objective criteria and procedures for Local WDBs to use when certifying one-stop centers.

(1) The State WDB, in consultation with chief elected officials and Local WDBs, must review and update the criteria every 2 years as part of the review and modification of State Plans pursuant to § 463.135.

(2) The criteria must be consistent with the Governor's and State WDB's guidelines, guidance, and policies on infrastructure funding decisions, described in § 463.705. The criteria must evaluate the one-stop centers and one-stop delivery system for effectiveness, including customer satisfaction, physical and programmatic accessibility, and continuous improvement.

(3) When the Local WDB is the one-stop operator as described in 20 CFR 679.410, the State WDB must certify the one-stop center.

(b) Evaluations of effectiveness must include how well the one-stop center integrates available services for participants and businesses, meets the workforce development needs of participants and the employment needs of local employers, operates in a cost-efficient manner, coordinates services among the one-stop partner programs, and provides access to partner program services to the maximum extent practicable, including providing services outside of regular business hours where there is a workforce need, as identified by the Local WDB. These evaluations must take into account feedback from one-stop customers. They must also include evaluations of how well the one-stop center ensures equal opportunity for individuals with disabilities to participate in or benefit from one-stop center services. These evaluations must include criteria evaluating how well the centers and delivery systems take actions to comply with the disability-related regulations implementing WIOA sec. 188, set forth at 29 CFR part 38. Such actions include, but are not limited to:

(1) Providing reasonable accommodations for individuals with disabilities;

(2) Making reasonable modifications to policies, practices, and procedures where necessary to avoid discrimination against persons with disabilities;

(3) Administering programs in the most integrated setting appropriate;

(4) Communicating with persons with disabilities as effectively as with others;

(5) Providing appropriate auxiliary aids and services, including assistive technology devices and services, where necessary to afford individuals with disabilities an equal opportunity to participate in, and enjoy the benefits of, the program or activity; and

(6) Providing for the physical accessibility of the one-stop center to individuals with disabilities.

(c) Evaluations of continuous improvement must include how well the one-stop center supports the achievement of the negotiated local levels of performance for the indicators of performance for the local area described in sec. 116(b)(2) of WIOA and part 463. Other continuous improvement factors may include a regular process for identifying and responding to technical assistance needs, a regular system of continuing professional staff development, and having systems in place to capture and respond to specific customer feedback.

(d) Local WDBs must assess at least once every 3 years the effectiveness, physical and programmatic accessibility, and continuous improvement of one-stop centers and the one-stop delivery systems using the criteria and procedures developed by the State WDB. The Local WDB may establish additional criteria, or set higher standards for service coordination, than those set by the State criteria. Local WDBs must review and update the criteria every 2 years as part of the Local Plan update process described in § 463.580. Local WDBs must certify one-stop centers in order to be eligible to use infrastructure funds in the State funding mechanism described in § 463.730.

(e) All one-stop centers must comply with applicable physical and programmatic accessibility requirements, as set forth in 29 CFR part 38, the implementing regulations of WIOA sec. 188.

§ 463.900 What is the common identifier to be used by each one-stop delivery system?

(a) The common one-stop delivery system identifier is "American Job Center."

(b) As of November 17, 2016, each one-stop delivery system must include the "American Job Center" identifier or "a proud partner of the American Job Center network" on all primary electronic resources used by the one-stop delivery system, and on any newly printed, purchased, or created materials.

(c) As of July 1, 2017, each one-stop delivery system must include the "American Job Center" identifier or "a proud partner of the American Job Center network" on all products, programs, activities, services, electronic resources, facilities, and related property and new materials used in the one-stop delivery system.

(d) One-stop partners, States, or local areas may use additional identifiers on their products, programs, activities, services, facilities, and related property and materials.

Signed at Washington, DC, this 29th day of June 2016.

Thomas E. Perez,

Secretary of Labor.

John B. King, Jr.,

Secretary of Education.

[FR Doc. 2016–15977 Filed 8–8–16; 11:15 am]

BILLING CODE 4000–01–P; 4510–FN–P; 4510–FT–P

FEDERAL REGISTER

Vol. 81 Friday,

No. 161 August 19, 2016

Part VI

Department of Labor

Employment and Training Administration

20 CFR Parts 603, 651, 652, et al.

Workforce Innovation and Opportunity Act; Final Rule

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Parts 603, 651, 652, 653, 654, 658, 675, 679, 680, 681, 682, 683, 684, 685, 686, 687, and 688

[Docket No. ETA–2015–0001]

RIN 1205–AB73

Workforce Innovation and Opportunity Act

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Final rule.

SUMMARY: The Department of Labor (DOL or the Department) issues this Final Rule to implement titles I and III of the Workforce Innovation and Opportunity Act (WIOA). Through these regulations, the Department reforms and modernizes our nation's workforce development system. This rule provides the framework for changes for statewide and local workforce development systems to increase the employment, retention, earnings, and occupational skill attainment of U.S. workers, particularly those individuals with barriers to employment, so they can move into good jobs and careers and provide businesses with the skilled workforce needed to make the United States more competitive in the 21st Century global economy.

DATES: This Final Rule is effective October 18, 2016.

FOR FURTHER INFORMATION CONTACT: Adele Gagliardi, Administrator, Office of Policy Development and Research (OPDR), U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW., Room N–5641, Washington, DC 20210, Telephone: (202) 693–3700 (voice) (this is not a toll-free number). If you use a telecommunications device for the deaf (TDD), call 1–800–326–2577.

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I. Executive Summary

A. Purpose of the Regulatory Action

On July 22, 2014, President Obama signed the Workforce Innovation and Opportunity Act (WIOA) (Pub. L. 113–128), comprehensive legislation that reforms and modernizes the public workforce system. WIOA reaffirms the role of the public workforce system, and brings together and enhances several key employment, education, and training programs. This new law provides resources, services, and leadership tools for the public workforce system to help individuals find good jobs and stay employed and improves employer prospects for success in the global marketplace. It ensures that the public workforce system operates as a comprehensive, integrated, and streamlined system to provide pathways to prosperity for those it serves and continuously improves the quality and performance of its services.

The Department is publishing this Final Rule to implement those provisions of WIOA that affect the core programs under title I, the Wagner-Peyser Act Employment Service (ES) program, as amended by WIOA title III (ES program), and the Job Corps and national programs authorized under title I which will be administered by the Department. In addition to this DOL WIOA Final Rule, the Departments of Education (ED) and Labor jointly are publishing a Final Rule to implement those provisions of WIOA that affect all of the WIOA core programs (titles I through IV) and which will have to be overseen and administered jointly by both Departments. Readers should note that in this DOL WIOA Final Rule there are a number of cross-references to the Joint WIOA Final Rule published by ED and DOL, including those provisions in the Joint WIOA Final Rule regarding performance reporting. In addition to the Joint WIOA Final Rule, ED and DOL are issuing separate final rules to implement program-specific requirements of WIOA that fall under each Department's purview. DOL is issuing this Final Rule governing program-specific requirements under WIOA title I and for the ES program, as amended by WIOA title III. ED is issuing three final rules: One implementing program-specific requirements of the Adult Education and Family Literacy Act (AEFLA), as reauthorized by title II of WIOA; and two final rules implementing all program-specific requirements for programs authorized under the Rehabilitation Act of 1973, as amended by title IV of WIOA. The Joint WIOA Final Rule and other Department-specific final rules are published

elsewhere in this issue of the **Federal Register**.

WIOA seeks to deliver a broad array of integrated services to customers of the public workforce system, which include both individuals seeking jobs and skills training and employers seeking skilled workers. The law improves the public workforce system by more closely aligning it with regional economies and strengthening the network of about 2,500 one-stop centers. Customers must have access to a seamless system of high-quality services through coordination of programs, services, and governance structures. The Act builds closer ties among key workforce partners—business leaders, State and Local Workforce Development Boards (WDBs), labor unions, community colleges, non-profit organizations, youth-serving organizations, and State and local officials—in striving for a more job-driven approach to training and skills development.

WIOA will help job seekers and workers access employment, education, training, and support services to succeed in the labor market and match employers with the skilled workers they need to compete in the global economy. The purposes of WIOA described in the statute include:

- Increasing access to and opportunities for the employment, education, training, and support services that individuals need, particularly those with barriers to employment.
- Supporting the alignment of workforce investment, education, and economic development systems, in support of a comprehensive, accessible, and high-quality workforce development system.
- Improving the quality and labor market relevance of workforce investment, education, and economic development efforts.
- Promoting improvement in the structure and delivery of services.
- Increasing the prosperity of workers and employers.
- Providing workforce development activities that increase employment, retention, and earnings of participants and that increase postsecondary credential attainment and as a result, improve the quality of the workforce, reduce welfare dependency, increase economic self-sufficiency, meet skill requirements of employers, and enhance productivity, and the competitiveness of our nation.

WIOA's passage and implementation builds upon the groundwork already laid by an Administration-wide review of employment, education, and training programs to ensure Federal agencies do everything possible to prepare ready-to-work-Americans with ready-to-be-filled jobs. That review identified several priorities for Federally supported training programs, including employer engagement; promoting work-based learning strategies, such as on-the job training and registered apprenticeships, career pathways, and regional collaboration; increasing access to training by breaking down barriers; and data-driven program management and evaluation.

As WIOA implementation progresses, success in accomplishing the purposes of WIOA at the State, local, and regional levels, will be determined by whether:

- One-stop centers are recognized as a valuable community resource and are known for high quality, comprehensive services for customers.
- The core programs and one-stop partners provide seamless, integrated customer service.
- Program performance, labor market, and related data drive policy and strategic decisions and inform customer choice.
- Youth programs reconnect out-of-school youth (OSY) to education and jobs.
- Job seekers access quality career services either online or in a one-stop center through a "common front door" that connects them to the right services.
- One-stop centers facilitate access to high quality, innovative education and training.
- Services to businesses are robust and effective, meeting businesses' workforce needs across the business lifecycle.

As noted throughout this Final Rule, the Department will be issuing guidance to help our regulated communities understand their rights and responsibilities under WIOA and these regulations. Consistent with the Administrative Procedure Act's exemption from its notice and comment requirement for general statements of policy, interpretations, and procedural instructions, this guidance will provide interpretations of many of the terms and provisions of these regulations and more detailed procedural instructions that would not be appropriate to set out in regulations. The Department also will be issuing guidance to provide information on current priorities and initiatives, suggested best practices, and in response to stakeholder questions.

B. Summary of Major Provisions

To implement WIOA title I, the Department has added several new CFR parts to title 20, chapter V (ETA's regulations). In particular, because the WIA regulations will continue to be referenced in existing and historic documents for some time after the WIOA transition, the Department is creating entirely new programmatic regulations to reflect the requirements of WIOA, rather than amending the WIA title I regulations found at 20 CFR parts 660 through 672. Table 1 below presents a crosswalk for these new CFR parts to illustrate how they relate to the existing WIA regulations.

In addition, the Department is revising in this DOL WIOA Final Rule certain other CFR parts in accordance with WIOA, rather than creating entirely new parts, where it was not necessary to retain the WIA version of the regulation. For example, the Department retains the Wagner-Peyser Act implementing regulations in 20 CFR parts 651 through 658 and is revising in this Final Rule only those parts that are affected by WIOA, *i.e.*, parts 651 through 654 and 658. Further, the Department is amending portions of part 603 (Federal-State Unemployment Compensation (UC) Program; Confidentiality and Disclosure of State UC Information) in accordance with WIOA. These CFR parts that are amended but not new in this DOL WIOA Final Rule are indicated in Table 1 by showing that they do not change location in the CFR from WIA to WIOA. The remainder of this section I.B briefly summarizes each CFR part in this Final Rule and any significant differences between the notice of proposed rulemaking (NPRM) and Final Rule.

TABLE 1—CROSSWALK OF WIA AND WIOA REGULATIONS

Subject matter	WIA CFR part	WIOA CFR part
Federal-State UC Program	20 CFR part 603	20 CFR part 603.
Definitions/Introduction to Regulations	20 CFR part 660	20 CFR part 675.
State and Local WDBs, Local and Regional Plans, Waivers	20 CFR part 661	20 CFR part 679.
Adult and Dislocated Workers	20 CFR part 663	20 CFR part 680.

TABLE 1—CROSSWALK OF WIA AND WIOA REGULATIONS—Continued

Subject matter	WIA CFR part	WIOA CFR part
Youth Activities	20 CFR part 664	20 CFR part 681.
Statewide Activities	20 CFR part 665	20 CFR part 682.
Administrative Provisions	20 CFR part 667	20 CFR part 683.
Indian and Native American Programs	20 CFR part 668	20 CFR part 684.
National Farmworker Jobs Program	20 CFR part 669	20 CFR part 685.
Job Corps	20 CFR part 670	20 CFR part 686.
National Dislocated Worker Grants	20 CFR part 671	20 CFR part 687.
YouthBuild	20 CFR part 662	20 CFR part 688.
Wagner-Peyser Act Employment Service—Definitions	20 CFR part 651	20 CFR part 651.
Wagner-Peyser Act Employment Service—Establishment and Functioning	20 CFR part 652	20 CFR part 652.
Wagner-Peyser Act Employment Service—Services	20 CFR part 653	20 CFR part 653.
Wagner-Peyser Act Employment Service—Special Responsibilities	20 CFR part 654	20 CFR part 654.
Wagner-Peyser Act Employment Service—Administrative Provisions	20 CFR part 658	20 CFR part 658.

1. Part 603—Federal-State Unemployment Compensation Program

The Department is amending its regulations at 20 CFR part 603 to help States comply with WIOA. WIOA requires that States use "quarterly wage records" in assessing the performance of certain Federally funded employment and training programs. In particular, this Final Rule amends part 603 to clarify and expand, in a limited fashion, those public officials with whom the State may share certain confidential information to carry out requirements under WIOA, including the use of wage records to meet performance reporting requirements and cooperation with certain DOL and ED evaluations. The Department is amending part 603 as proposed in the NPRM.

2. Part 675—Introduction to the Regulations for the Workforce Development System Under Title I of the Workforce Innovation and Opportunity Act

Part 675 discusses the purpose of title I of the WIOA, explains the format of the regulations governing title I, and provides additional definitions for terms used in the law.

The most notable changes to this part from the regulatory text proposed in the NPRM include the addition of a definition of "family" and strengthening the definition of "consultation." The DOL WIOA Final Rule defines "family" in the same way as the WIA definition of "family," except that instead of using the gender-specific "husband" and "wife" terms that were in WIA, it substitutes "a married couple." This is intended to bring the definition into conformance with the recent Supreme Court decisions about marriage equality.

Regarding the revised definition of "consultation," in response to public comments expressing concern that the proposed definition was not specific enough, the Final Rule definition better focuses on the public workforce system and is necessary to clarify that consultation constitutes a coming together of stakeholders, robust conversation, and opportunity for all parties to express thoughts and opinions.

The Department also changed the terms "workforce innovation and opportunity system," and "workforce investment system" to "workforce development system" throughout this rule. This was done to enhance consistency across parts and avoid confusion, and to be emphasize the role of workforce development boards in this system.

3. Part 679—Statewide and Local Governance of the Workforce Development System Under Title I of the Workforce Innovation and Opportunity Act

Part 679 addresses the statewide and local governance provisions of the workforce development system under WIOA title I. This part includes provisions that govern the conditions under which the Governor must establish the State WDB (subpart A); the requirements for designation of regions and local areas under WIOA (subpart B); the role of Local WDBs, Local WDB membership, and the role of chief elected officials (CEOs) (subpart C); the requirements relating to regional and local plans (subpart D); the statutory and regulatory waiver authority provided by WIOA sec. 189(i), including the requirements for submitting a workforce flexibility plan under WIOA sec. 190 (subpart E).

As for notable changes to this part from the NPRM regulatory text, to address concerns about representation of core programs on the State WDB was raised by many commenters, the Department has revised the final regulations to clarify that, for the WIOA title I and ES programs, a single lead State official with primary responsibility for those programs may represent more than one of those programs. However, WIOA title II programs must have a single, unique representative, and the Vocational Rehabilitation (VR) program administered by ED and authorized under title I of the Rehabilitation Act of 1973, as amended by WIOA title IV (VR program), must have a single, unique representative. *See* § 679.110(b)(3)(iii)(A)(*1*)(*i*) through (*iii*).

Further, the Department clarified the regulatory text by providing details on the duration of initial local area designation and the timing of the first available opportunity for local area subsequent designation to occur. The Department revised the proposed requirement to clarify that initial designation is applicable only to Program Year (PY) 2016 and PY 2017. Noting the commenters' concerns regarding availability of WIOA performance data, which is required for the determination of designation, the Department added § 679.250(c) to clarify that no determination of subsequent designation may be made before the conclusion of PY 2017. The section-by-section discussion of part 679 below details other changes to the part 679 regulatory text, as well as Department responses to all substantive public comments.

4. Part 680—Adult and Dislocated Worker Activities Under Title I of the Workforce Innovation and Opportunity Act

In this part of the Final Rule, the Department describes requirements relating to the services that are available for adults and dislocated workers under WIOA title I. Under WIOA, adults and dislocated workers may access career services and training services. Training is provided through a robust eligible training provider and program list (ETPL), comprised of entities with a demonstrated capability of training

individuals to enter quality employment. WIOA also provides enhanced access and flexibility for work-based training options, such as on-the-job training (OJT), customized training, and incumbent worker training. In this part, the Department also discusses supportive services and needs-related payments that can be provided, based on customer needs, to enable them to participate in WIOA career and training services.

Some of the notable changes to this part from the NPRM regulatory text include that the Final Rule clarifies that the priority of service in the adult program for individuals who are public assistance recipients, other low-income individuals and for individuals who are basic skills deficient exists at all times, not just when funds are limited.

Regarding the role of registered apprenticeship programs, the Final Rule emphasizes the key role WIOA envisions for registered apprenticeship programs by highlighting these programs as a training service for both Individual Training Accounts (ITAs) and as OJT. The Final Rule allows apprenticeship programs that are not registered to go through the eligible training provider (ETP) process if they want to be on the ETP list; the rule does not provide apprenticeship programs that are not registered special access to the ETPL. The Department also clarifies in this Final Rule that registered apprenticeship programs are automatically eligible for the ETPL and the State is required to notify them of their automatic eligibility and allow the registered apprenticeship program an opportunity to consent to be on the State ETPL (*see* § 680.470). This mechanism must be minimal burden to registered apprenticeship programs and must comply with Federal guidance. The Department further clarifies in this Final Rule that local areas, which have the authority to set more stringent standards than the State for eligibility of training providers, may not do so for registered apprenticeship programs that are on the State ETPL. Finally, the Department clarifies in this Final Rule that registered apprenticeship programs may be removed from the State ETPL for enforcement reasons other than performance, such as a clear violation of WIOA (*see* § 680.470). Although registered apprenticeship programs are not required to report in the same way as other ETPs, they are required to be a part of the State annual ETP performance report under WIOA sec. 116(d)(2).

5. Part 681—Youth Activities Under Title I of the Workforce Innovation and Opportunity Act

Part 681 describes requirements relating to the services that are available to youth under WIOA title I, subtitle B, as part 664 did for youth activities funded under WIA. The most significant change to the youth formula program under WIOA is the shift to focus resources primarily on OSY. WIOA increases the minimum percentage of program funds required to be spent on OSY from 30 to 75 percent. The Department plans to release subsequent guidance and technical assistance on how States and local areas can incorporate strategies for recruiting and serving more OSY.

In addition, WIOA includes a major focus on providing youth with work experience opportunities with a requirement that local areas must spend a minimum of 20 percent of local area funds on work experience. And although work experience becomes the most important of the program elements, WIOA also introduces 5 new program elements: Financial literacy; entrepreneurial skills training; services that provide labor market and employment information about in-demand industry sectors or occupations available in the local areas; activities that help youth prepare for and transition to postsecondary education and training; and education offered concurrently with and in the same context as workforce preparation activities and training for a specific occupation or occupational cluster.

The most significant change between the NPRM and the Final Rule occurs in § 681.400. This section clarifies that youth activities may be conducted by the local grant recipient and that when the Local WDB chooses to award grants or contracts to youth service providers, such awards must be made using a competitive procurement process in accordance with WIOA sec. 123. The section-by-section discussion of part 681 below details other changes to the part 681 regulatory text, as well as Department responses to all substantive public comments.

6. Part 682—Statewide Activities Under Title I of the Workforce Innovation and Opportunity Act

WIOA provides a reservation of funds for statewide employment and training activities. These activities are undertaken by the States, rather than by Local WDBs; both the required and allowable activities are addressed by part 682. WIOA designates the percentage of funds that may be devoted to these activities from annual allotments to the States—up to 15 percent must be reserved from youth, adult, and dislocated worker funding streams, and up to an additional 25 percent of dislocated worker funds must be reserved for statewide rapid response activities.

Some of the notable changes to this part from the NPRM regulatory text include the specification that layoff aversion is a required rapid response activity, as applicable. Layoff aversion activities may include employer-focused activities such as providing assistance to employers in managing reductions in force, funding feasibility studies to determine if the employer's operation may be sustained through a buy-out, etc. Further, the DOL WIOA Final Rule specifies that a successful rapid response system includes comprehensive business engagement. Finally, the DOL WIOA Final Rule specifies that rapid response funds may be used to pay for incumbent worker training as long as it is part of a broader layoff aversion strategy. Incumbent worker training is also a valuable layoff aversion tool and, under WIA, many States requested a waiver to allow such training with rapid response funds. This Final Rule change recognizes the value of incumbent worker training for this purpose and includes it as allowable under rapid response within the context of layoff aversion activities.

7. Part 683—Administrative Provisions Under Title I of the Workforce Innovation and Opportunity Act

Part 683 establishes the administrative provisions for the programs authorized under title I of WIOA. Some of the provisions are also applicable to grants provided under the Wagner-Peyser Act, as indicated in specific sections of the part. The remaining Wagner-Peyser Act administrative regulations are located in part 658. Additionally, please note that administrative provisions for Job Corps (subtitle C of title I of WIOA) contracts are addressed separately in part 686.

This DOL WIOA Final Rule adds a requirement that the Governor establish criteria or factors for approving Local WDB transfers of funds between the adult and dislocated worker programs and that these criteria must be in a written policy, such as the State Plan or other written policy.

Regarding Pay-for-Performance contract strategies, the final regulations made a change from the NPRM in that the Department has added a new section that maintained the requirement for a feasibility study prior to implementing a Pay-for-Performance contract strategy

but removed it from the 10 percent limitation of funds.

8. Part 684—Indian and Native American Programs Under Title I of the Workforce Innovation and Opportunity Act

Part 684 governs the Indian and Native American (INA) program authorized under WIOA sec. 166. WIOA and part 684 streamline the competitive process for awarding the INA program grants. Section 166 of WIOA requires both that grants be awarded through a competitive process and that grantees submit a 4-year plan (WIOA secs. 166(c) and 166(e)). These WIOA regulations streamline the grant award process to ease the administrative burdens. The Department will no longer designate grantees or require a notice of intent. Moreover, the part 684 WIOA regulations have incorporated the 4-year plan into the competitive grant award process. Because these changes will help streamline the process for awarding grants, these WIOA regulations should result in less of an administrative burden on both applicants and the Department.

Other than a few technical, non-substantive edits, the Department has made no changes to the regulatory text in part 684.

9. Part 685—National Farmworker Jobs Program Under Title I of the Workforce Innovation and Opportunity Act

The purpose of part 685 is to implement WIOA sec. 167, which authorizes migrant and seasonal farmworker (MSFW) programs. In drafting these regulations, the Department consulted with States and MSFW groups during stakeholder consultation sessions conducted in August and September 2014, as required by WIOA sec. 167(f). MSFW programs include career services and training, housing assistance, youth services, and related assistance to eligible MSFWs.

The regulations in part 685 support strategic alignment across workforce development programs by: Aligning the definition of "farmwork" found in this part with that used in the ES program; adjusting the upper and lower age ranges of eligible MSFW youth to conform to those established in WIOA sec. 129 for OSY and ISY; and requiring that grantees coordinate services, particularly outreach to MSFWs, with the State Workforce Agency (SWA) in their service area and the State Monitor Advocate. These changes are intended to support coordination between MSFW programs and other workforce programs such as the ES program, and facilitate MSFW youth co-enrollments with other WIOA title I programs.

Part 685 includes language regarding training services that reinforces that training must be directly linked to an in-demand industry or occupation that leads to economic self-sufficiency and encourages the attainment of recognized postsecondary credentials when appropriate (*see* § 685.350).

Part 685 also establishes that grantees funded under WIOA sec. 167 can serve eligible MSFW youth participants (*see* §§ 685.320 and 685.510). These regulations also require that a percentage of the total funds appropriated each year for WIOA sec. 167 activities must be used for housing grants, and described specific housing assistance activities to better articulate the types of services that can be delivered to eligible MSFWs (*see* § 685.360).

Based on the public comments received in response to the NPRM, the Department made the following significant changes to part 685 as proposed:

- The Final Rule permits a National Farmworker Jobs Program (NFJP) grantee some flexibility to increase the OJT reimbursement rate up to 75 percent of the wage rate of a participant, provided that such reimbursement rates are consistent with the rates set by the Governor in the State or Local WDB(s) in the local area(s) in which the grantee operates in accordance with WIOA sec. 134(c)(3)(H)(i);
- The Final Rule revises § 685.360(d) to clarify that NFJP-funded permanent housing development activities that benefit eligible MSFWs do not require individual eligibility determinations;
- The Final Rule clarifies in § 685.360 that development of on-farm housing located on property owned and operated by an agricultural employer is an allowable activity; and
- In response to commenters' concerns regarding the negative impact that would result on performance indicator calculations by including individuals who receive only certain minimal "related assistance" services, which do not require a significant investment of staff time and resources, the Department has added language to § 685.400 that puts the NFJP program in alignment with other WIOA authorized programs regarding performance accountability calculations.

10. Part 686—The Job Corps Under Title I of the Workforce Innovation and Opportunity Act

This part establishes regulations for the Job Corps program, authorized in title I, subtitle C of WIOA. The regulations address the scope and purpose of the Job Corps program and provide requirements relating to site selection, protection, and maintenance of Job Corps facilities; funding and selection of center operators and service providers; recruitment, eligibility, screening, selection and assignment, and enrollment of Job Corps students; Job Corps program activities and center operations; student support; career transition services and graduate services; community connections; and administrative and management requirements. The regulations carry out Congressional direction on contracting and competition for centers and incorporate the requirements of title I, subtitle C of WIOA. Specifically, the regulations describe how the Job Corps program is operated in order to deliver relevant academic and career technical training (CTT) that leads to meaningful employment or postsecondary education and explain the requirements necessitated by the unique residential environment of a Job Corps center.

Although the Department received some public comments that opposed the proposed provision stating that the Secretary of Labor, in consultation with the Secretary of Agriculture, may select an entity to operate a Civilian Conservation Center (CCC) or close low performing CCCs if the Secretary of Labor deems appropriate (§ 686.350(e) through (f)), the DOL WIOA Final Rule retains these paragraphs as proposed because the regulatory text mirrors the statutory requirements at WIOA sec. 159(f)(2). In addition, regarding concerns expressed by commenters that the proposed high-performing center criteria were too difficult to achieve, the Department is retaining § 686.320 as proposed because the language in the regulation mirrors that of WIOA and the Department does not have the discretion to loosen the criteria.

11. Part 687—National Dislocated Worker Grants

National Dislocated Worker Grants (DWGs) are discretionary awards that temporarily expand service capacity at the State and local levels through time-limited funding assistance in response to significant dislocation events. These grants are governed by sec. 170 of WIOA. The part 687 regulations set forth the key elements and requirements for DWGs. Additional guidance on DWGs and the application requirements for these grants was published separately by the Department in Training and Employment Guidance Letter (TEGL) No. 01–15, "*Operational Guidance for National Dislocated Worker Grants, pursuant to the*

Workforce Innovation and Opportunity Act (WIOA or Opportunity Act)."

The part 687 regulations establish a framework that will enable eligible applicants to apply quickly for grants to relieve the impact of layoffs, emergencies, and disasters on employment in the impacted area and to meet the training and reemployment needs of affected workers and to enable them to obtain new jobs as quickly as possible. These regulations call for early assessment of the needs and interests of the affected workers, through either rapid response activities or other means, as well as an indication of the other resources available to meet these needs, to aid in the creation of a customer-centered service proposal. The early collection of information about affected workers will allow applicants to have an understanding of the needs and interests of the impacted workers to enable a prompt application for the appropriate level of DWG funds. Early collection of information also will facilitate the receipt of DWG funds when the Secretary determines that there are insufficient State and local formula funds available. Early intervention to assist workers being dislocated is critical to enable them to access work-based learning opportunities and other types of training that lead to industry-recognized credentials, as appropriate, to help them find new employment in in-demand industries and occupations as soon as possible after their dislocation occurs.

The Department has made several global changes and technical edits to the part 687 regulations proposed in the NPRM for clarity and technical accuracy. For example, "National Dislocated Worker Grants" will be referred to by the acronym "DWGs" in this part for simplicity. In addition, the Department has determined it is necessary to alter the labels of what the NPRM called "Regular" and "Disaster" DWGs to describe more accurately their purpose and intended use. "Regular" DWGs have been renamed "Employment Recovery" DWGs, and "Disaster" DWGs have been renamed "Disaster Recovery" DWGs. Further, the terms "career services" and "employment-related assistance" have been changed to "employment and training assistance" to clarify that the use of DWG funds is not limited to only career services. Training and supportive services also may be provided as appropriate and in accordance with the requirements of part 687. Finally, the term "temporary employment" has been replaced with the term "disaster relief employment" to better align the text of this part 687 with that of WIOA sec. 170. In addition, this DOL WIOA Final Rule clarifies that individuals who relocate to another State, tribal, or outlying area after a disaster may receive services in either the disaster area or the area to which they relocate. However, the Final Rule also includes a provision for the Secretary to allow, in certain circumstances, individuals to receive services in both the disaster and the relocation area. Other non-substantive changes and technical edits are described in detail in the section-by-section discussion of part 687 below.

12. Part 688—Provisions Governing the YouthBuild Program

The YouthBuild program authorizes grants for job training and educational activities for at-risk youth who, as part of their training, help construct or rehabilitate housing for homeless individuals and families and low-income families in their respective communities. Participants receive a combination of classroom training, job skills development, and on-site training in the construction trades. The Department wants to emphasize the connections across all of our youth-serving programs under WIOA, including the WIOA youth formula program and associated boards and youth committees, connections to pre-apprenticeship and registered apprenticeship programs, and Job Corps centers across the country. WIOA is an opportunity to align and coordinate service strategies for these ETA youth training programs, as well as to align with our Federal partners that serve these same customers. WIOA also ensures that these programs are using common performance indicators and standard definitions, which includes aligning the definitions for homeless youth, basic skills deficient, occupational skills training, and supportive services. Additionally, the YouthBuild regulation adopts the six new performance indicators that were codified across WIOA youth-serving programs and aligns YouthBuild with the WIOA youth formula program performance outcomes.

WIOA affirms the Department's commitment to providing high-quality education, training, and employment services for youth and young adults through YouthBuild grants by expanding the occupational skills training offered at local YouthBuild programs. YouthBuild programs can offer occupational skills training in in-demand occupations, such as health care, advanced manufacturing, and IT, as approved by the Secretary and based on the maturity of the program and local labor market information.

Other changes include revisions to the duration of the restrictive covenant clause, clarifying eligibility criteria for participation, and describing qualifying work sites and minimum criteria for successful exit from the YouthBuild program. Beyond these regulations, the Department will continue to develop guidance and technical assistance to help grantees and the workforce development community operate highly effective YouthBuild programs.

13. Part 651—General Provisions Governing the Wagner-Peyser Act Employment Service

The Wagner-Peyser Act of 1933 established the ES program, which is a nationwide system of public employment offices that provide public labor exchange services. The ES program seeks to improve the functioning of the nation's labor markets by bringing together individuals seeking employment with employers seeking workers. In 1998, the ES program was amended to make it part of the one-stop delivery system established under WIA. The ES program has now been amended again under title III of WIOA.

WIOA expands upon the previous workforce reforms in the WIA and, among other provisions, identifies the ES as a core program in the one-stop delivery system, embeds ES State planning requirements into a unified planning approach, and requires the colocation of ES offices into the one-stop centers. The regulations in parts 651, 652, 653, 654, and 658 update the language and content of the regulations to implement amendments made by title III of WIOA to the Wagner-Peyser Act. In some areas, these regulations establish entirely new responsibilities and procedures. In other areas, the regulations clarify and update requirements already established. The regulations make important changes to the following components of the ES program: definitions, data submission, and increased collaboration requirements, among others.

Part 651 sets forth definitions for 20 CFR parts 652, 653, 654, and 658. The Department received several comments regarding these definitions and has eliminated, revised, and added definitions, as needed. Some commenters suggested new terms they would like to see defined in part 651, and other commenters expressed concerns or suggestions relating to specific proposed definitions. Additionally, the Department has made technical and clarifying changes to some of the definitions.

14. Part 652—Establishment and Functioning of State Employment Service

The regulations at 20 CFR part 652 set forth standards and procedures regarding the establishment and functioning of State ES operations. These regulations align part 652 with the WIOA amendments to the ES program, and with the WIOA reforms to the public workforce system that affect the ES program. The WIOA-amended Wagner-Peyser Act furthers longstanding goals of closer collaboration with other employment and training programs by mandating colocation of ES offices with one-stop centers; aligning service delivery in the one-stop delivery system; and ensuring alignment of State planning and performance indicators in the one-stop delivery system. Other new Wagner-Peyser Act provisions are consistent with long-term Departmental policies, including increased emphasis on reemployment services for UI claimants (sec. 7(a)); promoting robust Workforce Labor Market Information (WLMI); the development of national electronic tools for job seekers and businesses (sec. 3(e)); dissemination of information on best practices (sec. 3(c)(2)); and professional development for ES staff (secs. 3(c)(4) and 7(b)(3)).

Several public comments received in response to the NPRM prompted the Department to make minor changes to parts of the regulations in this section. For example, the Department agreed with comments regarding ensuring comprehensive front-line staff training; and direct language has been added to § 652.204 from sec. 3(c)(4) of the Wagner-Peyser Act (as amended by WIOA sec. 303(b)(4)) to indicate that professional development and career advancement can be supported by the Governor's Reserve. The Department agreed with the commenter-suggested benefits of aligning definitions across the core programs, and as a result, the terms "reportable individual" and "participant" have been revised to align with the performance accountability of the other core programs. The Department also agreed with commenters who suggested that career services under WIOA are not a substitute for Wagner-Peyser Act sec. 7(a) services; § 652.3(f) has been amended to reference sec. 7(a) of the Wagner-Peyser Act. The Department continues to seek alignment of service delivery with WIOA core programs.

The Department received several varying comments regarding colocation. This part clarifies the intent of colocation; how ES-only affiliate sites do not meet the intent of WIOA; the Department's decision to broaden language in 20 CFR 678.315(b) to allow multiple programs to meet the more than 50 percent threshold by combining the time their staff members are physically present (*see* Joint WIOA Final Rule); and the expectation that colocation should be completed as expeditiously as possible, and that the Department will issue future guidance on this topic. Many commenters also raised questions and provided comments regarding the allowable uses of Wagner-Peyser Act funds. The Department clarified that there are no changes in the activities that may be funded by Wagner-Peyser Act funds. Specifically, training services may not be provided with sec. 7(a) of the Wagner-Peyser Act funding; however, appropriate career services and labor exchange services may be provided to individuals in training and there is no restriction on funding training services with sec. 7(b) funds under the Wagner-Peyser Act.

In regard to WLMI, some of the clarifications identified in this part include: There is a need to provide extensive education and technical assistance with regard to accessing wage record data; the Workforce Information Advisory Council (WIAC) will advise on WLMI and may consider what kind of information is needed for planning, but it will not be involved in developing State Plans; and the Departments of Labor and Education will issue joint guidance with regard to use of wage data for performance in the context of the confidentiality requirements for the use of UI wage record data and education data under the Family Educational Rights and Privacy Act (FERPA). The Department also made other clarifying changes to part 652, as discussed elsewhere in this Final Rule.

15. Part 653—Services of the Wagner-Peyser Act Employment Service

Part 653 sets forth standards and procedures for providing services to MSFWs and provides regulations governing the Agricultural Recruitment System (ARS), a system for interstate and intrastate agricultural job recruitment. In subparts B and F of part 653, the Department is implementing the WIOA title III amendments to the Wagner-Peyser Act, as well as streamlining and updating certain sections to eliminate duplicative and obsolete provisions. Despite these changes, part 653 remains consistent with the "Richey Order." *NAACP* v. *Brennan,* 1974 WL 229, at *7 *(D.D.C. Aug. 13, 1974).*

Upon the consideration of comments suggesting that the Department require outreach workers to be trained on not only how to identify and refer possible incidents of sexual harassment, but also on similar issues such as sexual coercion, assault, and human trafficking, the Department has added such language to the regulatory text at § 653.107(b)(7). Training outreach workers in this way is key in helping to connect victims with appropriate resources and support networks.

16. Part 654—Special Responsibilities of the Employment Service System

In 1980, the Department published amended regulations at 20 CFR part 654, subpart E, providing agricultural housing standards for MSFWs. In the NPRM, the Department proposed to revise these agricultural housing regulations (hereinafter "ETA standards") by updating outdated terminology and by establishing an expiration date for the ETA standards. This proposed expiration date was intended to transition housing currently governed by the ETA standards to the Occupational Safety and Health Administration (OSHA) regulations governing temporary labor camps for agricultural workers as set forth at 29 CFR 1910.142. After considering the public comments received on this aspect of the proposal, the Department is rescinding its proposal to establish an expiration date for the ETA standards in order to transition housing currently governed by the ETA standards to the OSHA standards, as explained in further detail in this Final Rule.

17. Part 658—Administrative Provisions Governing the Wagner-Peyser Act Employment Service

Part 658 sets forth systems and procedures for complaints, monitoring for compliance assessment, enforcement, and sanctions for violations of the ES regulations and employment-related laws, including discontinuation of services to employers and decertification of SWAs. The Department's proposed changes to part 658 updated terminology and responsibilities and reorganized various regulations to increase the clarity and efficiency of the provisions involved. Additionally, headings were revised, when necessary, to reflect changes to the regulations, and language was added to permit, where relevant, the use of electronic mail and electronic signatures.

Overall, the Department received several comments seeking clarification on processing complaints and apparent violations, attempting informal

resolution, and the role of MSFW complainant's representatives, among many others. The Department has addressed these requests for clarification in the responses to public comments contained in the part 658 section-by-section discussion below (*see* section V.Q). Additionally, the Department will issue guidance on the Complaint System, informal resolution, referring complaints and apparent violations, and on part 658, subpart F (Discontinuation of Services to Employers by the Employment Service System).

C. Costs and Benefits

This Final Rule has been designated an "economically significant rule" under sec. 3(f)(4) of Executive Order (E.O.) 12866. Therefore, the Office of Management and Budget (OMB) has reviewed the Final Rule, and the Department has conducted a regulatory impact analysis to estimate the costs, benefits, and transfers associated with the Final Rule, which is detailed in full in section V.A of the Final Rule below. In total, the Department estimates that this Final Rule will have an average annual net benefit of $14,806,210 and a total 10-year net benefit of $95,836,706 (with 7-percent discounting).

The Department estimates that this Final Rule will have an average annual cost of $35,037,540 and a total 10-year cost of $278,750,652 (with 7-percent discounting). The largest contributor to the cost is the requirement related to the development and continuous improvement of the workforce development system, followed by the career pathways development and the colocation of ES services.

The Department quantified the expected incremental benefits associated with this Final Rule relative to the baseline of the current practice under the Workforce Investment Act of 1998 (WIA), where possible. Specifically, the Department quantified the benefits expected to result from required competition for all one-stop operators. Competition for all one-stop operators will result in cost reductions for Local WDBs due to increases in efficiency, which are estimated to amount to approximately $49,843,750 per year and $374,587,357 over the 10-year period (with 7-percent discounting). This quantified benefit resulting from increased competition for all one-stop operators, however, does not account for several other important benefits to society that the Department was unable to quantify due to data limitations or lack of existing data or evaluation findings. Based on a review of empirical studies (primarily studies published in peer-reviewed academic publications and studies sponsored by the Department), however, the Department identified a variety of societal benefits: (1) Training services increase job placement rates; (2) participants in occupational training experience higher reemployment rates; (3) training is associated with higher earnings; and (4) State performance accountability measures, in combination with the board membership provision requiring employer/business representation, can be expected to improve the quality of the training and, ultimately, the number and caliber of job placements. The Department identified several channels through which these benefits might be achieved: (1) Better information about training providers will enable workers to make better informed choices about programs to pursue; (2) sanctions to under-performing States will serve as an incentive for both States and local entities to monitor performance more effectively and to intervene early; and (3) enhanced services for dislocated workers, self-employed individuals, and workers with disabilities will lead to the benefits discussed above.

In addition, the Final Rule will result in transfer payments, *i.e.*, a shift in costs or benefits from one group to another that does not affect total resources available to society. The Department estimates that this Final Rule will result in annual average transfer payments of $12,887,628 and a total 10-year transfer payment of $96,853,514 (with 7-percent discounting). These transfers result from increased funding for targeting OSY.

The Department has determined that the Final Rule will have no cost impact on small entities and will not impose an unfunded mandate on Federal, State, local, or tribal governments as defined by the Unfunded Mandates Reform Act of 1995.

II. Acronyms and Abbreviations

AEFLA Adult Education and Family Literacy Act
ALJ Administrative Law Judge
ACS American Community Survey
ADA Americans with Disabilities Act
ANRC Alaska Native Regional Corporation
ANVSA Alaska Native Village Service Area
AOP Agricultural Outreach Plan
ARC Analyst Resource Center
ARS Agricultural Recruitment System
ATAP Assistive Technology Act Program
AWPA Migrant and Seasonal Agricultural Worker Protection Act
AWOL Absent Without Official Leave
BCL Business and Community Liaison
BLS Bureau of Labor Statistics
CBO Community-based organization
CCC Civilian Conservation Center
CDBG Community Development Block Grant
CEO Chief elected official
CEP Concentrated Employment Program
CFR Code of Federal Regulations
Complaint System Employment Service and Employment-Related Law Complaint System
COO Chief operating officer
COSO Committee of Sponsoring Organizations of the Treadway Commission
CPARS Contract Performance Assessment Reports
CPP Career Preparation Period
CRIS Common Reporting Information System
CTS Career Transition Services
CTT Career Technical Training
DACA Deferred Action for Childhood Arrivals
DINAP Division of Indian and Native American Programs
DOL Department of Labor
DVOP Disabled Veterans Outreach Program
DWG Dislocated Worker Grant
EBSS Enterprise Business Support System
ED Department of Education
EEOC Equal Employment Opportunity Commission
E.O. Executive Order
EO Equal opportunity
ES Employment Service
ESA Employment Standards Administration
ESARS Employment Security Automated Reporting System
ETA Employment and Training Administration
ETP Eligible training provider
ETPL Eligible training provider list
FAR Federal Acquisition Regulations
FECA Federal Employees Compensation Act
FEIN Federal employer identification number
FEMA Federal Emergency Management Agency
FERPA Family Educational Rights and Privacy Act
FLSA Fair Labor Standards Act
FOA Funding Opportunity Announcement
FPO Federal Project Officer
FR Federal Register
FTE Full Time Equivalent
GED General Educational Development
GIS Geographic information system
GPRA Government Performance and Results Act
HEARTH Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009
HHS Department of Health and Human Services
HOME HOME Investment Partnerships
HSD High School Diploma
HSE High School Equivalent
HUD U.S. Department of Housing and Urban Development
IC Information collection
ICR Information Collection Request
IEP Individual Employment Plan
IEVS Income and Eligibility Verification System
INA Indian and Native American
IRFA Initial Regulatory Flexibility Analysis
IRS Internal Revenue Service
ISDEAA Indian Self-Determination and Education Assistance Act

ISS Individual Service Strategy
ISY In-school youth
IT Information technology
ITA Individual Training Account
JIS Job Information Service
JS Job Service
JTPA Job Training Partnership Act
JVSG Jobs for Veterans State Grants
LEARS Labor Exchange Agricultural Reporting System
LEHD Longitudinal Employer-Household Dynamics
LEP Limited English proficiency
LEWIS Local Employment and Wage Information System
LLC Limited Liability Corporation
LLSIL Lower Living Standard Income Level
LMI Labor Market Information
Local WDB Local Workforce Development Board
MOU Memorandum of Understanding
MPO Management Performance Outcome
MSFW Migrant and Seasonal Farmworker
MSWR Medical Separation with Reinstatement Rights
NAA National Apprenticeship Act
NAACP National Association for the Advancement of Colored People
NAETC Native American Employment and Training Council
NAFTA North American Free Trade Agreement
NAICS North American Industry Classification System
NDWG National Dislocated Worker Grant
NEG National Emergency Grant
NFJP National Farmworker Jobs Program
NICRA Negotiated Indirect Cost Rate Agreement
NIEM National Information Exchange Model
NLX National Labor Exchange
NPRM Notice of Proposed Rulemaking
OA Outreach and Admissions
OALJ Office of Administrative Law Judges
OBS On-board strength
ODEP Office of Disability and Employment Policy
OFLC Office of Foreign Labor Certification
OIG Office of the Inspector General
OJT On-the-job training
OMB Office of Management and Budget
OMS Outcome Measurement System
OPDR Office of Policy Development and Research
OSHA Occupational Safety and Health Administration
OSY Out-of-school youth
OTSA Oklahoma Tribal Service Area
OWI Office of Workforce Investment
PART Program Assessment and Rating Tool
PBP Program Budget Plan
PEDCS Post Enrollment Data Collection System
PIA Privacy Impact Assessment
PII Personally identifiable information
PIP Performance improvement plan
PIRL Participant Individual Record Layout
PMP Projections Managing Partnership
PPACA Patient Protection and Affordable Care Act
PRA Paperwork Reduction Act of 1995
PREP Profiling Reemployment Program
PRH Policy and Requirements Handbook
Pub. L. Public Law
PY Program year
REA Reemployment and Eligibility Assessment
RESEA Reemployment Services and Eligibility
RFA Regulatory Flexibility Act
RFP Requests for proposals
RHY Runaway or Homeless Youth
Richey Order Judge Richey Court Order
RIN Regulatory Information Number
RMA Regional Monitor Advocate
RSA Rehabilitation Services Administration
SBA Small Business Administration
SBREFA Small Business Regulatory Enforcement Fairness Act of 1996
SDA Service delivery area
sec. Section of a Public Law or the United States Code
SESA State Employee Security Act
S–FTP Secure File Transfer Protocol
SMA State Monitor Advocate
SOC Standard Occupational Classification
SNAP Supplemental Nutrition Assistance Program
SSA Social Security Act
SSDI Social Security Disability Insurance
SSN Social Security Number
State WDB State Workforce Development Board
STAWRS Simplified Tax and Wage Reporting System
SWA State Workforce Agency
SWCAP Statewide Cost Allocation Plans
TAA Trade Adjustment Assistance
TANF Temporary Assistance for Needy Families
TAPR Trade Act Participant Report
TAT Technical Assistance and Training
TDD Telephone device for the deaf
TEAP Trainee Employee Assistance Program
TEGL Training and Employment Guidance Letter
TEN Training and Employment Notice
UC Unemployment Compensation
UCX Unemployment Compensation for Ex-service members
UI Unemployment insurance
U.S.C. United States Code
VA Department of Veterans Affairs
VETS Veterans' Employments and Training Service
VR Vocational rehabilitation
Wagner-Peyser Act Wagner-Peyser Act of 1933
WARN Worker Adjustment and Retraining Notification
WDB Workforce Development Board
WHD Wage and Hour Division
WIA Workforce Investment Act of 1998
WIAC Workforce Information Advisory Council
WIASRD Workforce Investment Act Standardized Record Data
WIB Workforce investment boards
WIC Workforce Information Council
WIOA Workforce Innovation and Opportunity Act
WLMI Workforce and Labor Market Information
WLMIS Workforce and Labor Market Information System
WPRS Worker Profiling and Reemployment Services
WRIS Wage Record Interchange System
YB-TAP YouthBuild Trainee Apprenticeship Program
ZT Zero Tolerance

III. Rulemaking Authority and Background

A. Workforce Innovation and Opportunity Act Principles

On July 22, 2014, President Obama signed WIOA, the first legislative reform of the public workforce system in more than 15 years, which passed Congress by a wide bipartisan majority. WIOA supersedes WIA and amends the Adult Education and Family Literacy Act (AEFLA), the Wagner-Peyser Act, and the Rehabilitation Act of 1973. WIOA presents an extraordinary opportunity for the public workforce system to accelerate its transformational efforts and demonstrate its ability to improve job and career options for our citizens through an integrated, job-driven public workforce system that links diverse talent to our nation's businesses. It supports the development of strong, vibrant regional economies where businesses thrive and people want to live and work.

WIOA reaffirms the role of the customer-focused one-stop delivery system, a cornerstone of the public workforce development system, and enhances and increases coordination among several key employment, education, and training programs. Most provisions in WIOA took effect on July 1, 2015, the first full program year after enactment, although the new statutory State Plans and performance accountability system requirements take effect July 1, 2016. Title IV of WIOA, however, took effect upon enactment.

WIOA is designed to help job seekers access employment, education, training, and support services to succeed in the labor market and to match employers with the skilled workers they need to compete in the global economy. WIOA has six main purposes: (1) Increasing access to and opportunities for the employment, education, training, and support services for individuals, particularly those with barriers to employment; (2) supporting the alignment of workforce investment, education, and economic development systems in support of a comprehensive, accessible, and high-quality workforce development system; (3) improving the quality and labor market relevance of workforce investment, education, and economic development efforts; (4) promoting improvement in the structure and delivery of services; (5) increasing the prosperity of workers and employers; and (6) providing workforce development activities that increase employment, retention, and earnings of participants and that increase

postsecondary credential attainment and as a result, improve the quality of the workforce, reduce welfare dependency, increase economic self-sufficiency, meet skill requirements of employers, and enhance productivity and competitiveness of the nation.

Beyond achieving the requirements of the new law, WIOA offers an opportunity to continue to modernize the public workforce system, and achieve key hallmarks of a customer centered public workforce system, where the needs of business and workers drive workforce solutions, where one-stop centers and partners provide excellent customer service to job seekers and businesses, where the public workforce system pursues continuous improvement through evaluation and data-driven policy, and where the public workforce system supports strong regional economies.

Regulations and guidance implementing WIOA titles I and III are issued by DOL, with the exception of the joint regulations issued by DOL and ED on the provisions in title I relating to unified and combined planning, performance, and the one-stop delivery system. Regulations and guidance on implementing titles II and IV of WIOA are issued by ED. The Joint WIOA Final Rule and the ED WIOA Final Rules are published elsewhere in this issue of the **Federal Register**.

WIOA retains much of the structure of WIA, but with critical changes to advance greater coordination and alignment. Under title I, subtitle A, each State will be required to develop a single, unified strategic plan that is applicable to six core workforce development programs. The core programs consist of the adult, dislocated worker, and youth formula programs administered by the Department under WIOA title I; the Adult Education and Family Literacy program administered by ED under WIOA title II; the ES program administered by the Department and authorized by the Wagner-Peyser Act, as amended by WIOA title III; and the VR program administered by ED and authorized under title I of the Rehabilitation Act of 1973, as amended by WIOA title IV (VR program). In addition to core programs, WIOA provides States the opportunity to include other key one-stop partner programs such as the Supplemental Nutrition Assistance Program (SNAP), Unemployment Insurance (UI), Temporary Assistance for Needy Families (TANF), and Perkins Career Technical Education in a Combined State Plan. The law also includes a common performance accountability system applicable to all of the core programs.

The remainder of WIOA title I authorizes the adult, dislocated worker, and youth formula programs; the State and local WDBs (formerly workforce investment boards or WIBs); the designation of regions and local areas; local plans; the one-stop delivery system; national programs, including Job Corps, YouthBuild, Indian and Native American (INA) programs, and Migrant and Seasonal Farmworker (MSFW) programs; technical assistance and evaluations; and general administrative provisions currently authorized under title I of WIA. Title II retains and amends the Adult Education and Family Literacy Program currently authorized under title II of WIA. Title III contains amendments to the Wagner-Peyser Act relating to the ES and Workforce and Labor Market Information System (WLMIS), and requires the Secretary to establish a WIAC. Title IV contains amendments to the Rehabilitation Act of 1973, which were also included under title IV of WIA; it also requires the Secretary of Labor to establish an Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities. Finally, title V contains general provisions similar to the provisions applicable under title V of WIA as well as the effective dates and transition provisions.

B. Major Changes From the Workforce Investment Act of 1998

This section contains a summary of the major changes from WIA. As indicated above, WIOA retains much of the structure of WIA. Major changes in WIOA are:

- *Aligns Federal investments to support job seekers and employers.* The Act provides for States to prepare a single Unified State Plan that identifies a 4-year strategy for achieving the strategic vision and goals of the State for preparing an educated and skilled workforce and for meeting the skilled workforce needs of employers. States govern the core programs as one system assessing strategic needs and aligning them with service strategies to ensure the public workforce system meets employment and skill needs of all workers and employers.
- *Streamlines the governing bodies that establish State, regional and local workforce investment priorities.* WIOA makes State and Local WDBs more agile and well positioned to meet local and regional employers' workforce needs by reducing the size of the WDBs and assigning them additional responsibilities to assist in the achievement of the State and local strategic workforce vision and goals. The State WDBs continue to have a majority of business representation and a business chair and work for all workers and job seekers, including low-skilled adults, youth, and individuals with disabilities, while they foster innovation, and ensure streamlined operations and service delivery excellence.
- *Creates a common performance accountability system and information for job seekers and the public.* WIOA ensures that Federal investments in employment, education, and training programs are evidence-based and data-driven, and accountable to participants and the public. It establishes a performance accountability system that applies across the core programs, by generally applying six primary indicators of performance: Entry into unsubsidized employment at two points in time, median earnings, attainment of postsecondary credentials, measurable skill gains, and effectiveness in serving employers.
- *Fosters regional collaboration to meet the needs of regional economies.* WIOA promotes alignment of workforce development programs with regional economic development strategies to meet the needs of local and regional employers.
- *Enhances access to high quality services through the network of one-stop delivery system.* WIOA helps job seekers and employers acquire the services they need in centers and online, clarifies the roles and responsibilities of the one-stop partner programs, adds the TANF program as a required one-stop partner unless the Governor objects, requires competitive selection of one-stop operators, and requires the use by the one-stop delivery system of a common one-stop delivery identifier or brand developed by the Secretary of Labor ("American Job Center," *see* Joint WIOA Final Rule).
- *Improves services to individuals with disabilities.* WIOA stresses physical and programmatic accessibility, including the use of accessible technology to increase individuals with disabilities' access to high quality workforce services.
- *Makes key investments for disconnected youth.* WIOA emphasizes services to disconnected youth to prepare them for successful employment by requiring that a minimum of 75 percent of youth formula program funds be used to help OSY, in contrast to the 30 percent required under WIA. WIOA increases OSYs' access to WIOA services, including pre-apprenticeship

opportunities that result in registered apprenticeship. It adds a requirement that at least 20 percent of formula funds at the local level be used on work-based training activities such as summer jobs, OJT, and apprenticeship.

• *Helps employers find workers with the necessary skills.* WIOA contributes to economic growth and business expansion by ensuring the public workforce system is job-driven—matching employers with skilled individuals. WIOA requires Local WDBs to promote the use of industry and sector partnerships that include key stakeholders in an industry cluster or sector that work with public entities to identify and address the workforce needs of multiple employers.

Additionally, successful implementation of many of the approaches called for within WIOA, such as career pathways and sector strategies, require robust relationships across programs and with businesses, economic development, education and training institutions, including community colleges and career and technical education, local entities, and supportive services agencies.

C. Workforce Innovation and Opportunity Act Rulemaking Process

Since the enactment of WIOA, the Department has used a variety of means to coordinate with other Federal agencies that have roles and responsibilities under the Act. The Department works closely with staff at ED and the Department of Health and Human Services (HHS) on all shared policy and implementation matters. Key areas of collaboration include the Unified State Plan, performance reporting, one-stop service delivery, and services to disconnected youth and to individuals with disabilities. WIOA created an opportunity to enhance coordination and collaboration across other Federal programs through the Combined State Plan and the Department meets with the other Federal agencies regarding those plans.

Before publishing the WIOA NPRM (80 FR 20690, Apr. 16, 2015), the Department solicited broad input through a variety of mechanisms including:

• Issued Training and Employment Notice (TEN) No. 05–14 to notify the public workforce system that WIOA was enacted, accompanied by a statutory implementation timeline, a fact sheet that identified key reforms to the public workforce system, and a list of frequently asked questions.

• Issued TEN No. 06–14 to announce a series of webinars to engage WIOA stakeholders in implementation of WIOA.

• Issued TEN No. 12–14 to provide guidance to States and other recipients of funds under title I of WIA on the use and reporting of PY 2014 funds for planning and implementation activities associated with the transition to WIOA.

• Established a WIOA Resource Page (*www.doleta.gov/WIOA*) to provide updated information related to WIOA implementation to the public workforce system and stakeholders;

• Established a dedicated email address for the public workforce system and stakeholders to ask questions and offer ideas related to WIOA (*DOL.WIOA@dol.gov*);

• Conducted, in conjunction with ED and HHS, outreach calls, webinars, and stakeholder and in-person town halls in each ETA region. The Department and its Federal partners hosted 10 town halls across the country, reaching over 2,000 system leaders and staff representing core programs and one-stop partners, employers, and performance staff. This included a town hall with INA leaders and membership organizations serving Indians and Native Americans, Hawaiians, and Alaskan Natives as well as a formal consultation with members of the Native American Employment and Training Advisory Council to the Secretary of Labor.

• Conducted readiness assessments to implement WIOA in all States and 70 local workforce areas to inform technical assistance.

Since the DOL WIOA NPRM was published, the Department has issued additional WIOA guidance using various mechanisms including the following:

• Issued numerous pieces of official guidance to the public workforce system on policies related to WIOA implementation (some jointly with ED), including "Vision for the One-Stop Delivery System under WIOA" (Aug. 13, 2015) and TEGL No. 14–15, "*Workforce Innovation and Opportunity Act (WIOA) Requirements for Unified and Combined State Plans.*" *See http://wdr.doleta.gov/directives/All_WIOA_Related_Advisories.cfm.*

• Provided on-going technical assistance to the public workforce system in the form of Frequently Asked Questions. *See https://www.doleta.gov/wioa/FAQs.cfm.*

• Developed a network of peer learners titled the Innovation and Opportunity Network (ION) that is designed to help all levels of workforce development professionals, stakeholders, and partners connect with others throughout the public workforce system who are working to implement WIOA. ION's in-person collaboration is provided through the Department's regional Federal Project Officers, and regional meetings with State and local stakeholders. Regarding online collaboration, the ION Web site provides webinars, quick start action planners, podcasts from voices in the field describing their experiences in implementation, and other online resources.

• Conducted, in conjunction with ED and HHS, webinars for stakeholders on a variety of topics, including: Credentials that Count for Youth (Apr. 29, 2015); ION (May 13 and June 3, 2015); Firing Up Youth Standing Committees (May 27, 2015); Making the Shift—Successfully Leveraging In-School Youth (ISY) and OSY Resources and Services (June 24, 2015); WIOA Act Now Series: Partnerships in Action (July 1, 2015); Webinar Series Act Now: Governance, Leadership, and Building a Strategic Board (July 15, 2015); Collaborative Partnerships Serving Youth wish Disabilities (July 29, 2015); Customer-Centered Design Implementation WIOA (July 29, 2015); WIOA Eligible Training Provider Provisions: The First Year (Aug. 5, 2015); WIOA Performance Accountability Reporting Requirements—Overview of Layout and Templates (Aug. 12 and 13, 2015); Career Pathways for Youth (Aug. 26, 2015); Proposed Information Collection: Required Elements for Submission of the Unified or Combined State Plan and Plan Modifications Under WIOA (Aug. 27, 2015); Implementing WIOA in Rural Areas (Sept. 30, 2015); DEI Lessons Learned for WIA/WIOA: How Integrated Resource Teams Achieved WIA Outcomes for Populations that Experience Multiple Challenges to Employment and Implications for WIOA (Oct. 22, 2015); ApprenticeshipUSA Online Toolkit: A New Tool to Advance Apprenticeship Under WIOA (Oct. 26, 2015); Partnership Between WIOA and TANF to Serve Youth (Oct. 28, 2015).

Workforce Innovation and Opportunity Act Information Collection Requests

There are two new Information Collection Requests (ICRs) and six existing OMB-approved information collections that are being revised as part of this DOL WIOA Final Rule. Section V.B of the NPRM (Paperwork Reduction Act) included descriptions of the new ICRs and how the proposal would change each of the existing information collections. Section VI.D of this Final Rule (Paperwork Reduction Act) provides summary information about the public comments received on these

ICRs and details the final burden estimates for the revised information collections.

Soon after publication of the DOL WIOA NPRM and the Joint WIOA NPRM, DOL and ED published a notice in the **Federal Register** announcing the joint ICR for the WIOA Performance Management, Information, and Reporting System (80 FR 43474, July 22, 2015) and requested comments on this ICR during a 60-day public comment period (hereinafter "WIOA Joint Performance ICR") (*see https://www.regulations.gov/#!docketDetail;D=ETA-2015-0007*). On September 1, 2015, DOL solicited comments on its own WIOA performance accountability ICR to require the following programs to report on a standardized set of data elements through the WIOA Workforce Performance Accountability, Information, and Reporting System: WIOA adult, dislocated worker, and youth, ES, National Farmworker Jobs, Trade Adjustment Assistance, YouthBuild, INA, and the Jobs for Veterans' State Grants (80 FR 52798) (hereinafter "DOL Performance ICR") (*see https://www.regulations.gov/#!docketDetail;D=ETA-2015-0008*). On April 16, 2015, ED solicited comments on its ICR related to the VR program Case Service Report (RSA–911) to require VR agencies to report data required under sec. 101(a)(10) of the Rehabilitation Act of 1973, as amended by WIOA, as well as performance accountability data under title I of WIOA (hereinafter "RSA–911"). DOL and ED received 112 public comment submissions in response to the WIOA Joint Performance ICR, DOL received public comments on the DOL Performance ICR, and ED received public comments on the RSA–911, respectively. The Departments address those comments in the final WIOA Joint Performance and DOL WIOA ICRs.

On August 6, 2015, the U.S. Departments of Labor, Education, Health and Human Services, Agriculture, and Housing and Urban Development proposed a new information collection regarding required elements for submission of the Unified or Combined State Plan and Plan modifications under WIOA (hereinafter "WIOA State Plan ICR") (80 FR 47003) (see *https://www.regulations.gov/#!docketDetail;D=ETA-2015-0006*). The WIOA State Plan ICR received a total of 16 public comments. These public comment submissions informed the development of the final WIOA State Plan ICR, which OMB approved on February 19, 2016. *See http://www.reginfo.gov/public/do/PRASearch* (ICR Reference No. 201601–1205–001).

D. Legal Basis

On July 22, 2014, the President signed WIOA (Pub. L. 113–128) into law. WIOA repeals WIA (29 U.S.C. 2801 *et seq.*). As a result, the WIA regulations no longer reflect current law. Section 503(f) of WIOA required that the Department issue an NPRM and then a Final Rule that implements the changes WIOA makes to the public workforce system in regulations. Therefore, the Department has developed and issued this Final Rule that implements WIOA. The Department has issued regulations regarding the WIOA sec. 188 nondiscrimination and equal opportunity provisions through separate rulemaking. *See* 80 FR 43872 (July 23, 2015) (establishing WIOA sec. 188 implementing regulations at 29 CFR part 38); 81 FR 4494 (Jan. 26, 2016) (proposing updates to 29 CFR part 38 consistent with current equal opportunity law).

IV. Public Comments Received on the Notice of Proposed Rulemaking

The Department's NPRM to implement titles I and III of WIOA was published on April 16, 2015 (80 FR 20690). During the 60-day public comment period, the Department received a total of 767 public comments on the WIOA NPRM. In addition to these submissions, the Department also considered portions of 84 public comment submissions from the Joint WIOA NPRM docket that the Department determined related to the DOL WIOA NPRM. The Joint WIOA NPRM, which proposed regulations to implement jointly administered activities authorized under WIOA title I, was also published on April 16, 2015 (80 FR 20574).

General Comments

Comments: Several commenters expressed general support for the proposed regulation, commenting that the regulations would increase employment, make the United States more competitive, lead to higher wages, and produce other benefits. Some of these commenters expressed confidence that that the Department can deliver on this proposal, and that the associated expense is necessary. Several comments made general positive remarks about WIOA, and specifically cited an emphasis on one or more specific aspects of the law, such as adult education, college and career readiness, strengthening connections among programs and recognizing the role of distance learning and technology in reaching broader audiences. The commenters suggested that WIOA provides adequate flexibility to accommodate differences among States (*e.g.,* size, population density and population diversity. Some commenters discussed workforce development-related services currently provided or cited statistics that they asserted illustrate the current or historical use of the public workforce system in terms of services and participant demographics. For example, one organization cited statistics regarding which aspects of titles I and II are being used by LEP individuals.

Department Response: Since these comments require no response, they are not addressed in this DOL WIOA Final Rule. No submissions expressed general opposition to the proposal. Instead, many commenters discussed their disagreement with specific aspects of the proposal. These comments are addressed in the associated and appropriate sections of the section-by-section discussion of the Final Rule (*see* section V below).

Requests To Extend the Comment Period

Comments: A few commenters requested a 60-day extension of the comment period. The commenters cited the size and complexity of the five proposed NPRMs implementing WIOA.

Department Response: While the Department recognizes that the issues addressed in the DOL WIOA NPRM are complex and important, the Department concluded that the 60-day comment period was sufficient to provide the public a meaningful opportunity to comment, and this conclusion is supported by the hundreds of complex and thoughtful comments received. Additionally, the NPRM was available to the public for a preliminary review on the **Federal Register** Web site upon submission of the NPRMs to the **Federal Register**, which was several weeks prior to publication, thereby providing stakeholders additional time prior to the publication date.

Coordination and the WIOA Rulemaking Process

Comments: A commenter urged the Departments of Labor and Education to increase collaboration, including more coordinated implementation guidance, providing incentives for programs within the two Departments to participate in a Combined Plan, and affording flexibility in use of funding streams and on performance accountability. Two commenters said that aspects of the proposed regulations suggest lesser coordination of WIOA

guidance and oversight across Departments than envisioned by WIOA. Further, these commenters expressed concern that the lack of specificity in areas of the proposed regulations could result in the issuance of Federal guidance on levels that should be in regulation to ensure that States and local areas have an opportunity to comment.

Department Response: The Departments of Labor and Education have taken great care to coordinate the issuance of collaborative guidance regarding WIOA implementation, including TEGL No. 14–15, "*Workforce Innovation and Opportunity Act (WIOA) Requirements for Unified and Combined State Plans*"; TEGL No. 04–15, "*Vision for the One-Stop Delivery System under the Workforce Innovation and Opportunity Act (WIOA).*" The Departments will continue to issue guidance collaboratively. As appropriate, the Department will reach out and consult other stakeholders as it develops guidance and technical assistance. As the Department implements WIOA, it anticipates lots of stakeholder outreach, building on our long established relationships. The Department will continue this robust outreach throughout implementation.

V. Section-by-Section Discussion of Public Comments and Final Regulations

The analysis in this section provides the Department's response to public comments received on the DOL WIOA NPRM. If a proposed CFR section is not addressed in the discussion below, it is because the public comments submitted in response to the NPRM did not substantively address that specific section and no changes have been made to the regulatory text. Further, the Department received a number of comments on the NPRM that were outside the scope of the proposed regulation and the Department offers no response to such comments. Lastly, the Department has made a number of non-substantive changes to correct grammatical and typographical errors to improve the readability and conform the document stylistically that are not discussed in the analysis below.

A. Part 603—Federal-State Unemployment Compensation Program

Relationship Between 20 CFR part 603 and WIOA

The disclosure of wage record data is governed by 20 CFR part 603, which establishes requirements for maintaining the confidentiality of unemployment compensation (UC) information along with standards for mandatory and permissive disclosure of such information. Part 603 permits State agencies to disclose confidential unemployment compensation information—including "wage information" (referred to in § 603.2(k))—to "public officials" (defined at § 603.2(d)) under limited circumstances (under § 603.5), and authorizes such public officials in turn to use the information to meet certain Federal requirements in the performance of their official duties.

The Department has decided to amend 20 CFR part 603 as proposed in the NPRM. These Final Rules amend current regulations to clarify and expand, in a limited fashion, those public officials with whom the State may share certain confidential information to carry out requirements under WIOA. The regulations enumerate certain additional public officials who may access confidential State wage records for the State's performance reporting. Ensuring such access to these State records will allow State agencies to manage better the information for the purpose of making Federally required reports on certain program outcomes, and to cooperate more effectively and be more informative with respect to Federal program evaluations.

WIOA sec. 116(i)(2) and 20 CFR 677.175(a) (*see* Joint WIOA Final Rule) require State workforce, training, and education programs to use quarterly wage records to measure the progress of the State on State and local performance accountability measures. The Department interpreted at 20 CFR 677.175(b) the reference to "quarterly wage records" in WIOA sec. 116(i)(2) to require States to use the confidential UC information in the employer-provided wage reports collected under sec. 1137 of the Social Security Act (SSA), 42 U.S.C. 1320b–7. These are the reports that the State UC agency obtains from employers for determining UC tax liability, monetary eligibility, or for cross-matching against State UC agencies' files to determine if improper payments have been made.

The regulation at 20 CFR 677.175(b) (*see* Joint WIOA Final Rule) defines "quarterly wage record information" to include three data elements or categories of data elements: (1) A program participant's Social Security Number (SSN); (2) information about the wages that program participants earn after exiting from the program; and (3) the name, address, State, and (when known) Federal Employer Identification Number (FEIN) of the employer paying those wages. The "wage information" defined in § 603.2(k)—which the regulations allow State agencies to disclose under limited circumstances—includes the three data categories or elements (wages, SSN(s), employer information) that States must use as their data source for State and local performance reporting under WIOA. These terms are different but refer to the same information: wage records.

As explained in greater detail below, in the NPRM the Department proposed to change and expand § 603.2 (definition of "public official") and change § 603.5 (governing disclosures to public officials) to help States comply with WIOA's performance requirements, including the performance reports of the States, local areas, and Eligible Training Providers (ETPs). In addition, the Department amended § 603.6 to add a provision requiring disclosure of confidential UC information to a Federal official (or an agent or contractor of a Federal official) requesting such information to meet the new statutory requirement on State cooperation with certain DOL and ED evaluations. These changes facilitate States' obligations to report on performance through the use of quarterly wage records, and to cooperate in DOL and ED evaluations.

The amendments to 20 CFR part 603 only relate to State agency disclosures necessary to comply with certain provisions of WIOA. Much of part 603 was left intact and was not considered for amendment in the NPRM, the purpose of which was to implement WIOA, not to otherwise impact partner programs. The Department invited comments on the proposed amendments to part 603, but did not consider comments on other portions of part 603 or other UC matters that are outside the scope of the proposed rulemaking.

The Department received 22 comments in response to the proposed changes to part 603. While normally the Department does not discuss comments that are outside the scope of the amendment, the Department notes that only the portions of part 603 that are being amended were part of the NPRM and open for comment. The existing data protections required under other portions of part 603 will continue and will be enforced. These required protections, laid out in §§ 603.8, 603.9, 603.10, and 603.12, ensure that confidential UC data are secure. These portions of part 603 were not considered for amendment and so were excluded from the NPRM.

The analysis that follows provides the Department's response to public comments received on the proposed part 603 regulations. If a section is not addressed in the discussion below, it is because the public comments submitted

in response to the NPRM did not substantively address that specific section and no changes have been made to the regulatory text. Further, the Department received a number of comments on this part that were outside the scope of the regulation and the Department offers no response. Lastly, the Department has made a number of non-substantive changes to correct grammatical and typographical errors to improve the readability and conform the document stylistically that are not discussed in the analysis below.

Section 603.2 What definitions apply to this part?

Definition of "public official": The changes to this section amend the definition of "public official" as used throughout part 603. The changes to § 603.2(d), to facilitate State compliance with WIOA's reporting requirements, clarify and expand the definition of who and what entities are considered "public officials." The amendments to § 603.2(d) clearly enumerate that "public official" includes officials from public postsecondary educational organizations; State performance accountability and customer information agencies; the chief elected officials of local areas (as that term is used in WIOA sec. 106); and a public State educational authority, agency, or institution. Some of these officials already would meet the definition of "public official" under current § 603.2(d); however, the amendments make this clear.

Comments: The Department received some comments suggesting clarification of the definition and application of the phrase "chief elected official."

Department Response: No changes were made to the regulatory text in response to these comments. Such clarification is best accomplished through guidance and technical assistance as needed.

Disclosure to public postsecondary institutions: Section 603.2(d)(2) permits disclosure to public postsecondary educational institutions, regardless of how those institutions are structured or organized under State law. Section 603.2(d)(2) clearly delineates the types of postsecondary educational institutions that are allowed access to confidential UC information:

(1) Public postsecondary educational institutions that are part of a State's executive branch, *i.e.*, that derive their authority either directly from the Governor or from an entity (State WDB, commission, etc.) somewhere in that line of authority (see § 603.2.(d)(2)(i));

(2) Public postsecondary educational institutions that are independent of the State's executive branch, which means those institutions whose directors derive their authority either directly from an elected official in the State other than the Governor or from an entity (again, a State WDB, commission, or other entity) in that line of authority. This covers any public postsecondary educational institution established and governed under State law, for example, a State Board of Regents (see § 603.2(d)(2)(ii));

(3) State technical colleges and community colleges, which may also be covered under (1) or (2) (see § 603.2(d)(2)(iii)).

Section 603.2(d)(5) permits disclosure to a public State educational authority, agency, or institution; the Department considers the heads of public institutions deriving their authority from a State educational authority or agency to be "public officials" for purposes of part 603.

These changes are designed to help States comply with WIOA's requirement to use wage records to measure performance (WIOA sec. 116(i)(2)) and to facilitate the performance reporting required for ETPs under secs. 116(d) and 122 of WIOA. As long as the recipients of the data adhere to all of the requirements in 20 CFR part 603, this section permits States to make these disclosures to comply with WIOA requirements for Federal, State, or local government reporting on program outcomes and for other specified purposes.

Comments: The Department received several comments requesting that non-public educational institutions, community-based organizations, and for-profit educational institutions be added to the list of entities included in the term "public official."

Department Response: As explained in the NPRM, non-public educational institutions, including non-profit or for-profit educational institutions, community-based organizations, and eligible training providers that are not subject to the authority of the executive branch of a State or other elected official, are not permitted to obtain confidential UC information, including wage information, under this authority. In first proposing the "public official" exception to the UC confidentiality requirement in 69 FR 50,022, 50,027 (2004), the Department explained that "there is less risk of unauthorized use or disclosure of UC information if responsibility for safeguarding confidentiality rests within the executive or legislative branches of government." Any disclosures of confidential UC information to those entities for purposes of complying with WIOA must be authorized under an exception contained in § 603.5 other than § 603.5(e). The Department is issuing guidance to address how non-public entities that need wage record information to complete reports required under WIOA will be able to obtain access to aggregate wage record information for this purpose. No changes were made to the regulatory text in response to these comments.

Section 603.6(b)(8) What disclosures are required by this subpart?

Section 603.6(b)(8) makes the disclosure of confidential UC information mandatory for certain Federal evaluations when the disclosure does not interfere with the efficient administration of State UC law. The addition of § 603.6(b)(8) implements the requirement that States cooperate in conducting evaluations under the authority of either the Secretary of Labor or the Secretary of Education under WIOA sec. 116(e)(4). This cooperation, defined in WIOA, must include "the provision of data (in accordance with appropriate privacy protections established by the Secretary of Labor)"; this includes 20 CFR part 603 and any other privacy protections the Secretary may establish. The final regulation requires disclosure of confidential UC information to Federal officials or their agents or contractors, requesting such information in the course of an evaluation covered by WIOA secs. 116(e)(4) and 116(e)(1) to the extent that such disclosure is "practicable."

The Department interprets "to the extent practicable" to mean that the disclosure would not interfere with the efficient administration of State UC law. This interpretation is consistent with the application of regulations that apply to disclosures under § 603.5. The introductory language to § 603.5 provides that, in situations where the disclosure of confidential UC information is permitted, the State may make the disclosure only if doing so would not interfere with the efficient administration of State UC law. In effect, § 603.6(b)(8) requires that State UC agencies make disclosures to DOL and ED for the purposes of the Departments' conducting evaluations, when the disclosures do not interfere with the efficient administration of the State UC law. The Department expects this cooperation and related disclosures to include responding to surveys and allowing site visits, as well as disclosing confidential UC information needed for evaluations.

Comments: The Department received two comments that raised concerns that the adoption of § 603.6(b)(8) would

allow the creation of a national UC database and require a State's "entire UI file."

Department Response: The information required to be disclosed for a given evaluation is considerably less than what may be included in a State's UC file. Additionally, these disclosures are required only for research, evaluation, and investigation purposes found in WIOA, the Rehabilitation Act of 1973, and the Wagner-Peyser Act, as well as evaluations under other laws. The information disclosed may not be used for purposes other than that for which it was obtained. These disclosures are subject to the appropriate privacy and confidentiality protections found throughout 20 CFR part 603. Research projects, evaluations, and investigations have set time frames for which data are being reviewed and are generally limited in scope. In general, the Department would not be in possession of any of the information requested under the disclosure provisions at § 603.6(b)(8). The researcher, evaluator, or investigator would be in possession of the information and use it for their stated purposes under proper authority or would be subject to sanctions for breach of the agreement under which the data were obtained. No changes were made to the regulatory text in response to these comments.

B. Part 675—Introduction to the Regulations for the Workforce Development Systems Under Title I of the Workforce Innovation and Opportunity Act

Part 675 discusses the purpose of title I of the WIOA, explains the format of the regulations governing title I, and provides additional definitions which are not found and defined in WIOA.

Section 675.100 describes the purposes of title I of WIOA.

Section 675.200 outlines the structure of the WIOA regulations.

Section 675.300 provides a list of definitions that are applicable across the WIOA regulations.

Included in this list of definitions, the Department includes the following relevant definitions from the Office of Management and Budget's (OMB) "Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards" found at 2 CFR part 200: Contract, Contractor, Cooperative Agreement, Federal Award, Federal Financial Assistance, Grant Agreement, Non-Federal Entity, Obligations, Pass-Through Entity, Recipient, Subaward, Subrecipient, Unliquidated Obligations, and Unobligated Balance. All other definitions at 2 CFR part 200 apply to these regulations where relevant, but have not been included in this section.

Contract. The definition for "contract" incorporates the definition established by OMB at 2 CFR 200.22. Specifically, the term "contract" refers to the legal document that a non-Federal entity uses to purchase property or services used to carry out its duties under a grant authorized under WIOA. If the Department determines that a particular transaction entered into by the entity is a Federal award or subaward it will not be considered a contract.

Contractor. The definition of "contractor" incorporates the definition contained in OMB's Uniform Guidance at 2 CFR 200.23. The Uniform Guidance has replaced the term "vendor" with the term "contractor." As used in these regulations, the term "contractor" includes entities that WIOA refers to as "vendors." Additionally, it is important to note that contractors are not subrecipients. Additional guidance on distinguishing between a contractor and a subrecipient can be found at 2 CFR 200.330.

Cooperative Agreement. The definition of "cooperative agreement" incorporates the definition contained in the Uniform Guidance at 2 CFR 200.24.

Department or DOL. This term refers to the United States Department of Labor, its agencies, and organizational units.

Employment and Training Activity. As used in these regulations, the term "employment and training activity" refers to any workforce investment activities carried out for an adult or dislocated worker under sec. 134 of WIOA and 20 CFR part 678 (*see* Joint WIOA Final Rule).

Equal Opportunity (EO) Data. This term refers to the data required by the Department's regulations at 29 CFR part 37 implementing sec. 188 of WIOA.

ETA. This term refers to the Employment and Training Administration, which is an agency of DOL, or its successor organization.

Federal Award. This definition incorporates the definition in the Uniform Guidance at 2 CFR 200.38.

Federal Financial Assistance. The definition of "Federal financial assistance" incorporates the definition contained in the Uniform Guidance at 2 CFR 200.40.

Grant or Grant Agreement. The definition of "grant agreement" incorporates the definition contained in the Uniform Guidance at 2 CFR 200.51. Because both WIOA and these regulations use "grant" and "grant agreement" interchangeably, the inclusion of both terms here clarifies that the terms are synonymous.

Grantee. The definition of "grantee" refers to a recipient of funds under a grant or grant agreement. Grantees are also referred to as recipients in these regulations.

Individual with a Disability. This definition uses the definition from sec. 3 of the Americans with Disabilities Act, as amended, and is further defined at 29 CFR 37.4.

Labor Federation. This definition remains unchanged from the definition used in the regulations under WIA at 20 CFR 660.300.

Literacy. The definition for "literacy" as used in these regulations is a measure of an individual's ability to participate and successfully function both in the workplace and in society.

Local WDB. This definition clarifies that the term "Local WDB" as used in these regulations refers to the Local Workforce Development Boards (WDB) established under WIOA sec. 107, to set policy for the local workforce development system.

Non-Federal Entity. The definition of "non-Federal entity" incorporates the definition contained in the Department's Exceptions to the Uniform Guidance at 2 CFR 2900.2.

Obligations. The definition of "obligations" incorporates the definition contained in the Uniform Guidance at 2 CFR 200.71.

Outlying Area. The term "outlying area" refers to those Territories of the United States which are not within the definition of "State," including the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and, in certain circumstances, the Republic of Palau.

Pass-through entity. The definition of pass-through entity incorporates the definition in the Uniform Guidance at 2 CFR 200.74.

Recipient. The definition of "recipient," which is different than the current definition of recipient under WIA at 20 CFR 660.300, incorporates the definition in the Uniform Guidance at 2 CFR 200.86.

Register. The definition of "register" means the point at which an individual seeks more than minimal assistance from staff in taking the next step towards self-sufficient employment. This is also when information that is used in performance information begins to be collected. At a minimum, individuals must provide identifying information to be registered.

Secretary. This term refers to the Secretary of the U.S. DOL, or their officially delegated designees.

Secretaries. This term refers to the Secretaries of the U.S. DOL and the U.S. ED, or their officially designated designees.

Self-Certification. The term "self-certification" refers to the certification made by an individual that they are eligible to receive services under title I of WIOA.

State. The term "State" refers to each of the several States of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

State WDB. This definition clarifies that the term "State WDB" as used in these regulations refers to the State Workforce Development Boards (WDB) established under WIOA sec. 101.

Subgrant or *Subaward.* This term incorporates the definition of "subaward" in the Uniform Guidance at 2 CFR 200.92. This term replaces the term "subgrant" found in WIA at 20 CFR 660.300. Because both WIOA and these regulations use "subgrant" and "subaward" interchangeably, the inclusion of both terms here clarifies that the terms are synonymous.

Subrecipient. The definition of "subrecipient" incorporates the definition in the Uniform Guidance at 2 CFR 200.93. This term is synonymous with the term "subgrantee."

Unliquidated Obligations. The definition of "unliquidated obligations" incorporates the definition contained in the Uniform Guidance at 2 CFR 200.97.

Unobligated Balance. The definition of "unobligated balance" incorporates the definition in the Uniform Guidance at 2 CFR 200.98.

Wagner-Peyser Act. As used in these regulations, the term "Wagner-Peyser Act" refers to the Wagner-Peyser Act passed on June 6, 1933, and codified at 29 U.S.C. 49 *et seq.*

WIA Regulations. The term "WIA Regulations" as used in this regulation or subsequently by the Department refers to the regulations 20 CFR parts 660 through 672. This definition is necessary because, as described in the introduction to these regulations, the Department has chosen to retain the WIA regulations at parts 660 through 672 of title 20 of the CFR.

WIOA Regulations. This term, as used in this regulation or generally by the Department means those regulations in 20 CFR parts 675 through 687, the Wagner-Peyser Act regulations in 20 CFR part 652, subpart C, and the regulations implementing WIOA sec. 188 in 29 CFR part 37.

Workforce Investment Activities. The term "workforce investment activities" is a general term that describes the broad array of activities and services provided to eligible adults, dislocated workers, and youth under secs. 129 and 134 of title I of WIOA.

Youth Workforce Investment Activity. The term "youth workforce investment activity" refers to those activities carried out for eligible youth that fall within the broad definition of "workforce investment activity."

Section 675.100 What are the purposes of title I of the Workforce Innovation and Opportunity Act?

Comments: An advocacy organization urged the Department to include in § 675.100 a reminder to States and employers of their existing obligations under the Americans with Disabilities Act (ADA), notwithstanding anything else reflected in the WIOA regulations.

Department Response: The Department takes nondiscrimination seriously and addresses it in the regulation at 20 CFR part 38. No change to the regulatory text was made in response to this comment.

Section 675.200 What do the regulations for workforce development systems under title I of the Workforce Innovation and Opportunity Act cover?

Comments: Some commenters provided feedback on technical corrections for this section, while others provided comments that addressed specific provisions found elsewhere in this regulation.

Department Response: Technical corrections were made to this section. In addition, several comments that referenced this section were more appropriately addressed in other parts of the regulation, and have been so addressed.

Section 675.300 What definitions apply to these regulations?

Comments: Some commenters suggested that the Department should provide additional detail on what is involved in a requirement to consult. These commenters generally emphasized the importance of meaningful consultation. For example, referring to the proposed definition of consultation, a Local WDB commented that "exchanging viewpoints and ideas" is only helpful when both parties feel equally empowered to influence the outcome of the discussion. Two commenters expressed concern that the requirement to consult could be interpreted to mean just share information or whatever else is in the best interest of the entity required to consult. Another commenter suggested that consultation should be defined as strongly as possible to stress advanced notice, robust conversation, and collaborative efforts with local areas prior to the State's decision-making process. Some commenters made specific suggestions for what the Department should or could include in a definition of consultation, including active engagement, good faith discussion and decision-making agreement and consent from local elected officials, the Local WDB, and the State WDB, provision of written notice of intended changes with a cost-benefit analysis and a specific timeframe for public comment, process to contest decisions through a formal grievance process, requiring consultation with the largest and smallest local areas in the State, and requiring State WDB members to visit and engage local areas.

Department Response: The Department agrees with the need to emphasize meaningful consultation and revised the definition of *consultation* in this section to emphasize convening, robust conversation, and an opportunity for all stakeholders to share their thoughts and opinions. In addition, some of the specific suggestions not incorporated into this definition are addressed in other parts of this regulation and the Joint WIOA Final Rule. For example, 20 CFR part 676 requires public comment on Unified and Combined State Plans (*see* Joint WIOA Final Rule), and part 679 of this regulation requires governors to appoint only persons who have been nominated by certain stakeholder organizations to certain positions on the State WDB.

Comments: A commenter recommended clearly defining "career pathways" in this regulation in such a way to ensure flexibility in deviation from a pathway if education and employment requirements are met.

Department Response: WIOA secs. 3(7)(A) through (G) define career pathways as a combination of rigorous high-quality education, training, and other services that meet specified guidelines. The Department agrees that additional guidance would help State and Local WDBs implement career pathways. With the Department of Education, the Department has published a Career Pathways Toolkit, which can be found at *www.DOLETA.gov*, and continues to provide guidance and technical assistance on the implementation of career pathways under WIOA.

Comments: Asserting that neither WIOA sec. 3 nor the WIOA NPRMs include a definition of "family," some commenters suggested that the Department provide clarification on this term.

Department Response: The Department agrees that "family" is a term that should be defined in this

regulation and has added a definition of family that is based on the WIA definition and has been updated to reflect the Supreme Court decision in *United States* v. *Windsor,* 133 S. Ct. 2675 (2013). While this definition applies to all parts of this regulation, the Department notes that part 681 of this regulation adds a reference to dependents, per specifications of the Internal Revenue Service, when this definition is considered as part of a determination of eligibility to participate in the WIOA youth programs described in that part.

Comments: Several commenters recommended adding to this part definitions of terms not addressed above or in the NPRM. Most of them were related to indicators of performance of WIOA title I programs, which are addressed in 20 CFR part 677 of the Joint WIOA Final Rule. Several other comments focused on defining or revising definitions of terms that are used in regulations applying solely to Department of Education programs. The Department worked with the Department of Education to ensure they were addressed where they most appropriately fit, which was often in the Joint WIOA Final Rule and sometimes in specific parts of this regulation.

Department Response: The Department considered these comments and addressed them in other parts of this regulation, as appropriate, and worked with the Department of Education to address these comments in the most relevant part of the most appropriate regulation. For example, some commenters suggested definitions of terms related to performance under WIOA title I programs are addressed in 20 CFR part 677 (*see* Joint WIOA Final Rule) and comments related to serving youth under WIOA title I programs are addressed in part 681.

In addition, the Department realized that the NPRM contained minor inconsistencies in how it defined "individual with a disability" across parts. The Department therefore edited such definitions using the statutory definition at WIOA sec. 3(25), which uses the definition from the Americans with Disabilities Act (ADA), to make them consistent with each other. The Department interprets all references to the ADA to include case law and interpretive guidance. The Department also changed the terms "workforce innovation and opportunity system," and "workforce investment system" to "workforce development system" throughout this rule. This was done to enhance consistency across parts and avoid confusion, and to be emphasize the role of workforce development boards in this system.

C. Part 679—Statewide and Local Governance of the Workforce Development System Under Title I of the Workforce Innovation and Opportunity Act

20 CFR part 679 addresses the Statewide and Local Governance provisions of the Workforce Development System under title I of WIOA. This part includes provisions on the State WDB, the Workforce Innovation and Opportunity Act Local Governance (Workforce Development Areas), Local WDBs, Regional and Local Plans, and Waivers/Workforce Flexibility Plans.

The analyses that follows provides the Department's response to public comments received on the proposed Statewide and Local Governance regulations. If a section is not addressed in the discussion below, it is because the public comments submitted in response to the NPRM did not substantively address that specific section and no changes have been made to the regulatory text. Further, the Department received a number of comments on this part that were outside the scope of the regulation and the Department offers no response. Lastly, the Department has made a number of non-substantive changes to correct grammatical and typographical errors to improve the readability and conform the document stylistically that are not discussed in the analysis below.

1. Subpart A—State Workforce Development Board

Subpart A sets forth the conditions under which the Governor must establish the State WDB. 20 CFR 679.100(a) through (e) explain the purpose of the State WDB. The State WDB represents a wide variety of individuals, businesses, and organizations throughout the State. WIOA is designed to help job seekers and workers access employment, education, training, and support services needed to succeed in the labor market, and match employers with the skilled workers needed to compete in the global economy. The State WDB has the critical role of leading and guiding the State's implementation of WIOA, which requires aligning Federal investments in job training, integrating service delivery across programs, and ensuring that workforce investments are job-driven and match employers with skilled workers. The State WDB serves as a convener of State, regional, and local workforce system partners to enhance the capacity and performance of the workforce development system and align and improve employment, training, and education programs, and through these efforts, promote economic growth. The State WDB's role as a strategic convening place where key stakeholders and partnerships come together can be accomplished only if each State WDB member is an active participant in the business of the board. State WDB members must establish a platform in which all members actively participate and collaborate closely with the required partners of the workforce development system, and other stakeholders, including public and private organizations. This engagement is crucial in the State WDB's role to help integrate and align a more effective job-driven workforce development system that invests in the connection between education and career preparation.

Overarching Comments on State WDBs

Comments: Commenters expressed concern with the WIOA implementation timelines for establishing compliant State WDBs. They said that States should have more flexibility in the time allowable to become compliant with new requirements, including new membership requirements and the new State WDB role, which could require changes by the State legislature.

Department Response: WIOA called for the implementation of most of WIOA, including the State WDB requirements, by July 1, 2015. State WDB requirements are outlined in WIOA sec. 101 and § 679.100. The Department issued operating guidance in TEGL No. 27–14 on April 15, 2015, titled "*Workforce Innovation and Opportunity Act Transition Authority for Immediate Implementation of Governance Provisions.*" This guidance can be found at *http://wdr.doleta.gov/directives/All_WIOA_Related_Advisories.cfm.*

Comments: One commenter was concerned with potential political influence the Governor holds over State and Local WDBs as well as procurement requirements.

Department Response: WIOA vests certain authority with the Governor, including State WDB appointments, and the Department has no authority to change it.

WIOA sec. 107(e) requires Boards to operate in a transparent manner; §§ 679.140 and 679.390 set forth the parameters for State and Local WDBs to conduct business in an open and transparent manner. Transparency in operations also assures that all parties are held accountable to the public and can mitigate concerns of inappropriate influence. Transparency promotes

accountability and provides valuable information to citizens on the Federal, State, and local government's activities. The State WDB must make available to the public on a regular basis, through electronic means and open meetings, information about State WDB activities such as the State Plan, modifications to the State Plan, board membership, the board's by-laws, and the minutes of meetings. This information must be easily accessed by interested parties. Ensuring that this information is widely available promotes transparency and provides access to the public on how the State WDB works to align, integrate, and continuously improve the workforce development system. No change to the regulatory text was made in response to this comment.

Comments: Another commenter recommended that developing an overarching vision for the workforce development system and monitoring of progress toward that vision should be a function of the State WDB.

Department Response: These actions are a function of the State WDB. 20 CFR 679.100 implements WIOA sec. 101(d) and outlines the vision and purpose of the State WDB. Among other responsibilities, the State WDB is required to assist the Governor in the "development, implementation, and modification of the State Plan" (WIOA sec. 101(d)(1)) and to support the function of the public workforce system enumerated in WIOA sec. 101(d)(2) through (12). The State Plans must detail the State's strategic workforce approach and vision as outlined in 20 CFR 676.100(a) (*see* Joint WIOA Final Rule) and no change to the regulatory text was made in response to this comment.

Section 679.100 What is the purpose of the State Workforce Development Board?

20 CFR 679.100 implements WIOA sec. 101 and outlines the purpose of the State WDB. A key goal of Federally-funded training programs is to get more U.S. workers jobs and marketable skills and support businesses to find workers with the skills that are needed. The State WDB is responsible for engaging employers, education providers, economic development, and other stakeholders to help the workforce development system achieve the purpose of WIOA and the State's strategic and operational vision and goals outlined in the State Plan.

The Department encourages the State to take a broad and strategic view when considering representatives of the State WDB, and also in establishing processes which it will use to include necessary perspectives in carrying out State WDB functions. For example, alignment of required one-stop partner investments is essential to achieving strategic and programmatic alignment at the State, regional, and local level. Further, States are encouraged to examine factors like the natural bounds of regional economies, commuting patterns, and how economic sectors impact the State, which may benefit from inputs either from formal members of the board, or through other engagement. Broad geographic representation as well as a reflection of diversity of populations within the State is critical.

Comments: A commenter emphasized the need for Boards to remain connected to local and regional programs, and another requested more information on how employer engagement would be measured and how a State WDB would know if their engagement was successful. This commenter suggested surveys of partners (both pre-WIOA and annually) to determine the level of engagement.

Department Response: There is a primary indicator of performance in WIOA sec. 116(b)(2)(i)(vi) to gauge the system's effectiveness in serving business. WIOA does not provide parameters for measuring the Board's effectiveness in engaging employers. However, this engagement is crucial in the State WDB's role to help integrate and align a more effective job-driven workforce development system that invests in the connection between education and career preparation. The Department will continue to provide technical assistance and guidance to Boards to assist their efforts to fulfill this vision. The Department envisions that the State WDB will serve as a convener of State, regional, and local workforce system partners to enhance the capacity and performance of the workforce development system; align and improve employment, training, and education programs, and through these efforts, promote economic growth.

Comments: A commenter suggested that more information regarding the State Plan and how States will satisfy the needs of individuals with disabilities, and the specific performance metrics that will be used for systemic improvement be included in § 679.100.

Department Response: State Plan requirements as a function of the State WDB are addressed in § 679.130. WIOA sec. 102 describes the requirements for the State Plan; State Plan requirements are also addressed in 20 CFR part 676, including requirements to address the needs of the State's workforce and services to individuals with barriers to employment (*see* Joint WIOA Final Rule). No change to the regulatory text was made in response to this comment.

Section 679.110 What is the State Workforce Development Board?

Local Elected Officials

Comments: Commenters citing the needs of large and diverse States that are concerned with adequate representation of local level interests recommended that Governors include the chief elected official from the smallest and largest workforce areas on the State WDB. Similarly, other commenters recommended that the local elected officials be increased from a minimum of two representatives to a percentage of the Board.

Department Response: Both WIOA and the regulations offer the Governor the flexibility to "include other appropriate representatives and officials designated by the Governor" as detailed in § 679.110(b)(3)(iii)(B). The Governor has the flexibility to appoint more local elected officials to the State WDB as he/she sees fit and a Governor may seek to have such officials represent the range of local government entities. The Department encourages the Governor to use this authority, which may include increasing the representation of CEOs, to ensure accurate representation of the interests of job seekers and businesses in the State. No change to the regulatory text was made in response to these comments.

Representation of Core Programs

Comments: Commenters opposed the Department's interpretation of WIOA allowing for representation of multiple core programs by a single person (as proposed in § 679.110(b)(3)(iii)(A)) and indicated that this situation fails to adequately represent adult education. Some commenters called for specifically mandating the State director of adult education on the State WDB. Others were concerned that the Department's interpretation does not satisfy the requirement to have a representative of the lead State official with primary responsibility for each of the core programs.

Department Response: The Governor is responsible for ensuring adequate representation of the core programs, which the Department interprets to mean that the core program's State WDB representative has not only primary responsibility for the program, but also the expertise to actively and meaningfully contribute to the State WDB's understanding of the program's role in the public workforce system, especially with regard to the strategic

planning for that system, and in the development and implementation of the State Plan. The Department has added § 679.110(b)(3)(iii)(A)(*1*)(*i*) through (*iii*) to clarify that, for title I and Wagner-Peyser Act programs, a single lead State official with primary responsibility for those programs may represent more than one of those programs. However, the WIOA title II and VR programs must have a single, unique representative. When appointing a board member to represent multiple core programs under § 679.110(b)(3)(iii), Governors should take into account the requirement that the representative has the primary responsibility for the core program which includes direct responsibility for, and understanding of, policy issues involving the core program and the public workforce system. The Department encourages Governors to ensure an ongoing role for all core programs to inform the Boards' actions. Meeting these requirements may be achieved in a number of ways, such as directly appointing a State's director for those core programs to the Board, gathering direct input from program administrators via a subcommittee or staffing structure, or frequent efforts to gather input.

These provisions are intended to ensure that all core programs have meaningful input on the State WDB, but neither WIOA nor the regulation requires that the adult education director be appointed to the State WDB. The regulation is not changed to require a specific title be named as representative; however, representatives must meet the requirement of primary responsibility.

The Department will issue guidance to support the implementation and maintenance of compliant State WDBs.

Labor Union, Small Business, and Registered Apprenticeship Representation

Comments: Comments on the membership requirements of representatives of labor organizations and registered apprenticeship included multiple suggestions for regulatory text changes. One commenter suggested changing "exists" in § 679.110(b)(3)(ii)(B) to "operating," because "exists" could cause confusion. Another commenter suggested that the term "registered" precede apprenticeship, out of concern that the NPRM language would allow low-quality apprenticeship programs that are not registered be considered.

Department Response: The Department disagrees that "exists" will cause confusion in reference to registered apprenticeship programs available in the State. The Department agrees that the reference to apprenticeship should be changed to "registered apprenticeship" because references throughout WIOA are generally references to registered apprenticeship.

No change to the regulatory text was made in response to these comments, with the exception of revising § 679.110(b)(3)(ii)(B) to refer to apprenticeship as "registered apprenticeship."

Comments: Commenters requested clarification of the total number of labor representatives required on the State WDB, and suggested labor representatives include employee representatives for non-unionized employees.

Department Response: WIOA requires at least two representatives of labor organizations nominated by State labor federations, and a representative of a registered apprenticeship program. Because State WDB members may not serve multiple roles for the categories included in WIOA sec. 101(b)(1)(C)(ii) (as outlined in WIOA sec. 101(b)(3)(B)), the Department's proposed language clarified that, at minimum, two labor representatives and one joint labor-management of a registered apprenticeship program are required. The State WDB must include not less than 20 percent representation of the workforce, including at a minimum these three representatives.

In addition to these representatives, WIOA sec. 101(b)(1)(C)(iii)(II) and § 679.110(b)(3)(iii)(B), give the Governor the flexibility to appoint "other representatives and officials as the Governor may designate." This would allow the Governor to designate non-union employee organizations as additional members of the State WDB. No change to the regulatory text was made in response to these comments.

Nominations

Comments: Two union commenters urged the Department to clarify that the nominations for representatives of joint labor-management registered apprenticeship programs on State and Local WDBs should be made by State and local building and construction trades councils, except where none exist in the State, in which case the representative(s) should be nominated by the local Building Trades Councils within the State.

Regarding the proposed § 679.110(b)(3)(i)(C) requirement that the Governor must appoint required representatives of businesses or organizations based on nominations from business organizations and trade associations in the State, a commenter asked what would qualify these organizations to submit such nominations and requested that the Department clarify the definition of these organizations.

Department Response: Paragraph (b)(3)(i)(C) of § 679.110 implements WIOA sec. 101(b)(1)(C)(i)(III), which requires State WDB members who represent businesses or organizations representing businesses to be appointed from a list of potential members nominated by State business organizations and business trade associations. WIOA does not further define trade associations; restricting the nominating entity would not comply with WIOA sec. 101(b)(1)(C)(i)(III), but Governors may accept nominations of representatives to the State WDB from Trade Councils. Furthermore, WIOA does not require that the representatives of joint labor-management registered apprenticeship programs (under WIOA sec. 101(b)(1)(C)(ii)(II) be nominated by any organization. The Department declines to add the requirement that trades councils must nominate these members. No change to the regulatory text was made in response to these comments.

Single-Area States

Comments: Relating specifically to concerns for single-area States, one commenter suggested that the core programs can be improved by CEOs on the State WDB and that the Departments of Labor and Education must look critically at any Unified or Combined State Plan that is submitted from a single-area State that does not obviously and fully represent the local viewpoint from a diverse set of stakeholders, as is the intention of this section. Another commenter stated that because local control is primarily with the State WDB in single-area States, the local community advisory groups, who are more familiar with the specific community needs, do not have the influence that they should. Multiple commenters also requested that the Department clarify the meaning of the proposed § 679.110(b)(3)(iii)(A)(*2*) requirement that the State WDB include two or more CEOs (collectively representing both cities and counties "where appropriate") and indicate whether this language would exempt single-area States from requiring CEOs to serve on the State WDB.

Department Response: 20 CFR 679.270 implements WIOA sec. 107(c)(4), which describes the requirements of Local WDBs in single-area States. Section 679.270 requires that the State WDB, acting as the Local

WDB, carry out the functions of both Boards except that the State is not required to meet and report on a set of local performance accountability measures. Section 679.110(b) requires CEO representation on the State WDB. There is no exemption for membership categories on the State WDB in single-area States. No change to the regulatory text was made in response to these comments.

Community-Based Organizations

Comments: A few commenters recommended that State WDBs should be required to have at least one representative from community-based organizations (CBOs) with experience and expertise in addressing individuals' training, employment, and educational needs. For example, one commenter suggested adding § 679.110(b)(3)(ii)(E) that states "State Boards are strongly encouraged to include organization representatives in (C) and (D)."

Department Response: Many comments from stakeholders with mandated representation on the Board under WIA requested that they again be mandated Board members or that they be referenced in regulation. WIOA reduced mandated Board membership in an effort to streamline State WDBs and provide Governors the flexibility to establish Boards that best reflect the diversity of the State's job seeker and employer communities. The Department recognizes that many important system partners with experience with specific job seeker populations, such as required one-stop partner programs, tribal organizations, other Department program grantees, and those serving the disadvantaged and disabled populations are no longer required members of the Board. However, § 679.110(b)(3)(ii) permits representatives of community-based organizations that have demonstrated experience and expertise in addressing the employment, training, or education needs of individuals with barriers to employment to contribute to the 20 percent workforce threshold. Paragraph (b)(3)(iii)(B) says the Governor has the flexibility to appoint "other appropriate representatives and officials designated by the Governor" which does not preclude any organization as the Governor deems appropriate for the State. The Department encourages the Governor to ensure that State WDB members represent the diversity of job seekers, and employers across the State, which includes ensuring adequate representation on the State WDB. The Department has made no changes to the regulatory text in response to these comments.

Chairperson Requirements

Paragraph (c) of § 679.110 implements WIOA sec. 101(c) requiring the Governor to select a chairperson of the Board from among the business representatives on the Board who are the owner or chief executive officer for the business or organization, or a person who is an executive with the business or organization with optimum policy-making or hiring authority.

Comments: One commenter requested amending the statutory language to allow outlying areas to appoint a representative from a non-governmental organization, a community-based organization, or a small business rather than a business as chair of the State WDB, expressing concern about finding a chairperson who would be willing to dedicate the time and effort to the Board.

Department Response: A small business owner would meet the qualifications outlined in the statue and would not require a change to the regulations. However, WIOA does not delineate specific Board membership exemptions for outlying areas. No change to the regulatory text was made in response to these comments.

Individuals With Disabilities and Other Barriers to Employment

Comments: Many commenters from stakeholders with mandated representation on the Board under WIA and from other interest groups requested that they again be mandated Board members or that they be referenced in regulation. Various commenters suggested that Governors be required to appoint individuals with disabilities, disability service providers, and direct support professionals, lead State officials from agencies with primary responsibility for providing services to individuals with intellectual, developmental, and other significant disabilities as members of the State WDB. Another commenter recommended that because it is not required, the Department should strongly urge representation of populations with disabilities on State and Local WDBs.

Department Response: WIOA reduced mandated Board membership in an effort to streamline State WDBs and provide Governors the flexibility to establish Boards that best reflect the diversity of the State's job seeker and employer communities. The Department recognizes that many important system partners with experience with specific job seeker populations, such as required one-stop partner programs, tribal organizations, other Department program grantees, and those serving the disadvantaged and individuals with disabilities are no longer mandated members of the Board. However, § 679.110(b)(3)(ii) requires not less than 20 percent of the Board be comprised of workforce representatives which may include one or more individuals who have demonstrated experience and expertise in addressing the employment, training, or education needs of individuals with barriers to employment. Paragraph (b)(3)(iii)(B) says the Governor has the flexibility to appoint "other appropriate representatives and officials designated by the Governor," which does not preclude representatives of any required partner program, community based organizations or other organizations as the Governor deems appropriate for the State. The Department encourages the Governor to ensure that State WDB members represent the diversity of job seekers, and employers across the State, which includes ensuring adequate representation on the State WDB. The Department has made no changes to the regulatory text in response to these comments.

Work-Relevant Training

Comments: Relating to the WIOA provision that provides that State WDB business representatives may represent businesses that provide "employment opportunities that, at a minimum, include high-quality, work-relevant training and development in in-demand industry sectors," some commenters asked the Department to clarify the definition of "work-relevant training" in proposed § 679.110(b)(3)(i)(B). In particular, some of these commenters asked whether it pertains to for-profit training providers. Another commenter stated while the definition of "in-demand" is located at WIOA sec. 3(23), there are no definitions for the terms "high-quality" and "work-relevant." This commenter recommended that the Department allow definition of these terms at the State or local level.

Department Response: Paragraph (b)(3)(i)(B) of § 679.110 implements WIOA sec. 101(b)(1)(C)(i)(II), which provides that State WDB business representatives must represent businesses that provide "employment opportunities that, at a minimum, include high-quality, work-relevant training and development in in-demand industry sectors." WIOA sec. 3 provides definitions used in the law, however the terms "work-relevant" training and "high quality" are not defined in WIOA. The State WDB, in conjunction with the Governor, is responsible for crafting appropriate parameters to address

circumstances in the State; States are therefore responsible for defining "work-relevant" and "high-quality" in accordance with the particular circumstances faced by that State. The Department has made no changes to the regulatory text in response to these comments.

Comments: Other commenters said that while they agree that customized training, registered apprenticeship, or OJT are all work-relevant, the Department should clarify that these are just a few examples and not a comprehensive list because such limitation could deem ineligible representatives of the business community who may successfully offer alternative types of training such as a non-registered apprenticeship. Similarly, another commenter recommended that § 679.110(b)(3)(i)(B) should clarify that "a representative of a business providing an alternative form of training can serve on the State Board."

Department Response: The Department acknowledges that the training options mentioned in this section are illustrative, and that other training strategies could reasonably satisfy this requirement. The Department has determined that no further definition is required and has made no changes to the regulatory text in response to these comments.

Voting Rights

Comments: Expressing concern that allowing a Governor to selectively grant voting rights among non-required members could skew a Board or lead to the appearance of discrimination against some of the non-required member interests, a commenter recommended that § 679.110(g) state clearly that the Governor may grant voting privileges to either all or none of the non-required members of the State WDB. Another commenter said that allowing a CEO to give voting rights to non-required members could lead to political tension. Some commenters were concerned that a Governor's authority to convey voting privileges to non-required members, as stated in § 679.110(g), would be used to circumvent the requirement of a business majority on the State WDB, or otherwise impact the functionality of the Board.

Department Response: WIOA sec. 101(b)(1) mandates certain State WDB members in order to ensure a core set of interests are represented. Title 20 CFR 679.110(g) requires all mandated Board members to have voting rights. This section also permits the Governor to grant voting privileges to the non-required members of the board, and the Department encourages the Governor to do so, if doing so would further the mission and goals of the board. Additionally, as described below, the Governor may not award voting rights in such a way that would upset the balance of required membership categories. Under the regulations as proposed, Governors cannot circumvent membership requirements by granting voting rights to non-mandated State WDB members because the membership requirements explained in paragraph (b) will always cause the majority of members on the Board to be mandated members. No change to the regulatory text was made in response to these comments.

Indian and Native American Representation

Comments: Paragraph (b) of § 679.110 implements WIOA sec. 101(b) describing the required State WDB membership. Many comments from stakeholders with mandated representation on the Board under WIA and other interest groups requested that they again be mandated Board members or that they be referenced in regulation. Several commenters suggested that Indian and Native American representatives be required as Board members. As part of a Council resolution submitted as a public comment, the Native American Employment and Training Council (NAETC) proposed that each State WDB should have a representative from a tribe or tribal organization.

Department Response: WIOA reduced mandated Board membership in an effort to streamline the State WDBs and provide Governors the flexibility to establish Boards that best reflect the diversity of the State's job seeker and employer communities. Many important system partners with experience with specific job seeker populations, such as tribal organizations, other Department program grantees, and those serving the disadvantaged and disabled populations are no longer required members of the Board. However, § 679.110(b)(3)(ii) requires not less than 20 percent of the Board be representatives of the workforce, which may include representatives of community-based organizations that have demonstrated experience and expertise in addressing the employment, training, or education needs of individuals with barriers to employment. It also says the Governor has the flexibility to appoint "other appropriate representatives and officials designated by the Governor" (§ 679.110(b)(3)(iii)(B)); the Department encourages the Governor to ensure that State WDB members represent the diversity of job seekers and employers across the State. No change to the regulatory text was made in response to these comments.

Section 679.120 What is meant by the terms "optimum policy-making authority" and "demonstrated experience and expertise"?

Paragraph (a) of § 679.120 defines the term "optimum policy-making authority" as an individual who can reasonably be expected to speak affirmatively on behalf of the entity he or she represents and to commit that entity to a chosen course of action. This section retains the same requirements that were included in the WIA regulations at 20 CFR 661.203(a). Paragraph (b) of § 679.120 defines the term "demonstrated experience and expertise" as an individual who has documented leadership in developing or implementing workforce development, human resources, training and development, or a core program function."

Comments: The Department sought comment on the definition of optimum policy-making authority, and demonstrated experience and expertise. Commenters recommended adding education and training expertise to § 679.120 by indicating that documented leadership in any of the areas in § 679.110(b)(3)(ii)(C) and (D) also would be considered.

Department Response: The Department agrees with these commenters and changed the regulatory language in § 679.120 to reference § 679.110(b)(3)(ii)(C) and (D).

Comments: Commenters also recommended in-depth criteria including: A successful track record, leveraging of funds, documented service track record, quality partnerships, culturally competent, and a physical location in the area. However, the majority of commenters supported leaving the definition open to State and local discretion. Some commenters expressed concern that the definition proposed in § 679.120 was too specific and may limit the types of representatives on the State WDB to those with experience in human resources.

Department Response: With the clarification that demonstrated experience and expertise may include individuals with experience in education or training of job seekers with barriers to employment as described in § 679.110(b)(3)(ii)(C) and (D), the Department has determined that the definition is sufficiently clear to provide parameters to State WDBs.

Comments: Another commenter suggested removal of the term "documented," referencing experience in the areas described in § 679.120, to avoid added administrative burdens of processing documentation.

Department Response: The use of the term "documented" assures that the selected representatives meet the criteria necessary to contribute meaningfully to the Board's actions for job seekers but does not require any specific administrative burden. Processes and procedures related to membership are the responsibility of the elected official. No change to the regulatory text was made in response to these comments.

Section 679.130 What are the functions of the State Workforce Development Board?

20 CFR 679.130 implements sec. 101(d) of WIOA and describes the role and functions of the State WDB. Paragraphs (a), (d) through (e), and (g) through (k) of § 679.130 reiterate the relevant statutory requirements at WIOA secs. 101(d)(1), (4) and (5), and (7) through (11). These functions are the primary functions of the State WDB.

Comments: A few commenters suggested text changes such as requiring State WDBs to partner with public television stations due to those stations' experience creating instructional materials on employability skills for job agencies and one-stop centers, providing professional development tools like workshops, and hosting job fairs.

Department Response: The Department encourages State WDBs to partner with a wide variety of organizations, however it declines to require entities not identified in statute. No change to the regulatory text was made in response to these comments.

Comments: One commenter suggested that § 679.130(a) and (b) should require State WDBs to create and implement an appeal process for all policies, monitoring, and negotiations that take place by the Governor, State WDB, or State pass-through entity and the Local WDBs.

Department Response: Section 679.130 implements WIOA sec. 101(d), which does not include the requirement to establish such an appeals process. No change to the regulatory text was made in response to these comments.

Clarification of Role of the State WDB

Comments: Commenters requested clarification of the roles of the State WDB such as how the State WDB is to assist in reviewing recommendations "on actions that should be taken by the State to align workforce development programs to support a comprehensive and streamlined workforce development system" and whose recommendations the Board is to review.

Department Response: WIOA sec. 101(d) indicates that the role of the State WDB is to assist the Governor in the development, implementation, and modification of the State Plan. To that end the Board is to review policies, programs, and recommendations on actions that should be taken by the State to align workforce development programs in the State. The State WDB is not limited in the types of recommendations that can be reviewed. The Board may consider recommendations from any number of areas, not limited to those resulting from the public comment on the State Plan, from State WDB meetings, or standing committees. In its role in assisting the Governor, the State WDB should review relevant comments regarding State WDB actions, as well as provide its own recommendations of actions to the Governor. No change to the regulatory text was made in response to these comments.

Comments: Commenters requested clarification of the role of the State WDB when other entities perform the same functions such the development and oversight of the State's labor market information (LMI) system, which involves the State WDB and State Unemployment Insurance (UI) Administrator.

Department Response: State WDBs have several roles related to the use of LMI in the State. Paragraph (e)(3) of § 679.130 implements WIOA sec. 101(d)(5)(C) and requires State WDBs to develop effective training programs that respond to real-time data analysis of the labor market. WIOA sec. 101(d)(11) and § 679.130(k) require the development of the statewide workforce and labor market information system described in sec. 15(e) of the Wagner-Peyser Act which refers to the State's responsibilities. The responsibilities are complementary rather than duplicative of the roles of other State agencies in these areas. The State WDB should coordinate with all relevant parties to develop and implement a plan for ensuring activities are cohesively leveraged rather than duplicated. No change to the regulatory text was made in response to these comments.

Comments: Two commenters urged the Department to incorporate into § 679.130 an active review of State policies that encourage innovation or hinder innovative strategies that are developed at the local level and both cautioned against over-regulation by the State.

Department Response: Under § 679.130 State WDBs are already required to review policies, programs, and recommendations on actions that should be taken by the State to align workforce development programs in the State. No change to the regulatory text was made in response to these comments.

Comments: A commenter asked whether, for the purpose of carrying out sec. 101(d), WIOA authorizes the Governor to ignore or otherwise disregard existing State laws with regard to agency rulemaking.

Department Response: WIOA does not provide this authority to the Governor. However, States are required to comply with the Final Rule as a condition of the WIOA grant. The Governor should follow applicable State laws in a manner best designed to comply with these regulations when implementing the functions of the State WDB.

Single-Area States

Comments: Single-area States, which operated as such under WIA, are permitted under WIOA. A commenter urged the Department to mandate use of Local WDBs and/or regional consortia in single-area States.

Department Response: WIOA sec. 107(c)(4) requires that State WDBs operating as the Local WDB carry out the same functions, except as noted, required of the Local WDB as detailed in § 679.270. Therefore, State WDBs in single-area States are already required by statute and regulation to meet all requirements of membership and functions of both State and Local WDBs. No change to the regulatory text was made in response to these comments.

Career Pathways (§ 679.130(c)(2))

WIOA sec. 101(d)(3)(B) outlines "the development of strategies to support the use of career pathways for the purpose of providing individuals, including low-skilled adults, youth, and individuals with barriers to employment (including individuals with disabilities), with workforce investment activities, education" as a function of the State WDB and is described in § 679.130(c)(2). WIOA sec. 107(d) and § 679.300 extends the requirement to Local WDBs. WIOA sec. 3(7)(A) through (G) defines career pathways as a combination of rigorous and high-quality education, training, and other services that meet specified guidelines.

Comments: Commenters requested that the Department provide more comprehensive guidance on the implementation of career pathways.

Several commenters provided recommended changes to the regulatory text that included adding criteria, including a section specific to Local WDB implementation of career pathways, requiring the State and Local WDBs to define the roles and responsibilities of WIOA programs related to career pathways, listing required partners (such as Job Corps, and public television), and developing strategies to include job seekers with specific barriers.

Department Response: The ideas and suggestions provided by the commenters support career pathways as a dynamic topic that involves input of multiple partners and stakeholders throughout the system. The statutory language provides general criteria for both State and Local WDBs to reference in developing career pathway strategies. The Department has concluded that more prescriptive regulatory language may limit State WDBs' innovation in developing career pathways to support individuals to retain and enter employment; however, the Department will issue further guidance and technical assistance to help States. No change to the regulatory text was made in response to these comments.

Industry or Sector Partnerships (§ 679.130(c)(4))

Paragraph (c)(4) of § 679.130 implements WIOA sec. 101(d)(3)(D) states that the roles and functions of the State WDB include the development and expansion of strategies to meet the needs of employers, workers, and job seekers particularly through industry or sector partnerships related to in-demand industry sectors and occupations.

Comments: A commenter suggested that the Department should revise § 679.130(c)(4)'s requirement for State WDBs to assist with strategies related to industry or sector partnerships to include the language "with an emphasis on attainment of recognized post-secondary credentials."

Department Response: Title 20 CFR 679.130(c)(4) states that State WDBs have responsibility for the development and expansion of strategies to meet the needs of employers, including sector strategies. State WDB functions already include the requirement to develop and update comprehensive State performance and accountability measures to assess core program effectiveness under WIOA sec. 116, which includes a credential attainment measure. Therefore, attainment of credentials, including postsecondary credentials, should already be a State WDB priority, as should sector strategies. No change to the regulatory text was made in response to these comments.

Best Practices (§ 679.130(e))

Paragraph (e) of § 679.130 requires the Board to identify and disseminate best practices in a number of areas (paragraphs (e)(1) through (3)).

Comments: Commenters had concerns about dissemination of best practices surrounding assessments. One commenter urged the Department to explain further how States would use assessments by including how to report this in title-specific data. This commenter expressed concerns that the value of requiring these assessments could be undercut through a perverse incentive for programs to avoid co-enrollment if the assessments' use in an accountability system is not clearly defined and recommended that States ensure that title II providers have processes for sharing assessment data with title I providers and vice versa.

Department Response: The regulation does not require the reporting of the use of assessments in this section. The State WDB's purpose, as outlined in WIOA sec. 101 and § 679.100, is to convene State, regional, and local workforce system, and partners to align and improve the outcomes and effectiveness of Federally-funded and other workforce programs and investments. Therefore, the Board' responsibility already includes aligning the strategies related to best practices in assessments. The State Plan should address the State's strategic and operational vision. No change to the regulatory text was made in response to these comments.

State WDB One-Stop Delivery System Guidance (§ 679.130(f))

Paragraph (f) of § 679.130 requires the State WDB to develop and review statewide policies affecting the coordinated provision of services through the State's one-stop delivery system which is to include developing objective criteria and procedures for the Local WDBs' use in assessing the physical and programmatic accessibility of one-stop centers.

Comments: A commenter suggested that the language in § 679.130(f) should be strengthened to better reflect the importance of including programmatic and physical accessibility in the assessment of one-stop centers. This commenter recommended that accessibility of one-stop centers must include the removal of barriers as defined in the Americans with Disabilities Act (ADA) and 28 CFR 36.304 and should extend to technological accessibility, citing sec. 508 of the Rehabilitation Act of 1973.

Department Response: The Department agrees that accessibility is paramount for all job seekers, and it is the State WDB's function to develop the tools to assist local areas to ensure that one-stop centers are both physically and programmatically accessible to all job seekers. As noted by the commenter, physical accessibility is already required under existing statute and individual State laws as well as the regulation implementing WIOA sec. 188 at 29 CFR part 38. WIOA sec. 102(2)(vii) and the WIOA State Plan ICR require that the State Plan address how the one-stop delivery system will comply with the Americans with Disabilities Act of 1990. No change to the regulatory text was made in response to these comments.

Strategies for Technological Improvements To Improve One-Stop Services (§ 679.130(g)) and Strategies for Aligning Technology and Data Systems Across One-Stop Partner Programs (§ 679.130(h))

Comments: A State agency expressed concern that the requirement that State WDBs develop strategies to ensure technology is accessible to individuals with disabilities and individuals residing in remote areas (§ 679.130(g)(4)) could become costly and asked the Department for information on if each State would create its own plan and for the expectations for the scope of available technology. A commenter expressed concern that the requirement that State WDBs develop strategies to for aligning technology and data systems across one-stop partner programs in § 679.130(h) could become costly, and asked the Department for an explanation of why this responsibility is necessary and what the plan development schedule would look like.

Department Response: Paragraph (g)(4) of § 679.130 and paragraph (h) of § 679.130 address technology improvements, and data system alignment across one-stop partner programs. Neither paragraph (g) nor (h) require the development of a plan, or outline specific technology expectations; rather, the Board is responsible for developing strategies for technological improvements. Although the State WDB may choose to develop a technology plan to achieve those requirements, neither WIOA nor the regulations require the submission of a formal technology plan. No change to the regulatory text was made in response to these comments.

Development of Statewide Workforce and Labor Market Information System (§ 679.130(k))

Comments: WIOA sec. 101(d)(11) and § 679.130(k) require the development of the statewide workforce and labor market information system described in sec. 15(e) of the Wagner-Peyser Act which refers to the State's responsibilities. A commenter requested clarification of the role of the State WDB in the development and oversight of the State's labor market information (LMI) system. State WDBs have several roles related to the use of LMI in the State.

Department Response: Paragraph (e)(3) of § 679.130 implements WIOA sec. 101(d)(5)(C) and requires State WDBs to develop effective training programs that respond to real-time data analysis of the labor market. WIOA sec. 101(d)(11) and § 679.130(k) require the development of the statewide workforce and labor market information system described in sec. 15(e) of the Wagner-Peyser Act which refers to the State's responsibilities. The responsibilities are complementary rather than duplicative of the roles of other State agencies in these areas. The State WDB should coordinate with all relevant parties to develop and implement a plan for ensuring activities are cohesively leveraged rather than duplicated.

Section 679.140 How does the State Workforce Development Board meet its requirement to conduct business in an open manner under "sunshine provision" of the Workforce Innovation and Opportunity Act?

Title 20 CFR 679.140 implements WIOA sec. 101(g) requiring the State WDB to conduct business in an open manner.

Comments: A commenter recommended the Department revise § 679.140(b)(3) to require State WDBs to make available the minutes of meetings and any public comments, feedback, or requests for service, and to provide a written response to such comments or requests.

Department Response: The Department notes that paragraph (b)(3) already implements the WIOA sec. 101(g) requirement that meeting minutes be available to the public upon request. The Department encourages all State WDBs to operate with transparency; State WDBs are free to make additional information, such as public comments and other information it deems appropriate, available to the public. No change to the regulatory text was made in response to these comments.

Section 679.150 Under what circumstances may the Governor select an alternative entity in place of the State Workforce Development Board?

Title 20 CFR 679.150 implements WIOA sec. 101(e), which authorizes the use of alternative entities to the State WDB under the following conditions: The alternative entity was in existence on the day before the date of enactment of the Workforce Investment Act of 1998; is substantially similar to the WIOA State WDB; and includes representatives of business and labor organizations in the State. As outlined in § 679.150(c), if the alternative entity does not provide representatives for each of the categories required under WIOA sec. 101(b), the State Plan must explain the manner in which the State will ensure an ongoing role for any unrepresented membership group in the workforce development system. The State WDB must maintain an ongoing and meaningful role for an unrepresented membership group, including entities carrying out the core programs.

Comments: Commenters disagreed with the interpretation at § 679.150(d) that required a new State WDB if the membership of the alternative entity had changed significantly after August 7, 1998 and paragraph (e) that defined the criteria for a significant change. Commenters interpreted the alternate entity provisions of WIOA to mean that an alternative entity may add or remove membership categories and maintain alternative entity status unless those changes make the State WDB "substantially dissimilar" to the State WDB. Commenters requested the Governor be given the authority to make a determination regarding the definition of "substantially similar."

Department Response: The Department agrees and has deleted the proposed text at § 679.150(d) and (e) from the Final Rule. The Department declines to further define "substantially similar" in § 679.150 but considers substantially similar to be aligned with the composition of the WIOA compliant State WDB as outlined in WIOA sec. 101(a) through (c) and § 679.110. The Department considers changes to the alternative entity membership or structure that are contrary to the requirements of WIOA sec. 101(a) through (c) and § 679.110 or those that make the alternative entity less aligned with WIOA State WDB compliance to result in an alternative entity that is not substantially similar to a compliant WIOA State WDB.

Comments: Commenters requested that the Department require a business majority for alternative entities.

Department Response: WIOA sec. 101(e) and § 679.150(b)(3) require alternative entities to have representatives of businesses in the State, however lacks a requirement for a business majority. The Department strongly encourages alternative entities to seek a majority business participation in State WDB activities and decisions. No change to the regulatory text was made in response to these comments.

2. Subpart B—Workforce Innovation and Opportunity Act Local Governance (Workforce Development Areas)

This subpart provides the requirements for identification of regions and designation of local areas under WIOA. WIOA envisions a workforce development system that is customer focused on both the job seeker and business, and is able to anticipate and respond to the needs of regional economies. It requires Workforce Development Boards and CEOs to design and govern the system regionally, aligning workforce policies and services with regional economies and supporting service delivery strategies tailored to these needs. To support this regional approach, this subpart requires States to identify intrastate or interstate regions. When the region contains more than one local area, the local areas are required to plan regionally. WIOA envisions a regional system where public workforce system leaders partner and provide leadership as part of a comprehensive, regional workforce and economic strategy. The majority of comments in this section pertained to the structure of regions, and initial and subsequent designation of workforce development areas.

Section 679.200 What is the purpose of requiring States to identify regions?

Title 20 CFR 679.200 implements requirements found at both WIOA sec. 101(d)(3)(E), and WIOA sec. 106(a), which require the Governor to identify regions with consultation from the CEOs and Local WDBs in the affected region. The development of comprehensive regional partnerships facilitates alignment of workforce development activities with regional economic development activities, and better supports the execution and implementation of sector strategies and career pathways. Regional cooperation may also lower costs and increase the effectiveness of service delivery to businesses that span more than one local area within a region and to job seekers through coordination of shared

services, processes, and operations. The Department encourages States to ensure that local and regional planning areas are aligned to support improved service delivery, improved training and employment outcomes, better meet employer needs, and greater effectiveness and efficiency in achieving these outcomes.

Comments: A commenter expressed concern that defining boundaries of a region at the State level could result in a lack of coordination among locals in different regions. A different commenter suggested that the Department require cooperation between core partners to align existing services into the appropriate regions and "to reject plans where Governors have not effectively assigned local areas to regions."

Department Response: State WDBs are required to identify regions in consultation with local chief elected officials and Local WDBs. The State WDB is also tasked with ensuring the overall alignment of the public workforce system. The function of identifying regions should not limit coordination among Local WDBs outside of the identified region; in fact, the State WDB function is to ensure that the system becomes more, rather than less, cohesive. No change to the regulatory text was made in response to these comments.

Comments: One commenter said that the market of a local area may lend itself to more than one region and in instances such as this they could exist as a singular local region and partner with the neighboring areas.

Department Response: The Department agrees that the State WDB could reach such a conclusion. No change to the regulatory text was made in response to these comments.

Section 679.210 What are the requirements for identifying a region?

Title 20 CFR 679.210 addresses the requirements for identifying a region and requires a process that includes consultation with Local WDBs and CEOs.

Comments: Commenters suggested additional clarification regarding how consultation will take place including requiring memorandums of agreement, and a detailed policy of the process.

Department Response: The term consultation is used in § 679.210 as a requirement for identifying a region; the Department added a definition of consultation to part 675. This clarifies that consultation constitutes a robust conversation in which all parties are given opportunity to share their thoughts and opinions. The Department declines to add additional requirements.

Comments: The Department requested comment on additional data that may be considered other than that laid out in § 679.210(c)(1) through (8). Commenters provided suggestions for new data points as well as adjustments to those in paragraphs (c)(1) through (8), such as including public transportation when considering commuting patterns, adding the workforce participation rate of people with barriers to employment, especially individuals with disabilities and out of school youth with disabilities, administrative efficiencies, and existing regional capacity and a history of local areas working together.

Department Response: The data points in § 679.210(c)(1) through (8) are for illustrative purposes and should not limit the State's decision-making when identifying regions. The Department will review the suggestions when determining and issuing guidance on any additional factors as outlined in § 679.210(c)(8). No change to the regulatory text was made in response to these comments.

Comments: WIOA sec. 102(b)(2)(D)(i)(II) and § 679.210 require the Governor to develop a policy and processes for identifying regions. Commenters suggested that local areas designated under WIA be able to join one or more region or have the opportunity to remain a single region. Another commenter suggested that any current local areas that incorporate multiple jurisdictions should automatically be considered a region. A commenter requested clarification regarding the difference between the identification of regions and the designation of local areas.

Department Response: Local area designation is addressed in §§ 679.220 and 679.230; the purpose of a local area is to administer workforce development activities. The purpose of a region is addressed in §§ 679.200 and 679.210; the purpose of a regional area is to align workforce development activities and resources with larger regional economic development areas and resources. The regional plan should describe the Governor's processes for ensuring the requirements outlined in WIOA sec. 102 for the identification of regions are met. Local areas designated under WIA are not exempt from the regional identification process. No change to the regulatory text was made in response to these comments.

Comments: Those regions comprised of two or more contiguous local areas are planning regions as described in WIOA sec. 3(48). Commenters have suggested that a single area could participate in multiple planning regions by being a member, or through a memorandum of agreement.

Department Response: In accordance with WIOA sec. 106(a)(2), a single local area may not be split across two planning regions. Local areas must be contiguous in order to be a planning region and effectively align economic and workforce development activities and resources. The Department encourages States confronted with this issue to reevaluate whether the local areas in question are consistent with labor market areas and with regional economic development areas in the State. If these criteria are not met, the State should consider how best to recast local areas for the purposes of subsequent designation and regional integration. Local areas only may be part of one region, however, local areas within planning regions are not prohibited from working or coordinating with other local areas, and regions may coordinate with other planning regions. Coordination may be especially vital across States; the Department anticipates providing additional guidance regarding the creation and management of interstate planning regions. No change to the regulatory text was made in response to these comments.

Comments: A commenter requested that the Governor be provided flexibility to add more criteria to § 679.210(c) for use when identifying a region.

Department Response: The Department has determined that the Governor must use the criteria at § 679.210 in determining a region in order to ensure consistency among States. However, the list of factors in paragraph (c) is illustrative and additional factors may be considered. The Department will review the criteria when determining and issuing guidance on any additional factors as outlined in § 679.210(c)(8), which states that the Secretary of Labor may provide additional considerations for the development of regions according to the policy priorities of the Department. No change has been made to the regulatory text in response to this comment.

Section 679.230 What are the general procedural requirements for designation of local areas?

Title 20 CFR 679.230 describes a general public comment process and the general procedural requirements for designation of local areas, which include consultation with the State WDB, chief elected officials and affected Local WDBs. The Governor has the discretion to establish the process and procedures to solicit comments that it determines appropriate. However, a

wide-reaching, inclusive process allows sufficient time for stakeholders to provide substantive comments that will enable the Governor to receive meaningful feedback from all interested stakeholders, ensuring that the Governor is able to consider all relevant information, data, and opinions before making a decision to designate or redesignate a local area. WIOA sec. 102(b)(2)(D)(i)(II) requires the State Plan to describe the Governor's processes for designating local areas. In addition, the State Plan must detail how the State will ensure the requirements outlined in WIOA sec. 102 regarding public comments and consultation are met.

Comments: Commenters suggested that regulations require additional clarification regarding consultation.

Department Response: The Department agrees with the comment and has added a definition of consultation to the regulatory definitions in part 675 of the Final Rule. The term "consultation" is used throughout WIOA to describe the process by which State and/or local stakeholders convene to discuss changes to the public workforce system. The Department has concluded that this definition is necessary to clarify that consultation constitutes a robust conversation in which all parties are given opportunity to share their thoughts and opinions. Written correspondence or other simple communication methods do not constitute consultation. This definition applies to all provisions that use the term unless otherwise specified. With the addition of the definition in part 675 of the Final Rule, the Department considers the requirements of § 679.230 to be clear. No changes were made to the regulatory text in response to these comments.

Comments: Many commenters expressed their agreement with the general procedural language in this section and commented that pursuant to WIA sec. 189(i)(2), Texas's workforce areas were designated before WIA took effect and therefore, they may continue to be used as local areas. One of the commenters agreed commenter, stating that for these reasons, "Texas should continue to operate pursuant to the waiver authority afforded under WIOA."

Department Response: Throughout the sections pertaining to Local WDBs several similar comments referenced operations in Texas as approved under WIA. The Department's response to all comments pertaining to Texas's operation under special rule authority in WIA is that WIOA sec. 193 continues the provisions in effect in WIA and the Department will continue to administer them in the same manner under WIOA.

Section 679.240 What are the substantive requirements for designation of local areas that were not designated as local areas under the Workforce Investment Act of 1998?

Title 20 CFR 679.240 implements WIOA sec. 101 and addresses the substantive requirements for designation of local areas that were not designated as local areas under the Workforce Investment Act of 1998 and § 679.250 addresses subsequent eligibility of local areas.

Comments: One commenter supported this section as proposed. A few commenters, including a State WDB, suggested that the Department add language to the regulation that will provide Governors the flexibility to apply the factors outlined in § 679.240(a) following subsequent designation regardless of whether the area was designated previously.

Department Response: WIOA sec. 106(b)(3) outlines the requirements of subsequent eligibility: "After the period for which a local area is initially designated under paragraph (2), the Governor shall approve a request for subsequent designation as a local area from such local area, if such area—(A) performed successfully; (B) sustained fiscal integrity; and (C) in the case of a local area in a planning region, met the requirements described in subsection (c)(1)." WIOA does not require other criteria, and this provision permits existing areas to continue so long as they meet the statutory criteria. No change to the regulatory text was made in response to these comments.

Section 679.250 What are the requirements for initial and subsequent designation of workforce development areas that had been designated as local areas under the Workforce Investment Act of 1998?

Comments: A couple commenters expressed their support for the language in § 679.250(a) through (c). One commenter recommended that in this section and elsewhere in the regulations any language that "prohibits a rural concentrated employment program (CEP) from applying for designation as local workforce area" should be deleted.

Another commenter presented the same suggestion and recommended deleting language from the rule and preamble discussion that exclude rural CEPs from being eligible to apply as local workforce areas. Specifically, the commenter recommended deleting language from the regulatory text of § 679.250(g), and deleting language discussing CEPs in the preamble discussion for § 679.250(g), and the preamble discussion for § 679.290(a), and the commenter provided detailed rationale to support the deletion of all anti-CEP language.

Department Response: WIOA Technical Amendments Act, enacted on May 22, 2015, amended WIOA sec. 106(b) to allow rural concentrated employment programs to apply for initial and subsequent designation as a local workforce area. The regulations have been revised to conform with the statutory direction and paragraph (g) now reads as follows: "The Governor may approve, under paragraph (c) of this section, a request for designation as a local area from areas served by rural concentrated employment programs as described in WIOA sec. 107(c)(1)(C)."

Comments: Many commenters requested clarification regarding the requirements of subsequent designation and the associated timelines in § 679.250.

Department Response: The Department clarified § 679.250 to provide details on the duration of initial designation and the timing of the first available opportunity for local area subsequent designation to occur. The Department revised the proposed requirement to clarify that initial designation is only applicable to PY 2016 and PY 2017. Noting the commenters' concerns regarding availability of WIOA performance data, which is required for the determination of designation, the Department added § 679.250(c) to clarify that no determination of subsequent designation may be made before the conclusion of PY 2017.

Section 679.260 What do the terms "performed successfully" and "sustained fiscal integrity" mean for purposes of designating local areas?

Title 20 CFR 679.260 implements the WIOA sec. 106(e)(1) definition of performed successfully.

Comments: Many commenters asked for guidance in applying the WIOA sec. 106(e)(1) definition.

Department Response: The Department agrees that additional detail is necessary to ensure that initial and subsequent designation requirements are applied consistently. The Department has adjusted the Final Rule at § 679.260 to detail the performance indicators, and corresponding timelines, to be considered for initial and subsequent designation. For clarity and to reduce duplication the Department deleted § 679.260(a)(1) and (2) pertaining to the negotiated levels of performance. The details in paragraphs

(a)(1) and (2) were unnecessarily duplicative to the requirements covered in the introductory text of paragraph (a), which already outline the relevant performance goals. The Department added detailed timeframe information for subsequent designation in § 679.260(b)(1) and (2).

Comments: Some commenters suggested that performance be measured in the aggregate based on the total outcomes for all performance indicators instead of individual performance indicators. Another commenter requested that success be based on achieving 80 percent of the negotiated goal.

Department Response: Based on experiences under WIA, the Department determined that individual indicators of performance provide Governors more detailed information for making designation determinations. Title 20 CFR 679.260 clarifies that local areas must not fail any individual measure for 2 consecutive years. Title 20 CFR 679.260(a) clarifies that the local area must meet or exceed the performance levels the Governor negotiated with Local WDB and CEO.

Comments: A commenter asked for clarification regarding appeal rights if a local area is deemed not to have performed successfully if there was no negotiation between a local area and the State for the previous 1 to 2 years before enactment of WIOA.

Department Response: WIA sec. 136(c) and § 666.310(a) of the regulations implementing WIA required the negotiation of local area performance indicators under WIA. In accordance with WIOA sec. 106(e)(1) and § 679.260(a) and (b), the local performance must be judged in accordance with the definitions of "meets" and "exceeds" in place at the time the performance levels were negotiated. Appeals regarding local area designation must adhere to the requirements in §§ 683.630(a), 683.640, and 679.290.

Comments: Paragraph (c) of § 679.260 implements WIOA sec. 106(e)(2), which defines the term "sustained fiscal integrity." Commenters requested clarification of fiscal integrity, and one commenter expressed concern that the three criteria used for determining "sustained fiscal integrity" would limit the Governor's ability to designate local areas and suggested that the Department clarify that only the first criterion requires a formal determination by the Secretary of Labor.

Department Response: In WIOA sec. 106(e), "sustained fiscal integrity" means "that the Secretary has not made a formal determination, during either of the last 2 consecutive years preceding the determination regarding such integrity, that either the grant recipient or the administrative entity of the area misexpended funds . . . due to willful disregard of the requirements of the provision involved, gross negligence, or failure to comply with accepted standards of administration." Section 679.260(c) implements the requirements outlined in WIOA sec. 106(e). No changes were made to the regulatory text in response to these comments. To the extent that additional clarification may be needed, the Department will issue separate guidance.

Section 679.270 What are the special designation provisions for single-area States?

Title 20 CFR 679.270 implements WIOA secs. 106(d) and 107(c)(4)(A), which allow for single-area States so designated under WIA to continue, and requires the State WDB to carry out the functions of the Local WDB in a single-area State.

Comments: Commenters requested additional clarification on the roles of the State WDB in single-area States. Several commenters indicate that single-area States tend to be small or substantially rural areas and fulfilling the mandates of both the State and Local WDBs would be both unduly burdensome for single-area States as well as impractical. Others objected to single-area State WDBs taking on the role of the Local WDB and expressed concern that such situations are non-responsive to local needs and to local stakeholders. Commenters suggested varying solutions which include allowing waivers or exceptions for single-area States of certain Board functions; mandating local representation to a broader extent on the single-area State WDB; creating a specific section regulating exemptions for single-area State WDB functions; and offering non regulatory technical assistance and guidance.

Department Response: WIOA sec. 107(c)(4)(A) requires that single-area States' State WDB carry out the function of the Local WDB with an exemption only for meeting and reporting on local performance indicators, so the requirements of § 679.270(c) cannot be reduced. However, the Department does not intend for single-area States to conduct the required Board functions in such a way as to be inefficient or duplicative. To that end, the Department has amended the regulatory text at § 679.270 by adding paragraph (d), which clarifies that single-area States must conduct the functions of the Local WDB to achieve the incorporation of local interests but may do so in a manner that reduces unnecessary burden and duplication of processes. The Department will issue guidance regarding how single-area States must carry out the duties of State and Local WDBs.

The Department encourages the Governor to ensure that State WDB members represent the diversity of job seekers and employers across the State, which includes ensuring adequate local elected official representation on the State WDB. Single-area States have the additional burden of representing local level interests and stakeholders.

3. Subpart C—Local Workforce Development Boards

Title 20 CFR 679.300 explains the purpose of the Local WDB. The Local WDB represents a wide variety of individuals, businesses, and organizations throughout the local area. The Local WDB serves as a strategic convener to promote and broker effective relationships between the CEOs and economic, education, and workforce partners. The Local WDB must develop a strategy to continuously improve and strengthen the workforce development system through innovation in, and alignment and improvement of, employment, training, and education programs to promote economic growth. Local WDB members must establish a platform in which all members actively participate and collaborate closely with the required and other partners of the workforce development system, including public and private organizations. This is crucial to the Local WDB's role to integrate and align a more effective, job-driven workforce investment system. In this part the Department addresses comments on the roles of the Local WDBs, Local WDB memberships, and the role of local elected officials.

Section 679.300 What is the vision and purpose of the Local Workforce Development Board?

Title 20 CFR 679.300 establishes the vision for and explains the purpose of the Local WDB.

Comments: Commenters suggested the Department clarify that Local WDBs are responsible for organizing the key partners to develop a vision for the system collectively, implementing that system, and monitoring performance.

Department Response: These responsibilities are already laid out in the regulations under § 679.300(b)(1). One of the purposes of the Local WDB is to provide strategic and operational oversight in collaboration with required and other partners to help the workforce

development system achieve the purposes outlined in WIOA sec. 2, and assist in the achievement of the State's strategic and operational vision and goals outlined in the State Plan. Paragraphs (b)(2) and (3) of § 679.300 require the Local WDB to assist in the achievement of the State's strategic and operational vision and goals as outlined in the Unified State Plan or Combined State Plan, and to maximize and continue to improve the quality of services, customer satisfaction, and effectiveness of the services provided. No change to the regulatory text was made in response to these comments.

Section 679.310 What is the Local Workforce Development Board?

Title 20 CFR 679.310 implements WIOA sec. 107 by defining the Local WDB and its functions.

Comments: Commenters suggested changes regarding the function of establishing by-laws covered in § 679.310(g) including suggesting that the criteria that apply to the selection of Local WDB members also should apply to by-laws of the Board, and that Board members should not be required to actively participate in convening system stakeholders.

Department Response: WIOA sec. 107(b)(1) and § 679.320 describe the Local WDB membership requirements as enumerated in WIOA. The WIOA statute does not indicate that by-laws restrict membership. The Department declines to make the suggested regulatory change. No change to the regulatory text was made in response to these comments.

Comments: Some commenters stated that § 679.310(g)(7) should refer to membership on the Local WDB, rather than the State WDB. One commenter suggested that the authority should fall to Local WDBs and not CEOs and recommended that the Department reword § 679.310(g)(7) as follows: "A description of any other conditions governing appointment or membership on the Local Board as deemed appropriate by both the Local Board Chair and the CEO. The rest of these conditions should be under the authority of the [Local Board] and be included as requirements in the [Local Board] developed by-laws."

Department Response: The Department agrees and will make that technical change to § 679.310(g)(7) to replace State WDB with Local WDB. The regulatory text has been revised with this change to § 679.310(g)(7).

Comments: A commenter requested clarification regarding the financial liability for local areas with multiple chief elected officials.

Department Response: Paragraph (e) of § 679.310 says that if a local area includes more than one unit of general local government the chief elected officials may execute an agreement to describe their responsibilities for carrying out the roles and responsibilities. This agreement may include the assignment of liabilities among the units of local government. The chief elected officials should address financial roles in this agreement. In addition there is authority under WIOA sec. 107(d)(12)(B)(i)(I) that the Governor may agree to take on the liability of the chief elected official.

Comments: A commenter stated that the term "elect" in the nomination process should be changed to "appoint."

Department Response: The Department agrees and has changed the term "elect" in § 679.310(g)(1) to "select."

Comments: Regarding the nomination process, a commenter asked the Department to clarify whether the Board chair will be nominated by a vote of the Local WDB members and not by the chief elected official.

Department Response: The Local WDB is required to elect the chairperson as outlined in § 679.330 in accordance with WIOA sec. 170(b)(3).

Comments: The proposed regulations in § 679.310(g) would require the CEO to establish by-laws for Local WDBs. A few commenters suggested that the Department revise the language in proposed paragraph (g) to require that CEOs, "in consultation with the Local Board," must establish by-laws consistent with State policy for Local WDB membership.

Department Response: Paragraph (g) of § 679.310 requires the local elected official to establish by-laws that include the process to ensure Local WDB members actively participate in convening system stakeholders, brokering relationships with a diverse range of employers, and leveraging support for workforce development activities. The by-laws will outline the process and roles for Local WDB members. An effective Local WDB establishes clear roles, responsibilities, procedures, and expectations through its by-laws, and that these requirements will help Local WDBs to be more agile and proactive in reacting to board turnover, increase board participation when board members are not able to physically attend board meetings, improve board functionality, and help ensure that the public is informed about the operation of the board. No changes to the regulatory text have been made in response to these comments.

Comments: A commenter requested that the Department revise the section so that the Local WDBs must draft by-laws "after consultation with and approval by the chief elected official."

Department Response: WIOA sec. 107 delegates the establishment of by-laws to the chief elected official. The chief elected official must establish the by-laws in order to constitute a Local WDB. Paragraph (c) of § 679.310 allows the Local WDB and the chief elected official(s) to enter into an agreement that describes the respective roles and responsibilities of the parties which does not prohibit the Local WDB's role in the development of future by-laws. The suggested change is not necessary and no change to the regulatory text was made in response to this comment.

Section 679.320 Who are the required members of the Local Workforce Development Board?

Title 20 CFR 679.320 addresses the required members on the Local WDB in accordance with WIOA sec. 107.

Comments: The Department received comments of support for this section but one commenter suggested that it may cause political tension to allow a Chief Elected Official to appoint Local WDB members.

Department Response: WIOA clearly contemplates that Chief Elected Officials will use the State established criteria to appoint Local WDB membership that meets the requirements in WIOA sec. 107(b)(2). Section 679.320(g) requires the Chief Elected Official establish a formal nomination and appointment process. No change has been made to the regulatory text in response to this comment.

Overarching Comments on the Required Members of Local WDBs

Comments: Commenters requested guidance on documenting the inability to find a certain member type.

Department Response: Local WDBs should follow State guidelines for documenting the lack of member types in the area.

Adult Education Representation

Comments: The Department received several comments suggesting that a specific entity be named to represent adult education programs at the local level.

Department Response: WIOA sec. 107(b)(1) and § 679.320(a) require that the chief elected official use the criteria set by the Governor, in partnership with the State WDB, to appoint members of the Local WDBs. The Department concludes that the Governor, in

partnership with the State WDBs, has authority for creating a policy regarding the criteria for the membership of the Local WDB, which includes criteria for selecting the representative of a title II eligible provider of adult education and literacy activities. No change has been made to the regulatory text in response to this comment.

Comments: Commenters also recommended that a process be implemented for selecting a Local WDB representative in the event there are multiple providers in the area.

Department Response: In accordance with WIOA sec. 107(b)(2)(C)(i), § 679.320(d)(1) requires that the Local WDB include at least one eligible provider administering adult education and literacy activities under title II. Nominations are solicited when multiple entities are in a local area as described in § 679.320(g)(3) and WIOA sec. 107(b)(6). No change to the regulatory text was made in response to these comments.

Comments: One commenter asked for clarification between the terms "education and training activities" and "education and training services," stating that they seem to mean the same thing in many instances.

Department Response: In order to avoid confusion, the Department eliminated the term "education and training services" from the regulatory text.

Dual Representation

Title 20 CFR 679.320(h) allows an individual to be appointed as a representative on the Local WDB for more than one entity if the individual meets all of the criteria for representation.

Comments: Several commenters expressed concern with this approach because it differs from State WDB requirements; commenters recommended allowing for all core programs to have separate representation on Local WDBs. One commenter supported the flexibility in permitting a Local WDB member to represent multiple entities. Another commenter recommended that the Department should strongly discourage a Local WDB member from representing two interests, reasoning that a Board member serving the interests of two separate functions would not be true to the intent of WIOA. This commenter also expressed concern that it would create a conflict of interest under the Sarbanes-Oxley Act and a Board member's heightened fiduciary responsibilities.

Department Response: The Department recognizes that the structure of core programs may differ across the country and separate representation may not be possible or practical in all local areas. The Department offers Governors and Local Chief Elected Officials the flexibility for an individual to be appointed as a representative on the Local WDB for more than one entity if the individual meets all of the criteria for representation. However, there is no requirement that this be the case. In accordance with WIOA sec. 107(b)(1) and § 679.320(a) the CEO must follow the process established by the Governor, in partnership with the State WDB, for appointing members of the Local WDB. With regard to concerns about conflicts of interest under the Public Company Accounting Reform and Investor Protection Act (Sarbanes-Oxley Act) or other applicable laws, neither WIOA nor these regulations exempt an official serving in a dual representation capacity from any applicable ethical rules. In fact, § 683.200(c)(5) imposes specific conflict of interest requirements on WIOA recipients in addition to those applicable under the uniform administrative requirements. For these reasons, the Department has determined that the flexibility for Local WDB membership is appropriate and no change to the regulatory text was made in response to these comments.

Labor Union, Small Business, and Registered Apprenticeship Representation

Paragraph (c) of § 679.320 requires that at least 20 percent of Local WDB membership must be workforce representatives to include representatives of labor organizations, and a joint labor-management registered apprenticeship program, or (if no such program exists in the area) a representative of a registered apprenticeship program in the area if such program exists.

Comments: Commenters requested clarification of the total number of labor representatives required on the Local WDB, and suggested labor representatives include employee representatives for non-unionized employees.

Department Response: Paragraph (c) of § 679.320 clarified that, at minimum, three labor representatives must be included in the Local WDB: Two or more representatives of labor organizations, where such organizations exist in the local area, and one joint labor-management representative of a registered apprenticeship program where such program exists in the local area. In the event that these organizations are not present in the local area, representatives must be selected from other employee representatives. For local areas with no union-affiliated registered apprenticeship program, a representative of a non-union registered apprenticeship in the area must be appointed if one exists. The Local WDB may include other individuals or representatives as outlined in paragraph (e). The Department has determined that no change is required to the proposed language to allow for additional representation of the labor force as appropriate.

Regarding the number of small business representation, paragraph (b) of § 679.320 implements WIOA sec. 107(b)(2)(A)(ii), which describes Local WDB membership criteria and calls for members that "represent businesses, including small businesses." The Department interprets WIOA's use of the word "businesses" to indicate that the Local WDB is required to have more than one member representing a small business.

Comments: One commenter requested a definition of the word "business" and asked if it "may include large non-profit organizations." Another commenter requested a definition of "business organization," suggesting it "include trade associations and chambers of commerce," and another commenter also requested clarity that "business organizations can be a local chamber of commerce or a regional entity." One commenter asked if sector representatives had to come from an established sector or if they also could represent "aspirational industries."

Department Response: WIOA sec. 3 contains definitions of terms used in the law. This section does not specifically define a business or a business organization. The groups suggested by the commenters may be included as long as they meet the membership criteria outlined in § 679.320. Title 20 CFR 679.320 implements WIOA sec. 107(b)(2) by describing the required members of a Local WDB. Paragraph (b) requires that a majority of the members of the Local WDB be representatives of businesses in the local area and paragraphs (b)(1) and (2) outline the required criteria. The Chief Elected Official (CEO) has the authority in WIOA sec. 107 and § 679.320(e)(4) to appoint other members as he/she deems appropriate. Regarding the comment on "aspirational industries," many organizations can meet the criteria outlined in § 679.320(b) and the CEO has the authority to appoint additional members that meet the needs of the local area employers and job seekers. The Department concludes that no further definition is required and has

made no changes to the regulatory text in response to this comment.

Comments: Multiple commenters stated that the Department cites WIOA sec. 3(25) regarding business representative requirements in § 679.320(b)(2) and it should reference sec. 3(23) instead. A commenter asked if trained members who have experience with eligible youth, as referenced in proposed § 679.320(c)(4), would include representatives from local government funded programs such as 4–H.

Department Response: The Department agrees that the reference to WIOA sec. 3(25) in § 679.320(b)(2) is incorrect. WIOA sec. 3(23) defines in-demand industry sector or occupation. WIOA sec. 3(25) defines an individual with a disability which is not relevant to § 679.320(b)(2). The Department has made the correction in § 679.320(b)(2).

Regarding the question of whether representatives from 4–H programs would qualify as members having experience with eligible youth, § 679.320 implements WIOA sec. 107(b) which outlines membership criteria for Local WDBs. As outlined in § 679.320(a), for each local area in the State, the members of the Local WDB must be selected by the CEO consistent with the criteria established under statute and criteria established by the Governor, and must meet the requirements of WIOA sec. 107(c)(2). CEOs are required to establish a formal nomination and appointment process (§ 679.320(g)), which should answer specific questions about local area membership requirements. Due to the number of factors involved, the Department is not able to comment on if a specific entity would meet the requirements set forth by the Governor as well as all of the statutory requirements but advises interested parties to review the CEO's process in their area.

Comments: Paragraph (b)(2) of § 679.320 implements WIOA sec. 107(b)(1)(C)(i)(II), which provides that Local WDB business representatives represent businesses that provide "employment opportunities that, at a minimum, include high-quality, work-relevant training and development in in-demand industry sectors." Some commenters asked the Department to clarify the definition of "work-relevant training" in proposed § 679.110(b)(3)(i)(B). In particular, some of these commenters asked whether it pertains to for-profit training providers. Another commenter stated while the definition of "in-demand" is located at WIOA sec. 3(23), there is no definitions for the terms "high-quality" and "work-relevant." This commenter recommended that the Department allow these terms to be defined at the State or local level.

Department Response: WIOA sec. 3 provides definitions of terms used in the law. The terms "work-relevant" training and "high-quality" are not defined in WIOA or in the regulations. The Local WDB's functions under WIOA sec. 107(d) and § 679.370 include employer engagement, career pathways development, and identifying and disseminating promising practices. It is incumbent upon the Local WDB to apply the above terms so that it includes the members it determines best support its functions. No change to the regulatory text was made in response to these comments.

Nominations

WIOA sec. 107 and § 679.320 of this part outline the requirements for Local WDB membership.

Comments: Commenters requested that a nomination process not be required in communities where there are multiple adult education providers.

Department Response: WIOA sec. 107(b)(6) requires a nomination process if there are multiple eligible providers of title II adult education and literacy activities serving the local area (a similar process is required for multiple institutions of higher education in a local area). Section 679.320(g)(3) conforms with WIOA sec. 107(b)(6) and the Department made no changes to the regulatory text in response to these comments.

Comments: Another commenter suggested that Local WDB members must be nominated by an appropriate body, and if no such body is clear, then the opportunity to present nominations should be required to be widely publicized.

Department Response: WIOA does not require that the Local WDB nominations be from particular bodies, except that in instances of multiple adult education providers in a local area nominations will be accepted from those institutions in accordance with WIOA sec. 107(b)(6) and § 679.320(g)(3). In accordance with WIOA sec. 107(b)(1) and § 679.320(a) the CEO must follow the process established by the Governor, in partnership with the State WDB, for appointing members of the Local WDB which may include processes for soliciting nominations. No change to the regulatory text was made in response to these comments.

Individuals With Disabilities and Other Barriers to Employment

Section 679.320 implements WIOA sec. 107(b) describing the required Local WDB membership.

Comments: As with the State WDBs, many commenters from stakeholders with mandated representation under WIA, requested that they again be mandated members of the Local WDB, or that they be referenced in regulation.

Department Response: WIOA reduced required Local WDB membership in an effort to streamline the Boards and provide Chief Elected Officials the flexibility to establish Local WDBs that best reflect the diversity of job seeker and employer communities. The Department recognizes that many important system partners with experience with specific job seeker populations, such as required one-stop partner programs, tribal organizations, other Department program grantees, and those serving the disadvantaged and disabled populations are no longer required members of the Board. However, § 679.320(c) and (d) require the Board be comprised of workforce representatives that can include one or more representatives of community-based organizations that have demonstrated experience and expertise in addressing the employment, training, or education needs of individuals with barriers to employment. Paragraph (e)(4) of § 679.320 says the CEO has the flexibility to appoint "other appropriate individuals as determined by the chief elected official" which does not preclude any organization as the CEO deems appropriate. The Department encourages the CEO to ensure that Local WDB members represent the diversity of job seekers and employers in their local areas, which includes ensuring adequate representation on the Local WDB and ensuring appropriate expertise to address needs of individuals with barriers to employment. No change to the regulatory text was made in response to these comments.

Voting Rights

Title 20 CFR 679.320 implements WIOA sec. 107 (b) which outlines Local WDB membership.

Comments: Some commenters recommended that Board members from each core program must be individuals working specifically with core programming and they must get a vote on the Local WDB, including grandfathered Boards.

Department Response: Title 20 CFR 679.320(e)(4) says the CEO has the flexibility to appoint "other appropriate individuals as determined by the chief

elected official'' which does not preclude any organization as the CEO deems appropriate. The Department encourages the CEO to ensure that Local WDB members represent the diversity of job seekers, employers, and one-stop partner programs in the local area which includes ensuring adequate representation on the Local WDB. Title 20 CFR 679.320(i), which requires all required Local WDB members to have voting rights, also gives the CEO flexibility to convey voting rights to non-required members. No change to the regulatory text was made in response to this comment.

Comments: One commenter asked how adult education programs that are not funded by the State and do not have voting rights can still contribute.

Department Response: Title 20 CFR 679.360(a) permits the use of standing committees on the Local WDB. Standing committees may be established to provide information and assist the Local WDB in carrying out its responsibilities under WIOA 107. Standing committee members must include individuals who are not members of the Local WDB and who have demonstrated experience and expertise in accordance with § 679.340(b) and as determined by the Local WDB. Stakeholders with expertise may wish to contribute as members of standing committees, if the Local WDB establishes such committees. No change to the regulatory text was made in response to these comments.

Section 679.330 Who must chair a Local Workforce Development Board?

Section 679.340 What is meant by the terms ''optimum policy-making authority'' and ''demonstrated experience and expertise''?

Comments: One commenter strongly supported both proposed definitions. Another commenter expressed concern regarding the language used to define ''optimum policy-making authority'' because TANF is administered at the State level and local leadership does not have ''optimum policy-making authority'' for the agency. For this reason, the commenter requested that the Department clarify what ''optimum policy-making authority'' is at the local level.

One commenter asked the Department if it thinks local administrators of State agencies meet the criteria for optimum policy-making authority or if it expects this regulation will require the nomination and appointment of State capital-based agency executives.

Regarding demonstrated experience and expertise, one commenter recommended that all staff working with job seekers and business customers should receive certification through programs like Certified Workforce Development Professional (CWDP) by the National Association of Workforce Development Professionals (NAWDP) to ensure they are qualified in their role.

Department Response: 20 CFR 679.340 clarifies the term ''optimum policy-making authority'' as an individual who can reasonably be expected to speak affirmatively on behalf of the entity he or she represents and to commit that entity to a chosen course of action. The section also defines ''demonstrated experience and expertise'' at the local level, which includes a workplace learning advisor as defined in WIOA sec. 3(70); an individual who contributes to the field of workforce development, human resources, training and development, or a core program function; or someone the Local WDB recognizes for valuable contributions in education or workforce development related fields. The Department concludes that the Local WDB has flexibility to make the determinations of optimum policy-making authority and demonstrated experience and expertise within the outlined criteria. No change to the regulatory text was made in response to these comments.

Section 679.350 What criteria will be used to establish the membership of the Local Workforce Development Board?

Comments: Title 20 CFR 679.350 affirms that the chief elected official appoints the Local WDB in accordance with the criteria in WIOA sec. 107(b) and applicable State criteria. Commenters sought additional detail on which industries can be represented, specifically asking about the healthcare industry and educational institutions. Commenters also requested that 501(c)(3) corporations be defined as businesses.

Department Response: WIOA sec. 3 contains definitions of terms used in the law. This section does not specifically define a business or a business organization. The entities identified by the commenters may be included as long as they meet the membership criteria. No change to the regulatory text was made in response to these comments.

Section 679.360 What is a standing committee, and what is its relationship to the Local Workforce Development Board?

Comments: 20 CFR 679.360 implements WIOA sec. 107(b)(4) and establishes the roles and responsibilities of standing committees within the Local WDB structure. Commenters supported the text, as well as suggested that the Department require or recommend particular groups, such as Job Corps, to be members of standing committees.

Department Response: Standing committees were not legislated under WIA and are optional under WIOA as clarified in § 679.360(b). The Department declines to mandate a specific entity be represented on a standing committee, but nothing would prevent Job Corps representatives from being appointed to standing committees under § 679.360(b).

Standing committees may be used to assist the Local WDB in carrying out its responsibilities as outlined in WIOA sec. 107.

Comments: One commenter suggested changing the word ''must'' to ''may'' regarding the requirement in § 679.360(a) to include those appointed by the Local WDB in standing committees but who are not Board members.

Department Response: The Department encourages the use of standing committees to expand opportunities for stakeholders to participate in Local WDB decision-making, particularly for representatives of organizations that may no longer sit on the Local WDB but continue to have a stake in the success of Local WDB decisions. Such committees also expand the capacity of the Local WDB in meeting required functions and expand opportunities for stakeholders to participate in Local WDB decision-making. For this reason, it is important to require the appointment of non-Board members. No change to the regulatory text was made in response to these comments.

Section 679.370 What are the functions of the Local Workforce Development Board?

Role and Function of the Local WDB

Title 20 CFR 679.370 lists the functions of the Local WDBs as enumerated in WIOA sec. 107(d). Under WIOA, the Local WDB, in partnership with the CEO, must perform a variety of functions to support the local workforce system.

Comments: Commenters recommended the addition of a variety of Local WDB functions.

Department Response: In order to preserve Local WDB flexibility, the Department declines to enumerate additional functions. No change to § 679.370 was made in response to these comments.

Comments: Paragraph (b) of § 679.370 discusses a new role for Local WDBs

that are part of a planning region that includes multiple local areas. This provision repeats the WIOA requirement that Local WDBs that are part of a planning region must develop and submit a regional plan in collaboration with the other Local WDBs in the region. Regarding § 679.370(b), a commenter recommended the Department include language allowing any local area that includes multiple jurisdictions and partners to have an automatic designation as a region and to consider that area's local plan to be a regional plan.

Department Response: WIOA sec. 106(a)(2) clearly assigns the State the responsibility of identifying regions after consultation with Local WDBs and chief elected officials. As required in WIOA sec. 106(c)(2), the local plan is incorporated into the regional plan, where required, in accordance with § 679.540. No change to the regulatory text was made in response to this comment.

Career Pathways (§ 679.370(f))

WIOA sec. 3(7)(A) through (G) defines career pathways as a combination of rigorous and high-quality education, training, and other services that meet specified guidelines. WIOA sec. 101(d)(3)(B) enumerates "the development of strategies to support the use of career pathways for the purpose of providing individuals, including low-skilled adults, youth, and individuals with barriers to employment (including individuals with disabilities), with workforce investment activities, education" as a function of the State WDB and is described in § 679.130(c)(2). WIOA sec. 107(d) and § 679.300 extends the requirement to Local WDBs.

Comments: Commenters requested that the Department provide more comprehensive guidance on the implementation of career pathways. Several commenters provided recommended changes to the regulatory text that included adding criteria, including a section specific to Local WDB implementation of career pathways, requiring the State and Local WDBs to define the roles and responsibilities of WIOA programs related to career pathways, listing required partners (such as Job Corps, and public television), and developing strategies to include job seekers with specific barriers to employment.

Department Response: The Department acknowledges the interest in implementing successful career pathway strategies. The ideas and suggestions provided by the commenters support that career pathways is a dynamic topic that involves input of multiple partners and stakeholders across the public workforce system. The Department agrees that further guidance and technical assistance is needed and will be issued. However, the statutory language provides general criteria for both State and Local WDBs to use in developing career pathway strategies meeting their needs. More prescriptive language may limit State and Local WDBs' ability to be proactive and innovative in developing career pathways to support individuals to retain and enter employment. No change to the regulatory text was made in response to these comments.

Strategies for Technological Improvements To Improve One-Stop Services (§ 679.370(h))

Comments: Proposed § 679.370(h)(1) requires that Local WDBs facilitate connections among the intake and case management information systems of the one-stop partner programs; a commenter asserted that connecting intake and case management information systems will raise significant issues in terms of staffing, technology, and confidentiality.

Department Response: Title 20 CFR 679.370(h) does not outline specific technology requirements expectations, but rather the Board is responsible for developing strategies for aligning technology and data systems across one-stop partner programs. The Local WDB may connect intake and case management systems, but neither WIOA nor the regulations require a single case management system among one-stop partners. The regulation provides Local WDBs with flexibility to develop systems that best fit their needs and budgets. No change to the regulatory text was made in response to these comments.

Review of Adult Education Provider Applications (§ 679.370(n))

Paragraph (n) of § 679.370 reflects a number of new functions for the Local WDB related to coordination with adult education and literacy providers in the local area. This provision requires the Local WDB to review applications to provide adult education and literacy activities under title II to determine whether such applications are consistent with the local plan; the eligible agency retains approval authority. It also requires the Local WDB to make recommendations to the eligible agency to promote alignment with the local plan.

Comments: Commenters requested clarification regarding the application review process. Further information regarding Local WDB coordination with adult education and literacy providers is provided at 34 CFR part 463, which requires the eligible agency to establish in its competition a processes by which applicants must submit an application to the Local WDB for review prior to its submission to the eligible agency. This part also includes a role for the Local WDB in replicating and implementing cooperative agreements in accordance with subparagraph (B) of sec. 101(a)(11) of the Rehabilitation Act of 1973 (29 U.S.C. 721(a)(11)), and implementing cooperative agreements in accordance with that section with the local agencies administering plans under title I of that Act (29 U.S.C. 720 *et seq.*) other than sec. 112 or part C of that title (29 U.S.C. 732, 741) to enhance the provision of services to individuals with disabilities and other individuals.

Commenters expressed concerns that Local WDBs will not have the appropriate amount of time to review all adult education provider applications in a timely manner, particularly in large cities with many programs or for education programs serving jurisdictions with multiple Local WDBs. One commenter also expressed concern about the title II adult education provider application review process because Local WDBs do not understand enough about education programs and recommended that the regulations contain a clear conflict of interest policy as well as a process where the adult education stakeholders have the ability to help shape the local plan. One commenter suggested that the review and approval process outlined in § 679.370(n) for adult education providers should be applied to all core partner plans.

Department Response: The Department of Education provides additional information about the review of local applications for grants or contracts to provide title I adult education and literacy services at 20 CFR 463.20 which reiterates that the purpose of the review is to ensure that the application is consistent with the local plan. The section also advises that the review is taken into consideration when making funding decisions. The Department of Education advises that only appointed local WDB members who do not have a conflict of interest as defined in sec. 107(h) of WIOA are allowed to participate in the review of an eligible training provider application. Boards may arrange to offer training to local WDB members by adult education experts prior to participating in the review process. No change to the regulatory text was made in response to these comments.

Ensuring Appropriate Use and Management of WIOA Funds

Comments: Under paragraph (h), a commenter asked if the State can limit a Local WDB's authority to increase the on-the-job training reimbursement rate if all factors required in regulation and policy are met.

Department Response: Paragraph (h)(4)(i)(2) of § 679.370 requires Local WDBs, in partnership with the chief elected official for the local area, to ensure the appropriate use and management of funds. Therefore, local areas should establish policies, interpretations, guidelines, and definitions to implement provisions of title I of WIOA to the extent that such policies, interpretations, guidelines, and definitions are not inconsistent with WIOA and the regulations issued under WIOA, Federal statutes and regulations governing one-stop partner programs, and with State policies. States also should establish policies, interpretations, guidelines, and definitions to implement provisions of title I of WIOA to the extent that such policies, interpretations, guidelines, and definitions are not inconsistent with WIOA and the regulations issued under WIOA, as well as Federal statutes and regulations governing one-stop partner programs. Local WDBs, therefore, can set policies but those policies must not conflict with State policy, or WIOA. No change to the regulatory text was made in response to these comments.

Negotiation of Local Performance Indicators (§ 679.370(j))

Comments: Under paragraph (j), a commenter stated that the regulations need to indicate that local areas have the final decision regarding performance negotiations.

Department Response: WIOA sec. 107(d)(9) requires that locals negotiate performance and § 679.510(a)(1)(viii) requires an agreement between Local WDBs and chief elected officials for how a planning region will collectively negotiate and reach agreement with the Governor on local levels of performance. No change to the regulatory text was made in response to these comments.

Negotiating Methods for Funding One-Stop Infrastructure Costs (§ 679.370(k))

Title 20 CFR 679.370(k) requires that the Local WDB negotiate with the CEO and required partners on the methods for funding the infrastructure costs of one-stop centers.

Comments: Comments asked for clarification on the role of CEO.

Department Response: The CEO is not required to provide infrastructure costs, nor is the CEO required to negotiate the infrastructure costs, but rather the Local WDB and the CEO must agree upon the methods that will be applied to determine the infrastructure funding. Section 678.500 (*see* Joint WIOA Final Rule) describes what must be included in the Memorandum of Understanding executed between the Local WDB, with the agreement of the CEO, and the one-stop partners relating to the operation of the one-stop delivery system in the local area, and provides for additional details regarding infrastructure costs. No change to the regulatory text was made in response to these comments.

Selection of Youth Services, Training, and Career Services Providers (§ 679.370(l))

Comments: Under paragraph (l), a couple of commenters requested clarification that Local WDBs only can determine eligibility of training providers for their local areas and that eligibility is contingent on the providers being approved on the State eligible training provider list (ETPL).

Department Response: WIOA sec. 122 and 20 CFR part 677 of the Joint WIOA Final Rule describe the process for determining the eligibility of training providers. Providers must be approved via the Governor's process, however, Local WDBs may set additional criteria for providers on the local list. No change to the regulatory text was made in response to these comments.

Section 679.400 Who are the staff to the Local Workforce Development Board and what is their role?

Title 20 CFR 679.400 describes the Local WDB's authority to hire staff and the appropriate roles for Board staff as outlined in WIOA sec. 107(f).

Comments: Commenters suggested that any prior agreements between Local WDBs and chief elected officials regarding staffing roles and responsibilities be recognized; that the regulations clarify that the State agency is to take responsibility for hiring; and that the regulations should reiterate that the hiring of a director is optional.

Department Response: WIOA sec. 107(f) describes the authority of the Local WDB to hire a director. There is no mandate that Local WDBs hire staff. The authority to hire staff to support the Local WDB is granted under WIOA sec. 107(f) to the Local WDB, not the State agency.

Prior agreements are not automatically recognized. It is in the best interest of the public workforce system to ensure the director of the Local WDB is competent and experienced with workforce programs and service delivery. Paragraph (b) of § 679.400 requires the Local WDB to apply objective qualifications to the Board director, paragraph (d) limits the Local WDB staff's role to assisting the Board fulfill the functions at WIOA sec. 107(d) unless the entity selected to staff the Board enters into a written agreement with the Board and CEO as noted in § 679.400(e). Title 20 CFR 679.400 aligns with WIOA sec. 107(f) and no change to the regulatory text was made in response to these comments.

Section 679.410 Under what conditions may a Local Workforce Development Board directly be a provider of career services, or training services, or act as a one-stop operator?

Selection as a One-Stop Operator (§ 679.410(a))

Title 20 CFR 679.410 implements WIOA sec. 107(g) and explains the situations in which the Local WDB may directly act as a one-stop operator, a provider of career services, or training services provider.

Comments: The Department received many comments supporting the requirement that one-stop operators be competitively procured. However, other commenters recommended waivers or exceptions to the requirement that one-stop operators be competitively procured. Some commenters recommended waivers for performance, direct designation of the Local WDB as the one-stop operator with the agreement of the CEO and Governor, and allowing Governors to designate the selection of one-stop operators in single-area States. Several commenters disagreed with the Department's interpretation that WIOA sec. 107(g), which allows for the selection of the one-stop operator with the agreement of the CEO and Governor, is an additional requirement under WIOA sec. 121(d)(2)(A) and not a separate path to designation.

Department Response: A more detailed discussion of this issue is contained in 20 CFR part 678 of the Joint WIOA Final Rule. The Department maintains the interpretation, consistent with 20 CFR 678.605 (*see* Joint WIOA Final Rule) and WIOA sec. 121(d)(2)(A), that the Local WDB must select the one-stop operator through a competitive process. In instances in which a State is conducting the competitive process, the State must follow the same policies and procedures it uses for procurement with non-Federal funds. State, Local, and non-Federal entities should follow the applicable procurement guidelines in the Uniform Guidance at 2 CFR part 200. Neither WIOA nor § 679.410

prohibit Local WDBs from competing to become a one-stop operator if they could do so in accordance with the Uniform Guidance. The provision requires the competitive procurement of all one-stop operators. No change to the regulatory text was made in response to these comments.

Career Services Provider (§ 679.410(b))

The Department specified in § 679.410(b) that a Local WDB may act as a provider of career services only with the agreement of the CEO in the local area and the Governor.

Comments: Commenters requested clarification regarding the circumstances under which a Local WDB may provide career services.

Department Response: Although WIOA sec. 107(g) requires that one-stop operators be competitively procured, there is no similarly clear statutory requirement for provision of career services and therefore Local WDBs do not have to undertake a competitive process to offer career services.

Comments: Some commenters suggested that Local WDBs only be permitted to offer career services if the CEO and Governor agree that there are insufficient providers of career services in an area. Another commenter responded that many Local WDBs are currently delivering high quality career services and should not be forced to procure them.

Department Response: The Department has interpreted WIOA sec. 107(g)(2), which states that a Local WDB may provide career services described in WIOA sec. 134(c)(2) through a one-stop delivery system or be designated or certified as a one-stop operator only with the agreement of the CEO and the Governor, to mean that the Local WDB's delivery of career services is at the discretion of the CEO and Governor. Section 679.410(b) offers the CEO and Governor flexibility in deciding whether to pursue a competitive award of career services. However, the Department supports competition and maintains the opinion that Local WDBs acting as direct providers of these services is not optimal. No change to the regulatory text was made in response to these comments.

Comments: Commenters also requested clarity regarding the role of Local WDB members in delivering training and career services but offered no suggested language changes.

Department Response: Paragraph (d) of § 679.410 provides language that extends the Local WDB limitations outlined in § 679.410(c) to Local WDB staff. No change to the regulatory text was made in response to these comments.

Training Services Provider (§ 679.410(c))

WIOA sec. 107(g)(B) outlines a waiver process for Local WDBs to offer training services. Local WDBs wanting to offer training services, such as GED, are required to apply to the Governor for a waiver and meet the waiver restrictions outlined in WIOA sec. 107(g)(1) and § 679.410(c).

Comments: Commenters asked for clarification regarding the penalties for violating this provision.

Department Response: WIOA sec. 183 requires the Governor to monitor all locals and lays out the course of action for any deficiencies that are not corrected such as corrective action, sanctions, and reorganizing the Local WDB. Entities that do not comply are subject to appropriate administrative and fiscal actions, which may include revocation of the waiver as described in WIOA sec. 107. No change to the regulatory text was made in response to these comments.

Section 679.420 What are the functions of the local fiscal agent?

Comments: The Department requested comment on § 679.420 which addresses the roles of the local fiscal agent. Many commenters agreed with the regulation as proposed while others provided recommendations for expanding the role and suggested changes to the regulatory text to include requiring the permissible functions in § 679.420(c). Other commenters requested additional guidance on specific concerns such as fees, policy development, clarification on entities that may act as a fiscal agent, and the role of the CEO. Noting that most commenters agreed with the fiscal agent role set forth in the proposed regulatory text, the Department made no changes to the fiscal agent functions under § 679.420.

One commenter said that that the definition of fiscal agent conflicts with § 681.400.

Department Response: The Department disagrees that the two regulatory sections are in conflict. Paragraph (b) of § 679.420 provides a list of the key functions of a fiscal agent. The appropriate role of fiscal agent is limited to accounting and funds management functions rather than policy or service delivery. Section 681.400 provides that the local grant recipient may directly provide youth services. Entities serving multiple roles must adhere to WIOA title I, subtitle E (Administration) and § 679.430 to ensure appropriate firewalls within a single entity performing multiple functions, including when a fiscal agent also functions as a direct provider of services. No change to the regulatory text was made in response to these comments.

Section 679.430 How do entities performing multiple functions in a local area demonstrate internal controls and prevent conflict of interest?

Proposed 20 CFR 679.430 specified that a written agreement with the Local WDB and CEO is required when a single entity operates in more than one of the following roles: Local fiscal agent, Local WDB staff, one-stop operator, or direct provider of career services or training services.

Comments: Several commenters requested clarification regarding how various entities should function in multiple roles.

Department Response: This section requires a written agreement with the Local WDB and chief elected official when a single entity operates in more than one of the specified roles, but does not dictate the specific contents of the agreement, because the regulation cannot account for each individual Local WDB situation. However, the agreement must demonstrate how the organization will carry out its responsibilities while in compliance with WIOA and corresponding regulations, relevant Office of Management and Budget (OMB) circulars, the Uniform Guidance, and the State's conflict of interest policy. While it may be appropriate in some instances for a single organization to fulfill multiple roles, a written agreement between the Local WDB, chief elected official, and the organization fulfilling multiple roles is the best method to limit conflicts of interest or the appearance of conflicts of interest, minimize fiscal risk, and develop appropriate firewalls within a single entity performing multiple functions. Because the regulation must be adaptable to a variety of potential situations, the Department has determined that no regulatory change is appropriate in this section and no change to the regulatory text was made in response to these comments. However, to clarify the multiple roles this section is addressing, the regulatory text was revised to refer to "the direct provider of services" instead of "the direct provider of career and training services" in order to include cases where the entity may be directly providing youth services under WIOA.

Other Comments on Local Workforce Development Boards

Comments: A commenter expressed its support for all of the proposed part 679, subpart C, regulations. Multiple commenters said that Local WDBs should have more flexibility in the time allowable to become compliant with Federal and State laws during the program year 2015–2016.

Department Response: Regarding timelines, the Department agrees that clarification of the expectation for the process is needed and will add § 679.500(c), which requires the Governor to establish and disseminate a policy for the submission of local and regional plans.

Comments: One commenter asserted that the regulations are missing the vital role of a "system coordinator" that is truly necessary in complex areas like large metropolitan cities. The commenter described three options for designating a "system coordinator" that it asserted would maintain the Local WDB's authority to establish a vision for the local workforce development system, recognize the diversity in models for implementing WIOA, and maintain a competition to ensure the highest quality providers are selected to operate one-stop centers. These options were described as (1) the Local WDB taking on the role of system coordinator (provided it competitively selected one-stop operators per WIOA sec. 121(d)); (2) the Local WDB could, with agreement of the CEO, designate a local public agency or non-profit organization as the system coordinator (provided it competitively selected one-stop operators); or (3) a single one-stop operator could still play this role.

Department Response: WIOA does not define or otherwise reference a role for a system coordinator. WIOA secs. 101 and 107 allow Boards to hire staff for the purposes of assisting in carrying out the Board required functions. The local option to create a role of a system coordinator is already covered in the Boards' authority to hire staff. No change to the regulatory text was made in response to these comments.

4. Subpart D—Regional and Local Plan

Title 20 CFR 679.500 describes the purpose of the regional and local plans; WIOA provides designated regions and local workforce areas the responsibility and opportunity to develop employment and training systems tailored specifically to regional economies. These systems must meet the needs of the full range of learners and workers, including those with barriers to employment. The system must also address the specific needs of regional employers and the skills they require.

WIOA requires the Local WDB, in partnership with the CEO, to submit a local plan to the Governor. If the local area is part of a planning region, the Local WDB will submit its local plan as part of the regional plan and will not submit a separate local plan. The local or regional plan provides the framework for local areas to define how their workforce development systems will achieve the purposes of WIOA. The regional or local plans serve as 4-year action plans to develop, align, and integrate the region and local area's job driven workforce development systems, and provides the platform to achieve the local area's visions and strategic and operational goals. Since the local plan is only as effective as the partnerships that operationalize it, it must represent a collaborative process among local elected officials, boards, and required and other partners (including economic development, education, and private sector partners) to create a shared understanding of the local area's workforce investment needs, a shared vision of how the workforce development system can be designed to meet those needs, and agreement on the key strategies to realize this vision. The Department received comments on the purpose, the content, and the structure of regional and local plans. In this subpart the Department addresses comments regarding how regions can be aligned.

Section 679.500 What is the purpose of the regional and local plan?

WIOA sec. 106(c) addresses regional coordination and regional plans are addressed in WIOA sec. 106(c)(2). In accordance with WIOA sec. 106(c), § 679.500 describes the purpose of the regional and local plans.

Comments: Commenters provided feedback for the content of the regional plan, expressed concern about the challenges of coordination, requested additional guidance on plan development, and asked for clarity regarding plan development and submission.

Department Response: The Department has issued some guidance on planning and anticipates issuing additional guidance on planning to the public workforce system. Regarding timelines, the Department agrees that clarification of the expectation for the process is needed and has added § 679.500(c), which requires the Governor to establish and disseminate a policy for the submission of local and regional plans.

Section 679.510 What are the requirements for regional planning?

Participation in a Regional Planning Process (§ 679.510(a)(1))

WIOA sec. 106(c) governs regional coordination and regional planning requirements, which are clarified in § 679.510.

Comments: A commenter asked which local area within a region would be responsible for the performance negotiation process.

Department Response: The representatives of each local area in the region are collectively responsible for the process. Establishing an agreement among the Local WDBs and local CEOs in the region concerning how the planning region will collectively negotiate and reach agreement with the Governor on local levels of performance for, and report on, the performance accountability measures is required by WIOA sec. 116(c)(1)(H) and § 679.510(a)(1)(viii). No change to the regulatory text was made in response to these comments.

Preparation, Submittal, and Approval of Regional Plans (§ 679.510(a)(2))

Comments: Commenters have suggested that a single local area could elect to participate in multiple planning regions through a memorandum of agreement.

Department Response: In accordance with WIOA sec. 106, a single local area may not be split across two planning regions. Local areas must align with planning regions to align economic and workforce development activities and resources effectively. Local areas may be part of only one region. However, local areas are not prohibited from working or coordinating with other local areas, and regions may coordinate with other planning regions. Similarly, where a single local area is identified as a region, such a local area could reasonably coordinate with other local areas or planning regions. Coordination may be especially vital across States; the Department anticipates providing additional guidance regarding the creation and management of interstate planning regions. As the regulation aligns with WIOA and does not prohibit coordination, no change to the regulatory text was made in response to these comments.

Comments: A commenter asked how the plans are to be submitted.

Department Response: The plans must be submitted to the Governor as outlined in § 679.510(a)(2) and any guidance issued by the Department (§ 679.510(a)(1)(i)).

Other Requirements for Regional Planning (§ 679.510(b), (c), and (d))

Comments: Commenters suggested specific content for the regional plan including how the region coordinates core program services, economic development strategies, education attainment, credentialing of workforce skills to meet employer skill needs, and data regarding participants with disabilities.

Department Response: WIOA sec. 106(c)(2) and § 679.510 describe the requirements for regional planning, which already address the region's service strategies, regional labor market data, coordination efforts, etc. The Department plans to issue further guidance.

Section 679.520 What are the requirements for approval of a regional plan?

Section 679.520 describes the regional plan approval process.

Comments: The Department received comments regarding the timelines, including suggestions that the timeline for approval in § 679.520 of "90 days after submission" is inconsistent with WIOA sec. 108(e), which says the plan "shall be considered to be approved by the Governor at the end of the 90-day period beginning on the day the Governor receives the plan."

Department Response: The Department agrees that 90-day period should be revised to track WIOA and has amended both §§ 679.520 and 679.570 to reflect the statutory language of 90 days after receipt of the local plan.

Section 679.530 When must the regional plan be modified?

Title 20 CFR 679.530 describes when a regional plan must be modified and § 679.580 requires the Governor to establish procedures governing local plan review and modification to ensure that the biennial review and modification of local plans is conducted consistently throughout the State. The circumstances identified in § 679.530(b)(1) and (2) identify the significant changes that require modification but the Governor may require other factors. While sec. 106(c) of WIOA clearly describes the required contents of the regional plan, it provides less detail about the approval and modification process, saying only that officials in the planning region must "prepare, submit, and obtain approval" of the plan.

Comments: Commenters requested that the language in this section and of § 679.580 be narrowed to specify that modifications are required only in response to "changes to local economic conditions, and any changes in the financing available" to allow regions more flexibility.

Department Response: Because the local plan is a component of the regional plan, the Department decided to apply the approval and modification requirements to the regional plan, which are reflected in § 679.530(b)(2), and which require modification based on "other factors affecting the implementation of the local plan, including but not limited to changes in the financing available to support WIOA title I and partner-provided WIOA services." In the Department's view, ensuring that regional and local plans remain up-to-date and relevant, and ensuring consistency between regional and local plan requirements, will improve the effectiveness of the public workforce system. No change to the regulatory text was made in response to these comments.

Section 679.540 How are local planning requirements reflected in a regional plan?

Title 20 CFR 679.540 outlines how local planning requirements are reflected in a regional plan. WIOA is silent on the coordination of the regional and local plan, noting only that the regional plan must "incorporate local plans for each of the local areas in the planning region." The Department has determined that the most appropriate and least burdensome approach to implementing this provision is to include a copy of each local plan within the regional plan to accompany the plan's discussion of regional strategies. In this arrangement, the regional plan is completed in cooperation with the Local WDBs and CEOs in a planning region, per § 679.510(a). Each individual Local WDB and CEO will respond to the local planning requirements at § 679.560(b) through (e) individually. The Local WDBs and CEOs in a planning region must cooperate to develop a common response to the local planning requirements that discuss regional labor market information, as required by § 679.540(a), and any other appropriate requirements permitted by the Governor per § 679.540(b). When these activities are completed, the planning region submits one regional plan to the Governor that includes the common discussion of regional labor market information and other requirements as required by the Governor, as well as each local plan in a single document.

Comments: A commenter asked the Department to clarify if regions had to submit all of the separate local plans that are encompassed in the regional plan.

Department Response: WIOA sec. 106(c)(2) requires the regional plan to incorporate local plans for each of the local areas in the planning region. As described above, the Department has determined that the most appropriate and least burdensome approach to implementing this provision is to include a copy of each local plan within the regional plan to accompany the plan's discussion of regional strategies. No change to the regulatory text was made in response to these comments.

Section 679.550 What are the requirements for the development of the local plan?

Title 20 CFR 679.550 explains the requirements for the development of the local plan. This section emphasizes the importance of collaboration and transparency in the development and submission of the local plan and subsequent modifications.

Comments: A commenter requested clarification regarding when it was necessary for a local area to submit a local plan.

Department Response: Paragraph (a) of § 679.550 implements sec. 108(a) of WIOA and describes the general requirements for the preparation and content of the local plan. If the local area is part of a planning region, the Local WDB must comply with WIOA sec. 106(c) and §§ 679.510 through 679.540 in the preparation and submission of a regional plan. The local plan is considered submitted when it is incorporated in the regional plan.

Comments: Other commenters asked if the terms plan, the local plan, or the local workforce investment plan are synonymous and recommended consistency be used throughout the regulation.

Department Response: The Department used all terms to refer to the local plan required in WIOA sec. 108 and refers to the local plan in the regulations.

Section 679.560 What are the contents of the local plan?

Contents of a Local Plan

Title 20 CFR 679.560 is consistent with sec. 108(b) of WIOA and outlines the information that must be included in the local plan. These requirements set the foundation for WIOA principles, by fostering strategic alignment, improving service integration, and ensuring that the public workforce system is industry-relevant, responding to the economic needs of the local area and matching employers with skilled workers.

Comments: The Department received comments supporting the proposed section, and some recommending changes to the content of the local plan, as well as comments requesting additional guidance.

Department Response: The Department has determined it is appropriate for § 679.560 to track closely with WIOA sec. 108(b), which outlines the content requirements of the local plan. No changes were made to the regulatory text in response to these comments. The Department recognizes the need for technical assistance in developing local plans and will issue guidance for State and Local WDBs to assist in developing compliant plans.

Local Levels of Performance

Title 20 CFR 679.560(b)(4) explains that the Local WDB must describe how it will coordinate local workforce investment activities with regional economic development activities that are carried out in the local area and promote entrepreneurial skills training and microenterprise services.

Comments: Commenters requested additional information on performance criteria for the ETPL and "microenterprise development."

Department Response: Alignment between the public workforce system and local economic development activities is critical in order to identify and fulfill industry talent needs by training customers for emerging and in demand job skills. Furthermore, microenterprise development refers to training for the purposes of self-employment. This training strategy may be appropriate for individuals or participants with multiple barriers to employment, including persons with disabilities.

Title 20 CFR 679.560(b)(5) focuses on the delivery of services through the one-stop delivery system in the local area and requires descriptions regarding how the Local WDB will ensure the continuous improvement of eligible providers of services—see part 680, subpart D, for additional information on the requirements of the eligible training provider list.

Comments: Other commenters suggested that regulations detail the timeline for performance negotiations related to local plan submission.

Department Response: The Department agrees that clarification is needed and has added § 679.500(c), which requires the Governor to establish and disseminate a policy for the submission of local, and regional plans. This policy must account for the requirement that local areas in a region reach agreement on how they will negotiate performance indicators with the Governor, as provided in § 679.510(a)(1)(viii).

Priority of Service (§ 679.560(b)(21))

Comments: Commenters requested additional clarification on the implementation of priority of service, and recommended methods to ensure consistent implementation.

Department Response: Title 20 CFR 679.560(b)(21) requires that the plan include description of the process by which priority of service must be applied by the one-stop operator, but also clarifies that such priority is for adult career and training services and must be given to recipients of public assistance, other low-income individuals, and individuals who are basic skills deficient. Including the priority service policy in the local plan will help ensure a more uniform application of the policy throughout the local area. The Department has issued some guidance on planning and anticipates issuing additional guidance for State and Local WDBs to assist in developing compliant plans; no change to the regulatory text was made in response to these comments.

Comments: A commenter suggested that the WIOA system should provide program participants with access to curriculum-aligned industry-recognized certificates verifying attainment of the critical skills that employers are looking for, so that when opportunities open up, the match between job seeker and employment can be accelerated and career pathways can be illuminated.

Department Response: Title 20 CFR 679.560(b)(2) requires that the Local WDB describe how such alignment will improve access to services and to activities that lead to a recognized postsecondary credential. The Local WDBs have the flexibility to consider many options; the Department declines to require a specific approach. However, the Department recognizes the need for technical assistance in developing local plans and will issue planning guidance for State and Local WDBs to assist in developing compliant plans. No change to the regulatory text was made in response to these comments.

Other Comments on Local Plans

Comments: A commenter suggested deleting § 679.560(b)(17) regarding becoming or remaining a high-performing Board.

Department Response: The Department has determined that the requirement is consistent with WIOA sec. 108(b)(18) and has made no changes to the regulatory text in response to this comment.

Comments: The Department received several comments regarding § 679.560(b)(20) regarding the requirement that a local plan include a description of how one-stop centers are implementing and transitioning to an integrated, technology-enabled intake and case management information system for programs carried out under WIOA and by one-stop operators. Commenters had specific questions regarding how such a system is to be implemented.

Department Response: Paragraph (b)(20) of § 679.560 reflects WIOA sec. 108(b)(21). There is a requirement that the plan detail the actions that will be taken but there is no mandate in this section of a particular approach. No change to the regulatory text was made in response to these comments.

Section 679.570 What are the requirements for approval of a local plan?

Overarching Comments on the Approval of a Local Plan Timeline for Approval and Implementation

The Department recognizes that the development of the local plan is dependent on several other essential State and local WIOA implementation activities and that local areas may not be able to respond fully to each of the required elements of the local plan in the timeframe provided. The Department sought comment on the scope of the challenges local areas may face regarding regional and local planning and potential actions that the Department can take to help local areas address these challenges.

Comments: Several commenters requested that the amount of time be extended for both existing local plans that are already compliant with the initial designation criteria and local plans for new areas or regions. Commenters suggested that local plans be due 6 to 9 months after the State Plans are approved. Many commenters expressed concerns about the timeline in developing and submitting all plans. Several suggested timelines that should be regulated. Other commenters suggested that regulations detail the timeline for performance negotiations related to plan submission.

Department Response: Title 20 CFR 679.570 implements WIOA sec. 108(e). Paragraph (a) of § 679.570 requires that the Governor review completed plans and stipulates that unless the Governor determines that the plan is deficient according to paragraphs (a)(1) through (3), the plan will be considered approved 90 days after the Governor receives the plan. The Department made a clarifying edit to paragraph (a) so that

it is clear the 90-day time period begins when the Governor receives the plan, rather than at submission. The Department also edited paragraph (a)(2) to update the citation to the regulation that implements WIOA sec. 188. Regarding timelines, the Department agrees that clarification of the expectation for the process is needed and, as described above, has added paragraph (c) to § 679.500, which requires the Governor to establish and disseminate a policy for the submission of local and regional plans.

With Training and Employment Guidance Letter No. 14–15, "*Workforce Innovation and Opportunity Act (WIOA) Requirements for Unified and Combined State Plans,*" dated March 4, 2016, and the WIOA State Plan ICR, published under OMB control number 1205–0522, the Department issued guidance on and requirements for Unified and Combined State Plans. The Department also intends to issue guidance or technical assistance on local and regional planning. Section 679.570 aligns with WIOA sec. 108, and the changes described above address the commenters' concerns. No additional change to the regulatory text was made in response to these comments.

Paragraph (b) of § 679.570 outlines the processes, roles, and responsibilities in the local plan process for situations in which the State is a single local area. Paragraph (b)(1) clarifies the State must incorporate the local plan in the State's Unified or Combined State Plan submitted to the Department. Paragraph (b)(2) states that the Secretary of Labor will perform the roles assigned to the Governor as they relate to local planning activities and § 679.570(b)(3) indicates the Secretary of Labor will issue planning guidance for single-area States.

Comments: Commenters asked why the Secretary of Labor would be performing the Governor's role, what those planning activities are, and if the Secretary of Labor should be limited to approving local plans.

Department Response: Single-area States are required to submit the plan to the Secretary of Labor under WIOA sec. 108. The Secretary will perform the Governor's role in local planning as outlined in WIOA sec. 108(a) and (e) regarding plan submission and approval. Section 679.570 aligns with WIOA sec. 108 and the Final Rule makes no change to § 679.570(b) in response to these comments.

Section 679.580 When must the local plan be modified?

Title 20 CFR 679.580 is consistent with WIOA sec. 108(a), which requires the Governor to establish procedures governing local plan review and modification to ensure that the biennial review and modification of local plans is conducted consistently throughout the State. Paragraph (b) of § 679.580 explains that the Local WDB and appropriate CEOs must review the local plan every 2 years and submit a modification as needed, based on significant changes in labor market and economic conditions and other factors including changes to local economic conditions, changes in the financing available to support WIOA title I and partner-provided WIOA services, changes to the Local WDB structure, or a need to revise strategies to meet performance goals.

Comments: A commenter recommended that modifications be limited to only substantive changes or as required by the State WDB. Other commenters requested guidance that included examples of changes warranting a local plan modification.

Department Response: As outlined in § 679.580, the Governor is required to establish procedures governing local plan review and modification. The Governor has the flexibility to further define the criteria under § 679.580(b) that require a modification to the local plan. The Department does not agree that additional language is needed to require additional modification requirements. Moreover, as described in the discussion of regional plan modification in § 679.530, in the Department's view, ensuring that local and regional plans remain up-to-date and relevant, and ensuring consistency between local and regional plan requirements, will improve the effectiveness of the public workforce system. The Department declines to change the modification requirements and has made no changes to the regulatory text in response to these comments.

5. Subpart E—Waivers/WorkFlex (Workforce Flexibility Plan)

This subpart describes the statutory and regulatory waiver authority provided by WIOA sec. 189(i), and the requirements for submitting a Workforce Flexibility Plan under WIOA sec. 190. The Department addresses comments regarding the purpose of the waiver authority in WIOA, and the circumstances under which a waiver may apply.

WIOA provides States the flexibility to request a waiver of program requirements in order to implement new strategic goals for the improvement of the statewide workforce development system and to provide better customer service in exchange for accountability for expected programmatic outcomes. A Workforce Flexibility plan provides additional flexibility to the State. In general, a State with an approved Workforce Flexibility plan is given the authority to identify local level provisions to waive without further approval from the Secretary of Labor to achieve outcomes specified in the plan. A description of what provisions of WIOA and the Wagner-Peyser Act may and may not be waived is included, along with an explanation of the procedures for requesting a waiver. The subpart also describes what may and may not be waived under a Workforce Flexibility Plan, and the procedures for obtaining approval of a plan. The WIOA requirements for obtaining approval for a waiver or Workforce Flexibility Plan are similar to those in WIA secs. 189(i) and 192, respectively; therefore, many of the proposed regulations are the same as the regulations implementing WIA. No changes have been made to regulatory text in response to these comments.

Section 679.610 What provisions of the Workforce Innovation and Opportunity Act and the Wagner-Peyser Act may be waived, and what provisions may not be waived?

WIOA sec. 189(i)(3)(A)(i) establishes the limitations of the Secretary's general waiver authority for WIOA title I, subtitles A, B, and E. As described in the regulation, the Secretary is statutorily prohibited from waiving any provisions related to the following:

- Wage and labor standards;
- Non-displacement protections;
- Worker rights;
- Participation and protection of workers and participants;
- Grievance procedures and judicial review;
- Nondiscrimination;
- Allocation of funds to local areas;
- Eligibility of providers or participants;
- The establishment and functions of local areas and Local WDBs;
- Procedures for review and approval of State and local plans;
- The funding of infrastructure costs for one-stop centers; and
- Other requirements relating to the basic purposes of title I of WIOA described in § 675.100 of this chapter.

Comments: A commenter suggested that the Department consider waivers of some of these provisions to the extent that they enhance wage and labor standards and non-displacement protections.

Department Response: The Department does not have the authority to approve waivers that are prohibited

by statute and no change to the regulatory text was made in response to this comment.

Section 679.620 Under what conditions may a Governor request, and the Secretary approve, a general waiver of statutory or regulatory requirements under the Workforce Innovation and Opportunity Act?

Title 20 CFR 679.620(a) through (f) implements WIOA sec. 189(i)(3) and describes the conditions under which a Governor may request, and the Secretary may approve a waiver of statutory or regulatory requirements. Title 20 CFR 679.620(a) explains that the Secretary will issue guidelines on waiving WIOA and Wagner-Peyser requirements. States will be required to follow the Secretary's guidelines, which supplement the requirements listed in 20 CFR 679.600 through 679.620.

Comments: A commenter asked for more clarification regarding what the most recent data are that would be required to grant a waiver renewal, as required by proposed § 679.620(d)(7).

Department Response: In general, the Department has not required specific data sources when requesting a waiver under WIA or WIOA. The Governor has the discretion to use the data source or sources that most effectively demonstrates the need and/or benefit of the requested waiver. The Department has made no changes to the regulatory text in response to this comment.

Comments: A commenter asked if existing WIA waivers that are approved to run past 2015 will be applicable under WIOA, and suggested that they remain in effect through the original period for which they were approved. With regard to the WIOA transition period, one commenter supported the current continuation of waivers as granted. Other commenters recommended the continuation of existing waivers until the WIOA State Plan is approved. Regarding States with existing WIA waivers, one commenter recommended that the Department allow such States to keep this flexibility until either the Federal government provides additional time or resources necessary for implementation of WIOA's new requirements, or the States provide evidence that they are prepared to implement the additional requirements.

Department Response: The Department issued TEGL No. 01–15 ("*Guidance Regarding the Impact of Workforce Innovation and Opportunity Act Implementation on Waivers Under the Workforce Investment Act*"), which addresses the status of waivers during program year 2015 and communicates the Department's position on waivers under WIOA. This guidance includes an attachment that discusses whether each waiver type will be continued into WIOA, as well as those that expired effective July 1, 2015. No change to the regulatory text was made in response to these comments.

Section 679.630 Under what conditions may the Governor submit a Workforce Flexibility Plan?

Comments: One commenter expressed support for the language in this section that prohibits the waiver of certain requirements related to labor standards and worker protections.

Department Response: WIOA sec. 189(i)(3)(A)(i) and (ii) describe the statutory limitations to the Secretary's WIOA title I and Wagner-Peyser waiver authority. These prohibitions include any statutory provisions related to labor standards or worker rights. No change to the regulatory text was made in response to this comment.

Other Comments on Waivers/Work-Flex

Comments: One commenter expressed support for the proposed language in part 679 subpart E regarding waivers and Work-Flex.

To assist employers and job seekers best, one commenter requested that the Department offer waivers whenever possible. A State agency suggested that the Department add waiver provisions to the Final Rule regarding the application for continued eligibility of ETPs and to the internal control policy requirement provided that a written agreement pursuant to proposed § 679.430 is in place.

Department Response: Specific waiver requests must be requested through the waiver process. The Department declines to make changes to identify specific waivers in the regulatory text.

6. Other Comments on Statewide and Local WIOA Governance

Comments: With regard to the alignment of title I and title II services to improve services for immigrant and LEP individuals, multiple commenters recommended that the Department provide additional guidance to States and localities (whether through regulations or policy directive) that allows for differing eligibility criteria across the titles and encourages States and localities to align services without precluding participation by individuals who may be eligible for services under one title but not another. Another commenter stressed the importance of aiding immigrant and refugee communities and asked that the Department include reference to the need for expertise in serving linguistically and culturally diverse populations in its discussion of part 679.

One commenter expressed its concern about the challenge of meeting all WIOA requirements by July 1, 2015, particularly considering the late issuance of the WIOA regulations.

Department Response: While the Department acknowledges the need to be sensitive to the employment and training needs of immigrant and LEP individuals, WIOA sec. 189(i)(3)(A)(i) prohibits the Department from waiving or otherwise altering eligibility criteria. No change to the regulatory text was made in response to these comments.

The Department acknowledges the challenges inherent in implementing WIOA in the absence of a Final Rule. The Department issued Operating Guidance documents to inform the public workforce system how to comply with WIOA statutory requirements. The Operating Guidance provided a framework for program activities while regulations were finalized.

Comments: Explaining that its local areas have utilized funding to serve customers in their jurisdiction only, one commenter asked whether the State can set policy to allow a broader use of funds under WIOA. In addition, this commenter asked whether, if State agencies grant adult education programs to local areas, the infrastructure costs should come from the local vendor or the State.

Department Response: States have authority to set policy that is consistent with WIOA. The Department has determined that the State is in the best position to develop policy regarding allocating scarce Federal funds; the Department has not made changes to the regulatory text in response to this comment. Further, all funds must expended in accordance with the Uniform Guidance regulations and WIOA subtitle E (Administration). TEGL No. 15–14 ("*Implementation of the New Uniform Guidance Regulations*") provides additional information on implementing the Uniform Guidance.

Comments: One commenter suggested that Local WDBs should remain responsible for operation of local/regional workforce programs representing business sectors in their communities and that it is a conflict of interest for State governments to receive funding, develop and operate programs, and monitor and evaluate programs. This commenter asserted that State-operated workforce programs are primarily budget-driven, rather than customer-driven, with primarily digital service structures that leave individuals

in rural communities lacking internet, transportation, and skills without access to services.

Department Response: Section 679.100 implements WIOA sec. 101 and outlines the vision and purpose of the State WDB. Section 679.130 implements WIOA sec. 101(d) and describes the roles and functions of the State WDB. The State WDB's purpose, as outlined in WIOA sec. 101 and § 679.100, is to convene State, regional, and local workforce system, and partners to align and improve the outcomes and effectiveness of Federally funded and other workforce programs and investments. Section 679.300 implements WIOA sec. 107 and explains the purpose of the Local WDB. In accordance with the functions of the Local WDB outlined in WIOA sec. 107(d), § 679.300(b)(1) includes the function of providing strategic and operational oversight in collaboration with required and other partners to help the workforce development system achieve the purposes outlined in WIOA sec. 2, and assist in the achievement of the State's strategic and operational vision and goals outlined in the State Plan. Paragraphs (b)(2) and (3) of § 679.300 require the Local WDB to assist in the achievement of the State's strategic and operational vision and goals as outlined in the Unified State Plan or Combined State Plan, and to maximize and continue to improve the quality of services, customer satisfaction, and effectiveness of the services provided.

D. Part 680—Adult and Dislocated Worker Activities Under Title I of the Workforce Innovation and Opportunity Act

1. Introduction

In this part of the Final Rule, the Department describes requirements relating to the services that are available for adults and dislocated workers under WIOA. Adult services are provided to help job seekers who are at least 18 years old succeed in the labor market. WIOA establishes a priority in the adult program for serving low-income individuals, recipients of public assistance, and individuals lacking basic work skills. Dislocated worker services are provided to workers who have lost their job, through no fault of their own. The goal of dislocated workers services is to help these individuals obtain quality employment in in-demand industries.

Under WIOA, adults and dislocated workers may access career services and training services. WIOA provides for a public workforce system that is universally accessible, customer centered, and training that is job-driven. In this part, the Department also discusses supportive services and needs-related payments that can be provided, based on customer needs, to enable them to participate in WIOA career and training services.

The Department generally received comments that were supportive about the delivery of career and training services. It also received comments about the implementation of the statutory priority for the WIOA adult program, and how various populations, including individuals with disabilities, are able to access WIOA title I adult and dislocated worker services, which the Department has sought to clarify. In addition, the Department received comments about some of the new work-based experience and training opportunities under WIOA, including how registered apprenticeship can be utilized by the one-stop delivery system, and clarifications on transitional jobs, on-the-job training, and incumbent worker training. These comments are discussed below, in the sections corresponding to subparts A–D and F–G. The Department also received a number of comments on the Eligible Training Provider (ETP) eligibility requirements, which are discussed below under subpart D. For the comments received that pertain to the WIOA sec. 116(d)(4) ETP annual performance reports, those comments are discussed in the preamble discussion accompanying 20 CFR 677.230 (*see* Joint WIOA Final Rule published elsewhere in this issue of the **Federal Register**).

The analyses that follows provides the Department's response to public comments received on the proposed part 680 regulations. If a section is not addressed in the discussion below, it is because the public comments submitted in response to the NPRM did not substantively address that specific section and no changes have been made to the regulatory text. Further, the Department received a number of comments on this part that were outside the scope of the regulation and the Department offers no response. Lastly, the Department has made a number of non-substantive changes to correct grammatical and typographical errors to improve the readability and conform the document stylistically that are not discussed in the analysis below.

2. Subpart A—Delivery of Adult and Dislocated Worker Activities

Introduction

This subpart discusses the role of WIOA adult and dislocated worker services delivered through the one-stop delivery system. The one-stop delivery system provides universal access to career services to meet the diverse needs of adults and dislocated workers. Adult and dislocated worker programs are required partners in the one-stop delivery system and as such, grant recipients are subject to the required partner responsibilities set forth in 20 CFR 678.415 (*see* Joint WIOA Final Rule).

Career and training services, tailored to the individual needs of job seekers, form the backbone of the one-stop delivery system. While some job seekers may only need self-service or other basic career services like job listings, labor market information, labor exchange services or information about other services, some job seekers will need services that are more comprehensive and tailored to their individual career needs. These services may include comprehensive skills assessments, career planning, and development of an individual employment plan that outlines the needs and goal of successful employment. Under WIA, career services were identified as core and intensive services and participants generally would follow through each level of service to receive training eventually. WIOA provides an individual receiving services in one-stop centers the opportunity to receive the service needed to help him/her meet his/her employment and career goals. WIOA clarifies that an individual does not need to follow a fixed sequence of services that may not be necessary to meet his or her needs.

Under WIOA, the Department classifies career services into two categories: Basic and individualized career services. This grouping is not designed to create barriers to training, but rather identifies the importance that these two types of career services can have in helping individuals obtain employment. Basic career services must be made available to all job seekers and include services such as labor exchange services, labor market information, job listings, and information on partner programs. Individualized career services identified in WIOA and described in these proposed regulations are to be provided by local areas as appropriate to help individuals to obtain or retain employment. Career and training

services are more fully discussed in subparts A and B of this part.

Section 680.100 What is the role of the adult and dislocated worker programs in the one-stop delivery system?

Comments: A commenter expressed support for § 680.100 as proposed. In contrast, another commented that CEOs should not be considered one-stop partners. The commenter stated that CEOs are involved in the governance and oversight of the one-stop delivery system through the Board members that they appoint and so neither CEOs nor Board members should be involved in the operation of a one-stop delivery system.

Department Response: WIOA sec. 107 states that the CEO for the local area is the local grant recipient. WIOA sec. 107(c) provides for how CEOs are to be determined in the event that there are multiple units of local government in a workforce area. As the grant recipient for the adult and dislocated worker programs, the CEO or his/her designee is a required one-stop partner in the governance and delivery of services in the one-stop delivery system consistent with sec. 121(b)(1) of WIOA and 20 CFR part 678 (*see* Joint WIOA Final Rule). No changes have been made to the regulatory text in response to the comments.

Section 680.110 When must adults and dislocated workers be registered and considered a participant?

Comments: A one-stop center requested clarification on how registration can occur through an electronic submission. Specifically, this commenter asked whether eligibility can be determined based solely on an electronic submission. The commenter also requested clarification of the language in the preamble explaining that "minimal" assistance would trigger the need to register.

Department Response: State and local areas have the discretion to determine appropriate intake methods, which may include electronic and virtual means. Additionally, a service being provided to an individual electronically or virtually can be sufficient for the individual to be considered a "participant," provided it meets the standards of the definition provided at 20 CFR 677.150(a) (*see* Joint WIOA Final Rule).

Comments: A few commenters agreed with the way in which the NPRM described participation for adult and dislocated worker involvement with WIOA services. Specifically, several commenter suggested that self-service and information service should be included as participation for the purposes of registering a person to measure performance.

In contrast, several commenters disagreed with the proposed approach to describing participant or participation. A few commenters said that "participant" was described too narrowly, cautioning that the NPRM could lead to denial of services for individuals in need of assistance. Some commenters recommended revisions to § 680.110(a) to describe a "participant" by referencing 20 CFR 677.150 rather than limiting it to those individuals who receive staff-assisted services (*see* Joint WIOA Final Rule). One commenter expressed support for this revision, explaining that removal of minimally assisted customers from metrics would potentially reduce investments in resource rooms, a self-service facility that provides job seekers internet-based job search opportunities that are required by today's employer.

Additionally, several commenters recommended revisions to § 680.110(b) to allow for the provision of WIOA services to individuals who are not participants. In contrast, one commenter recommended that paragraph (b) more broadly define those individuals who are not required to register and be designated as participants to include individuals receiving referral services.

Another commenter requested clarification on the distinction between a "staff assisted WIOA service" and "self service and informational activities." This commenter stated that WIA regulations with similar language had caused analogous confusion. A one-stop center asked whether a basic workshop would be considered "informational services" or a career service for purposes of performance accountability. A commenter asked if there was a distinction between basic and individual career services as it relates to participation. Noting that the NPRM explicitly specifies the activities that will not count towards participation but does not specify the activities that will count, a commenter asked whether it is up to the State to determine which career services will place the individual into participation or performance calculations. Expressing confusion over the meaning of participant, a commenter requested a definition of participant, including a clear indication of whether registration or utilization of services was necessary to be considered a participant, and asked the Department to identify the term for clients that are not registered and not participants.

Several commenters stated that clarification is needed on where and when assessments and information collection efforts relevant to identify self-service individuals, reportable individuals, and participants will occur. Some commenters recommended that the Department provide a framework for how the designation of enrollment intertwines with career and training services, allowing maximum flexibility for States to design their approaches for both in-person and online services. In contrast, a commenter encouraged the Department to create a clear system that ensures a consistent approach across the States. Similarly, another commenter encouraged the Department to provide more details on the level/type of information required to be collected by individual and by required program titles to ensure data system integrity for reporting purposes.

A commenter encouraged the Department to require enrollment in WIOA title I programs to occur when an individual employment plan (IEP) is developed. A commenter recommended the point at which funds must be dedicated to the client for their employment or training needs as the appropriate trigger for enrollment.

Department Response: The Department made some non-substantive changes to align the definition of performance with 20 CFR 677.150(a)(3) (*see* Joint WIOA Final Rule). It also changed the text of § 680.110(a) to clarify when an individual is considered a "participant." The Department is providing additional clarity in guidance on what services count as self-services or information-only services and activities. Further guidance may be provided to explain which services cause an individual to be considered a "participant."

The distinction between reportable individual and participant is used for the purposes of reporting on performance, and does not have any impact on eligibility or service provision. Further information on performance is discussed in 20 CFR part 677 (*see* Joint WIOA Final Rule published in this issue of the **Federal Register**), and information on the collection and data systems is being provided through the Department's ICRs and guidance.

The Department notes that while an IEP will cause an individual to be considered a participant, there are other ways to qualify for participation because there is no sequence of services requirement in WIOA. An IEP is an individualized career service and can be provided under either title I of WIOA or under the Wagner-Peyser Act Employment Service (ES) (as amended by title III of WIOA). Individualized

career services (of which an IEP is one) may be provided with Wagner-Peyser Act funds.

Comments: A few commenters recommended that § 680.110(c) be revised to require the collection of data from only those individuals actually receiving aid, benefits, services, or training.

Department Response: The Department made a technical correction at § 680.110(c), changing "Employment Opportunity" data to "EO" data because that is the data referred to in this section as defined in 20 CFR 675.300. The collection of Equal Opportunity (EO) data on every individual who is interested in being considered for WIOA title I financially assisted aid, benefits, services, or training is necessary to ensure compliance with WIOA sec. 188. The regulations governing WIOA sec. 188 can be found at 29 CFR part 38.

The point at which an individual has indicated "interest" in WIOA title I services is within the grant recipient's discretion; however, the recipient's request for and receipt of information triggers the accompanying responsibility to collect EO data at the same time. The EO data must be maintained in a manner that allows the individuals from whom the data was collected to be identified, and that ensures confidentiality. This responsibility is separate from, and might not arise at the same point in the process as, the registration responsibility.

Section 680.120 What are the eligibility criteria for career services for adults in the adult and dislocated worker programs?

Comments: A commenter stated that there is a discrepancy between the preamble and the proposed regulation creating confusion whether individuals who are basic skills deficient also have to be low-income. Similarly, a few commenters stated that priority should be given to low-income adults and public assistance recipients and individuals who are basic skills deficient, in accordance with WIOA sec. 134(c)(3)(E). One commenter recommended that priority should also be given to adults who lack a regionally accredited secondary education diploma or high school equivalent (HSE).

A commenter stated that the change from core and intensive services to career services as in proposed § 680.120 would place a burden on States and local areas to revise policy and procedures. This commenter also requested that the Department define "basic career services" and "individualized career services" and describe when participants get placed into training.

Department Response: WIOA sec. 134(c)(3)(E) provides a statutory priority for public assistance recipients, other low-income individuals, and individuals who are basic skills deficient. The priority for these populations is not a criterion for eligibility for services under this program; rather, it is a statutory emphasis on providing individualized career services and training services to these populations under this program. The Department refers readers to § 680.600, which governs the priority provisions of the adult program. No changes have been made to the regulatory text in response to the comments.

Individuals who are basic skills deficient are to be provided priority with funds for these adult services. Basic skills deficient is defined in WIOA sec. 3(5), and an individual who lacks a secondary education diploma or HSE may qualify based on this standard. Additionally, § 680.600 provides Governors and Local WDBs with the authority to designate other priority populations. Individuals who lack a secondary education diploma or HSE could be designated by a Governor or Local WDB under that authority.

Under WIA, priority with adult funds was to be provided in the event that funding was limited; that provision was removed from WIOA. Thus, priority and the policies and procedures for determining priority are statutory requirements for the WIOA title I adult program. The Department refers a commenter to 20 CFR 678.430 for definitions of "basic career services" and "individualized career services" (*see* Joint WIOA Final Rule).

In addition, when participants are to be placed into training is a decision that must be made consistent with WIOA sec. 134(c)(3) and § 680.210.

Section 680.130 What are the eligibility criteria for career services for dislocated workers in the adult and dislocated worker programs?

Comments: Commenters requested clarification on the meaning of "unlikely to return to a previous industry or occupation," and what is meant by "unemployed as a result of general economic conditions in the community in which the individual resides or because of natural disasters."

One commenter encouraged the removal of the "unlikely to return" to their previous industry/occupation criteria from the definition of dislocated worker, because it hinders the ability to serve individuals that have been laid off or terminated.

Further, a commenter stated that the process for determining eligibility as a dislocated worker through receipt of unemployment insurance or exhaustion of unemployment insurance currently is a cumbersome process. This commenter recommended that one-stop or the ES staff have real time access to the unemployment insurance database for verification of eligibility of dislocated workers.

Department Response: WIOA defines "dislocated worker" under WIOA sec. 3(15), and requires the individual be "unlikely to return to a previous industry or occupation" under WIOA 3(15)(A)(iii). The regulation maintains this statutory definition. The Department has added regulatory text at § 680.130(b)(3) allowing for Governors and Local WDBs to establish policies and procedures for one-stop centers to use in determining when an individual is unlikely to return to his or her previous industry or occupation. Any policy or procedure must be consistent with § 680.660, which provides that separating service members meet this criterion.

The Department may utilize guidance and technical assistance to assist States and local areas in determining when an individual is "unlikely to return to a previous industry or occupation" or when an individual is "unemployed as a result of general economic conditions in the community in which the individual resides or because of natural disasters." No other changes have been made to the regulatory text in response to the comments.

Section 680.140 What Workforce Innovation and Opportunity Act title I adult and dislocated worker services are Local Workforce Development Boards required and permitted to provide?

Comments: A commenter requested a definition of how Local WDBs are allowed flexibility when providing services with adult and dislocated worker funds. This commenter also stated that there would be a burden on States to track local flexibility of funds. Another commenter asked whether subgrantees would need to report expenditures for job seeker services, employer services, or coordination activities, as listed in proposed § 680.140(b)(1) through (3).

Department Response: Section 680.140 describes the required and permissible employment and training activities with WIOA title I adult and dislocated worker funds. Paragraph (a) of § 680.140 describes the required activities a Local WDB must provide,

which includes career and training services. These services are required under WIOA sec. 134(c)(2) and (3). Paragraph (b) lists the permissible activities a Local WDB may provide. Local WDBs have discretion in what permissible activities and services they provide. All expenditures must be tracked and documented by the State and Local WDB to ensure the proper administration of these funds. No changes have been made to the regulatory text in response to the comments. Section 680.140(b) is further discussed below.

Comments: A few commenters expressed support for the various provisions within proposed § 680.140 covering services for individuals with disabilities and recommended additional language be added to the regulation to urge Local WDBs to focus their optional services on this population because these services are permissive and not mandatory. Two commenters also encouraged the Department to reference veterans' priority of service in § 680.140(a).

A couple of commenters encouraged the Department to mention bridge programs explicitly, which are programs that prepare individuals with limited academic or English skills to succeed in postsecondary education and training programs, as an acceptable activity under WIOA, and to encourage their use in the Final Rule. Another commenter recommended that referrals by one-stop centers to regionally accredited secondary-level educational programs providing entry-level workforce preparation and/or postsecondary education and training activities be included as a basic service and counseling service.

Department Response: The commenters above refer to the permissible local employment and training activities under WIOA sec. 134(d) and § 680.140(b). Paragraph (b)(1) of § 680.140 describes the permissible "job seeker services" that may be provided. The one-stop delivery system plays a vital role in providing career and training services to individuals with disabilities, as well as the customer supports that may be provided to help individuals with disabilities to navigate multiple services. The Department understands the commenters' desire to make these services to individuals with disabilities mandatory; however, WIOA states that these are permissible activities under WIOA sec. 134(d). The Department does encourage Local WDBs to provide these services for individuals with disabilities, veterans, and other individuals with barriers to employment. No changes have been made to the regulatory text in response to the comments for § 680.140(b)(1)(i) through (iv). The citation to transitional jobs at § 680.190 has been moved from § 680.830 to reflect the Department's position that transitional jobs are a type of work experience, and thus a career service.

Regarding the reference to veterans' priority of service, the regulation at § 680.650 ensures priority of service for veterans in all Department-funded employment and training programs.

The Department notes bridge programs may be an appropriate activity for individuals to obtain meaningful employment; however, bridge programs are not discussed in WIOA and are not included in the regulatory text.

Comments: A commenter recommended that career services for self-employed adults and dislocated workers be defined to include industry sector and/or entrepreneurship training for individuals who wish to remain self-employed.

Department Response: The Department does not propose to mandate any particular career services for self-employed adults and dislocated workers; these decisions are best made locally based on individual need. Decision-making about career and other services and training should be informed by information about in-demand industry sectors and occupations. The Department notes that entrepreneurship training is allowed for adults and dislocated workers under WIOA sec. 134(c)(3)(D).

Comments: A commenter requested clarification regarding employer services and the relationship to career services provided to job seekers versus employer services provided to businesses. This commenter explained that services provided to employers do not appear to be considered a career service because there would be no specific job seeker to register. Furthermore, the commenter stated that delivery of employer services does not need to be procured for a one-stop center, but can be designated by the local elected officials.

Several commenters recommended that to serve both job seekers and employers effectively, the role of business services outreach staff should, in addition to supporting the priorities of the Local WDB, be focused on the goals of the individual WIOA titles. One commenter sought clarification on whether custom training, on-the-job training (OJT), and incumbent worker training were acceptable services to be offered under the business services function. This commenter also urged the Department to clarify the regulations to make clear that the operation of business services by the Local WDB itself and its staff are acceptable.

A commenter encouraged the Department to define "employment generating activities," which are prohibited by the proposed regulation.

Department Response: Business and employer services are a permissible local activity under § 680.140(b)(2); services to employers are not considered a career service that is a required activity under § 680.140(a). No changes have been made to the regulatory text in response to the comments at § 680.140(b)(2).

The Department acknowledges the comments about defining "employment generating activities," and has addressed them in § 683.245 of the preamble and regulations. The Department notes that employer services described in § 680.140(b)(2) must not be used to encourage business relocation to the local area from another State or local area.

Comments: One commenter stated that it would be very difficult, if not impossible, to determine accurately when implementing a pay-for-performance training contract the amount of administrative funds that were spent on this specific activity because administrative funds may be pooled and that pooling includes the youth program. This commenter asserted a similar concern for percentage limitations associated with incumbent worker training (§ 680.800), transitional jobs (§ 680.820 in the NPRM; § 680.195 in this Final Rule), and work experience activities in the youth program (§ 681.590).

Department Response: WIOA allows Local WDBs to set aside and use up to 10 percent of their adult and dislocated worker funds on WIOA Pay-for-Performance contract strategies (see WIOA sec. 134(d)(1)(A)(iii) and § 683.500), up to 20 percent on incumbent worker training (see WIOA sec. 134(d)(4)), and up to 10 percent on transitional jobs (see WIOA sec. 134(d)(5)). See also § 680.140(b)(1)(v), (b)(4), and (b)(8). Administrative activities necessary to initiate or procure Pay-for-Performance contract strategies, incumbent worker training, and transitional jobs must be consistent with § 683.215, which discusses how to determine whether an activity is administrative or programmatic for purposes of WIOA. If the activity would be considered programmatic under § 683.215, then the cost would be subject to the caps discussed above. If the activity would be considered administrative under § 683.215, it may be paid for out of the Boards' usual

administrative funds, and it is not subject to the caps. Therefore, the Board would not need to specifically account how much of the administrative funds are spent on these particular programs.

Section 680.150 What career services must be provided to adults and dislocated workers?

Comments: A commenter stated that the definition of career services should be clarified to include pre-screening, application assistance, and colocation of application assistance services for the programs for which career services one-stop centers must provide information and referrals.

Another commenter recommended that referrals to regionally accredited secondary-level educational programs providing entry-level workforce preparation and/or postsecondary education and training activities be included as part of basic services and counseling services. A commenter requested clarification regarding whether alternative secondary school (formerly General Education Diploma [GED]) preparation is considered a career service or a training service.

One commenter recommended that § 680.150(c) be revised to refer to activities provided for a "participant" and not a "registered participant" to avoid confusion resulting from "registrants" and "participants" being two separately defined terms. Another suggested that the Department revise the regulations to allow participants to opt out of follow-up services, as was allowed under the WIA regulations. A few commenters requested clarification on the meaning of "follow up services as appropriate."

A commenter recommended that supportive services such as tools, uniforms, bus passes, or childcare, be allowed for up to 1 year after the exit date of adults or dislocated workers, saying some individuals may need a little additional help to keep a job that may not have been known when the individual initially took the job.

A commenter association recommended the addition of new paragraphs within § 680.150 to (1) specify that career services can be provided by any of the one-stop partners, as opposed to having to be provided by a WIOA title I partner; and (2) create a framework by which prior interviews, evaluations, and assessments of participants can be used for purposes of evaluating eligibility for career services.

Department Response: The Department has added "basic" before "career services" to ensure consistency with 20 CFR 678.430(a) in how these services are described (*see* Joint WIOA Final Rule). No changes have been made to the regulatory text in response to the comments at § 680.150(b).

Career services are defined in 20 CFR 678.430 (*see* Joint WIOA Final Rule) and WIOA sec. 134(c)(2). Pre-screening, application assistance, referrals, and other information all would qualify as basic career services under 20 CFR 678.430(a). Basic career services under § 680.150(a) must be made available and are key to ensuring high quality services throughout the one-stop delivery system.

The Department considers adult education and literacy activities (see WIOA sec. 3(3)) that lead to a secondary school diploma to be a training service. An entity that offers a program that leads to a secondary school diploma or its equivalent can be eligible as a State eligible training provider (ETP), see § 680.420. The Department notes, however, that if title I adult and dislocated worker funds are used for these activities, they must be done concurrently or in coordination with any training activities in WIOA sec. 134(c)(3)(D)(i)–(vii). The Department has added regulatory text to clarify this point at § 680.350.

The Department agrees with the suggestion that "registered participant" be changed to "participant" and has made this change in the regulatory text. The Department has added "as determined appropriate by the Local WDB" to proposed § 680.150(c) to clarify how the determination is made to provide follow-up services. This addition is consistent with the statutory text at section 134(c)(2)(xiii), which states that follow-up services are provided "as appropriate."

The Department declines to make any change in regulatory text to allow the provision of supportive services for adult and dislocated workers for up to a year after exit; section 134(d)(2)(A) of WIOA requires that adults and dislocated workers must be participants to receive supportive services. The Department also declines to modify the regulatory text about the provision of career services. Career services are defined in 20 CFR 678.430, which is the one-stop section of the joint regulation, and they may be provided by any partner program. The Department has decided that the use of prior interviews, evaluations, and assessments of participants for the purpose of eligibility is to be determined by State and local policies.

Section 680.160 How are career services delivered?

Comments: A few commenters expressed opposition to a requirement that Local WDBs obtain a waiver before providing career services. One of these commenters stated that the NPRM requirement that Local WDBs receive a waiver before being allowed to deliver career services would be a major change and a significant burden because getting a waiver is not an easy process. This commenter recommended that the Department provide States with an easier, quicker process for requesting waivers.

A commenter recommended that, at a minimum, a waiver request should address: (1) Why the waiver is necessary, (2) how granting the waiver would provide service to the affected area superior to that which would have been provided as the result of a competitive process; (3) why the prospective designee is the best choice as the local one-stop operator or provider of career services; and (4) what process was used in making the determination (including the specific data that supports it).

Department Response: For a Local WDB to provide career services, it must meet the requirements in WIOA sec. 107(g)(2), which allows for Local WDBs to be providers of career services of title I career services for adult and dislocated workers with the agreement of the CEO in the local area and the Governor. Although there is a waiver requirement for Local WDBs to provide training services under WIOA sec. 107(g)(1)(B) and § 679.410(c), which documents how Local WDBs may apply for a waiver with the State, there are no waiver requirements for Local WDBs to provide career services. No change is made in the regulatory text in response to these comments.

Section 680.170 What is the individual employment plan?

The Department has moved the proposed § 680.180 to § 680.170, so that the work experience regulation that was proposed as § 680.170 can be renumbered as § 680.180, closer to the transitional jobs provision at § 680.190. In § 680.170, the regulation also replaces the words "case manager" with "career planner" to be more consistent with the nomenclature used in WIOA.

Comments: A few commenters requested clarification on the role of IEPs for all services categories of individuals and programs and urged the Department to ensure consistency at the program enrollment level, including when an IEP is required to be started/

completed and some flexibility in serving the general public job seeker. Another commenter asked whether: (1) The development of an IEP requires participation under WIOA title I, (2) this service can be delivered by ES staff, or (3) this determination can be made at the local level.

Department Response: The Department strongly encourages the use of IEPs as a tool in the career planning process. However, there is no sequence of service requirement in WIOA and determining when an IEP is appropriate for individuals is a local decision. The Department encourages Local WDBs to develop policies and procedures for the appropriate use of IEPs.

An IEP is an individualized career service and can be provided under either WIOA title I or the ES (as amended by WIOA title III and as described in § 652.206), which is decided locally and is a part of the Memorandum of Understanding (MOU) governing the role of the ES in the one-stop delivery system.

Section 680.180 What is an internship or work experience for adults and dislocated workers?

The Department has moved this proposed § 680.170 to § 680.180, so that this work experience regulation is renumbered to be closer to the transitional jobs provision at § 680.190.

Comments: A commenter stated that it is important that WIOA participants who are placed in work experience or internships are fully protected by the nation's wage and hour laws and regulations. This commenter recommended that the Department revise proposed § 680.170 by deleting the language allowing for paid and unpaid work experiences and adding a cross reference to the U.S. Department of Labor Wage and Hour Division (WHD) regulations and guidance concerning unpaid internships. Similarly, a commenter requested clarification on when work experience can be unpaid, including assessment of the implications of unpaid work as a potential violation of the Fair Labor Standards Act.

Department Response: The Department notes the comments and has added language to the regulatory text stating that internships and work experiences under WIOA may be paid or unpaid, as consistent with other laws, including the Fair Labor Standards Act. The Department will continue to use guidance and technical assistance to assist grantees in determining how WIOA intersects with other laws.

Comments: A commenter encouraged the Department to maintain a broad definition of work experience that is applicable to all core programs, reasoning that work experience is an invaluable tool to engage businesses and to support job seekers in overcoming barriers by gaining experience that leads to unsubsidized employment.

Department Response: The Department agrees with the commenter's suggestion and makes no change in the regulatory text.

Comments: A commenter asked whether there were limitations on the percentage of funds to be utilized for paid work experience.

Department Response: Work experiences may be paid or unpaid, consistent with the Fair Labor Standards Act and other applicable laws. Transitional jobs is a type of paid work experience described in §§ 680.190 and 680.195. A Local WDB may use up to 10 percent of funds allocated to the local area under section 133(b) of WIOA to provide transitional jobs. (Sec. 134(d)(5) of WIOA.) Transitional jobs also are subject to certain eligibility criteria along with comprehensive career and supportive services requirements. In addition to transitional jobs, other work experiences may be paid; to be eligible for these work experiences an individual must meet adult and dislocated worker program eligibility and there is no requirement for comprehensive career and supportive services. These other types of paid work experiences are not subject to a statutory funding cap.

Comments: Another commenter encouraged the Department to allow Local WDBs to determine the appropriate timeframe for internships and/or work experience based upon multiple factors, including industry standard and/or practice and the sector-based accepted length of time needed to acquire one or more relevant skills and/or industry-recognized credentials.

Department Response: The Department has set no minimum or maximum duration requirements for work experiences. These factors may be used by Governors and Local WDBs in making such determinations.

Section 680.190 What is a transitional job?

Comments: Many commenters asked for clarification of "transitional jobs" versus "work experience;" including exceptions to the 10 percent cap on transitional jobs, the similarities between transitional jobs and work experiences, and distinctions from OJT.

Another commenter expressed concern that the distinctions between transitional jobs and OJT contracts in the NPRM are not clear enough and recommended that the Department expand on the differences in the Final Rule several ways: (1) Unlike OJT, the program provider should act as employer of record and assume all responsibilities of the employer-employee relationship; (2) transitional jobs require a 100 percent wage subsidy, while OJT subsidize up to 75 percent of wages; (3) funds for transitional jobs support all components of the service strategy; (4) transitional jobs should be targeted at those job seekers most in need of intervention; and (5) transitional jobs may be structured as offsite placements with private-sector, public-sector, or nonprofit employers or as in-house social enterprise or work crew placements.

Department Response: The Department agrees with the recommendation of some commenters and has added language to § 680.180, which defines what an internship or work experience is for adults and dislocated workers and clarifies that transitional jobs are considered to be a type of work experience. The Department also has moved proposed §§ 680.830 and 680.840 to §§ 680.190 and 680.195 respectively.

The Department agrees with the comments made about the OJT contracts, *i.e.,* that in transitional jobs programs the program provider may act as the employer of record; however, there may be a joint employment relationship between the worker, the firm in which the worker is placed, and the program provider. The Department has added regulatory text defining transitional jobs as providing an individual with work experience that takes place within the context of an employee-employer relationship, in which the program provider may act as the employer, and with an opportunity to develop important workplace skills. The Department will provide further guidance and technical assistance on transitional jobs programs, including best practices.

Comments: Some commenters asked the Department to define "inconsistent work history." One of these commenters also requested a substantive quantifiable definition of the term "chronic unemployment." One commenter requested that the Department define "transitional jobs" and asked for clarification of the required funds for career services and supportive services that must be provided with transitional jobs. A couple of commenters recommended that the Department strengthen the definition of "transitional jobs" with further guidance and technical support to States and localities. These commenters also

recommended that the Final Rule reiterate that the term means "wage-paid" subsidized employment consistent with other definitions in Federal law and agency guidance. Similarly, another commenter recommended that the Department define "transitional jobs" as "time-limited wage-paid experiences that are subsidized for individuals with barriers to employment who are chronically unemployed or have an inconsistent work history."

Department Response: The Department has decided that the definitions of "inconsistent work history" and "chronic unemployment" should be left to the Local WDBs and has added language to the regulatory text in § 680.190 to reflect this. The Department encourages Local WDBs to utilize information such as an individual's labor market history, unemployment status, durations of unemployment, long-term unemployment, and other factors that the Local WDB may determine appropriate for defining these terms. The Department has added language to better define transitional jobs, including adding the terms "time-limited" and "wage-paid" in § 680.190. WIOA requires transitional jobs to include both comprehensive and supportive services. Local WDBs determine which comprehensive and supportive services are appropriate for each individual.

Comments: One commenter recommended that the Department and the Internal Revenue Service (IRS) identify an acceptable means of paying a training stipend that does not trigger the Patient Protection and Affordable Care Act (PPACA) regulations. Another commenter recommended specific language to amend proposed § 680.830 (as explained above, renumbered in the Final Rule to § 680.190) to articulate that people who participate in transitional jobs are not counted toward labor participation rates, that is, not counted as "employed persons" by the BLS.

Further, this commenter and others asserted that workers in transitional jobs should be classified as employees rather than contractors or trainees and should be subject to protections such as wage and hour laws, minimum wage laws, unemployment insurance, and workers compensation.

Department Response: The ACA employer responsibility provisions are governed by the IRS and any training and employment agreements the grantees make may be subject to those provisions. The Department encourages grantees to utilize IRS resources and guidance when determining those responsibilities. The Department will issue subsequent guidance and technical assistance to help identify appropriate IRS resources and guidance. Transitional jobs and other work-based training often establish an employer-employee relationship that must follow applicable laws and regulations that govern such relationships, including: Wage and hour laws, minimum wage laws, unemployment insurance, and workers' compensation.

The suggestion that transitional jobs not count in the labor force participation rate that is captured by the Current Population Survey that the BLS administers is not germane to WIOA or these regulations.

Comments: A couple of commenters recommended that transitional jobs programs be targeted at populations with multiple employment barriers and people with sporadic, problematic and inconsistent work histories within the 2 years prior to engaging in the program. These commenters recommended targeting people experiencing homelessness; opportunity youth; people reentering communities from prison and those with criminal records; long-term recipients of TANF, SNAP and other public benefits; low-income noncustodial parents; and other chronically unemployed people.

Some commenters recommended that allowable use of funds should include: Wages paid to transitional jobs program participants during their subsidized job placement; funding for employment-related case management and support such as transportation vouchers and clothing allowances; funding for job retention services for no fewer than 6 months after placement in a subsidized job; supporting integration of literacy, adult basic education, training, and career advancement resources; and supporting program capacity-building needs, such as adding additional staff and/or infrastructure improvements as appropriate.

Department Response: The Department considers these recommended criteria to be appropriate factors that a Local WDB may use when determining who is eligible for a transitional job and which groups to target. Thus, no change is made in the regulatory text. The Department will provide further guidance and technical assistance as appropriate.

Allowable uses of transitional jobs funds include wages to the participant and supportive services such as transportation vouchers. The Department encourages local staff to align services and provide the appropriate mix of services to meet individuals' needs. Staff and infrastructure improvements are not allowable uses of transitional jobs funds.

Comments: Commenters asserted that transitional jobs are typically 3 to 9 months and seldom longer than 1 year. They recommended that transitional job arrangements include the following in order to avoid displacement of incumbent workers: Strong prohibitions against substitution and displacement; protections for recently laid-off employees, workers on leave, and striking workers; and preservation of recall rights under collective bargaining agreements for union employees of transitional job employer partners.

Department Response: The regulations at § 683.270 contain safeguards against displacement of employees that are applicable to WIOA title I employment and training activities, including transitional jobs. The Department also added § 680.840, which clarifies that funds for work-based training and work experiences may not be used to fill openings that resulted from a labor dispute.

Comments: Commenters recommended several ways to maximize the likelihood that workers are retained in unsubsidized employment after a transitional job program: (1) Monitoring participants and providing retention services for at least 6 months following unsubsidized job placement; (2) regular, frequent follow-up contacts by retention specialists; (3) ongoing retention-focused activities such as workshops, peer learning groups and support groups; (4) retention incentives in the form of monetary bonuses or nonmonetary incentives such as child care services; and (5) reemployment services for workers who are terminated from unsubsidized employment. The commenters also recommended several specific structure elements and polices that they asserted are essential: (1) A flexible length of time in subsidized employment based on the skill development needs of the individual; (2) subsidized employment offered should be no fewer than 20 hours per week and workers should be allowed to remain in the subsidized employment until unsubsidized employment slots are available for transition; (3) employers should support participant development and skill building; and (4) personal contact and consistent follow-up should be provided among program staff, participants, and employment supervisors, as well as opportunities to work with a case manager for the participant to address serious issues if they arise.

Department Response: The Department declines to propose a

minimum or maximum duration for transitional jobs that could create unnecessary restrictions that may prevent an individual from obtaining unsubsidized employment. The Department also declines to create a one-size-fits-all approach to transitional jobs, and considers these decisions are best made by the Local WDB and the individual's career planner. No changes have been made to the regulatory text in response to these comments. The Department will address these issues further through guidance and technical assistance.

Comments: A commenter recommended that proposed § 680.830 (as explained above, renumbered in the Final Rule to § 680.190) be amended to refer to "*time-limited* work experience" to be consistent with the language and intent of WIOA sec. 134(d)(5).

Department Response: The Department agrees with this comment and has amended the language in § 680.190 to include the phrase "time-limited work experience."

Comments: Another commenter asked what is the employer reimbursement rate and contract length?

Department Response: The employer reimbursement rate is to be determined by the Local WDB and can be up to 100 percent. The Department encourages Local WDBs to work with employers that are willing to provide a certain percentage of the cost of the transitional job.

Section 680.195 What funds may be used for transitional jobs?

Comments: Some commenters requested clarification on the 10 percent limit on use of funds. In particular, some commenters asked if the 10 percent limit would apply to work experience as an activity. A State WDB asked whether all adult and dislocated workers transitional job work experience is subject to the 10 percent cap.

Department Response: The Department considers transitional jobs to be a targeted service that includes comprehensive career and supportive services. Non-transitional job work experiences have no requirement that they must be paid or unpaid, and they do not have the same requirements for comprehensive career and supportive services. They also are not subject to the 10 percent funding cap that transitional jobs are. The Department has added text to the regulatory text to further clarify the 10 percent cap and that transitional jobs, defining them as a certain type of work experience which is targeted to a specific population that is: "chronically unemployed" or has an "inconsistent work history."

Comments: A commenter asked for clarification on what "comprehensive career services" means when required to be part of transitional jobs, and asked if it includes basic career services, individualized career services, or both, and if there is a sequence of services before service can be provided.

Department Response: Comprehensive career services may include both basic and individualized career services and are based on the needs of the participant. Comprehensive career services and supportive services, which are required to be provided as part of any transitional jobs strategy, are not subject to the 10 percent cap described at § 680.195. However, the Department is providing flexibility to allow for these services to be provided with the funds set-aside for transitional jobs. Local areas determine which comprehensive and supportive services are appropriate for each individual. There is no sequence of service required.

3. Subpart B—Training Services

Training services are discussed at §§ 680.200 through 680.230. WIOA is designed to increase participant access to training services. Training services are provided to equip individuals to enter the workforce and retain employment. Training services may include, for example, occupational skills training, OJT, registered apprenticeship (which incorporates both OJT and classroom training), incumbent worker training, pre-apprenticeship training, workplace training with related instruction, training programs operated by the private sector, skill upgrading and retraining, entrepreneurial training, and transitional jobs. Training services are available for individuals who, after interview, evaluation or assessment, and case management are determined to be unlikely or unable to obtain or retain employment that leads to self-sufficiency or higher wages than previous employment through career services alone. The participant must be determined to be in need of training services and possess the skills and qualifications to participate successfully in the selected program. It also must be determined that they are unlikely or unable to retain employment that leads to self-sufficiency or higher wages. Some participants may need additional services to assist their vocational training, such as job readiness training, literacy activities including English language training, and customized training.

Comments: Comments generally were supportive of the Department's flexible approach to the delivery of training services for the WIOA title I adult and dislocated worker programs.

Department Response: The Department has updated and clarified language regarding how registered apprenticeship and other apprenticeships may be utilized as a training solution for adult and dislocated worker customers.

Section 680.200 What are training services for adults and dislocated workers?

Comments: Two commenters strongly recommended that local flexibility be preserved as it relates to determining the appropriate availability, structure, and mix of training services that are offered locally to individuals and employers. Another commenter encouraged the Department to avoid restrictive standards and allow customization of varying training practices because there is slower adoption among small businesses of newer best practices. This commenter stated that this flexibility is particularly important when considering the effectiveness of competency-based training versus number of hours trained.

Department Response: The Department agrees that it is important to maintain local flexibility to make decisions about the appropriate mix of career and training services and has provided local flexibility in making those determinations.

Comments: A few commenters provided input on pre-apprenticeships and non-registered apprenticeships. One commenter encouraged the Department to add more flexibility into the regulations as they relate to pre-apprenticeships and non-registered apprenticeships so that manufacturers can develop and use programs that best meet their unique needs. Another commenter cautioned the Department not to discriminate against non-registered apprenticeships because many smaller employers rely on these types of programs. One commenter recommended that employer-sponsored craft training programs that are not registered, but that lead to an industry-recognized credential, should have an automatic initial ETP determination and then, be required to satisfy continued eligibility requirements after 1 year.

Department Response: WIOA sec. 122(a)(2)(B) provides automatic qualification for registered apprenticeship programs on eligible training provider lists (ETPLs) and WIOA in general provides an overall emphasis on registered apprenticeship

programs throughout the one-stop delivery system. The Department has used this emphasis to highlight the unique flexibilities the one-stop delivery system has in making use of registered apprenticeship programs to provide training services, including Individual Training Accounts (ITAs) and OJT. This in no way restricts pre-apprenticeship programs and non-registered apprenticeship programs from being an ETP according to the criteria in WIOA sec. 122(a). These training providers, in order to receive ITA payments, must go through the same eligibility criteria as other training providers on the ETPL. The Department considers programs that lead to an industry-recognized credential as valuable providers of training, and these programs are welcome to apply to become ETPs. The Department declines to make changes to the regulatory text in response to these comments.

Comments: One commenter encouraged the Department to allow adult education providers to provide workforce preparation rather than training in sector work. The commenter stated that if community-based adult education providers were required to offer sector training, most of these providers would have to be completely transformed, would require significant capacity boosts, would be less likely to reach the hard-to-serve, and would have drastically reduced enrollment.

One commenter requested clarification on the role of adult basic education.

Department Response: Under WIOA sec 134(c)(3)(D)(x), title I adult and dislocated worker funds may be used to support adult education and literacy activities, provided concurrently or in combination with other training services. The Department has added regulatory text clarifying this use of WIOA title I adult and dislocated worker funds in § 680.350. This regulation involving appropriate uses of adult education and literacy activities only applies to WIOA title I adult and dislocated worker funds.

Comments: A commenter expressed support for having both OJT and classroom training available to adult and dislocated workers. Two commenters supported the inclusion of integrated English literacy/civics education programs in WIOA. These commenters recommended that the Departments of Labor and Education provide diverse examples of how such programs may be designed, including ways in which they may represent components of sector partnerships and/or career pathways initiatives, and how they may facilitate the economic, linguistic, and civic integration of participants.

Department Response: The Department of Labor will work with the Department of Education to provide additional guidance and technical assistance on sector partnership and career pathways initiatives under WIOA, including how to integrate programs such as those the commenters highlighted.

Comments: One commenter described the benefits of entrepreneurship training and encouraged the Department to revise performance indicators that would create a barrier to the inclusion of entrepreneurship training in the WIOA public workforce system.

A few commenters requested clarification on what constitutes entrepreneurial training as cited at sec. 134(c)(3)(D)(vii) of WIOA.

Department Response: Entrepreneurial training is an allowable training activity, and the Department will issue guidance and technical assistance to support its use and to address performance accountability. Additionally, the Department has addressed instances where quarterly wage records are not traditionally available for performance accountability purposes, as may be the case where participants have received entrepreneurial training, in 20 CFR 677.175 (*see* Joint WIOA Final Rule).

Comments: Two commenters recommended that the regulations explicitly recognize the need for direct support professionals to address the growing "direct support worker crisis".

Department Response: WIOA sec. 108(b), which lists the required contents of local plans, states that the plans must include an analysis of existing and emerging in-demand industry sectors and occupations including the employment needs of employers in those sectors and occupations. Training programs for WIOA title I adult and dislocated worker programs are to be linked to in-demand industries and occupations in the local plan. The Final Rule does not explicitly recognize any specific industry or occupation needed to meet current workforce needs because these needs may change and often are based on State and local labor markets.

Comments: One commenter suggested that the regulations should better articulate the important role for digital literacy instructions, reasoning that these skills are critical to job advancement as well as educational credentials, including high school equivalency diplomas. Additionally, this commenter urged the Department to adopt a flexible framework as it relates to the integration of occupational skills training, which the commenter stated should include a student-centered approach in which co-enrollment in workforce education programs be optional rather than required.

Department Response: The Department considers digital literacy to be a pre-vocational service or a workforce preparation activity, both of which are considered to be individualized career services and not training services. The Department agrees that digital literacy is an important skill to succeed in the 21st century workforce, but considers it to be a service that may be made available based on individual need as determined by the local area. While WIOA encourages program alignment, and co-enrollment is one way to align service delivery, the Department does not require co-enrollment across programs.

Comments: A commenter suggested that the Department provide the list of training services found in WIOA in the regulations rather than simply referencing the statutory citation.

Department Response: The Department agrees with the recommendation and has adjusted the regulatory text of § 680.200 to include the list of training services provided in WIOA sec.134(c)(3)(D).

Comments: Commenters requested clarification on whether alternative secondary school (formerly GED) preparation is considered a career service or a training service.

Department Response: The Department considers a program that leads to a secondary school diploma to be a training service. A program that leads to a secondary school diploma or its equivalent can be eligible as a State ETP, see § 680.420.

Section 680.210 Who may receive training services?

Comments: A commenter asked who would be responsible for determining what constitutes self-sufficiency when determining who may receive training services under proposed § 680.210(a)(1).

Department Response: Under WIOA sec. 134(a)(3)(A)(xii), States may use statewide funds reserved by the Governor for adopting, calculating, or commissioning for approval an economic self-sufficiency standard for the State that specifies the income needs of families, by family size, the number and ages of children in the family, and sub-State geographical considerations. Under WIOA sec. 134(d)(1)(A)(x), local areas may use employment and training funds to adjust the State standard for local considerations, or can adopt, calculate, or commission for approval a

self-sufficiency standard for the local area that specifies the same factors required of the State standard. Under WIOA sec. 134(c)(3)(A)(i) individuals who receive training must be unlikely or unable to obtain or retain employment that leads to economic self-sufficiency or wages comparable to or higher than wages from previous employment through career services. Additionally, they must be in need of training services to obtain or retain employment that leads to economic self-sufficiency or wages comparable to or higher than wages from previous employment. The one-stop center is responsible for determining if an individual meets the self-sufficiency standard set by this process.

Comments: A commenter requested clarification about the division of responsibilities between one-stop centers and local service providers, including clarification on who is responsible for determining who can receive training services.

Department Response: The Department considers the ultimate responsibility for determining who can receive training services to rest with the Local WDB. However, through the service procurement process and other arrangements established through the local MOU, the board may delegate those responsibilities to the one-stop center or local service providers.

Comments: A commenter disagreed with the language in proposed § 680.210(a) that indicates that a determination needs to be made that the training will result in receipt of wages higher than wages from previous employment, reasoning that economic conditions can make this difficult.

Department Response: The Department notes that § 680.210(a) mirrors the requirements for title I adult and dislocated worker services found in WIOA sec. 134(c)(3)(A), and that training that leads to a "comparable wage" also is allowed for individuals to receive training services. No changes have been made to the regulatory text in response to the comments.

Comments: A commenter recommended that the Department make efforts to inform employers of the availability of training services to assist workers on short-term or long-term disability programs.

Department Response: The Department considers this to be an example of an appropriate business or employer service that may be provided through the one-stop delivery system. While the Department will not add language to the regulatory text mandating specific employer services, the Department does recognize the importance of ensuring quality services for individuals with disabilities and will utilize guidance and technical assistance to ensure best practices in serving businesses and individuals with disabilities.

Comments: A commenter suggested that the regulations should direct one-stop centers to take into account older workers' different training needs and lesser access to financial aid, and make sure that older workers are not discriminated against in access to WIOA-funded ITAs.

Department Response: Older workers are identified as a target population for WIOA services, based on their inclusion in the definition of individuals with a barrier to employment in WIOA sec. 3(24). The Department will issue guidance and technical assistance on best practices in providing career and training services to older workers.

Section 680.220 Are there particular career services an individual must receive before receiving training services under the Workforce Innovation and Opportunity Act?

Comments: One commenter stated that there should be no required sequence of services prior to providing training services to allow more flexibility in meeting the needs of customers. Another commenter asked whether there is a frequency rate permitted to bypass career services and whether bypassing career services before training was considered to be an exception.

One commenter requested further guidance and direction on how Local WDBs should document the circumstances that justify determinations that training services should be provided.

Department Response: There is no sequence of service requirement and therefore, no requirement that career services must be provided before training services. Section 680.220(b) states, if training services are provided without career services, the Local WDB must document the circumstances that justified its determination to provide training without career services. Eligibility for training must be determined by an interview, evaluation, or assessment, and career planning or any other method through which the one-stop partner or partners can obtain enough information to make an eligibility determination for training services. Paragraph (b) of § 680.220 requires a case file that includes a determination of need for training services, based on the criteria discussed in § 680.220(a). There is no frequency requirement; the need for training services should be determined prior to their provision. There have been no changes to the regulatory text in response to these comments.

Comments: Several commenters requested clarification as to how far back an assessment could have been conducted to satisfy the prerequisite for training services.

Department Response: The Department does not mandate a certain length of time that previous assessments may go back; however, the Department expects that the previous assessments must be recent. The Department recommends that Governors and Local WDBs develop policies for the use of recent assessments that are appropriate for the individual and the one-stop center. The recent assessment must have sufficient information to make an eligibility determination for training services.

Comments: A commenter recommended replacing the references to "eligibility" and "eligible" in proposed § 680.220(a) with "determined appropriate," "suitable," or "ability to benefit" to make it clear that this is not an additional eligibility determination beyond the eligibility determination conducted in § 680.110.

Department Response: WIOA sec. 134(c)(3)(A) refers to "eligibility" for training services and this language is incorporated in the regulatory text. The Department recognizes that there are two types of eligibility—eligibility for program services and eligibility for training services. An individual must meet program service eligibility to be considered for training service eligibility.

Comments: A commenter stated that the proposed steps required before a participant can receive training are appropriate for a customer who is in career transition, but questioned the appropriateness of the path where an employed worker is in need of skills upgrade to achieve economic self-sufficiency.

Another commenter encouraged the addition of a provision that training for jobs that fall below economic self-sufficiency standards also must include ongoing training post-hire for career ladders within the industry and take into consideration other factors including benefits, retirement, vacation, and education that can mitigate and improve lower wage jobs.

Department Response: The steps before a participant can be determined eligible for training services in the regulatory text are the minimum required by WIOA sec 134(c)(3)(A). The Department allows flexibility for local areas to develop methods to provide

services for individuals in need of a skills upgrade to achieve economic self-sufficiency. As part of the training eligibility, training services provided must be determined to lead to economic self-sufficiency or wages comparable to or higher than previous employment.

Section 680.230 What are the requirements for coordination of Workforce Innovation and Opportunity Act training funds and other grant assistance?

Comments: A commenter suggested that the Department revise the regulations to require, rather than recommend, that one-stop centers and partners take into account the full cost of training, including the cost of supportive services, when coordinating grant assistance.

Department Response: The Department considers the full cost of training services to be an important factor when coordinating assistance from other grants or resources. The Department strongly encourages this coordination and consideration be taken into account. WIOA allows for one-stop centers or partners to make this a consideration and does not require it. Therefore, the Department has changed "should" to "may" in § 680.230(a).

Comments: Some commenters recommended revisions to the proposed regulations as they relate to reimbursement of WIOA funds for participants who eventually receive Pell Grants. Specifically, because of the difficulties associated with implementing the proposed framework, these commenters recommended that WIOA funds not be reimbursed in situations where a Pell Grant is subsequently awarded after a one-stop center has paid for training. A commenter asked whether required educational fees are considered part of the training expenses or education-related expenses. This commenter sought clarification on this issue, but recommended that they be considered training expenses and not education-related expenses.

Department Response: The Department maintained the requirements of Pell Grant reimbursement, as described in § 680.230(c). WIOA sec 134(c)(3)(B)(ii) requires reimbursements to local areas from Federal Pell Grants to an individual who received WIOA title I training services while his or her Pell Grant was pending. The Department agrees with the commenters' suggestion that educational fees be considered part of the training expenses that should be reimbursed to the local area and has added language in § 680.230(c) to require this reimbursement.

Comments: A commenter stated that WIOA funds should be directed toward Temporary Assistance for Needy Families (TANF) recipients to enhance the work and training needs of the public assistance population without a requirement that TANF funds first be considered. Furthermore, the commenter stated that when resources in a local area are limited, local areas are best suited to determine which funds are dedicated to provide training and WIOA should be a primary funding source.

Department Response: The Department declines to make a change in the regulatory text at § 680.230(b). WIOA funds supplement other sources of training grants and do not supplant them.

Comments: To ensure consistency with previous Federal guidance, a commenter suggested that the Department add language to § 680.230 to clarify that education and training benefits earned by veterans are not required to be coordinated with training funds available under WIOA title I.

Department Response: While the Department declines to make a change in the regulatory text, it notes that the Department of Veterans Affairs benefits for education and training services are not included in the category of "other sources of training grants" listed in § 680.230(b). Therefore, veterans and spouses are not required to first use any available benefit entitlements associated with their military service before being considered eligible for WIOA funded training, and one-stop centers are not required to consider the availability of those funds.

Comments: Some commenters recommended that the Department clarify that WIOA title I funds can support title II adult education programs, as the WIOA sec. 134(c)(3) definition of training includes "adult education and literacy activities, including activities of English language acquisition and integrated education and training programs" at sec. 134(c)(3)(x). Commenters asserted that this clarification was needed as expeditiously as possible so that the planning processes in the States can proceed efficiently.

Department Response: Under WIOA sec. 134(c)(3)(D)(x), title I adult and dislocated worker funds may be used to support adult education and literacy activities, provided concurrently or in combination with other training services. The Department has added regulatory text clarifying this use of WIOA title I adult and dislocated worker funds in § 680.350. This regulation involving appropriate uses of adult education and literacy activities only applies to WIOA title I adult and dislocated worker funds.

Comments: Because availability of training assistance depends on whether participants have access to other sources to pay for training, a commenter strongly encouraged the Department to stress to Local WDBs the importance of the optional services outlined in § 680.140 for individuals with disabilities.

Department Response: The Department identifies in § 680.140 all of the required and permissible WIOA title I adult and dislocated worker services that Local WDBs may provide. The Department considers the permissible activities described in § 680.140(b) that may help individuals with disabilities to navigate among multiple services and activities to be important. The Department also has listed "reasonable accommodations for individuals with disabilities" to be an allowable supportive service in § 680.900.

4. Subpart C—Individual Training Accounts

Individual Training Accounts (ITAs) are key tools used in the delivery of many training services. The Department seeks to provide maximum flexibility to State and local programs in managing ITAs. These regulations do not establish the procedures for making payments, restrictions on the duration or amounts of the ITA, or policies regarding exceptions to the limits. The authority to make those decisions resides with the State or Local WDBs. The authority that States or Local WDBs may use to restrict the duration of ITAs or restrict funding amounts must not be used to establish limits that arbitrarily exclude eligible training providers.

Through the one-stop center, individuals will be provided with quality and performance information on providers of training and, with effective career services, case management, and career planning with the ITA as the payment mechanism. ITAs allow participants the opportunity to choose the training provider that best meets their needs. Under WIOA, ITAs can more easily support placing participants into registered apprenticeship programs.

Section 680.300 How are training services provided?

Comments: A commenter expressed support for the ability to pay an ITA at the beginning of the training program rather than on an incremental basis, because it would allow Local WDBs to budget and manage their ITAs much

more easily, eliminates the concern about putting customers into training that straddles 2 program years, and simplifies the determination of how much carry over funding to include in the next program year's budget.

Department Response: The Department considers it important to maintain flexibility in how ITA payments are made to support Local WDBs to use the most effective payment mechanisms. There have been no changes to the regulatory text in response to these comments.

Section 680.320 Under what circumstances may mechanisms other than Individual Training Accounts be used to provide training services?

Comments: A few commenters expressed support for the approach proposed in § 680.320. One commenter expressed support for the opportunity to contract for services rather than rely solely on ITAs, potentially support streamlining and more effective administration and planning for training providers. Another commenter expressed support for the training of cohorts, allowing States and local areas to contract with providers to assist groups of participants through one contract for services with defined goals and outcomes, rather than the administratively burdensome process of having each individual participant request services from providers through an ITA. Another commenter supported the Department's detailed list of circumstances under which a mechanism other than an ITA may be used to provide training services.

Several commenters provided input on funding mechanisms for training for individuals with barriers to employment. One commenter expressed support for allowing local areas to contract directly with training providers to supply training that will effectively service individuals with barriers to employment, expanding innovative and effective models for helping participants obtain industry-recognized credentials. Another commenter recommended that the Department recognize the need for coordination with vocational rehabilitation programs when addressing services for individuals with disabilities to avoid duplication of effort.

Department Response: The Department generally received supportive comments about the use of alternative methods to ITAs. The Department encourages coordination with Vocational Rehabilitation programs when serving individuals with disabilities to ensure effective service delivery. No changes have been made to the regulatory text in response to the comments, but the Department is adding, "and the local area has fulfilled the consumer choice requirements of § 680.340" to § 680.320(a), to ensure that the statutory requirement at WIOA sec. 134(c)(3)(G)(ii)(I) is included. This provision requires that a local area have a full ITA system in place even if it decides to provide training through contracts because one or more of the situations in § 680.320(a)(1) through (5) applies. Section 680.320(c) provides that the local plan describe the process to be used in all cases to select training under a contract to be consistent with WIOA sec. 108(b)(16).

Comments: A few commenters recommended that the Department clarify which individuals are considered to have a barrier to employment as a result of being an English language learner. Specifically, these commenters asserted that the preamble and the regulatory text differ in that one requires that three elements be met ((1) English language learners, (2) individuals who have low levels of literacy, (3) individuals facing substantial cultural barriers) while the other allows any one element as triggering categorization of having a barrier to employment. One commenter asked that the Department add a definition of "ex-offender" and encouraged the Department to include individuals with deferred sentences to be included within the definition because these individuals encounter similar barriers to employment as those individuals who actually spend time incarcerated. Another commenter asserted that the regulation should include employer incentives to encourage the hiring of ex-offenders.

Department Response: WIOA sec. 3(24) defines "individuals with barriers to employment," and WIOA sec. 3(24)(I) includes the following groups that qualify for this definition: "Individuals who are English language learners, individuals who have low levels of literacy, and individuals facing substantial cultural barriers." The Department clarifies that if an individual meets any one of the three criteria in WIOA sec. 3(24)(I), that individual may be considered to have a barrier to employment. WIOA defines "English language learner" in WIOA sec. 203(7) and is one of the criteria that may be met to be considered an individual with a barrier to employment. The Department also considers the definition of "literacy" provided in WIOA sec. 203(13) as the standard to be used for determining if an individual is considered to have low literacy, and therefore a barrier to employment. The Department will use guidance and technical assistance to States and Local WDBs to aid in determining when these elements are met. The term "offender" is defined in WIOA sec. 3(38) and the Department considers this to be the basis by which an individual is determined to be an "ex-offender." The Department declines to alter the regulatory text to include employer incentives for hiring of specific groups.

Comments: One commenter expressed support for the inclusion of "older individuals" in the list of barriers to employment, reasoning that the aging community has more challenges than younger workers in regaining employment once it has been lost and are more likely to be among the long term unemployed. Two commenters requested that the Department define the duration of unemployment that must be reached for an individual to be considered a long term unemployed individual.

Department Response: The Department generally defers to the Bureau of Labor Statistics (BLS) definition and will provide additional guidance to States and local areas on long-term unemployed.

Comments: Another commenter urged the Department to provide flexibility and guidance to use ITA funds concurrently or successively with paid work experience or OJT, reasoning that this combined use of ITA/OJT or ITA/paid work experience would provide additional benefits to the participants.

Department Response: The Department notes that there is no prohibition on the combined use of ITAs and OJT as well as any other contracted training services under WIOA sec. 134(c)(3)(G)(iv). These decisions must be based on individual need and they must be paying for separate program elements. There also is no prohibition on using career services, such as work experience, in combination with ITAs.

Comments: A commenter asked how the Department defines "institution of higher education" as the term relates to funding mechanisms for training services in proposed § 680.320.

Department Response: The term "institution of higher education" is defined in WIOA sec. 3(28); the Department has added this citation into the regulatory text in § 680.320(a)(4).

Comments: One commenter recommended a minor technical correction to proposed § 680.320(a)(4) to replace the phrase "will facilitate" with "in order to facilitate."

Department Response: The Department agrees with the commenter's suggestion and has made

this nonsubstantive correction in the regulatory text in § 680.320(a)(4).

Section 680.330 How can Individual Training Accounts, supportive services, and needs-related payment be used to support placing participating adults and dislocated workers into a registered apprenticeship program and support participants once they are in a registered apprenticeship program?

In this section, a new paragraph (a) was created, and proposed paragraph (a) is now (a)(1). Similarly, proposed paragraph (b) is now (a)(2). Proposed paragraph (c) has been renumbered to (b), and the following proposed paragraphs (d) and (e) are now (c) and (d).

Comments: A few commenters expressed support for allowing ITA funding to be used to pay for supportive services and needs-related payments to support the placement of a participant into a registered apprenticeship program. A commenter asked whether supportive services would be provided throughout a multi-year apprenticeship and whether supportive services would be provided to an employed individual participating in an apprenticeship. Additionally, the commenter asked how WIOA would assist an already employed worker who moves up the career ladder and is put into an apprenticeship either through OJT, ITA, or support services. Another commenter stated that one-stop centers should provide career services and supportive services during the final year of an apprenticeship because this is a crucial time that can directly lead to employment.

Some commenters stated that there should be no limitations placed on program service funding, including incumbent worker funding, which these commenters described as possibly the most appropriate funding to serve apprentices. In regard to incumbent worker funding, these commenters said that some companies may select current employees to upskill in a registered apprenticeship program given the length of the investment and the increased likelihood of the individual remaining engaged.

Department Response: The Department refers to the regulatory text in §§ 680.900 through 680.920, the general requirements for supportive services. Supportive services may be used for both employed and unemployed individuals to support their participation in career and/or training services. Decisions about the provision of supportive services, including the duration, timing, and type, are to be made by the Local WDB.

The Department refers to the regulatory text in §§ 680.700 through 680.750 and in particular § 680.710, which discusses the requirements for OJT contracts for employed workers. Incumbent worker training may be an appropriate service that would help an individual move up a career ladder within an apprenticeship program.

Comments: A commenter recommended that the Department revise proposed § 680.330(b) (renumbered in regulatory text as § 680.320(a)(2)) to allow for payments from ITAs to non-profit, joint labor-management training to defray the cost of providing apprenticeship or pre-apprenticeship training for programs that do not charge "tuition." This commenter suggested that these payments should include not only the pro-rata cost of delivering direct training to enrollees, but also should cover costs incurred to retain third-party providers. Two commenters stated that ITAs could be used to pay for pre-requisites for apprenticeship such as math courses, required education courses, and/or certifications as part of the work-based experience. Another commenter encouraged the Department to support the use of ITAs for competency-based apprenticeship models.

Department Response: The Department agrees with the comment that the term "tuition" does not reflect the funding arrangements of registered apprenticeship programs and has changed the text in § 680.330(a)(2) to change it to "Training services provided under a registered apprenticeship program" to address this and be consistent with the way the Department refers to other types of training. The other suggestions from commenters about allowable uses for ITA funds are acceptable as long as the providers of those services are on the ETPL. No other changes have been made to the regulatory text in response to the comments.

Comments: A commenter recommended that the regulations should allow for contracted apprenticeship programs as well as the placement of trainees into these programs solely through the ITA *system,* which the commenter described as not allowing for the easy organization of cohort-based programs. This commenter asserted that cohort-based apprenticeships and pre-apprenticeships can work with students recruited through the one-stop delivery system as well as those recruited from outside the system but would require a threshold number of trainees to be cost effective. The commenter concluded that the availability of trainee cohort classes in apprenticeship and pre-apprenticeship programs is a cost-effective approach to training.

Department Response: The Department considers that these types of training cohorts are allowable provided that the individuals meet the training eligibility requirements and the training providers are on the ETPL.

Comments: A commenter expressed the desire to be able to use ITAs to pay for apprenticeship programs that are not on the ETPL and that can last for many years to ensure that participants receive the training needed and that the local area is able to capture all applicable credentials received for performance purposes. Similarly, a commenter asked how long WIOA enrollment lasts past the 6 months of OJT if an apprenticeship lasts multiple years. This commenter also asked how a credential is documented if a WIOA participant exits the system prior to completion of the apprenticeship.

Department Response: To receive funds from an ITA, the training provider must be on the ETPL. The Department encourages interested providers to apply to be ETPs. The Department is issuing guidance about the credential measures in performance. WIOA enrollment is governed by the definitions of "participant" and "exit" in 20 CFR 677.150 (*see* Joint WIOA Final Rule). Local areas can develop ITA contracts within the framework of these definitions and the requirements for ITAs. Training services should be provided based on the needs of the individual and ITAs should be structured to address those needs.

Comments: To expand pre-apprenticeships and apprenticeships, some commenters recommended that the one-stop centers be given authority to initiate the application for registered apprenticeships. A commenter recommended that one-stop centers build and maintain relationships with apprenticeship programs that operate within their region to provide a point of contact for individuals that would like to enroll. To serve individuals enrolled in pre-apprenticeship or registered apprenticeship programs best, a commenter suggested including a regulatory requirement that the one-stop delivery system receive technical assistance to help expand one-stop center capacity to serve women entering these training programs.

Department Response: There is no prohibition in WIOA on one-stop centers initiating applications for registered apprenticeships. The Department encourages Local WDBs to partner with registered apprenticeships, work to align service delivery, and make

appropriate arrangements to build on these partnerships. The Department encourages the one-stop delivery system to help populations access training in nontraditional employment and will provide technical assistance to share best practices on this subject.

Comments: Two commenters listed the following ways in which a one-stop delivery system could serve the pre-apprenticeship programs, including, marketing, referrals, training costs, direct placements in registered apprenticeships, and use of OJT funds.

Department Response: The Department considers these recommendations to be examples of best practices to be shared through guidance and technical assistance.

Comments: A commenter requested clarification on several issues related to pre-apprenticeships: (1) With pre-apprenticeship programs moving to ITAs and therefore onto the ETPL, is the expectation that all other intensive service providers also will be included in the ITAs and ETPL; (2) the treatment of pre-apprenticeship programs that are not linked to a registered apprenticeship under WIOA; and (3) whether an out-of-school youth under 18 or an in-school youth be approved for an ITA for a pre-apprenticeship program?

Department Response: Pre-apprenticeship programs may be eligible for an ITA if they are on the ETPL. The Department encourages pre-apprenticeship programs that provide training services under an ITA to apply to be an ETP. The Department considers pre-apprenticeship programs to be directly partnered with at least one registered apprenticeship program; programs that do not meet this criterion are not considered a pre-apprenticeship program for the purposes of WIOA. In order to receive an ITA under WIOA title I adult and dislocated worker programs, an individual must meet program eligibility criteria as well as the training eligibility criteria.

Section 680.340 What are the requirements for consumer choice?

Comments: A commenter indicated that proposed § 680.340 does not speak effectively to the concept of "consumer choice." This commenter stated that it would take serious efforts by the Department to develop more extensive information regarding the learning providers to inform individuals seeking training opportunities properly. Furthermore, the commenter asserted that posting information about eligible trainers has not proven to assist the learner.

Department Response: The regulations on consumer choice are consistent with the language in WIOA sec 134(c)(3)(F). The Department emphasizes the importance of performance information on training providers to ensure consumers may make an informed assessment of their training options. The Department considers the role of the career planner as critical to support individuals to make well-informed training decisions. Career planners are responsible for making training eligibility determinations, and these determinations require that States and local make available high quality performance information to participants to make informed training choices.

Comments: One commenter suggested that the Department rewrite proposed § 680.340(b) so that it is clear that there is no requirement for the employer to report outcomes when using OJT and customized training other than in those circumstances required by the Local WDB.

Department Response: The Department agrees with the commenter and has changed the regulatory text in § 680.340(b) to emphasize that the ETPL is a separate list from the list that the Governor may require for work-based training providers.

Comments: A commenter recommended that proposed § 680.340 be revised to make it clear that training funds are not an entitlement and that criteria in addition to eligibility are assessed prior to referral to a provider and program. Two other commenters requested clarification as to the reasons that training could be refused.

Department Response: WIOA is not an entitlement program. Determinations for training are made consistent with the law, including WIOA sec. 134(c)(3)(A), State and local policies, funding availability, and other appropriate considerations. There have been no changes to the regulatory text in response to these comments.

One commenter requested that the Department provide a definition for the term "cost of referral" as used in proposed § 680.340(d).

Department Response: The Department declines to define the term "cost of referral" in the regulatory text.

Comments: A commenter expressed support for the prioritization of funding for training programs that result in a recognized postsecondary credential.

Department Response: The Department acknowledges the comment and has added language to the regulatory text in § 680.340(f) referencing the citation for WIOA sec. 3(52), which defines a recognized postsecondary credential.

Comments: A commenter recommended a technical correction to proposed § 680.340(b) to reference paragraph (d) in WIOA sec. 122 rather than paragraph (e).

Department Response: The Department agrees and has made this nonsubstantive correction in the regulatory text in § 680.340(b).

Section 680.350 May title I adult and dislocated worker funds be used to directly support adult education and literacy activities?

Comments: Some commenters recommended that the Department clarify that WIOA title I funds can support title II adult education programs, as the WIOA sec. 134(c)(3) definition of training includes "adult education and literacy activities, including activities of English language acquisition and integrated education and training programs" at sec. 134(c)(3)(D)(x). A commenter recommended that referrals to regionally accredited secondary-level educational programs providing entry-level workforce preparation and/or postsecondary education and training activities be included as part of basic services and counseling services. A commenter requested clarification regarding whether alternative secondary school (formerly General Education Diploma [GED]) preparation is considered a career service or a training service.

Department Response: Under WIOA sec. 134(c)(3)(D)(x), title I adult and dislocated worker funds may be used to support adult education and literacy activities, provided concurrently or in combination with other training services. The Department has added regulatory text clarifying this use of WIOA title I adult and dislocated worker funds in § 680.350. The Department notes that these activities for title I adult and dislocated worker funds must be done in coordination with other training activities in WIOA sec. 134(c)(3)(D)(x).

5. Subpart D—Eligible Training Providers

This subpart describes the process by which organizations qualify as eligible training providers of training services under WIOA. It also describes the roles and responsibilities of the State and Local WDBs in managing this process and disseminating the State Eligible Training Providers and Programs List (ETPL). Throughout the preamble, the Department refers to the State Eligible Training Providers and Programs List as the "State List," the List, and the ETPL. The State ETPL and the related

eligibility procedures ensure the accountability, quality, and labor market relevance of programs of training services that receive funds through WIOA title I, subtitle B. The regulations emphasize that the List and accompanying information must be easily understood and disseminated widely in order to maximize informed consumer choice and serve members of the public.

The State plays a leadership role in ensuring the success of the eligible training provider system in partnership with Local WDBs, the one-stop delivery system, and the one-stop's partners. The Governor, in consultation with the State WDB, must establish eligibility criteria and procedures for initial and continued eligibility for training providers and programs to receive funds under WIOA title I, subtitle B. In doing so, the Governor may establish minimum performance levels for initial and continued eligibility and the Department encourages Governors to do so. In establishing minimum performance levels for eligibility, the Governor should take into consideration the need to serve targeted populations. Except for with respect to registered apprenticeship programs, the Local WDB may establish higher performance levels or require additional information from State eligible training providers to receive funds through the local area Individual Training Accounts (ITAs).

The regulations in this subpart implement WIOA sec. 122 and refer to WIOA secs. 107, 116, and 134 where those sections affect program and provider eligibility, the ETPL, the use of ITAs, and the inclusion of registered apprenticeship programs on the ETPL. In § 680.410, the regulations clarify what entities can be eligible training providers. Section 680.470 provides that registered apprenticeship programs, which WIOA treats differently than other eligible training providers in some respects, are automatically eligible to be included on the ETPL. Finally, § 680.500 requires the Governor or State Workforce Agency (SWA) to disseminate the State ETPL with accompanying performance and cost information to Local WDBs in the State and to members of the public through specified means. The performance information must be presented in a way that is easily understood, in order to maximize informed consumer choice and serve all individuals seeking information on training outcomes, including WIOA participants and individuals with disabilities. Separately, 20 CFR 677.230 (*see* Joint WIOA Final Rule) addresses the ETP annual performance reports mandated at WIOA sec. 116(d)(4), which require providers to report on, among other things, the levels of performance for the WIOA primary indicators of performance for all individuals enrolled in the program of study.

In response to concerns expressed by stakeholders that some providers of training would face difficulties in participating in this WIOA-revised system, the Department has clarified the interrelated eligibility requirements and explained that while WIOA places an emphasis on quality training as measured by performance criteria, State and Local WDBs and training providers must work together in achieving this goal. The regulations emphasize the Governor's role in offering financial or technical assistance to training providers where the information requirements of this section result in undue cost or burden. Making a wide variety of high-quality programs of training available to participants will increase customer choice and training providers may find performance information useful to improve their programs of study, which in turn will provide a direct benefit to participants. The Department also encourages the Governor to work with eligible training providers to return aggregate performance information to the providers in ways that will help the providers improve their program performance. The State and Local WDBs must work together to ensure sufficient numbers and types of training providers and programs to maximize customer choice while maintaining the quality and integrity of training services. In addition, the regulations explain that community-based organizations (CBOs) can be eligible training providers, provided they meet the requirements to become eligible training providers in WIOA sec. 122 and this subpart. Because of WIOA's emphasis on ensuring the provision of quality training, and the importance of using performance criteria to obtain such quality, the Department does not intend to waive the requirement to submit performance information at this time.

Throughout this subpart, the Department has changed references from the Eligible Training Provider List to the list of eligible training providers and programs to convey that the list is a compilation of the programs of training services for which ITAs can be used. The Department has also made revisions throughout this subpart for consistency in the use of the term "program of training services" and to incorporate the use of youth funds for ITAs for out-of-school youth (OSY) aged 16–24.

The Department received a number of comments that pertain to the WIOA sec. 116(d)(4) ETP annual performance reports. The Department notes that submission of the ETP annual performance reports is required by WIOA sec. 116(d)(4) and comments and responses relating to this report are addressed in the Joint WIOA Final Rule preamble section for 20 CFR 677.230. This subpart D of part 680 addresses the ETP eligibility requirements.

Section 680.400 What is the purpose of this subpart?

Proposed § 680.400 explained the purpose of this subpart. It stated that the list must be accompanied by relevant performance and cost information and made publicly available online through Web sites and searchable databases as well as any other means the States use to disseminate information to consumers. The Department has made non-substantive corrections for consistency in how the Department uses terms throughout this section. Additionally, the Department has made substantive changes to paragraphs (a) and (b) of this section which are described in detail below.

Comments: A commenter requested that Local WDBs ensure the availability of training providers that understand the unique needs of individuals with disabilities. Another commenter cited the challenges faced by older workers and recommended that the regulations direct one-stop centers to take into account older workers' different training needs and lesser access to financial aid, and make sure that older workers are not discriminated against in access to WIOA-funded ITAs.

Department Response: The unique needs of individuals with disabilities require a minor revision to § 680.400 to emphasize the importance of disseminating the State ETPL to individuals with disabilities. One of WIOA's stated purposes is to increase access to employment and training for individuals with barriers to employment, which is defined in WIOA to include individuals with disabilities as well as older individuals. Individuals with disabilities (*e.g.*, those who are blind or hearing-impaired) may have unique needs that prohibit access to information through the Internet or other common databases. To fulfill the statutory purpose of WIOA, the Department has added language to § 680.400(b) that requires States to disseminate information to consumers in formats accessible to individuals with disabilities. In response to the comment that the regulations direct one-stop centers to take into account older

workers' different training needs, the Department notes that the ability to provide services to individuals with barriers to employment is a factor that must be taken into account in the Governor's eligibility procedures under § 680.460(f)(9) and that WIOA sec. 3(24)(D) and (E) define "individual with a barrier to employment" to include individuals with disabilities and older individuals. Because this is a required factor in the eligibility procedures, the Department has decided not to address this in the purpose section of the regulation. No changes were made to the regulatory text in response to these comments.

Comments: Another commenter requested that the Department explain whether programs other than those authorized by WIOA title I must use the eligible training provider list. A few commenters recommended that § 680.410 specify that the requirements apply to entities providing training to participants paid for with WIOA title I adult or dislocated worker funding only and are not more generally applicable to all entities providing training to adult and dislocated workers.

Department Response: WIOA's requirements regarding the State list of eligible training providers pertains to WIOA title I, subtitle B funds only. Core programs and partners other than the title I programs are not required to use the list of eligible training providers and programs, although States may choose to employ their ETP list for other activities. No changes were made to the regulatory text in response to this comment.

Comments: The Department received a number of comments regarding whether youth may use ITAs in response to proposed § 681.550 (Are Individual Training Accounts permitted for youth participants?).

Department Response: In § 680.400, the Department has added that this subpart describes the process for determining eligible training providers and programs for the adult, dislocated worker, and youth programs. More information about this is provided in the preamble corresponding to § 681.550. The Department has updated §§ 680.400(a), 680.430, and 680.490 to clarify which requirements of this subpart apply to the eligible training providers and programs that serve OSY aged 16 through 24 with ITAs.

Section 680.410 What is an eligible training provider?

The Department made non-substantive edits for consistency in how the Department uses terms throughout this section. Additionally, the Department has made significant substantive revisions to this section that are explained below.

The Department significantly revised this section to more clearly define the term "eligible training provider" (ETP) and changed the section's title to reflect this change. The Department made these changes to clarify which entities are considered ETPs, as many of the requirements of WIOA sec. 122 apply only to those entities that are considered ETPs under WIOA. This clarification responds to commenters' requests for clarification on which requirements of WIOA sec. 122 apply to which entities.

Section 680.410(a) through (c) lays out the defining characteristics of ETPs. Specifically, revised § 680.410(a) provides that ETPs are the only types of entities that can receive funding for training services through an ITA. This means that if an entity is not on the State ETPL, the entity may not receive ITA funds to pay for training services. Section 680.410(b) was revised to make clear that ETPs must be included on the State ETPL. The Department added new § 680.410(c) to provide that ETPs must provide a program of training services as that term is defined at § 680.420.

The Department also added new § 680.410(d) to describe the kinds of entities that can be ETPs. Eligible training providers can be institutions of higher education that provide a program which leads to a recognized postsecondary credential, entities that carry out programs registered under the National Apprenticeship Act (29 U.S.C. 50 *et seq.*), and other public or private providers of training services, which may include community-based organizations (§ 680.410(d)(3)(i)), joint labor-management organizations (§ 680.410(d)(3)(ii)), and eligible training providers of adult education and literacy activities under WIOA title II if such activities are provided in combination with the training services described at § 680.350 (§ 680.410(d)(3)(iii)).

The Department deleted proposed paragraph (b) of § 680.410 to clarify that this subpart is focused on ETPs and the State list of ETPs. The requirements for individuals receiving training from entities other than ETPs are addressed in §§ 680.320 and 680.530. Further description of the training that can be provided to individuals through entities other than ETPs can be found in § 680.530.

Part of the reason for this revision to this section is to make it clear that only entities that have gone through the Governor's ETP eligibility procedures and registered apprenticeship programs are considered ETPs, are able to be on the State ETPL, and can receive funding through ITAs. Additionally, because only these entities are on the State ETPL, only these entities, except for registered apprenticeship programs, are required to provide information for the ETP annual eligible training provider performance report required by WIOA sec. 116(d)(4).

Comments: Many commenters provided input on specific categories of training providers. A few commenters supported allowing Local WDBs to provide training services as long as the Local WDB is licensed, registered, or otherwise exempt by the State office of education. Some commenters requested guidance on approval of distance learning providers requesting to be put on the ETPL. One commenter requested that the Department define and add a distance learning category as a potential ETP.

Another commenter encouraged the Department to expand the definition of eligibility for training providers to include platforms that work with accredited institutions of higher education to provide Massive Open Online Courses (MOOCs). Several commenters encouraged the Department to revise § 680.410(a) to identify public television stations explicitly as an ETP with demonstrated expertise in developing and implementing evidence-based training services. Another commenter recommended that § 680.410 explicitly identify public libraries as potential providers, and particularly for enhanced digital literacy training and services. One commenter recommended that industry-based multi-employer training programs with a minimum of 50 percent employer representatives be eligible for inclusion on the ETPL to allow for training funds to be included as providers who would then be eligible for WIOA support. Another commenter urged the Department to consider integrating microenterprise development organizations, entities that help people in the very earliest stages of creating their own businesses, into the WIOA system. In addition, one commenter suggested a revision to paragraphs (a)(1) through (3) of § 680.410 to include, as examples of eligible training providers of training services with WIOA adult funds under title I, public or private organizations that have demonstrated effectiveness in providing regionally accredited secondary-level educational programs that include entry-level workforce preparation and/or postsecondary education and training activities.

Department Response: The Department has determined it is not appropriate in the regulation to specify

types of public and private entities that are appropriate to be ETPs, as many of these entities could be ETPs if they meet the requirements for initial and continued eligibility under § 680.410(d)(3). Instead, the Department has defined broadly the kinds of entities which are eligible to be ETPs based on WIOA sec. 122(a)(2). The public and private entities commenters encouraged for inclusion on the ETPL are within the parameters of entities under § 680.410(d) that can be ETPs, provided they meet all other applicable requirements, such as the Governor's eligibility requirements. In addition, the Department has not regulated to require training to be delivered in a specific format; programs may be delivered in-person, online, or in a blended approach. Nothing in the regulation precludes any of these approaches to training; therefore, it is unnecessary to regulate specifically that these are permissible types of training. In addition, the Department is clarifying that Local WDBs may provide training services, if they meet the conditions of WIOA sec. 107(g)(1), which includes the information required in a written waiver request to the Governor. This provision is addressed in § 679.410. In response to the commenter that suggested Local WDBs can provide training as long as the Local WDB is licensed, registered, or otherwise exempt by the State office of education, the Department notes that WIOA sec. 107(g)(1) establishes the requirements that must be met if a Local WDB wishes to provide training. Therefore, the Department has not included this in this section.

Section 680.420 What is a "program of training services"?

This section defines the term "program of training services" that is used throughout the regulations. The Department proposed to define the term as one or more courses or classes, or a structured regimen that leads to specified outcomes, including recognized postsecondary credentials, secondary school diplomas or their equivalent, employment, or measurable skill gains toward such credentials or employment. The Department made non-substantive edits for consistency in how the Department uses terms throughout this section. The Department also made substantive revisions to paragraphs (a) and (b) which are described in detail below.

In the NPRM preamble, the Department explained that the definition of a WIOA "program of training services" includes a structured regimen that leads to an industry-recognized credential. The NPRM preamble indicated that the outcomes in the definition of program of training services aligned with performance requirements in WIOA sec. 116(b)(2)(A).

Comments: Many commenters requested that the definition of "program of training services" be clarified with options to recognize "non-credentialed training, such as incumbent worker training, work-based learning opportunities, or single courses that fall within a career pathway for employment." These commenters also requested clarification of "industry-recognized credentials" to avoid confusion over which programs should qualify as eligible for WIOA funding. Several commenters requested clarification regarding how or when a program of training services leads to "a recognized postsecondary credential, secondary school diploma or its equivalent." A few commenters recommended that § 680.420 include training programs that lead to a "recognized postsecondary degree or industry recognized credential" to avoid a potential debate over what constitutes a "postsecondary credential." Other commenters suggested that a definition of "recognized industry credential" include a degree, diploma, or certification provided by an educational institution, third-party industry association, or industry accreditation body if it is not widely recognized by multiple employers in a region or industry. One commenter recommended that the term "industry-recognized credentials" as used in the preamble to the NPRM be added to the regulatory text. Another commenter asked whether having a group of five employers state the certificate of completion from a training provider is "industry recognized" would meet the definition of industry-recognized credential. One commenter recommended a change to § 680.420(a) through (c), to include, as outcomes of programs of training services, regionally accredited secondary education diplomas and career certification for entry-level work force preparation earned as a part of a secondary education program.

Department Response: The Department has revised the regulatory text of § 680.420 to further clarify which programs qualify as WIOA "programs of training services." The introductory text of § 680.420 was modified to clarify that a "program of training services" is one that provides the services in § 680.200 and leads to any of the outcomes listed in paragraphs (a) through (d) of this section, making clear the relationship between the definition of "program of training services" in this section and the definition of "training services" in § 680.200.

Section 3(52) of WIOA defines the term "recognized postsecondary credential," which was used in the Department's proposed definition of a "program of training services." The Department has revised § 680.420(a) to include all of the credentials, certificates, licenses, and degrees included in the WIOA definition of "recognized postsecondary credential." However, the Department removed the term "recognized postsecondary credential" from the definition of "program of training services" in response to comments that this may be read as too limiting if it is interpreted to mean that these credentials can only be obtained by individuals who have a secondary degree, or a high school diploma or its recognized equivalent. The new definition of "program of training services" remains consistent with the program outcomes described in WIOA sec. 116(b)(2)(A) and 20 CFR part 677 (*see* Joint WIOA Final Rule).

The Department chose not to define the term "industry-recognized credential" in the subpart and used the term "industry-recognized certificate or certification" in the definition of "program of training services" in order to mirror the definition of "recognized postsecondary credential" under WIOA. The term "industry-recognized credential" is an evolving term and the Department determined that defining it in the regulation may limit future innovation around industry-relevant training.

The Department agrees that programs of training services should be inclusive of non-credentialed training, such as incumbent worker training, work-based learning opportunities, or single courses that fall within a career pathway. The introduction to § 680.420 emphasizes that training services that "lead to" any of the outcomes listed at § 680.420, which includes employment, is a program of training services. Therefore, programs that are components of such a regimen may be eligible programs.

In addition, as explained in §§ 680.410 and 680.350 and associated sections of the preamble, WIOA title I adult and dislocated worker funds may be used for programs of training services that provide adult education and literacy activities if they are provided concurrently or in combination with occupational skills training and training services specified in § 680.350. For example, English as a second language may be part of a program of training services that leads to measurable skill gains toward postsecondary credentials, industry-recognized credentials, or

employment. The Department has added a cross reference to § 680.350 in § 680.420(b) to clarify that a participant may utilize a program offering a secondary school diploma or its equivalent only when that program is offered in conjunction with occupational skills training and other training options listed at § 680.350. The revised definition of program of training services and the acceptable outcomes to which a structured regimen may lead align with the definitions within WIOA sec. 116(b)(2)(A) and in 20 CFR part 677 (*see* Joint WIOA Final Rule). Section 680.420(d) provides that a program of training services is one that leads to measurable skill gains towards a credential described in paragraph (a) or (b) of this section. In this context, the term "measurable skill gains" is used similarly to its use in 20 CFR part 677 and the accompanying ICR. For clarification, the Department notes that the ETP annual performance report layout required under WIOA sec. 116(d)(4) uses the term "training program," which is synonymous with "program of training services."

Section 680.430 Who is responsible for managing the training provider eligibility process?

Section 680.430 outlines the roles and responsibilities of the Governor, the State WDB, any designated State agencies, and Local WDBs in establishing and implementing criteria and procedures for determining the eligibility of training providers. The Department received several comments addressing § 680.430. The Department made non-substantive edits for consistency in how the Department uses terms throughout this section and to this section's title. The Department also made substantive changes to paragraphs (a), (c)(3), and (d), and these changes are described in detail below.

The title to this section of the NPRM was "Who is responsible for managing the eligible provider process." The Department is making a non-substantive edit and inserting the word "training" between "eligible" and "provider" for consistency.

The Department modified § 680.430(a) to clarify that the Governor, in consultation with the State WDB, establishes the criteria, information requirements, and procedures, including procedures identifying the roles of the State and local areas, governing eligibility of providers and programs of training services to receive funds for out-of-school youth as described in § 681.550.

The Department renumbered and re-arranged paragraph (d) and added paragraph (e) for consistency with other portions of this subpart, including §§ 680.450, 680.460, and 680.470, in regard to what is required for registered apprenticeship programs to be an eligible training provider. These provisions of the subpart make it clear that registered apprenticeship programs are not required to follow the Governor's eligibility procedures (initial or continued) in order to be eligible training providers. This is consistent with WIOA sec. 122(a)(3), which provides that registered apprenticeship programs are maintained on the State List for so long as the program is registered under the National Apprenticeship Act. Therefore, the Department modified this section to ensure that the registered apprenticeship programs are not subject to the additional standards that may be established by a local area.

Because registered apprenticeship programs are not subject to the Governor's criteria and information requirements or required to report on their levels of performance for eligibility, Local WDBs cannot establish additional criteria and information requirements or establish higher levels of performance for these entities to receive training services in the local area. Moreover, permitting the Local WDBs to establish additional criteria and performance standards for registered apprenticeship programs would be in tension with what the Department has determined is a key purpose of sec. 122(a)(3): Encouraging the integration of the registered apprenticeship program into the WIOA system. Section 680.430(d) provides that the Local WDB can make recommendations to the Governor on the procedure used in determining the eligibility of providers and programs. This is not a change from the NPRM.

The Department has added new § 680.430(e), which contains the provisions from proposed § 680.430(d)(2) and (3), but clarifies that the provisions do not apply with respect to registered apprenticeship programs. Except for registered apprenticeship programs, the Local WDB may establish higher performance levels or require additional information from State eligible training providers to receive funds through local area ITAs. Paragraph (e)(1) provides that the Local WDB can, except with respect to registered apprenticeship programs, require additional criteria and information from local programs to become or remain eligible, and paragraph (e)(2) states that the Local WDB can set higher levels of performance, except with respect to registered apprenticeship programs, than those required by the State for local programs to become or remain eligible. In paragraph (e)(2), the Department made a non-substantive edit changing the phrase "local providers" to "local programs" to clarify that eligibility is determined on a program-by-program basis and removed the word "particular" from this paragraph as unnecessary.

Comments: One commenter commended the Department for outlining the responsibilities of State and Local WDBs to ensure adequate availability of training services for individuals with disabilities and recommended that § 680.430(c)(3) similarly remind Local WDBs to disseminate and maintain lists of providers in formats accessible to individuals with disabilities.

Department Response: As noted above under § 680.400, the State List must be made publicly available in a format this is accessible to individuals with disabilities. One of WIOA's stated purposes is to increase access to employment and training for individuals with barriers to employment, which WIOA defines as including individuals with disabilities as well as older individuals. Individuals with disabilities (*e.g.,* those who are blind or hearing-impaired) may have unique needs that prohibit them from accessing information through the Internet or other common databases. To fulfill one of the statutory purposes of WIOA articulated in WIOA sec. 2(1), the Department has added language to § 680.430(c)(3) requiring that Local WDBs ensure that the State list of eligible training providers and programs is disseminated through the one-stop delivery system in formats accessible to individuals with disabilities.

Comments: A commenter asked the Department to revise § 680.430(d)(1) to require the Governor to engage with the Local WDB and to require an equal exchange of information that allows for mutual consent in the management of the ETP process.

Department Response: The Department considered this comment; however, WIOA sec. 122 explicitly states that the Governor, in consultation with the State WDB, is to establish the criteria, information requirements, and procedures governing the eligibility of providers and programs and the Department will not create an additional requirement that the Governor obtain mutual consent of the Local WDBs. Moreover, § 680.430(d) already provides a role for the Local WDB in this process: It allows Local WDBs to make recommendations to the Governor on

the procedures used to determine eligibility of providers and programs. The Department encourages Local WDBs to make such suggestions and strongly encourages the Governor to carefully consider and incorporate the Local WDBs' suggestions, as they are most familiar with the training needs of their specific area. No changes were made to the regulatory text in response to this comment.

Comments: One commenter recommended that the regulation explicitly require a Governor to make the process for becoming an ETP transparent and ensure adequate access for CBOs to become ETPs. The commenter stated that a transparent and accessible process is necessary in order to expand access to a variety of high-quality providers and programs for individuals seeking employment and a way out of poverty.

Department Response: The Department notes that § 680.410 was modified to include paragraph (d)(3)(i), which explicitly acknowledges that CBOs may be eligible training providers. Moreover, CBOs can provide training through training contracts with the Local WDB under § 680.320. The Department agrees that a transparent process is important. Section 680.450(c) requires the Governor to solicit and take into consideration recommendations from Local WDBs and providers, provide an opportunity for interested members of the public to comment, and designate a specific time for doing these things. Additionally, § 680.460(e) requires that the Governor's procedures be described in the State Plan, which is subject to the public comment requirements for State Plans. Because the Department concludes the process will already be transparent as public comment is required in the development of the procedures and in the development of the State Plan, no changes were made to the regulatory text in response to this comment.

Comments: Another commenter recommended that "may" be changed to "must" in § 680.430(c)(2), to ensure that States with large Indian, Alaska Native and Native Hawaiian populations focus attention on the special circumstances of these populations.

Department Response: The Department notes that § 680.430(c) requires the Local WDB to carry out the activities in § 680.430(c)(2) and already uses the term "must." This section of the regulation implements WIOA sec. 107(d)(10)(E), which requires the Local WDB to work with the State to "ensure there are sufficient numbers and types of providers of career services and training services (including eligible training providers with expertise in assisting individuals with disabilities and eligible training providers with expertise in assisting adults in need of adult education and literacy activities) serving the local area and providing the services involved in a manner that maximizes consumer choice, as well as providing opportunities that lead to competitive integrated employment for individuals with disabilities." This section is focused on ensuring consumer choice for individuals with disabilities and adults in need of adult education and literacy activities. However, the Department interprets § 680.430(c)(2) to ensure that there are sufficient numbers and types of providers of career services and training services, to include ensuring that such services are available to assist specific populations such as the Indian, Alaska Native, and Native Hawaiian populations. No changes to the regulatory text were made in response to these comments.

Section 680.440 [Reserved]

The NPRM included a proposed § 680.440 implementing WIOA sec. 122(c), which allowed the Governor to establish a transition procedure for training providers eligible under WIA to maintain their eligibility and the eligibility of their programs under WIOA until December 31, 2015. In this Final Rule, the Department has removed § 680.440 in its entirety because the time during which providers could retain their eligibility under WIA into WIOA has elapsed. Therefore, this provision is no longer necessary. Although this provision is not in the Final Rule, the Department received several comments on the proposed rule and is addressing them below.

Comments: Commenters addressed the Department's proposed timeline and transition procedures for implementation of the continued eligibility provisions for ETPs eligible under WIA. A handful of commenters expressed support for exempting ETPs eligible under WIA from initial eligibility procedures and for providing these ETPs a transition period before requiring compliance with the application procedures to establish continued eligibility.

A number of commenters requested that the Department allow States more time to implement the continued eligibility procedures. One commenter recommended that the Department extend the time allowed for transition of ETPs to meet the new requirements under WIOA until June 30, 2016. Another commenter recommended that the Department allow all ETPs to receive initial and/or subsequent eligibility under WIA regulations until the State publishes and implements its new eligibility procedures, no later than June 30, 2016, reasoning that this approach would be consistent with the Department's transition authority in sec. 503 of WIOA. One commenter cautioned that the procedures for initial and continued eligibility are lengthy and that there would not be enough time for implementation, then urged the Department to adopt more flexible procedures for easier implementation.

A few commenters recommended that a waiver provision be added in the WIOA Final Rule relating to the application for continued eligibility of ETPs. Another commenter recommended a longer period of transition (*i.e.*, more than 12 months) because of the additional information required from applicants to become an ETP under WIOA as well as the additional programming needed to electronically capture this information.

One commenter recommended that States be allowed to use existing procedures for new providers and develop and implement new procedures by July 1, 2016, consistent with the start date of Unified State Plans. The commenter reasoned that this timeframe would allow States to identify best procedures and update software programming and user training and communicate these to potential providers. Other commenters recommended that the timeframe relevant in § 680.440 be determined by each individual State policy as determined by the Governor, without providing additional detail about the specific activities of concern. One commenter requested that continued eligibility be implemented as a phased transition.

Department Response: In order to facilitate the transition from WIA to WIOA and give the states sufficient time to create robust eligibility policies and procedures for ETPs, the Department exercised its transition authority and issued guidance (Training and Employment Guidance Letter (TEGL) 41–14, Change 1) that extended the timeline for implementation of continued eligibility requirements for training providers eligible under WIA by 6 months through June 30, 2016, unless the Governor determined that an earlier date was possible. While this is not the 12-month extension requested by a commenter, the Department concluded this was sufficient time for States to implement the continued eligibility procedures. The Department has chosen not to regulate waiver policy in the Final Rule.

WIOA sec. 122(b)(4)(B) requires providers not previously approved under WIA to complete the initial eligibility procedure. WIOA sec. 122(i) requires that the Governor and Local WDBs implement these requirements no later than 12 months after the date of enactment. Although States are required to implement new procedures for initial eligibility and continued eligibility, rather than using existing procedures, the regulation at § 680.460(f)(1)(v) allows the Governor to use alternate factors for performance until performance information is available to establish continued eligibility. The Department notes that the Governor has discretion to determine what the alternate factors for performance are; thus the Governor's procedure may take into account existing performance information. Moreover, the regulation at § 680.450(e)(2) requires the initial eligibility procedures to take into account "a factor related to" the indicators of performance which may take into account existing performance information.

It is unclear what the commenter is suggesting by a "phased transition." The Department notes that the Governor's transition procedures could have been implemented in phases if the Governor chose to conduct the transition this way, as long as the continued eligibility procedures were implemented in a timely way to ensure that continued eligibility was established prior to the end of the transition period in that State, which, consistent with ETA guidance, could have extended no later than June 30, 2016.

The Department notes that it also received comments on this section related to the eligible training provider annual performance report required under WIOA sec. 116(d)(4). The Department addresses these comments and provides responses in the preamble to 20 CFR 677.230 (*see* Joint WIOA Final Rule).

Comments: Several commenters expressed confusion about how providers designated under WIA between WIOA's enactment on July 22, 2014, and implementation of WIOA's ETP provisions on July 22, 2015, were to be treated. One commenter requested that the Department clarify the date at which States are no longer allowed to use their old eligibility-determination process. Another commenter recommended either grandfathering or offering States the discretion to allow training providers that become eligible under WIA between July 22, 2014, and June 30, 2015, to remain eligible training providers until December 31, 2015, or to an earlier date according to the Governor's transition procedures.

Department Response: The Department is clarifying that WIOA sec. 122(i) covers all providers and programs that were previously eligible under WIA. Thus, any provider that was previously eligible under WIA procedures, regardless of whether this was before or after the date of WIOA's enactment on July 22, 2014, is subject to the continued eligibility procedures under WIOA. This reading is consistent with WIOA and with the Department's intention stated in the NPRM to grandfather all WIA providers through the duration of the Governor's transition period. The Department modified § 680.460(a)(1) to make the treatment of providers and programs eligible under WIA consistent, regardless of whether they became eligible before, on, or after July 21, 2014. This interpretation is in accord with WIOA secs. 122(b)(4)(B) and 122(i) because all WIA providers determined eligible through June 30, 2015, were deemed eligible under the version of WIA sec. 122 requirements in effect on July 21, 2014 (the day before enactment of WIOA).

Section 680.450 What is the initial eligibility process for new providers and programs?

Section 680.450 establishes the requirements for the initial eligibility procedures for new providers and programs. The Department made non-substantive edits for consistency in how the Department uses terms throughout this section. The Department also made substantive edits to paragraph (b), which are discussed in detail below.

Comments: The Department received comments addressing various issues relating to § 680.450. Several commenters expressed support for the proposed initial eligibility process. Other commenters suggested that provisions for waivers be included in §§ 680.450 (initial eligibility) and 680.460 (continued eligibility) of the Final Rule, and that WDBs be given authority to waive eligibility requirements on a case-by-case basis where it is in the best interest of those receiving training services. Some commenters recommended that Governors be given authority to approve public higher education schools automatically, similar to the proposed approach for registered apprenticeship programs, including eliminating the need for these institutions to be subject to initial or continued eligibility. These commenters stated that this was a duplicative burden on these institutions that are already required to report on programs to their primary funding sources. Several commenters recommended that National Farmworker Jobs Program (NFJP) grantees be presumed to be ETPs and be included on their States' ETPLs automatically to encourage and streamline the ability of WIOA adult and dislocated worker programs to co-enroll participants who also qualify for NFJP. In addition, one commenter expressed concern that its State would be unable to implement a new process that includes creating a technical system to track provider performance and other new WIOA requirements, as well as have public comment and implement by July 22, 2015, the date by which initial eligibility procedures are required to be implemented. Another commenter stated that even though local areas may set more stringent standards for performance for eligible training providers, because providers can apply to any Local WDB for approval to the statewide list, these more stringent standards are ineffective in ensuring provider quality. This commenter suggested that local areas should have full control over their Eligible Training Provider List, provided minimum standards are met.

Department Response: The Department is clarifying in this preamble that States and local areas are the only entities authorized to determine new provider or program eligibility under WIOA. WIOA sec. 122(a) requires the Governor to determine eligibility procedures. State and Local WDBs do not have authority under WIOA to waive initial or continued eligibility requirements. The Department is therefore not including such waiver authority in this subpart. However, the eligibility requirements in the regulations are quite flexible because although they require the Governor to take certain factors into account, they do not proscribe what weight is given to any one factor. Additionally, Local WDBs may use contractual arrangements under §§ 680.320 and 680.530 to ensure that training is available. Automatic approval of higher education institutions or NFJP grantees as eligible training providers is not permitted under WIOA; these institutions and grantees will need to apply for initial eligibility in the same manner as all other training providers. In response to comments about duplicative burden, the Department acknowledges that there may be some duplication of requirements. However, the Department encourages these institutions to examine where there is overlap in the reporting requirements to minimize duplicative

work in complying with all of the institution's reporting requirements. Therefore, no change was made in response to this comment.

The Department has made no change to the timeline for implementing initial eligibility procedures in order for new training providers and programs to be included on the State Eligible Training Provider and Programs List. The States must implement initial eligibility procedures within 1 year of WIOA's enactment as is required under WIOA sec. 122(c).

The Department corrected the reference to paragraph (d) in § 680.450(c) to paragraph (e).

Comments: Several commenters provided input on the specific performance information that the Governor of each State is required to request from potential training providers under § 680.450(e).

Department Response: The Department considered commenters' suggestions on what kinds of information could be considered a "factor related to the indicators of performance" to meet § 680.450(e)'s requirement. However, with regard to the comments on the performance information requirements in § 680.450(e), no substantive changes were made to the regulatory text in response to these comments. In part, because the factors related to performance that a Governor must take into account to establish initial eligibility are set forth in WIOA sec. 122, the regulations are consistent with the statutory requirements. Moreover, WIOA sec. 122 gives the Governor the discretion to determine the procedures for initial eligibility and establish minimum performance standards and the Department wants to allow the Governor the flexibility to establish procedures that are most relevant and applicable to the Governor's State.

Section 680.450(e)(2) requires the initial eligibility procedures to take into account "a factor related to the indicators of performance . . . ." This does not mandate a specific factor and it is at the Governor's discretion to determine what information to require for the applicant to meet this requirement. The Department has listed below the comments and responses received on the requirement at § 680.450(e)(2).

Finally, the Department notes that it revised § 680.450(e)(4) to clarify its implementation of WIOA sec. 122(b)(4)(E)(iii). This provision of WIOA permits the Governor to require other factors that indicate high-quality training services, including the factor described at WIOA sec. 122(b)(1)(H). WIOA sec. 122(b)(1)(H) requires an analysis of the quality of a program of training services, including programs of training services that lead to recognized postsecondary credentials. Therefore, the Department has made a minor revision to § 680.450(e)(4) to reflect that the Governor's criteria may require applicants to provide information demonstrating the program is a high quality program, which can include information related to training services that lead to recognized postsecondary credentials.

Comments: A few commenters described the burden associated with the proposed performance information requirements and cautioned that they may limit the options available to training customers. Similarly, one commenter stated that the performance information requirements under both §§ 680.450 and 680.460 were too burdensome for small training providers, who are generally not equipped for tracking employment outcomes.

Department Response: The Department considered commenters' concerns about the burden of providing performance information under §§ 680.450 and 680.460. However, the information required for submission is set out in WIOA sec. 122 and the sections implement WIOA's requirements for initial and continued ETP eligibility. The Department encourages States and providers to consider the benefit to the programs of training of having robust performance outcome data that can be used to evaluate and advertise the effectiveness of their programs of training. No changes were made to the regulatory text in response to these comments.

Comments: A commenter cautioned against requiring past performance information for new training providers that do not have past performance information to evaluate. Another commenter recommended requiring applicant training providers to present average earning rates after exit rather than median earnings.

Department Response: The Department considered the commenter's recommendation, but determined that the Governor's flexibility to determine what factors related to the performance indicators will be selected as part of the initial eligibility criteria is sufficient. This includes determining what factor related to performance may be used for new training providers. The Department notes that while the Governor has discretion to determine the factor related to performance that may be used for initial eligibility, once eligibility is established, WIOA sec. 116(b)(2)(A)(i)(III) requires approved ETP programs to report on median earnings. However, this does not prohibit the Governor from also requiring ETP programs to report on average earnings. No changes were made to the regulatory text in response to these comments.

Comments: One commenter requested changes in training provider eligibility criteria for providers that are different from WIA occupational skill providers (*e.g.*, pre-apprenticeships, entrepreneurial training, customized and incumbent worker training, and youth services).

Department Response: As explained above, the provider eligibility criteria are left to the Governor's discretion. No changes have been made to the regulatory text in response to this comment. However, the Department notes that it is within the Governor's discretion to have specific eligibility criteria for providers that provide training that is distinct from traditional WIA-occupational skill providers, as long as the criteria also comply with §§ 680.450 and 680.460 and are included in the State's policies. Section 680.530 and its preamble provide additional information on how States may provide customized and incumbent worker training.

Comments: One commenter asked whether each State is required to specify which elements from § 680.450(e)(2) training providers need to provide information on or whether the training provider can submit information on any of the factors listed.

Department Response: The State procedure must specify which elements from § 680.450(e)(2) training providers need to provide information on and what verifiable information will satisfy this requirement.

Comments: Another commenter sought clarification of the definition of "partnership with a business" as used in NPRM § 680.450(e)(3), and asked how this would impact the eligibility of a training provider.

Department Response: The Department is clarifying that information about whether a provider is "in a partnership with a business" under § 680.450(e)(3) could include information about the quality and quantity of employer partnerships. However, the Department did not include this example, or others in the regulation text, as States may have other methods for determining whether the provider is in a partnership with a business and including one example may be seen as limiting State options. The impact of this factor on the eligibility of the training provider is

determined by the Governor's initial eligibility procedure.

Comments: One commenter requested flexibility in initial eligibility requirements for training providers in rural areas and those serving the hardest to serve populations.

Department Response: The Governor may require additional information in order to ensure that the needs of the State are being met, including in rural areas and in serving hard-to-serve populations. The Governor's procedure determines how these additional factors may impact initial eligibility. In addition, the Local WDB must work with the State to ensure there are sufficient numbers and types of providers of training services, including eligible training providers with expertise in assisting individuals with disabilities and eligible training providers with expertise in assisting adults in need of adult education and literacy activities described under WIOA sec. 107(d)(10)(E), serving the local area. No changes were made to the regulatory text in response to this comment.

Comments: Another commenter urged the Department to require new applicants to be subject to the same anti-discrimination provisions as registered apprenticeship programs under 29 CFR part 30. This commenter suggested that new applicants provide the following: A plan for recruitment to ensure underrepresented populations have access to nontraditional opportunities; capacity to deliver equitable training practices and classroom and OJT training environments that support underrepresented populations' success and retention in the training program; and support services, case management, mentorship, and other strategies necessary for underrepresented populations' success in training and employment.

Department Response: Title 29 CFR part 30 governs the policies and procedures to promote equality of opportunity in apprenticeship programs registered with the U.S. Department of Labor and State apprenticeship programs registered with recognized State apprenticeship agencies. Therefore, the Department will not apply 29 CFR part 30 to all eligible training providers. However, for all other programs, the Department notes that the Governor has discretion to consider a wide range of factors when determining initial and continuing eligibility under §§ 680.450 and 680.460. Therefore, if the Governor wishes to consider factors such as an eligible training provider's treatment of underrepresented populations, this is within the Governor's discretion. The Department has determined that applying criteria developed for one type of program of training to all types of training programs may unnecessarily limit the types of programs of training available to participants in WIOA programs. No changes were made to the regulatory text in response to this comment.

Comments: The Department also received responses to the specific solicitation in the NPRM requesting comments about the types of verifiable program-specific information the Governor must require from providers seeking initial eligibility as ETPs under § 680.450(e).

Department Response: The Department has carefully analyzed the comments regarding verifiable program specific performance information, including the suggestions of specific factors and methods of providing verifiable information in the least costly manner. The Department has determined that no substantive changes to regulatory text are necessary in response to these comments. Instead, the Department is clarifying that the Governor and the States have discretion when developing their initial eligibility criteria and requirements to decide what constitutes verifiable program specific performance information and the factors related to indicators of performance. This flexibility will enable States to meet the individual needs of each State and allow each State to establish requirements that the ETPs and the State are able to manage given their current levels of technology. Examples of potential criteria include average earnings rates, average cost of training, and criteria based on information available in UI wage records. However, these examples are not intended to be an exhaustive list and States are not limited to the Department's suggestions.

In meeting the requirement that the factor be "related" to the WIOA sec. 116 reporting requirements in § 680.450(e)(2), this factor need not be limited to WIOA participants, even though under sec. 116 the primary indicators of performance require reporting on WIOA participants. This is because programs of training applying for initial eligibility will be applying to serve WIOA participants for the first time and will not have results available for WIOA participants.

Comments: One commenter stated that the easiest-to-verify information that providers could furnish would be customer-level data that States can match to unemployment insurance (UI) wage records to determine employment outcomes. The commenter stated that providers would be expected to submit that information if they are placed on the ETPL because this information would be required for the ETP annual performance report. The commenter asserted that requiring information for an eligibility determination that matches information required for the ETP annual performance report would reduce costs for both providers and States and increase data integrity. A few commenters stated that the most valid, reliable, and efficient way to measure training providers' performance is for the State to first collect a small set of seed records from each provider for each student (*e.g.,* social security number, program of study, start date, end date, credential, and demographic characteristics) and then link the records with UI wage records and other administrative records used to determine outcomes.

Department Response: The Department notes that these are potential options for States and the Governor may choose to utilize these approaches. However, the Department has chosen not to require States to implement these approaches for initial eligibility to give States the flexibility to determine the most effective method for obtaining verifiable program specific performance information for determining initial eligibility. As explained earlier, the Department recognizes that there is overlap between what is required for eligibility and the WIOA sec. 116(d)(4) ETP annual performance report. The Department strongly encourages States and ETPs to work together to find efficiencies in how information can be reported in the performance report and for eligibility purposes. No changes were made to the regulatory text in response to these comments.

Comments: Another commenter stated that the regulations should encourage ETPs to focus their follow-up efforts on participants who do not appear in the UI wage records, relieving data collection burdens on the individual participants and the non-public training providers.

Department Response: The Department recognizes that social security numbers will not be available for each participant and has determined that supplemental follow-up methods will be allowable. The use of supplemental information in performance reporting is further discussed in 20 CFR part 677 (*see* Joint WIOA Final Rule) and the associated ICR.

Comments: Another commenter requested that the system used to gather ETP data should be accurate by nature

so that Local WDBs are not required to monitor or ensure accuracy of information.

Department Response: The Governor or the Governor's designated SWA (or appropriate State entity) is responsible for ensuring that programs meet eligibility criteria and performance levels established by the State, including verifying the accuracy of the information. The Local WDB must carry out the procedures assigned to the Local WDB by the State, including monitoring and ensuring accuracy of the information. No changes were made to the regulatory text in response to this comment.

Comments: One commenter recommended specific performance information to be collected, including average cost of training to include tuition, supplies, and supportive service needs; loan default rates; employer partners; and the completion rates of all students rather than the exit rates.

Department Response: The Departments have included in the subpart only the performance information required by WIOA secs. 122 and 116. However, as described in § 680.490(c), the Department notes that the Governor may require additional specific performance information that the Governor determines to be appropriate to determine or maintain eligibility. No changes were made to the regulatory text in response to this comment.

Comments: One commenter stated that wages and retention should be verified using the employment base wage.

Department Response: The Department is unclear what the commenter intends by "employment base wage." However, the Department has chosen not to require States to implement these approaches for initial eligibility. States have the flexibility to determine the most efficient method for obtaining and verifying program specific performance information for determining initial eligibility.

Comments: A few commenters suggested that States should be allowed to use supplemental/existing data because most schools are already required to report on programs to their primary funding sources, making the ETP reporting requirement a duplicative effort. These commenters asserted that the local area should determine if a training provider's performance is acceptable and whether the training provider should continue to be listed on the ETPL.

Department Response: The Department recognizes that some of the information ETPs are currently reporting might overlap with the information required for reporting for initial eligibility. The Department encourages States to examine closely WIOA reporting requirements and the other requirements ETPs are subject to, to find overlap and reporting efficiencies. Regarding the commenter's suggestion that the local area determine if a training provider's performance is acceptable, the Department notes that WIOA sec. 122(b)(3) and § 680.430(e) provide that Local WDBs can establish criteria and information requirements, in addition to the Governor's, and require higher levels of performance than the Governor for purposes of determining the continuing eligibility of providers to receive funds to provide training services in the Local WDB's area. No changes to the regulatory text have been made in response to this comment.

Comments: Some commenters recommended that the Department allow States to determine the definition of verifiable information. Another commenter requested clarification regarding the "program specific" indicators required by the Department and recommended that States be allowed the flexibility to define what those mandated indicators will be through their ETP State policy.

Department Response: As explained above, this subpart leaves the Governor the flexibility to determine what constitutes "verifiable program-specific information." No changes were made to the regulatory text in response to this comment.

Comments: One commenter suggested that providers report data on (and States determine eligibility for) all similar degree programs as one. For example, all bachelor's degree programs at that provider are reporting as one bachelor's degree program, rather than breaking them out into bachelor's in education, bachelor's in biology, bachelor's in math, etc. This commenter also suggested that providers report data on (and States determine eligibility for) the main program of study, rather than all of the individual courses that make up the program. Further, this commenter recommended that providers do not need to report on (and States determine eligibility for) courses that are pre-vocational intensive service or skills upgrade courses, or courses that cross industry sectors and occupations or which are less than 3 days in duration.

Department Response: In response to the recommendation that eligibility be determined generally at the degree level, the Department is clarifying that eligibility is determined at the level of "program of training" as described in § 680.420, rather than at the class, course or general degree level. A program of training may involve one course or a course of fewer than 3 days in duration, if the course leads to one of the outcomes as described in the definition of a program of training services at § 680.420. In order for such a program of training to receive WIOA title I adult, dislocated worker, or youth training funds through an ITA, the program must be determined eligible and is therefore subject to reporting requirements. Registered apprenticeship programs are an exception to the eligibility requirements. Work-based training options do not receive training funds through an ITA, and are described at § 680.530. No changes were made to the regulatory text in response to this comment.

Comments: One commenter recommended that States be given an additional 2 years to implement the performance information requirements in §§ 680.450(e) and 680.460(f). After stating that the Department does not anticipate complete performance data derived from wages until PY 2018, a few commenters suggested allowing eligibility to be based on completion rates and credentials until complete employment and wage performance data can be collected.

Department Response: The Department has determined that a regulation change is not necessary given the flexibility in the regulation at §§ 680.460(f)(1) and 680.450(e)(2). Under § 680.460(f)(1), the State may use alternate factors for performance until data from the conclusion of each performance indicator's first data cycle is available. Under § 680.450(e)(2), the Governor's procedure must require applicant providers to provide information addressing a factor related to performance indicators, meaning that the Governor's initial eligibility procedure may not require the provision of the results for each of the indicators of performance. The required factors for initial and continued eligibility allow the Governor's procedure to determine whether to set minimum performance standards and how much emphasis to put on any one factor that is taken into account.

Although the Department determined no change to the regulation was necessary in response to those comments, the Department has made a revision to § 680.450(f) by inserting the word "performance" between "minimum standards" to clarify that the minimum standards a Governor may set refer to minimum performance standards. Additionally, in response to commenters who requested that initial

eligibility last for longer than a year because more time is needed to generate enough exiters to provide a meaningful outcome measurement given the data lag for performance indicators, the Department is clarifying that § 680.460(f)(1)(v) allows the Governor to take into account alternate factors related to the performance indicators described in § 680.460(f)(1) until performance information is available. Similarly, for initial eligibility, the Governor may use a factor related to performance in determining eligibility. Thus, the Governor's ability to establish continued eligibility procedures and to take other factors into account enable the State to build in consideration of the limits of initially eligible training providers to supply performance information after only 1 year. The Department notes that it also plans to launch an intensive technical assistance effort.

Comments: A commenter requested that initial eligibility under § 680.450(g) last longer than 1 year because more time is needed to generate enough exiters to provide a meaningful outcome measurement given the data lag for performance indicators, such as earnings in the fourth quarter after program exit.

Department Response: The Department has determined that initial eligibility will be maintained at 1 year. WIOA sec. 122(b)(4)(B) provides that initial eligibility is "for only 1 fiscal year." However, because program eligibility is not aligned with a fiscal year, the Department has removed the word "fiscal" from paragraph (g) in this section. Since initial eligibility may be determined at any time during a calendar year or program year, requiring initial eligibility to be for 1 year, rather than 1 fiscal year enables the State to establish a 12-month initial eligibility period for each program.

Comments: One commenter recommended that the Department launch an intensive technical assistance effort for States to develop the IT infrastructure needed to meet these requirements. Another commenter requested that the regulation allow States and localities to waive the reporting requirements for libraries when developing lists of ETPs in the first year, on the grounds that libraries would be prevented from providing training with WIOA funding without such a waiver. A few commenters stated that reductions in overall funding and limited funding for the Governor's set-aside will make performance reporting requirements, including the need to modify data reporting systems, difficult. As a solution to this concern, commenters recommended that the full Governor's set-aside be reinstated. One commenter encouraged the Department to pay particular attention to the impact that the requirements would have upon students that have expressed a desire to reengage back into the educational system and obtain their accredited high school diploma. The commenter made several specific recommendations about programs that would be helpful for this particular population, including making State WIOA program eligibility to be dictated by regional accreditation.

Department Response: The Department has already deployed technical assistance for ETP requirements, including webinars and a Quick Start Action Planner and plans to engage in a technical assistance effort to assist with ensuring adequate information technology infrastructure to implement the new WIOA requirements.

The Department has chosen not to regulate waiver policy in the Final Rule. The Department does not have authority under WIOA to provide States and local areas the ability to grant waivers. Therefore, the Department has not included such waiver provisions in the Final Rule for libraries. However, the Department notes that small CBOs, such as libraries, can provide programs of training services under contracts with local areas as described at §§ 680.530 and 680.320. Programs of training services provided under such contracts are not eligible training providers and are not included on the State ETPL. Thus, they are not required to comply with the requirements to be on and stay on the list. The Department additionally notes that because CBOs providing training services through a contract are not on the State ETPL, they are also not required to submit the WIOA sec. 116(d)(4) ETP annual performance report.

The set-aside amount is determined by Congress as part of the annual appropriations process and is therefore outside the scope of this regulation.

The Governor's procedure for initial eligibility may require other information in order to demonstrate high quality training services and such information may include regional accreditation and the ability to serve students who wish to reengage the educational system. As described under § 680.420, a program of training services may lead to a secondary diploma or its equivalent, as long as this is consistent with § 680.350. No changes to the regulatory text were made in response to this comment.

However, the Department has made a change to the regulatory text at § 680.450(b) to align with changes made to § 680.470, providing that apprenticeship programs registered under the National Apprenticeship Act are exempt from initial eligibility procedures and must be included and maintained on the State ETPL unless the program is removed from the list for the reasons in § 680.470. This change was made to conform with changes made to § 680.470, which are discussed in the preamble corresponding to that section. Although this is discussed more fully in the preamble to 20 CFR 677.230 (*see* Joint WIOA Final Rule), the Department notes that registered apprenticeship programs are not required to submit the WIOA sec. 116(d)(4) ETP annual performance report. Outcomes for WIOA participants in WIOA-funded registered apprenticeship programs must still be included in the State's annual performance report under WIOA sec. 116(d)(2). The Department also made a non-substantive change to this provision by removing the word "corresponding" from the phrase "corresponding program" as the word "corresponding" did not provide needed clarification and therefore was unnecessary.

Section 680.460 What is the application procedure for continued eligibility?

Section 680.460 sets out the requirements for the application procedure for continued eligibility. The Department has made non-substantive edits to this section for consistency with how the Department uses terms throughout the regulation. The Department has also made substantive revisions to paragraphs (c), (f)(1) and (10), and (j). The Department made edits to (i) to clarify the requirements for biennial review of eligibility information. These changes are discussed in further detail below.

Comments: Several commenters supported requiring public comment during the development of continued ETP eligibility procedures as well as allowing the Governor discretion to set the timetable for consultation and public comment. One commenter recommended that the regulations be revised to provide assurance that the biennial review is transparent and that it allows for adequate input from employers, as well as to provide guidance on specific ways in which Governors may hold providers accountable for meeting the needs of local employers. Another commenter suggested that the Department provide more structure for the process of including education programs on the ETPL and include specific examples for

gauging program quality by demanding standards of effective practice.

Department Response: The Department has determined that no changes to the regulatory text are necessary to address the concerns raised by commenters as the section already achieves the commenters' suggestions. The Governor's procedure for biennial review may take into consideration factors to ensure that the State will meet the needs of local employers. The Governor establishes the procedure after taking into consideration recommendations from Local WDBs and training providers and providing an opportunity for comment from interested members of the public, including representatives of business and labor organizations as required by § 680.460(b)(1) through (3). In addition, States must describe the eligibility procedures in their State Plans, which are subject to public comment requirements that include allowing for input from key stakeholders such as employers. This is further discussed in 20 CFR part 676 (*see* Joint WIOA Final Rule) and the WIOA State Plan ICR. Therefore, commenters' concerns about public comment during the development of the policies are already addressed.

In response to commenters' concerns about the Governor setting up a timetable for consultation with the public, the Department notes that § 680.460(b)(3) requires the Governor to set up a time period for soliciting and considering recommendations from Local WDBs and providers and giving the public an opportunity for comment. However, this section of the regulation does not prescribe a specific time period. Therefore, the Governor has discretion to set up a timetable for considering recommendations and public comment. Per § 680.460(f)(4), the Governor must take into account the degree to which programs of training relate to in-demand industry sectors and occupations in the State. Further, as described in § 680.460(f)(11), the Governor may take into account other factors such as ensuring that one-stop centers are meeting the needs of local employers and participants. It is unclear what additional structure the commenter is recommending in order to gauge program quality by demanding standards of effective practice. WIOA performance accountability requirements, as addressed in the ETP performance reports in 20 CFR 677.230 (*see* Joint WIOA Final Rule), are highly structured. Through technical assistance, States will have opportunities to share effective practices to gauge program quality.

The Department modified proposed § 680.460(c). In the NPRM, this paragraph required programs registered under the National Apprenticeship Act (NAA) to be included and maintained on the list for as long as the program was registered and required the Governor's eligibility procedures to include a mechanism for registered apprenticeship programs to indicate interest in being on the list as described in § 680.470. The Department reorganized this paragraph for clarity, moving the sentence that procedures for including registered apprenticeship programs on the list are found in § 680.470 to the beginning of the paragraph, instead of the end of the paragraph, and made a substantive revision for consistency with § 680.470. This section now provides that programs registered under the NAA are automatically eligible to be on the State's list and must remain on the State's list unless they are removed from the list for the reasons set forth in § 680.470. This is a conforming edit to changes made in § 680.470 and more can be read about that change below. The Department also made a non-substantive edit to this section removing the word "corresponding" as it was unnecessary.

Comments: Many commenters responded to our request for comment under proposed § 680.460(f)(1) on the alternate factors that may be used until performance data are available. The Department revised § 680.460(f), breaking the requirements into separate subsections for clarity and consistency with WIOA sec. 122(b)(1)(A)(i) and (ii). The flexibility for the Governor to use alternate factors until performance data are available is now located at § 680.460(f)(1)(v). The regulation at § 680.460(f)(1)(v) allows the Governor to use alternate factors for performance until performance information is available to establish continued eligibility. Several commenters suggested that alternate factors for performance be left to the Governor and Local WDBs to decide, while others offered a variety of specific alternate factors that the Governor could take into account. These suggestions included: WIA criteria; use of other information already supplied for State and Federal accountability measures, such as Carl D. Perkins Act performance indicators; three letters from local employers; completion rates; credentials; gainful employment measure; and graduation rates.

Department Response: The Department acknowledges that the suggestions provided by commenters offer appropriate options for the Governor's procedure, but has chosen not to include these in the regulation text to give Governors flexibility in choosing what performance information to use. In this way, the Governor's procedure can be tailored to the best performance data available among applicant training providers in that State.

Comments: A few commenters recommended a separate, lower set of performance standards for training providers who serve hard to serve participants, such as tribal colleges and programs specifically designed to provide combined workplace language and workplace skills to new Americans needing English literacy instructions. A few commenters recommended allowing States and local areas to grant waivers to CBOs for the reporting of data to ensure that these entities have the capacity to qualify as ETPs. However, a few other commenters stated that CBOs, including those serving hard to serve participants, must be held to the same standards as any other provider on the list.

Department Response: The regulatory language authorizes the Governor to take into account such factors as meeting the needs of hard-to-serve participants and programs specifically designed to provide combined workplace language and workplace skills to new Americans needing English literacy instruction when developing the State's continued eligibility procedures. Section 680.460(f)(9) specifically requires the Governor to take into account the ability of providers to provide training services to individuals who are employed and individuals with barriers to employment. In addition, local areas may enter into contracts to provide training services under specific circumstances, including with CBOs. Because CBOs which are providing programs of training through contracts are not considered ETPs, they do not need to meet the initial and continuing eligibility requirements of this subpart. However, CBOs that are included in the State List of Eligible Training Providers and receive payment for the training services through ITAs, rather than contracts, are subject to the eligibility and reporting requirements of the State list. No changes to the regulatory text were made in response to these comments.

Comments: Commenters addressed the performance information under § 680.460(g) that the Governor must require for continued eligibility for the State list of ETPs. One commenter questioned whether 20 CFR 677.230, which requires reporting performance

information on all participants, is in conflict with § 680.460(g) which requires reporting on WIOA-participants only.

Department Response: The Department does not consider these provisions as being in conflict as they are derived from different statutory provisions and serve different purposes under WIOA. The ETP annual performance report is required by WIOA sec. 116(d)(4) and explicitly requires information on the levels of performance for all individuals in a program of study. As explained above, more information about this requirement can be found in 20 CFR 677.230 and its corresponding preamble (*see* Joint WIOA Final Rule). Separately, the requirements for a training provider to continue to be on the State List of Eligible Training Providers and programs are found in WIOA sec. 122, and sec. 122(b)(2)(A) explicitly identifies the performance information the ETP must provide for this purpose. Thus, the WIOA sec. 116(d)(4) annual report is for reporting on performance, while the requirements in § 680.460 are for staying on the State List of Eligible Providers and Programs. In order to continue to be eligible, the ETP must provide information on the performance accountability measures in sec. 116 of WIOA for "participants" whose training is funded under title I, subtitle B. However, the Department notes that both the Governor, under WIOA sec. 122(b)(1)(J), and the Local WDB, under WIOA sec. 122(b)(3), have authority to require additional data from ETPs, which might include data on all students. In addition, WIOA sec. 122(b)(1)(A)(ii) explicitly permits the Governor to require reporting on all individuals enrolled in the programs in which WIOA-funded participants studied.

Comments: Several commenters cited the potential problem of a small number of participants ("small in size") when providing WIOA-participant-only data. These commenters stated that the resulting data would be too small to yield useful outcome information and would risk revealing personally identifiable information (PII). Other commenters suggested that § 680.460(g) specifically include instructions similar to those found in WIOA sec. 116(d)(6)(C), which states that the disaggregation of data for the State performance reports is not required when the number of participants is too small to yield statistically reliable information or when results would reveal PII about an individual participant. One commenter said that an alternative approach is needed for using performance results for management, provider selection, and public/consumer information, but did not specify what the alternative approach would be. Some commenters suggested that the State List require reporting on all students in order to yield a larger data set. One commenter urged the Department to require biannual reporting of all completers and placement numbers for the previous year utilizing a standardized template to collect data to ensure an educated training program selection process. Several commenters recommended that the materials to be considered when determining ETP continued eligibility include information reported to State agencies on Federal and State training programs other than WIOA title I, subtitle B, and asked for submission of performance results for all students and not just those who received training subsidized by WIOA title I adult or dislocated worker funds.

However, several commenters supported a requirement that performance reports include only WIOA-funded students. One commenter cautioned that the cost for reporting all students and not just WIOA-funded students by program could result in training providers not accepting WIOA-funded students to avoid the reporting burden. One commenter stated that in order to avoid revealing data on any individual, it would normally not be required to disclose performance information on any program with a small number of participants and that performance data would be relatively meaningless if too few individuals are in the performance cohort. This commenter recommended that the regulations specifically recognize that this information shouldn't be revealed for those programs with low participant numbers.

Department Response: With respect to the privacy concerns that arise from the small numbers in participant data, the Department notes that the regulation already addresses this issue. Paragraph (e) of § 680.500 addresses privacy concerns for the dissemination of the ETPL by requiring that the State List and accompanying information be made available in a manner that does not reveal personally identifiable information about an individual participant and that, in developing the information to accompany the State List of Eligible Training Providers and Programs, disclosure of personally identifiable information from an education record must be carried out in accordance with the Family Educational Rights and Privacy Act, including the circumstances relating to prior written consent. Accordingly, additional regulatory text for § 680.460 is not needed. While the Governor must take into account all of the information listed in WIOA sec. 122(b)(1) in setting the criteria for eligibility on the State ETPL, the Department interprets WIOA sec. 122(b)(1)(A)(ii) to provide discretion to the Governor to determine whether reporting on all students is an "appropriate" measure of performance outcomes under that paragraph. The Department is not regulating State eligibility procedures to require reporting on all students in order to yield a larger data set; however, the Governor may choose to do so as part of the State's eligibility procedures.

With respect to the minimum size of a data set that would ensure participant confidentiality and the reliability of outcomes data, the Department has determined that States will maintain confidentiality and reliability of data by complying with relevant State law and with WIOA itself. WIOA sec. 122(d)(3) states that the State List and accompanying information must be made available to such participants and to members of the public through the one-stop delivery system in the State in a manner that does not reveal PII about an individual participant. WIOA sec. 122 does not require that the performance information that accompanies the State List be statistically reliable in the same way that WIOA sec. 116(d)(6)(C) does for the annual performance reports. Therefore, the Department has not regulated this as a requirement.

In response to commenters suggesting that the Department require biannual reporting of all completers and placement numbers for the previous year utilizing a standardized template, the Department has chosen not to require a template for the State List of Eligible Training Providers. While a standardized template is required for the reporting of information in the ETP Performance Reports, as described in 20 CFR 677.230 (*see* Joint WIOA Final Rule), the Department has concluded that WIOA intends the development of the State List to be at the State's discretion in order to meet the needs of individuals seeking training in that State. In addition, the flexibility to determine the format and presentation of the State List enables the State to accommodate additional information that the Governor may choose to require as part of the State's eligibility procedures.

In response to commenters that suggested that eligibility information include materials submitted to State agencies on Federal and State training

programs other than programs within WIOA title I, subtitle B, this is already reflected in the factors that the Governor's continued eligibility must take into account under § 680.460(f)(3).

The Department again wishes to clarify that reporting on all participants is a requirement of the ETP performance reports described in 20 CFR 677.230. Suggestions that the ETP performance reports include WIOA-funded students only, and related comments citing potential concerns by training providers, are addressed in that section.

Comments: Several commenters requested that the Department add waiver provisions to ease the transition to WIOA or to adjust reporting requirements for providers applying for continued eligibility for the ETPL. Other commenters disagreed with the proposed continued eligibility procedures for ETPs eligible under WIA and described them as a time-consuming burden for State and Local WDBs.

Department Response: Because of WIOA's emphasis on ensuring the provision of quality training, and the importance of using performance criteria to obtain such quality, the Department is not including waivers in the regulation. In transitioning to collection of WIOA data, § 680.460(f)(1) already provides sufficient flexibility by allowing the Governor to use alternate factors for performance until WIOA performance information is available for an ETP. No changes were made to the regulatory text in response to these comments.

Comments: The Department received comments in response to the request for ideas on how to reduce the burden and avoid duplication of effort to meet reporting requirements under WIOA secs. 122 (provider eligibility) and 116 (performance accountability).

A few commenters responded to the requirement that the State criteria for continued eligibility take into account the timely and accurate submission of ETP performance reports. Several commenters commented on the ETP annual performance report requirements under WIOA sec. 116(d)(4). Comments related to this report are more fully addressed in the preamble to 20 CFR 677.230 (*see* Joint WIOA Final Rule). A commenter cautioned that requiring training providers to submit appropriate, accurate, and timely information to the States to create the ETPL under § 680.460(f)(10) is an unnecessary burden because most case management systems already capture and validate this information as part of case management, and that collecting this information from training providers would compromise the accuracy, validity, and consistency of the information. This commenter recommended that States be granted flexibility to capture this information in the manner that best balances the validity of data and efficiency of progress, rather than strictly from training providers. Another commenter stated that the Governor and local WDBs should have the discretion to utilize alternative data sources in the interim to determine ETPs' performance outcomes and that these data outcomes should not be prescribed by the Department because local case managers have real-time participant outcomes not subject to the lag time associated with DOL performance indicators. One commenter disagreed with the proposed WIOA continued eligibility requirements and recommended that the Department continue to use the WIA requirements.

One commenter, referring to § 680.460(l), questioned what qualifies as an "undue cost or burden" to remove a training provider from the performance requirement.

Department Response: The information required under § 680.460 to maintain continued eligibility is separate from the ETP annual performance reports required under 20 CFR 677.230 (*see* Joint WIOA Final Rule). Paragraph (e)(3) of 20 CFR 677.230 addresses coordination and dissemination of the ETP performance reports and the State list of eligible training providers as described at § 680.500. With respect to the commenter's recommendation that the requirement to consider whether a provider timely and accurately submits information for the WIOA sec. 116(d)(4) ETP annual report to the State, the Department acknowledges that there will be some overlap in what is required for inclusion in the WIOA sec. 116(d)(4) report and the information the State already has in its case management files. The Department recommends that States work with training providers to minimize the reporting burden and utilize integrated systems as much as possible. No change in the regulation text was made in response to this comment.

Additionally, the Department notes that the provision at § 680.460(l) does not allow a State to remove a training provider from this performance requirement based on undue cost or burden. Rather, this provision allows the Governor to establish procedures and timeframes for providing technical assistance to training providers that are failing to meet the criteria and information requirements due to undue cost or burden. The Governor's procedures determine what constitutes undue cost or burden. The Department has chosen not to regulate what constitutes "undue cost or burden" in order to provide Governors the flexibility needed to best address the particular needs of the ETPs in each State.

WIOA, not WIA, dictates the continued eligibility requirements and the Department declines to substitute WIA requirements for WIOA requirements. WIOA sets forth factors and the Governor's continued eligibility procedures determine how these WIOA-required factors are taken into account. WIOA and the regulations further provide that the Governor's criteria for eligibility and information requirements may include any appropriate additional information that the Governor may require. In addition, WIOA allows for WIA-eligible providers to remain eligible through December 31, 2015.

Comments: One commenter requested clarification on the timeline for initial eligibility compared to the beginning of the biennial review and renewal period.

Department Response: States have discretion in how they implement eligibility procedures and timelines for biennial review. Some States may find it efficient to review the entire State list every 2 years, while others may have a system for reviewing each provider on the second anniversary of when that provider established continued eligibility under WIOA. The timeline for how initially eligible training providers are deemed continued eligible training providers and thereby incorporated into the review system will vary from State to State. The Department made minor edits to § 680.460(i) for clarity regarding the requirement for biennial review of eligibility information by inserting the word biennial before the word "review."

The Department modified § 680.460(j) on the biennial review to provide that, in addition to the verification of the registration status of registered apprenticeship programs, the biennial review also must include removal of any registered apprenticeship programs that are removed from the list under § 680.470. This change was made to conform with changes to § 680.470. More can be read about the Department's changes to proposed § 680.470 below.

Paragraph (f)(10) of § 680.460 proposed to require the Governor, in establishing the eligibility criteria for continued eligibility, to take into account whether providers timely and accurately submitted the information needed for the WIOA sec. 116(d)(4) ETP report. The Department also revised this

provision to require the Governor to take into account whether the provider timely and accurately submitted the information required for initial and continued eligibility. Additionally, the Department revised this provision to require that the Governor consider whether the provider submitted "all of the" information for the report and eligibility procedures, which means the Governor must take into account whether the information the provider submitted is complete.

In response to comments and to ensure that providers comply with the requirement to timely and accurately submit all of this information, the Department added § 680.460(l) to require that the Governor's procedure include what the Governor considers to be a substantial violation of § 680.460(f)(10). And § 680.460(l)(2) requires those providers that substantially violate this requirement be removed from the State list of eligible training providers and programs consistent with § 680.480(b).

These modifications were made for consistency with WIOA sec. 122(f)(1)(B), which requires programs be removed from the State list of eligible programs and providers when a provider substantially violates any of the requirements of title I of WIOA. Given WIOA's focus on performance accountability in WIOA sec. 116 and informed consumer choice in WIOA sec. 122, the Department has concluded that failure to timely and accurately submit the information required for the WIOA sec. 116(d)(4) ETP report and the initial and continued eligibility constitutes a substantial violation of WIOA title I requirements.

Because WIOA sec. 122(f)(1)(B) requires the determination of a substantial violation to be made by an individual or entity specified in the Governor's procedures, § 680.460(l) gives the Governor the discretion to determine what constitutes a substantial violation of the requirement to timely and accurately submit all of the required information. Therefore, the Governor has the flexibility to take into account the specific circumstances in the State that affect a provider's ability to submit the required information. Moreover, the Department notes that paragraph (l)(1) requires the Governor's determination of what constitutes a substantial violation of the requirement to timely and accurately submit all of this information to take into account exceptional circumstances beyond the provider's control, such as natural disasters, unexpected personnel transitions, and unexpected technology-related issues. The Department included this provision specifically to address instances in which, through no fault of its own, a provider may not be able to timely or accurately submit all of the information required. In those instances, the Governor may not determine that a substantial violation has occurred. Additionally, the Department notes that the list of the exceptional circumstances in this regulatory provision is not exhaustive and the Department encourages Governors to consider the particular needs of providers in the State in creating the policy and determining what constitutes exceptional circumstances beyond the provider's control.

The Department also has made a clarifying change to § 680.460(f)(10) adding the words "information required for completion of" between "submitted" and "eligible" to clarify that while the ETPs are required to provide accurate and timely information for purposes of completion of the ETP performance report required by WIOA sec. 116, an ETP will not have all of the information to complete that report.

Finally, the Department removed paragraph (k) because the authority for the Local WDBs to require higher levels of performance for local programs is already referenced in § 680.430(e). Therefore, this provision was unnecessary. The Department renumbered what was previously proposed paragraph (l) to paragraph (k) to conform to this change.

Section 680.470 What are the procedures for including and removing registered apprenticeship programs on a State list of eligible training providers and programs?

Section 680.470 described the process for including and maintaining registered apprenticeship programs on the ETPL. The Department made non-substantive edits for consistency in how the Department uses terms throughout this section. The Department also made substantive changes to § 680.470(a) and (b), and added new paragraphs (c) and (f). The Department received comments regarding § 680.470(d), which is now renumbered as (e).

Proposed § 680.470(a) provided that all registered apprenticeship programs would be automatically eligible to be included on a State Eligible Training Providers and Programs List and required the Governor to establish a mechanism by which registered apprenticeship programs may indicate whether they wish to be included on the State Eligible Training Providers and Programs List. The NPRM required registered apprenticeship programs to indicate interest to be included in the State Eligible Training Providers and Programs List. Due to concern that some registered apprenticeship programs may not wish to be on the State ETPL, proposed § 680.470(b) provided that registered apprenticeship programs will remain on the List until they are deregistered or have notified the State that they no longer wish to be included on the List. The proposed section was silent on whether a registered apprenticeship program could be subject to the provisions for removal from the ETPL under § 680.480, and § 680.480 did not provide an express exclusion from those procedures for registered apprenticeship programs. Proposed § 680.470(d) encouraged Governors to consult with State and Local WDBs and other entities to establish voluntary reporting of performance information for registered apprenticeship programs, because WIOA sec. 122(a)(3) specifically exempts registered apprenticeship programs from the criteria and information requirements and Governor-established procedures required for inclusion on the State ETPL, and therefore the NPRM did not require registered apprenticeship programs to provide performance information in order to be included on the ETPL. In addition, 20 CFR 677.230(b) of the Joint WIOA NPRM (regarding information required for the ETP performance report) exempted registered apprenticeship programs from reporting information for purposes of the ETP performance report required by WIOA sec. 116(d)(4) but specified that any such information submitted voluntarily to a State must be included by the State in the ETP annual performance report required by 20 CFR 677.230. A number of changes were made to this § 680.470 in response to comments received and for purposes of clarity.

Comments: Several commenters expressed support for automatic qualification of registered apprenticeship programs for the State ETPL. In addition, several commenters offered suggestions on how registered apprenticeship programs are added to and removed from a State List of Eligible Training Providers and Programs. One commenter urged the Department to create a uniform standard for all Governors to follow when developing a mechanism by which registered apprenticeship programs request inclusion on the List. The commenter warned that nationally registered apprenticeship programs that offer training in various States would need to assess each State's process, which could prove overly burdensome

if States have different mechanisms. Another commenter objected to placing the burden on registered apprenticeship training programs to ensure inclusion on the ETPL, in part because of the statutory mandate that registered apprenticeship programs be eligible to be included on the List. The commenter expressed concern that the added requirement to indicate interest would create confusion and cause delay in getting registered apprenticeship programs on the State List. A few commenters were concerned that States with a history of being unfriendly or hostile to unions or of having significant bureaucratic inertia may use the requirement as an excuse to disfavor registered apprenticeship programs. Another commenter recommended revising the regulations to create an opt-out framework rather than an opt-in framework, such that registered apprenticeship programs would be included on the ETPL unless the program took steps to be excluded. This commenter stated that an opt-out system would allow program sponsors that may not wish to be on the State List to remove themselves while avoiding ill-designed opt-in procedures that could preclude or delay, intentionally or accidentally, the sponsors of registered joint labor-management apprenticeship programs from appearing on the State ETPL. Other commenters supported the proposal to require registered apprenticeship programs to opt in. Some commenters suggested revising the regulation to clarify when registered apprenticeship programs may be removed from the State List of Eligible Training Providers and Programs and whether registered apprenticeship programs are exempt from the enforcement provisions of WIOA sec. 122(f) that were set forth in proposed § 680.480. One commenter asked how States should monitor registered apprenticeship programs for compliance and what the criteria are to qualify as a registered apprenticeship program.

One commenter stated that proposed § 680.480 was inconsistent with WIOA to the extent that it allows registered apprenticeship programs to be removed from the List for any reason other than deregistration because, in this commenter's view, the requirement in WIOA sec. 122(a)(3) that registered apprenticeship programs shall be included and maintained on the State ETPL for so long as the program is registered precludes removal for any reason other than deregistration. According to the commenter, the standards for deregistration under the National Apprenticeship Act are sufficient to trigger removal from the ETPL where appropriate, and application of the enforcement provisions in WIOA sec. 122(f) is inappropriate and unnecessary. The commenter states that regulations implementing the National Apprenticeship Act already include clearly-defined, qualitative standards governing when such a program can be deregistered. The commenter suggested a change to the enforcement section of the ETP requirements at proposed § 680.480 to affirm that registered apprenticeship programs are not subject to these enforcement provisions. The commenter suggested adding language to § 680.480(a) that states: "Except for a provider described in section 122(a)(3) of WIOA, a training provider may lose its eligibility pursuant to this section."

Department Response: The Department has made revisions to § 680.470(a) to clarify the process for including registered apprenticeship programs on the State List of Eligible Training Providers and Programs. Through a mechanism established by the Governor, registered apprenticeship programs must be informed of their automatic eligibility and must be provided an opportunity to consent to their inclusion before being placed on the State Eligible Training Providers and Programs List. The Department chose this approach in order to ensure that the States include registered apprenticeship programs that are interested in accepting WIOA participants while at the same time ensuring that all registered apprenticeship programs are readily included with minimal burden. The Department chose to allow Governors to develop such a process, rather than create a uniform standard for all States, in keeping with the Governor's discretion to implement procedures regarding the State List of Eligible Training Providers. This approach will also allow each Governor to establish a procedure that works best for the registered apprenticeship programs in that specific State.

While the NPRM provided that the Governor's mechanism "should" be developed based on guidance from the U.S. Department of Labor Office of Apprenticeship representative in the State or the assistance of the recognized State apprenticeship agency, § 680.470(a) now requires the procedures to be developed based on such guidance. This guidance includes how to ensure that national registered apprenticeship programs are included as eligible training providers. Finally, this paragraph has been amended to add a requirement that the Governor develop a process to impose only minimum burden on registered apprenticeship programs. In response to commenters' concerns that States with a history of being unfriendly or hostile to unions or of having significant bureaucratic inertia may use the requirement as an excuse to disfavor registered apprenticeship programs, these changes together with Departmental technical assistance and guidance ensures that States are inclusive of registered apprenticeship programs.

These revisions will provide registered apprenticeship programs the opportunity to consent to being included on the State List of Eligible Training Providers and Programs while minimizing the affirmative burden placed on them to do so. The Department has concluded that this type of process will increase the participation rate of registered apprenticeship programs on the ETPL and further the aims of the registered apprenticeship program by having such programs included on the State List as soon and as easily as possible. The Department chose not to revise the regulation to require registered apprenticeship programs be included on this List unless they choose to opt out, in order to reduce the potential confusion for participants utilizing the List. Allowing for registered apprenticeship programs to consent allows States to ensure that only providers that are willing to accept WIOA participants are included on the State List of ETPs.

The Department has also revised the regulation at § 680.470(b) and added a new § 680.470(c) to clarify that registered apprenticeship programs may be removed from the State List of Eligible Training Providers and Programs for violations of WIOA and that enforcement provisions may apply in such cases. The regulation now includes § 680.470(b)(3), which provides that a registered apprenticeship program may be removed from the State List of Eligible Training Providers and Programs for having intentionally supplied inaccurate information or substantially violated any provision of WIOA title I (*e.g.*, civil rights or discrimination violations) or WIOA regulations.

Section 680.470(c) provides that removal from the List for reasons under § 680.470(b)(3) will result in a termination of eligibility for the ETPL for not less than 2 years and liability to repay all training funds received during the period of noncompliance, consistent with the requirements under § 680.480 for all other ETPs. Section § 680.470(c) further provides that the Governor must specify in enforcement procedures

established under § 680.480 the process for and the entity making the determination of ineligibility, and must provide an opportunity for hearing. The Department has concluded that the process used for all non-compliant eligible training providers must be applied to noncompliant registered apprenticeship programs, including removal from the State ETPL. This is needed to maintain the integrity and quality of the State ETPL. Application of the WIOA enforcement provisions to registered apprenticeship programs enables the State to take action to remove a registered apprenticeship program from the State List, if that program is in significant violation of WIOA. The Department wishes to avoid a scenario where a registered apprenticeship program that is in significant violation of WIOA could remain on the State List of ETPs until that program's registered status is reviewed under the National Apprenticeship Act.

In addition, the Department disagrees that WIOA requires the Department to exclude registered apprenticeship programs from the enforcement provisions of WIOA sec. 122(f). WIOA sec. 122 contains express statutory exceptions for registered apprenticeship programs from providing performance information as a requirement for inclusion and maintenance on the State ETPL but WIOA sec. 122 contains no similar exception for registered apprenticeship programs from the enforcement provisions. In fact, WIOA sec. 122(h) contains express exemptions from the enforcement provisions for several types of providers, but does not include registered apprenticeship programs on that list of exempted entities. The Department interprets this silence to mean that the regular WIOA enforcement provisions apply to registered apprenticeship programs. Accordingly, the Final Rule now allows the State to take action as appropriate, in addition to the enforcement and deregistration process under the National Apprenticeship Act.

The Department has also revised the wording in the title of § 680.470 to reflect that this section addresses both inclusion and removal of registered apprenticeship programs from the State List of Eligible Training Providers and Programs.

Comments: A few commenters encouraged mandatory reporting of performance information for all training programs, including registered apprenticeship programs, that seek to be included on a State's List of Eligible Training Providers and Programs. Several commenters stated that registered apprenticeship programs should not be exempt from reporting ETP performance data, reasoning that this information is valuable in determining the effectiveness of registered apprenticeship programs in leading individuals to unsubsidized employment. One commenter supported exempting registered apprenticeship programs from the application procedures, information requirements, and performance reporting requirements of other training providers in light of the rigorous process for registering apprenticeship programs with the Department. Several commenters opposed any additional reporting for registered apprenticeship programs and requested that the regulation clearly describe applicable reporting requirements for registered apprenticeship programs. One commenter pointed out that States and local areas will have to determine and establish data collection for tracking for performance and asked whether the Department will define the measures for registered apprenticeship program performance.

Department Response: The Department has decided to maintain the wording of proposed § 680.470(d) in the Final Rule, renumbered to § 680.470(e), because of the addition of new § 680.470(c). The exception for registered apprenticeship programs from providing performance information to be included or maintained on the State ETPL is required by WIOA sec. 122(a)(3). However, the Department is clarifying that voluntary reporting of performance information by registered apprenticeship programs is encouraged under the regulation. More information can be read on this in the preamble to 20 CFR 677.230 (*see* Joint WIOA Final Rule). In addition, the Department is maintaining the exception for registered apprenticeship programs from providing performance information for the ETP performance report required under 20 CFR 677.230 for the reasons discussed in the preamble to that section, but notes that outcomes for WIOA participants in WIOA-funded registered apprenticeship programs must still be included in the State's annual performance report under WIOA sec. 116(d)(2).

Comments: A few commenters recommended that apprenticeship programs be required to demonstrate recruitment of underrepresented populations. One commenter suggested that a key qualification for apprenticeship programs' integration into the use of ITAs be adherence to existing requirements under 29 CFR part 30, which prohibits discrimination based on race, color, religion, national origin, or sex in apprenticeship programs. Another commenter suggested that the WIOA regulations should ensure that older workers are not discriminated against in apprenticeship programs.

Department Response: The Department has concluded that putting additional requirements on registered apprenticeship programs in order to participate in the State List of ETPs or to use ITAs is outside the scope of this regulation because WIOA designates registered apprenticeship programs as eligible to serve as ETPs. In addition, registered apprenticeship programs are already required to comply with 20 CFR part 30 anti-discrimination provisions.

Comments: Other commenters recommended that pre-apprenticeship programs be included on the State ETPL but with a performance measurement model that is more appropriate for the activity, for example, enrollment in an apprenticeship program or a community college program would both be positive outcomes.

Department Response: The commenter did not specify whether it meant that pre-apprenticeship programs should be included under the exception for registered apprenticeship programs or included through the Governor's eligibility procedures for eligible training providers. However, the Department acknowledges the need to clarify how pre-apprenticeship programs are treated for inclusion on the State ETPL. The Department has added a § 680.470(f) to clarify that because pre-apprenticeship programs are not registered under the National Apprenticeship Act and are not included in the exceptions for registered apprenticeship programs under WIOA sec. 122(a)(3), they must follow the Governor's procedure for eligibility in this subpart. Pre-apprenticeship providers that wish to use WIOA funds to provide training services may go through the normal training provider program application procedure to be included on the State List of Eligible Training Providers and Programs. Therefore, such pre-apprenticeship programs would be subject to the eligibility and information reporting requirements of the State ETPs.

Comments: One commenter expressed concern throughout the regulation that in defining how individual training accounts may be used, and defining the use of on-the-job training funds, preference is given to registered apprenticeship programs. The commenter urged the Department to revise the regulation to reflect the

importance of other OJT programs. The commenter emphasized the robust and valuable non-registered apprenticeship programs embraced by many manufacturers, and that training for in-demand skills is available in multiple venues and that these programs should be considered based on the value of their training, rather than their registration status with a government entity. However, the commenter did not provide suggestions on how the Department could address the commenter's concerns.

Department Response: The Department has determined that no changes to the regulatory text are needed in response to this comment. Both the requirement that registered apprenticeship programs shall be included on the State ETPL and the exemption for registered apprenticeship programs from the requirement to submit performance information for inclusion on the State List are specifically limited to registered apprenticeship programs by WIOA sec. 122(a)(3). Regarding the commenter suggesting a revision to the regulatory text to emphasize OJT, it is unclear what revisions to the regulation the commenter is suggesting. The Department has made revisions to § 680.530 to clarify how exceptions to the eligible training provider List, which may provide training through contracts with the Local WDB, including OJT, are to be treated; more about this change can be read in the preamble to § 680.530. The Department agrees with the commenter that non-registered apprenticeship programs and work-based training are important training options.

Section 680.480 May an eligible training provider lose its eligibility?

Section 680.480 describes the enforcement provisions available to apply to training providers who are not in compliance with WIOA and WIOA regulations. The Department made non-substantive edits for consistency in how the Department uses terms throughout this section. The Department also made substantive changes to paragraphs (b) and (c) which are further described below.

The Department made a clarifying edit to § 680.480(a). The Department is deleting the phrase "deliver results" and replacing it with language to clarify that this provision requires that training programs meet the Governor's eligibility requirements and that training providers provide accurate information.

The Department also made a clarifying edit to § 680.480(e) to clarify that if a training program is removed from the eligible training providers in a local area because the training program failed to meet the local area's higher performance standards, the training provider may appeal this eligibility denial under § 683.630(b). This provision no longer requires Local WDBs to create an appeals procedure for these purposes.

Proposed § 680.480(b) provided that providers whose eligibility is terminated under this section are liable to repay all adult and dislocated worker funds received during the period of non-compliance. The Department revised this paragraph for consistency with § 681.550 that permits youth funds to pay for training for out-of-school youth aged 16–24 and such funds are also subject to the requirement to repay funds received during non-compliance.

Comments: The Department received only a handful of comments addressing proposed § 680.480. As discussed above, one commenter stated that proposed § 680.480 was inconsistent with WIOA to the extent that it allows registered apprenticeship programs to be removed from the List for any reason other than deregistration.

Department Response: The Department revised § 680.480(c) by adding language stating that registered apprenticeship programs may only be removed from the List for reasons set forth in § 680.470. The regulation includes registered apprenticeship programs within the enforcement provisions in WIOA sec. 122(f) for the reasons set forth in the preamble to § 680.470. WIOA sec. 122 does not require registered apprenticeship programs to supply performance information in order to be determined eligible training providers, in light of the extensive vetting process that registered apprenticeship programs undergo in order to become registered. Therefore, the Department is not regulating that registered apprenticeship programs be removed from the State List of Eligible Training Providers for reasons related to performance.

Comments: Another commenter stated that training providers should be considered to be noncompliant when less than 50 percent of those enrolled complete the program in the allotted training period or when less than 50 percent of completers fail to find employment within 180 days of completion. The commenter stated that these statistics should be based on all enrolled students, not just WIOA-funded individuals. In addition, a commenter suggested that ETPs that do not provide performance information as required under WIOA should be removed from the State ETPL, as those that are non-compliant or intentionally provide inaccurate information. The commenter said that such providers should also be liable for repayment of adult and dislocated worker funds. Another commenter asked how monitoring of training providers will be conducted and who has ultimate responsibility for this task.

Department Response: The Governor's procedures for establishing eligibility may establish minimum performance standards for all providers other than registered apprenticeship programs. Under § 680.480(c), the Governor may remove provider programs from the State List during its biennial renewal procedure for failure to meet State eligibility criteria, including any minimum performance levels established. The Department has not regulated specific threshold amounts for compliance because it is within the Governor's authority under WIOA to establish appropriate minimum standards through its procedure. Under § 680.430(e), the Local WDB may establish higher levels of performance than those required by the Governor for a provider to be eligible to receive training funds from that local area. The Department made a minor revision to § 680.480(e) for consistency with § 680.430(e) to clarify that if the Local WDB has established higher performance standards pursuant to § 680.430(e), the Local WDB can remove a program of training services from the eligible programs in that local area for failure to meet those higher performance standards. In response to the comment suggesting that ETPs who do not provide performance information should be removed from the State ETPL, the Department refers readers to § 680.460 and its accompanying preamble.

Regarding comments on which entity is responsible for monitoring ETPs, the Department notes that under WIOA sec. 122, States and local areas are responsible for monitoring eligible training providers and for determining how such monitoring is conducted. Per § 680.430(b)(2) and (c), the Governor or the Governor's designated SWA (or appropriate State entity) is responsible for ensuring that programs meet eligibility criteria and performance levels established by the State, including verifying the accuracy of the information, and the Local WDB must carry out procedures assigned to the Local WDB by the State.

Section 680.490 What kind of performance and cost information must eligible training providers other than registered apprenticeship programs provide for each program of training services?

Section 680.490 describes the information that training providers must submit to the State to meet initial and continued eligibility criteria for inclusion on the State List of Eligible Training Providers and Programs under § 680.460(h). Proposed § 680.490(d) required the Governor to establish a procedure and methods to assist training providers who demonstrate that providing the required information is unduly burdensome or costly. This section has been adopted as proposed, with revisions for clarity and consistency of terms and one substantive change at paragraph (c).

The Department revised proposed § 680.490(a) for clarity. Proposed § 680.490(a) provided that, in accordance with § 680.460(h), every 2 years training providers are required to submit appropriate, timely, and accurate performance and cost information. However, the Department changed the reference to § 680.460(h) in this paragraph to § 680.460(i) to clarify that eligible training providers, except registered apprenticeship programs, must submit this information at least every 2 years in accordance with the State's continued eligibility policy.

The Department also modified § 680.490(c) by adding that the Governor may require additional performance information if the Governor determines it is appropriate to better inform consumers. This paragraph originally provided that the Governor could add this information if the Governor determined it was appropriate for determining or maintaining eligibility. However, WIOA sec. 122(b)(1)(J)(iii) provides that the Governor's criteria and information requirements can include other factors the Governor determines are appropriate to ensure informed choice of participants among training service providers, and the modification to this section reflects this authority.

Comments: Several commenters agreed with the Department's message that the Governor must assist providers in supplying the information required of them under WIOA and the NPRM. These commenters urged that the State ETPL coordinators at the State level be required to maintain a list of available technical assistance for training providers and that a probationary period be included for all those who may miss eligibility. One commenter encouraged the Department to ensure that the regulations provide maximum flexibility for the State to work with training providers to report on the primary indicators of performance.

Department Response: The Department cannot require States to provide a probationary period or maintain technical assistance lists. However, the Governor has significant flexibility under § 680.490(d). For example, if a provider demonstrates that providing additional information required under this section would be unduly burdensome or costly, the Governor may provide additional resources from funds for State workforce investment activities reserved under WIOA secs. 128(a) and 133(a)(1) as provided in § 680.490(d)(2) to assist providers in the information collection. Further, in addition to the required factors, the regulations allow the Governor to take any appropriate additional factors into account when developing procedures for providers to be included and maintained on the State List of Eligible Training Providers and Programs. No changes to regulatory text were made as a result of these comments.

Comments: Several commenters supported the § 680.490(d) requirement that Governors have a procedure in place to address the costs and burden of any increased reporting requirements. One commenter expressed appreciation for the Department's recognition of the potential cost and burden of WIOA's requirements for ETPs in meeting their performance reports and urged the Department to issue guidance to the States on how to streamline performance reporting for training providers and minimize the burden associated with reporting on multiple programs through the ETP performance reports required by WIOA sec. 116 and the performance information required by WIOA sec. 122 for inclusion and maintenance on the State ETPL. A number of comments appear to reflect confusion between these two types of performance information.

A few commenters stated that many of the requested reporting elements are not valuable to the consumer and asserted that local areas should determine if a provider should continue to be listed on the ETPL because local areas' performance is directly related to the quality of the training programs. One commenter suggested that for each program of study, the following information be collected: Number enrolled, number completed, number of completers employed at 90 and 180 days after exit, and wage at placement of those employed.

Department Response: WIOA sec. 122 requires specific information that must accompany the State List of Eligible Training Providers and Programs. The Departments of Education and Labor are issuing joint guidance on data sharing. Submission of ETP performance reports is required by WIOA sec. 116(d)(4) and addressed in 20 CFR 677.230 of the regulations (*see* Joint WIOA Final Rule). This section of the preamble addresses § 680.460 and is focused on the requirements for ETP eligibility and maintenance of the State ETPL. Comments related to the ETP annual performance reports required under WIOA sec. 116(d)(4) and other issues related to specific performance indicators are addressed in the Joint WIOA Final Rule preamble section relating to 20 CFR part 677. In addition, the Governor's procedure for continued eligibility and for publishing the State List may include the specific information suggested by the commenter. No changes were made to the regulatory text in response to these comments.

Comments: Several commenters stated that flexibility is needed in the performance reporting requirements for inclusion on the State ETPL to allow Local WDBs to assess providers at the course, program, or institutional level because the proposed ETP performance reporting requirements could raise data privacy concerns where PII is provided. One commenter suggested that performance information be maintained at the participant level and not across programs.

Department Response: The Department has determined that reporting requirements for inclusion and maintenance of the State ETPL must be established at the program level only. WIOA clearly establishes initial and continued eligibility requirements for provider programs. Eligibility and performance reporting is thus determined on a program-by-program basis for each provider under the regulations. Therefore, reporting is done through the program of study, rather than the individual courses that make up the program. All performance reporting requirements must be carried out consistent with all applicable Federal and State privacy laws and the Department is issuing guidance to assist States in complying with these laws.

In addition, the Department made a revision to the title of § 680.490 to clarify that registered apprenticeship programs are not subject to these performance reporting requirements. As the Department explained in the preamble addressing § 680.470, WIOA exempts registered apprenticeship

programs from ETP performance reporting requirements for inclusion on the ETP list. However, voluntary reporting of performance information by registered apprenticeship programs is encouraged under the regulation. The Department also modified § 680.490(a) to clarify, consistent with the decision that registered apprenticeship programs are exempt from the performance reporting requirements, that registered apprenticeship programs are not required to submit the performance and cost information required by this section.

Finally, as noted in the preamble to § 680.400, § 680.490(b) has been revised to require performance reporting on all WIOA participants enrolled in a program of training services and receiving funding through an ITA for the performance information on WIOA participants required by § 680.490(b). This includes OSY aged 16–24. As the Department is permitting youth program funds for OSY aged 16–24 to use ITAs, it is important that the performance information required encompass these WIOA participants. However, the ETPs will report based on the adult primary indicators of performance for these youth to provide comparability and to eliminate the burden that would be imposed if ETPs were required to report on separate performance indicators for adults and dislocated workers and for the subset of youth who may receive training through ITAs.

Section 680.500 How is the State list of eligible training providers and programs disseminated?

Section 680.500 describes the requirements for distributing the State List of Eligible Training Providers and Programs and accompanying cost and performance information to Local WDBs and to the general public. Other than non-substantive changes for consistency of terms, the Department has adopted this section as proposed.

Comments: One commenter supported making the ETPL publicly accessible in a consumer friendly format. Another commenter stated that only one List per State should be permitted to be published because multiple publications within a State would be confusing for participants and ETPs. One commenter recommended that States be required to identify and list credentialing organizations and helpful information about key or high growth sectors on the homepages of the State Lists of Eligible Training Providers and Programs, including providing a list of high growth industries. This commenter stated that when a nationally-recognized, industry-driven credential has been discovered by a State or local entity, or the Federal government, this information should be shared publicly to raise the bar on training programs and help ensure that tasks are performed to the highest standards available, while maintaining and improving American competitiveness.

Department Response: WIOA requires the State to generate and disseminate its List of ETPs that contains, at a minimum, the information required by WIOA sec. 122(d) and § 680.500. However, as provided at § 680.430(e), Local WDBs may establish higher performance standards or additional information and criteria, except with respect to registered apprenticeship programs. In addition, the Department notes that States have the discretion to identify credentialing organizations or to restrict the types of providers included on the State List. It is up to the State to determine what providers meet its initial and continued eligibility criteria in order to be included on the State List. Some of this information, including whether a provider organization provides an industry-recognized credential may be noted on the State List. No changes were made to the regulatory text in response to these comments.

Comments: Several commenters responded to the Department's request for comments on the value of a summary sheet to accompany the ETPL. A few commenters stated that a summary sheet was not necessary because applicants only need the following key data to make an informed choice: Completion rate, placement rate, credential, and wages. In contrast, another commenter encouraged the use of a uniform summary sheet to help prospective students compare information across all participating programs. This commenter recommended that the summary sheet include detailed information about the programs, including many data points that are part of the ETP performance reports, such as comparative information about costs, program completion, and job placement rates, average starting salaries, and debt upon completion. Other commenters recommended that each State be allowed to design its own accompanying information. One commenter suggested that the information required for the ETP be detailed in a simple chart format with cohort information for completion and placement information, and that the public site should include information that is pertinent to the customer. One commenter urged the Department to consider the work of Local WDBs that already have scorecards. Another commenter encouraged developing "ease of use reports" that meet the needs of training seekers while minimizing the reporting burden on providers and States. Another commenter recommended allowing States to design their own display.

Department Response: The Department has determined that no revisions to the regulatory text are needed in response to these comments. The list of ETPs and accompanying cost and performance information must be disseminated in coordination with the ETP annual performance reports in accordance with 20 CFR 677.230(e)(3) (*see* Joint WIOA Final Rule). The ETP annual performance report must include the information required under WIOA sec. 116(d)(4) and must be provided using a template created by the Department. In contrast, WIOA sec. 122(d) does not require that the State List of Eligible Training Providers and Programs and accompanying information comport with a Federal template or format. The Department, therefore, has decided that the statutory mandate is best met by leaving it to the States' discretion to determine: (1) What information should accompany the State ETPL provided that the accompanying information meets statutory requirements (including the requirement in WIOA sec. 122(d)(1) that the accompanying information identify the recognized postsecondary credential); (2) the best format to provide that information to users; and (3) how to coordinate its distribution with the ETP performance reports. The Department plans to issue further guidance to States regarding the relationship between ETP performance reports and the State List of Eligible Training Providers and Programs.

Comments: One commenter stated that some State laws include additional restrictions on data sharing beyond the Federal law requirements and encouraged the Department to consider how regulations and guidance can help States interpret or revise their own laws to allow greater access to data for strategic planning and evaluation purposes. One commenter urged the Department to issue guidance and technical assistance on how data shared for WIOA performance reporting may be incorporated into Statewide Longitudinal Data Systems (SLDS) in compliance with both UI confidentiality provisions and the Family Educational Rights and Privacy Act (FERPA). The commenter stated that the data collected would be useful for a variety of stakeholders, including for longitudinal

research and evaluation to improve the mix and targeting of program services.

Department Response: Privacy concerns in regard to how the State List and accompanying information are made available are addressed under the regulations in § 680.500(e). In developing the information to accompany the State List described in § 680.490(b), disclosure of personally identifiable information from an education record must be carried out in accordance with the Family Educational Rights and Privacy Act, including the circumstances relating to prior written consent. No changes were made to the regulatory text in response to these comments. Instead, the Department intends to provide additional guidance on this issue and will also provide technical assistance to States who face legal barriers in complying with performance reporting requirements.

Section 680.510 In what ways can a Local Workforce Development Board supplement the information available from the State list of eligible training providers and programs?

The Department did not receive any comments addressing § 680.510 other than a general statement of support for the provision as drafted. The Department made non-substantive edits to the title of this section for uniformity in use of the term "State list." The Department also modified § 680.510 to clarify that, as explained above, the Local WDB cannot supplement the criteria and information requirements established by the Governor for registered apprenticeship programs.

Section 680.520 May individuals choose training providers and programs located outside of the local area or outside of the State?

Section 680.520 governs when an individual can choose to attend a training program located outside of the local area or State. The Department has made non-substantive revisions to this section for consistency in the use of terms, and made revisions for clarity to this section.

Section 680.520(a) provides that individuals may choose training providers and programs outside of the local area provided that the training program is on the State List and it is consistent with local policies and procedures. For State ETPs that are outside of the local area or that do not meet the local area's criteria for eligibility, local policies and procedures determine whether participants in the local area may utilize ITAs for training. However, the local area may choose to make exceptions to its local eligibility criteria. The local policies and procedures must be consistent with State policies and procedures in order for the program to receive funds through an ITA.

Section 680.520(b) provides that individuals may choose eligible training providers and programs outside of the State consistent with State and local policies and procedures and that State policies and procedures may provide for reciprocal or other agreements established with another State to permit eligible training providers in a State to accept ITAs provided by the other State. The State policies and procedures may allow training providers or programs located outside of that State to receive funds through a participant's ITA within specific circumstances, or a State may enter into a broader agreement with another State to establish that ETPs in the other State are eligible in the "home" State. State policies may determine whether the training providers and programs in another State must meet any or all of the "home" State's eligibility criteria order to receive the ITA funds provided by the State. In either case, the local policies and procedures can have more stringent standards than the State policy, and therefore any use of ITAs for training providers and programs outside of the State must be consistent with both State and local policies and procedures.

Comments: The Department received a handful of comments addressing proposed § 680.520. One commenter supported allowing participants to choose training located outside the local area or in other States. Another commenter agreed with allowing individuals to choose training providers located outside of the local area as long as the training providers meet the performance criteria set by the Local WDB in the local area where the person resides.

One commenter urged the Department to work with inter-governmental organizations to develop guidance for the active inclusion of out-of-area and eLearning options into the training approaches of Local WDBs. This commenter stated that guidance would be preferable to reciprocity agreements to reduce the time required to understand and implement the specifics of interstate agreements.

Department Response: The Department has concluded that reciprocity agreements will be maintained in § 680.520 because they are specifically authorized under WIOA sec. 122(g) and they further the goals of WIOA. Reciprocity agreements reduce the burden on States and providers by eliminating duplicative procedures. They also expand the array of training options available to individuals seeking training. The Department recommends that States consider how best to establish and implement reciprocity agreements, and how these agreements may be used to expand distance and online training options. The Department notes that its revisions to this section, in § 680.520(b), permit the States to develop other agreements that permit ETPs in a State to accept ITAs provided by another State. This provides additional flexibility to the States as the agreement does not have to be reciprocal. The Department will consider whether there is a need for additional guidance on this issue in the future.

Section 680.530 What eligibility requirements apply to providers of on-the-job training, customized training, incumbent worker training, and other training exceptions?

Section 680.530 explains that providers of OJT, customized training, incumbent worker training, internships, paid or unpaid work experience, or transitional jobs are not subject to the same WIOA eligibility requirements of sec. 122(a) through (f) that are established for providers listed on the State List of Eligible Training Providers and Programs. Section 680.530 requires local one-stop operators to collect any separate performance information required by the Governor and determine whether these providers meet the Governor's performance criteria. The Department made non-substantive edits for consistency in how the Department uses terms throughout this section and made substantive edits to the provision which are further explained below.

The Department reorganized this section for clarity by breaking what was one paragraph into several paragraphs. Paragraph (a) now provides that providers of OJT, customized training, incumbent worker training, internships, paid or unpaid work experience, or transitional jobs are not subject to the requirements applicable to providers and programs which are included on the State ETPL. Paragraph (b) now provides that the Governor may establish performance criteria those providers must meet to receive funds through the adult or dislocated worker programs pursuant to a contract consistent with § 680.320. Thus, while these kinds of programs cannot be paid for with ITAs, Local WDBs may enter into a contract with these entities to provide these training services. More information can be read about this in § 680.320 and its accompanying preamble. Paragraph (c) provides that one-stop operators must

collect any performance information required by the Governor and determine if the provider meets these performance standards. For those that meet the Governor's standards, paragraph (d) requires the one-stop operator to distribute information about those programs, with the relevant performance information, throughout the system.

Comments: Several comments requested clarification of whether these other training providers are exempted from the State eligibility process required by WIOA sec. 122 and/or from the ETP performance reporting process required by WIOA sec. 116, if they are not included on the State List of Eligible Training Providers and Programs. Other commenters supported allowing local areas to contract with providers not on the State List of Eligible Training Providers for customized training, incumbent worker training, internships, paid or unpaid work experience, and transitional employment. One commenter expressed support for exempting OJT, customized, and incumbent worker training from the ETP process but recommended that these training programs be subject to performance reporting. Another commenter recommended revising § 680.530 to provide that OJT, customized training, incumbent working training, and other training exceptions are not exempt from rigorous performance standards even though they are exempt from the general performance metrics in WIOA sec. 122 and must be subjected to rigorous performance standards suited to the type of program. This commenter recommended that § 680.530 be revised to emphasize that local one-stop operators must collect the performance information that the Governor shall require and to emphasize that local one-stop operators must disseminate this list of training exceptions. This commenter recommends requiring inclusion of the Governor's performance criteria for OJT, customized training, and incumbent worker training in the State Plan and annual reports and that the monitoring of these programs be referenced in § 680.530. Further, this commenter recommended that performance of these programs be detailed by industry, company, and occupation at the quarterly meetings of Local and State WDBs Another commenter suggested the Local WDB must concur with the Governor that such information is worth collecting and that the Local WDB should determine how best to collect the information. This commenter felt that requiring the operator to collect such information is likely to be less efficient that obtaining the information directly from the service provider or UI wage records, and that local areas should decide if it is worth collecting data on every work-based, customized, incumbent worker training, internship, or work experience arrangement.

One commenter recommended that work experience programs be excluded from reporting. Another commenter suggested that the Department require the Governor's performance standards for these exceptions to be described in the State Plan. Some commenters recommended that these exceptions be subject to the same accountability, transparency, and monitoring standards that apply to all programs regulated by WIOA. One commenter recommended that where a Local WDB is using short-term and/or eLearning assisted "training," these training services should be regarded as being provided by the Local WDB, and these approaches should be exempted from the ETP process. This commenter stated that these training programs should be subject to performance reporting. One commenter stated that OJT and customized training providers should not be included on the State ETPL because these should be matters of negotiation between Local WDBs and affected business entities. Finally, one commenter said that customized training, registered apprenticeship, or OJT are all work-relevant, but the section-by-section discussion in the regulation should clarify that these are examples and not an exhaustive list of the types of training that would have to be provided by a business. Such limitation could deem ineligible representatives of the business community who may successfully offer alternative types of training such as a non-registered apprenticeship.

Department Response: The Department has made changes to the regulatory text of § 680.530 to clarify that the training providers listed in this section are not included on the State ETPL. The Department is including among these exceptions the types of work-based training included at WIOA section 122(h), which does not specifically identify non-registered apprenticeship programs but does include on-the-job training, customized training, incumbent worker training, internships, paid or unpaid work experience, and transitional jobs. There is no Federal restriction on States and Local WDBs including non-registered apprenticeship programs on the ETPL; however, these programs must apply through the Governor's eligibility procedure to become an eligible training provider, just as any other potential eligible training provider would. Additionally, there is no restriction on non-registered apprenticeship programs participating in on-the-job training or customized training through contracts as described in § 680.530, if it is determined appropriate by the State and Local WDB. This decision is based on the exception in WIOA sec. 122(h) exempting these providers from the requirements for inclusion on the List, maintenance on the List, and removal from the List. Notwithstanding this exclusion, that exemption in WIOA sec. 122(h) further authorizes the Governor to require the local area to collect performance information on these providers. That information can be the same as that required for ETPs or may be different information.

Local WDBs may provide training services, including short-term and/or eLearning assisted training, if the Local WDB meets the conditions of WIOA sec. 107(g)(1), which includes the information required in a written waiver request to the Governor.

The revised regulatory text at § 680.530(d) clarifies that one-stop operators must disseminate information identifying providers and programs that have met the Governor's performance criteria and the relevant performance information as required by the Governor throughout the one-stop delivery system. Local WDBs are not required to concur with the Governor regarding the value of the performance information that the Governor chooses to require.

While States are not required in their State Plans to describe the State's performance standards for on-the-job training, incumbent worker training, transitional jobs, and customized training, the State is required to describe the State's strategies for how these exceptions ensure high quality training for both the participant and the employer. State Plan requirements are fully described in the WIOA State Plan ICR and 20 CFR part 676 (*see* Joint WIOA Final Rule).

The Department does not have the authority to require State or Local WDBs to review performance information by industry at quarterly meetings.

Further, the regulatory text has been modified to clarify that these other training providers are eligible to receive WIOA funding through a contract for services rather than through ITAs. The regulatory text was also edited to remove the statement that approved providers under this section are considered eligible training providers services, which could inappropriately suggest that these entities may serve as

ETPs and receive funding through ITAs without going through the Governor's eligibility procedures. As explained, this is not the case. The regulation text was also revised to clarify that these providers are not subject to the other requirements that training providers and programs which are on the State ETPL must fulfill. However, these providers are still subject to other requirements of WIOA outside of this subpart.

The Department has also made a change to the terminology used in reference to transitional employment. For consistency with other areas of the WIOA Final Rule, the Department is using the term transitional jobs.

Comments: One commenter recommended that § 680.530 be revised to ensure that non-credit training and education be included on the ETP, and that performance-related elements are consistent across all ETPs, including community colleges, to ensure better program outcomes and a level playing field for all ETPs. Two commenters suggested that work experience should be excluded from any reporting required of these training exceptions.

Department Response: Section 680.530 describes programs that are not included on the State ETPL. The programs listed in this section may or may not offer credit, and the eligible training providers included in the State List of Eligible Training Providers and Programs may or may not offer credit. For performance reporting, the performance-related elements required by WIOA are consistent across all eligible training providers, except for registered apprenticeship programs. For eligibility procedures, the performance-related elements in the Governor's procedure should be consistent across all programs in the State. However, the Governor's performance criteria for the work-based training exceptions described at § 680.530 may be quite different and these programs are not a part of the State List of Eligible Training Providers. No changes were made to the regulatory text in response to these comments.

Comments: Several commenters requested clarification of how the Governor may treat providers who fall within the exceptions to ITAs described at §§ 680.320 and 680.530 as to whether these excepted providers may use ITAs or only contracts, and what is required if they are to be on the State ETPL.

Department Response: As described above, local areas may contract for these work-based training exceptions and these programs of training services do not need to be on the State List nor are they subject to the ETP eligibility procedures. However, these providers also could have programs of training that are not excepted under § 680.530 and that the provider wishes to be eligible to use ITAs. As explained above, only ETPs on the State List are able to use ITAs. Therefore, when a provider that provides a program of training services through contract to a local area wishes to be eligible to receive students using ITA funding, the training provider would need to complete the ETP eligibility process described in this subpart. These programs would be subject to the Governor's eligibility procedure. An example of such a case would be a company that provides OJT through a contract with a local area and also offers classroom training or credentialing; the classroom training could be a regular ETP while the company could have a contract for the OJT. More information about the ETP exceptions can be found in § 680.320. No changes were made to the regulatory text in response to these comments.

6. Subpart E—Priority and Special Populations

Introduction

The services provided with adult funds can be a pathway to the middle class for low-income adults, public assistance recipients, and individuals who are basic skills deficient. The regulations implement the statutorily-required priority for the use of adult funds, and ensure any other priorities or designations are consistent with the statutory priority. This subpart contains regulations about how participants from certain populations are able to access adult and dislocated worker services, and regulations establishing priority access to these services. WIOA sec. 134(c)(3)(E) provides that priority for adult training services and certain career services must be given to recipients of public assistance, other low-income individuals, and individuals who are basic skills deficient. Under WIOA, priority access to services by members of this group is always in effect regardless of funding levels. Nonetheless, WIOA allows one-stop centers to provide individualized career services to individuals who are not members of these groups, if determined appropriate by the one-stop center.

The Department encourages close cooperation between WIOA-funded programs and other Federal and State sources of assistance for job seekers. Coordination between WIOA-funded programs and the TANF program is a crucial element in serving individuals who are on public assistance. TANF is a required partner in the one-stop delivery system. Through close cooperation, each program's participants will have access to a much broader range of services to promote employment retention and self-sufficiency than if they relied only on the services available under a single program.

In this subpart, the Department explains how displaced homemakers may be served with both adult and dislocated worker funds. Under WIOA, a displaced homemaker qualifies as an "individual with a barrier to employment" (see WIOA sec. 3(24)(A) and § 680.320(b)). Additionally, displaced homemakers meet the definition of a "dislocated worker," as defined in WIOA sec. 3(15)(D). Displaced homemakers, whose work, albeit without a formal connection to the workforce, is recognized for its value, may need WIOA services to develop further work skills. WIOA also expands the definition of displaced homemakers to include dependent spouses of the Armed Forces on active duty to ensure they have access to WIOA title I services.

This subpart ensures that veterans and certain service members have access to adult and dislocated worker programs. Under WIOA, as was the case under WIA, veterans receive priority of service in all Department-funded employment and training programs. The regulations in this subpart describe what is meant by "priority of service." The regulation is consistent with guidance it issued in TEGL No. 22–04 ("*Serving Military Service Members and Military Spouses under the Workforce Investment Act Dislocated Worker Formula Grant*"), dated March 22, 2005 (*http://wdr.doleta.gov/directives/attach/TEGL22-04.pdf*) and expanded in TEGL No. 3–15 ("*Guidance on Services Provided through the Adult and Dislocated Worker Program under the Workforce Innovation and Opportunity Act (WIOA or Opportunity Act) and Wagner Peyser, as Amended by WIOA, and Guidance for the Transition to WIOA Services*"), dated July 1, 2015 (*http://wdr.doleta.gov/directives/attach/TEGL/TEGL_03-15.pdf*) that separating service members meet the eligibility requirements for dislocated worker activities. This regulation will ensure that service members will have access to the full array of services available through the one-stop delivery system.

Section 680.600 What priority must be given to low-income adults and public assistance recipients and individuals who are basic skills deficient served with adult funds under title I?

Comments: Several commenters expressed general support for giving priority for service to recipients of public assistance, other low-income individuals, and individuals who are basic skills deficient. In contrast, a few commenters expressed disagreement with the priority of service provisions, reasoning that the regulations fail to address employer needs and focus instead solely on the needs of the employee. Two commenter recognized the need to be responsive to both the employers and the employees.

Department Response: The Department notes that WIOA sec. 134(c)(3)(E) requires priority be given to individuals who are public assistance recipients, low income, or basic skills deficient, with regard to the provision of individualized career services and training services. This priority applies to funds allocated to a local area for the WIOA title I adult program, It is not an eligibility criterion for the program, but it is the means to ensure an emphasis on providing services to these populations. This priority is not required for the WIOA title I dislocated worker program. The Department recognizes the need to serve not only low-skilled individuals but also those with more advanced skills and training who also need assistance. The Department also recognizes the importance of the one-stop delivery system's employer customer, assisting them to find, hire, train, or upskill their workforces. The one-stop delivery system connects the provision of career services and training to help individuals get good jobs and build careers and the development of the skilled workers employers need and their match to employers. Work-based training focuses on employer workforce needs, particularly incumbent worker training, where the employer is the primary customer.

Comments: A few commenters supported the removal of the WIA "limited funding" exception. Two commenters strongly urged the Department to clarify in the Final Rule that the priority is in effect regardless of funding. Two commenters stated that it was preferential to apply the proposed priority of service provisions when funds are limited. One commenter questioned whether the regulations pre-suppose that limited funding exists and expressed support for the development of criteria that would give local areas the authority to set priority of service thresholds that would take effect only during times of limited funding.

Department Response: The application of priority under the title I adult program applies at all times as required in WIOA sec. 134(c)(3)(E).

Comments: A commenter recommended that the regulation allow for local definition of low income rather than the Federally defined Lower Living Standard Income Level (LLSIL), reasoning that an individual might not be below the low-income level as defined by the LLSIL, but still be far below the level of self-sufficiency in the local area. Another commenter asked what the definition of "family" would be when determining whether someone is considered low income in regard to priority of service. One commenter recommended incorporating the definition of family from WIA sec. 101(15) into the regulations to clarify the meaning of low income. One commenter questioned how the priority groups included in the regulation relate to Equal Employment Opportunity (EEO) considerations and requested clarification within the regulation that EEO applies within the priority groups rather than before prioritization is considered.

A few commenters asserted that insufficient detail was provided in the regulations (*e.g.*, family income calculations) and expressed concern with an approach that provided these details through guidance, reasoning that guidance allows for requirements to change over time.

Department Response: The term "low-income individual" is statutorily defined in WIOA sec. 3(36); it includes language that the LLSIL is determined by the Secretary. The Department agrees with the commenters requesting a definition of "family" and has added language to the definitions in part 675 of this Rule. Discussion of the added definition is provided in the preamble accompanying part 675.

The non-discrimination provisions of WIOA sec. 188 do not provide for preference for services. They protect against discrimination in the provision of services and prevent individuals from being otherwise adversely affected because of their membership in a protected class. Therefore, the Department has declined to make changes in the regulatory text in response to this comment.

Comments: Several commenters recommended a revision to proposed § 680.600(c) to clarify that any designation of priority for other eligible individuals must be subject to both the veterans priority of service requirements at § 680.650 and the WIOA statutory priority of service requirements in sec. 134(c)(3)(E). A commenter suggested that any guidance in this area, including guidance on expectations for State and local implementation, should support flexibility to allow States and localities to serve their unique and diverse populations best. One commenter questioned the relative priority that should be applied to other groups of individuals designated by the Local WDB or Governor as receiving priority of service compared to those explicitly listed in WIOA.

Department Response: The Department agrees with the commenters' suggestion that any additional priority populations identified by the Governor must be consistent with the statutory priority as well as the veteran's priority of service. The Department has made changes to the regulatory text at § 680.600(c) to reflect this suggestion. The Department will issue guidance and technical assistance about the implementation of these priority requirements.

Comments: Several commenters stated that the Department must revise proposed § 680.600(a) to align with WIOA and allow for priority to be given to "recipients of public assistance, other low-income individuals, and individuals who are basic skills deficient," not "recipients of public assistance, other low-income individuals, who are basic skills deficient," as was proposed. A commenter requested clarification as to whether being basic skills deficient alone would quality an individual for priority of service.

Department Response: The Department agrees with the commenters and has modified the regulatory text in § 680.600(a) to make clear that individuals who are basic skills deficient is its own category to be eligible for priority of service in the WIOA title I adult program.

Basic Skills Deficient

Comments: A commenter provided several recommendations about priority of service for individuals who are basic skills deficient: (1) Basic skills deficient should include computer literacy skills as a skill necessary to function on the job; (2) the process for identifying basic skills deficient should allow self-attestation and observation by one-stop staff; (3) a standard tool for measuring basic skills deficient should be developed and should include consideration of career-oriented employability skills; and (4) any individual who meets the definition of basic skills deficient should be eligible for services.

A few commenters cautioned against using a definition of basic skills deficient that considered how the individual's skill set would allow them to "function on the job." These commenters reasoned that such a definition could create a loophole that might diminish the priority of service requirement by permitting services to otherwise non-low- income individuals who simply lack some skill needed to do a specific job. A few commenters recommended that the methodology for determining basic skills deficiency should be identified in State or local policy, rather than in regulation or Department policy.

Department Response: The term "basic skills deficient" is defined in WIOA sec 3(5). States and Local WDBs have flexibility in determining when an individual meets this definition.

Comments: A commenter stated that proposed paragraphs (a) and (c) of § 680.600 included inconsistent language when describing individuals who are basic skills deficient, one paragraph using the term "basic skills deficient" and the other using the term "individuals without basic work skills." The commenter asserted that consistent terminology is important.

Department Response: The Department agrees with these comments and has modified the regulatory text to incorporate this suggestion.

Implementation of Priority of Service Requirements

Comments: Several commenters requested guidance on the implementation of the priority of service requirements. A few commenters stated that guidance should include an explanation of how States and localities will be monitored to ensure that an appropriate process or protocol is established and details on what the protocols should include. Because the priority groups could be seen as a threat to successful performance tracking, one commenter stated that reporting and incentives should be put into place to ensure these participants are actually served and supported.

Several commenters provided additional input on how to implement the priority of service requirements, including the following recommendations, building on the Department's use of veterans' priority of service, utilizing technical assistance and best practices, developing performance metrics and benchmarks, and coordination with immigration and refugee organizations and State Refugee Coordinators.

A few commenters described how U.S. Census data could be used to implement or verify the priority of service requirements. To verify that the priority of service has been properly implemented, two commenters recommended that the Department require that State and local planning efforts utilize the most current Census and administrative data available to develop estimates of each priority service population in their planning efforts and update these data year to year. Additionally, these commenters recommended that this data be used in Federal reviews of State Plans to ensure that system designs and projected investments are equitably targeted to service priority populations. The commenters also stated that this data should be used to benchmark system performance in actual implementation of the priority of service from year to year.

Department Response: The Department will provide further guidance to clarify how priority of service should be implemented and monitored.

Section 680.610 Does the statutory priority for use of adult funds also apply to dislocated worker funds?

Comments: A commenter sought clarification as to whether the same priority given to adult funds applied to dislocated worker funds that were transferred to the adult program.

Department Response: The Department considers funds transferred from the dislocated worker program to the adult program to be adult program funds and fall under the priority requirements of the adult program. Likewise, any transfer of funds from the adult program to the dislocated worker program will fall under the requirements of the dislocated worker program.

Comments: Commenting that older workers are more likely to show up in the dislocated worker program than in the adult program, one commenter recommended that priorities and protections should be established within the dislocated workers program.

Department Response: There is no priority in the dislocated worker program, other than veteran's priority of service. Participants must meet the dislocated worker eligibility criteria in order to participate in this program. No changes have been made to the regulatory text in response to the comments.

Section 680.620 How does the Temporary Assistance for Needy Families program relate to the one-stop delivery system?

Comments: A commenter suggested that the statement in the NPRM introduction to subpart E that the "Department strongly encourages close cooperation" between WIOA-funded programs and other Federal and State sources of assistance for job seekers does not convey the strength needed to have full coordination between WIOA-funded programs and the TANF program. This commenter recommended changing the wording to "mandates close coordination with funding tied to coordinated partnerships."

One commenter recommended that the Department seek out opportunities for increased alignment between WIOA common performance indicators and TANF. This commenter stated that one challenge is that TANF programs are not measured by the same accountability measures as the other core WIOA programs.

Department Response: WIOA delegated the authority to Governors and Local WDBs, to decide how closely to align and coordinate their plans with WIOA programs and other sources of public assistance like TANF. The Department encourages strong partnership and close alignment with TANF at the State and local level.

Comments: A commenter requested clarification on whether TANF funding had to be used, rather than WIOA funds, if available, and how TANF organizations should document that TANF funds are not available.

Department Response: Under § 680.230(b) and WIOA sec. 134(c)(3)(B), one-stop centers are required to consider the availability of other sources of grants to pay for training costs, which includes TANF funds. The Department will provide additional guidance and technical assistance to one-stop centers to answer questions about how to document whether funds from other sources such as TANF are available.

Comments: Several commenters recommended that the Department ensure that Local WDBs or their standing youth committees identify how connections will be made with TANF partners at one-stop centers to ensure policy and programmatic alignment for the young adult population under 25, who may receive a different set of services if they are not served though WIOA title I youth programs. These commenters asserted that WIOA and TANF differ greatly from each other, requiring specific policy and

programmatic alignment by the State and Local WDBs to service TANF recipients in a WIOA program.

Department Response: Coordination between TANF and WIOA services must take place at the State and local level and therefore, States and local areas are responsible for establishing policies and MOUs, and aligning plans wherever they deem to be appropriate to serve participants best. The Department recognizes that there are challenges associated with such planning and coordination and will continue to provide guidance and technical assistance to assist with these processes. No change is made in the regulatory text.

Section 680.630 How does a displaced homemaker qualify for services under title I?

Comments: A commenter expressed support for the inclusion of spouses of members of the Armed Forces on active duty as a displaced homemaker. Two commenters encouraged the Department to urge States to highlight the displaced military spouse homemakers in dissemination of information about services to this population.

Department Response: The Department agrees with the commenters' suggestion and encourages States and Local WDBs to highlight the eligibility for displaced military spouse homemakers in the information they disseminate about this program. No changes have been made to the regulatory text in response to the comments.

Section 680.640 May an individual with a disability whose family does not meet income eligibility criteria under the Workforce Innovation and Opportunity Act be eligible for priority as a low-income adult?

Comments: A few commenters expressed support for the provisions in § 680.640 as proposed. One comment also expressed support for the provisions in proposed § 680.640 to keep a family's income separate from the adult with a disability's income to that services are provided to all individuals who need it and that another eligibility barrier is not created to ensuring access to these services.

One commenter requested clarification on whether the provisions specifying the circumstances under which an individual with a disability may still qualify as a priority low-income adult, even when family income does not meet the low-income eligibility criteria, also apply to persons receiving Social Security Disability Insurance.

Another commenter recommended the Department clearly identify receipt of Social Security disability benefits as a barrier to employment.

Department Response: The circumstances that allow these individuals to qualify still as a low-income adult, regardless of family income, do not apply to persons receiving Social Security Disability Insurance (SSDI). The Department considers WIOA to be very specific about what does count and what does not with regard to income-based eligibility in its definition of "low-income individual" in WIOA sec. 3(36). This definition allows individuals on Supplemental Security Income (SSI) to be considered low-income, but does not consider individuals on SSDI to be considered low-income of the basis of that status alone. Also, SSDI payment cannot be excluded when making income-based eligibility determinations. However, individuals receiving SSDI meets the definition of an individual with a disability, which means the individual meets the criteria of an individual with a barrier to employment under WIOA sec. 3(24) and § 680.320(b). The Department encourages individuals receiving SSDI who are seeking to return to employment to access services through the one-stop delivery system. WIOA is subject to 38 U.S.C. 4213, and therefore military benefits are excluded from income-based eligibility determinations under WIOA.

7. Subpart F—Work-Based Training

Sections 680.700 through 680.850 are regulations for work-based training under WIOA. The regulations apply to (OJT) training, customized training, incumbent worker training, and transitional jobs. The regulations include specific information about general, contract, and employer payment requirements. Work-based training is employer-driven with the goal of unsubsidized employment after participation. Generally, work-based training involves a commitment by an employer or employers to employ successful participants fully after they have completed the program. Registered apprenticeship training is a type of work-based training that can be funded in the adult and dislocated worker programs; additionally pre-apprenticeships may be used to provide work experiences that can help participants obtain the skills needed to be placed into a registered apprenticeship.

Work-based training can be an effective training strategy that can provide additional opportunities for participants and employers in both finding high quality work and in developing a highly skilled workforce. Each of these work-based models can be effectively used to meet a variety of job seeker and employer needs. OJT is primarily designed to first hire the participant and provide them with the knowledge and skills necessary for the full performance of the job. Incumbent worker training is designed to ensure that employees of a company are able to acquire the skills necessary to retain employment and advance within the company or to provide the skills necessary to avert a layoff. Customized training is designed to provide local areas with flexibility to ensure that training meets the unique needs of the job seekers and employers or groups of employers.

Both training providers and employers providing OJT opportunities must be providing the highest quality training to participants. OJT contracts must be continually monitored so that WIOA funds provided through OJT contracts are providing participants the training to retain employment successfully. It is important that OJTs provide participants with relevant skills and opportunities for career advancement and provides employers with a skilled workforce.

Under WIOA, the statute enables a Governor or Local WDB to increase the reimbursement rate for OJT from 50 to 75 percent. This is designed to give States and Local WDBs additional flexibility in developing OJT opportunities that work best with the participating employers and in the local economy.

WIOA also explicitly allows for incumbent worker training at the local level. WIOA introduces incumbent worker training as an allowable type of training for a local area to provide. Incumbent worker training is designed to either assist workers in obtaining the skills necessary to retain employment or to avert layoffs and must increase both a participant's and a company's competitiveness. Local areas may use up to 20 percent of their local adult and dislocated worker funds for incumbent worker training. The Department seeks to ensure that incumbent worker training is targeted to improving the skills and competitiveness of the participant and increasing the competitiveness of the employer. The training should, wherever possible, allow the participant to gain industry-recognized training experience and ultimately should lead to an increase in wages. To receive incumbent worker funding under WIOA, an incumbent worker must have an employer-employee relationship, and an

established employment history, with the employer. Incumbent workers are employed at the time of their participation, and the contract funds are paid to the employer for training provided to the incumbent worker either to avert a lay-off or otherwise retain employment. A "model" incumbent worker training would be one where a participant acquires new skills allowing him or her to move into a higher skilled and higher paid job within the company, thus permitting the company to hire a job seeker to backfill the incumbent worker's pre-training position.

Comments: A commenter recommended that the regulations clarify that OJT, customized, and incumbent worker training are exempt from the ETP process.

Department Response: Work-based training and work experiences are subject to the dissemination requirements of WIOA sec. 134 (a)(2)(B)(v) and the requirements of WIOA sec. 122(h) as the Governor may require. These requirements are separate from the ETP section of WIOA sec. 122(a) through (f). The Department has modified the language of the regulatory text in § 680.340(b), which requires Local WDBs to disseminate the list of ETPs, to make clear that the work-based training provider information requirements are separate from the requirements governing the ETPL. These provisions of WIOA sec. 122(h) apply to providers of work-based training.

On-the-Job Training

Comments: A commenter expressed support for the proposed requirements regarding OJT. Another asked the Department to earmark funding either on the national or State level for employer education as to the benefits of hiring after training is received.

Department Response: The Department considers employer engagement to be critical to the success of these programs. It plans to provide additional guidance and technical assistance for this purpose.

Comments: A commenter expressed concern that the different "employer match" requirements for OJT, customized training, and incumbent worker training would present a challenge to explain to employers, and recommended that the Department simplify the match requirements and lower them for small businesses to encourage their participation in the programs. Specifically, this commenter recommended that the match requirement be the same across all three types of training and be differentiated based on business size.

Department Response: The matching requirements training for these three types of training are specified in WIOA, and are provided, consistent with WIOA, at: § 680.700 for OJT, § 680.760 for customized training, and § 680.820 for incumbent worker training. Each type of training emphasizes a different need of employers and individuals, and the employment match is designed to reflect the differences in those training types. No change is made in the regulatory text.

Section 680.700 What are the requirements for on-the-job training?

Comments: Two commenters asked if it would be permissible to enter into an OJT contract with a public non-profit agency such as a local fire department or board of education.

Department Response: Yes, as long as the requirements of §§ 680.700 through 680.730 are met, this type of OJT contract would be allowable.

Comments: Regarding the circumstances under which adult and dislocated worker funding may not be used to enter into an OJT contract, two commenters recommended adding to § 680.700(b) that OJT training contracts may not be entered into with employers that have unpaid unemployment insurance and workers compensation taxes.

Department Response: The Department considers this to be at the discretion of State and Local WDBs and declines to modify the regulatory text to include this requirement.

Comments: Two commenters recommended adding language to § 680.700 requiring OJT contracts that cover "apprenticeable occupations" and pre-apprenticeship programs to be attached to registered apprenticeship programs. These commenters also recommended adding an additional condition to the list of factors that the Governor or Local WDB must take into account when exercising discretion to increase the reimbursement rate for OJT contracts in § 680.730(a). Specifically, these commenters recommended that the Department add a new subparagraph that would prohibit reimbursements for OJT programs for apprenticeable occupations unless they are part of a registered apprenticeship program.

This commenter also suggested that this new regulatory provision require the Governor to consider whether the OJT contracts are harmonized with registered apprenticeship programs such that no OJT contract operates to train in an apprenticeable occupation unless it is part of a registered apprenticeship program (or comparable program determined by the Secretary not to undermine registered apprenticeship programs) and that any contract for pre-apprenticeship is articulated with at least one registered apprenticeship programs.

Department Response: Section 680.740 specifies how registered apprenticeship program sponsors or participating employers in registered apprenticeship programs may be contracted to provide OJT. The Department declines to add language that restricts the OJT portion of non-registered apprenticeships from receiving OJT funds providing that they meet the requirements of §§ 680.700 through 680.730 and any criteria established by the Local WDB.

Comments: One commenter requested that the Department amend § 680.700 to include work-based learning activities that are identified and linked to training provided by ETPs.

Department Response: There are no prohibitions to ETPs providing work-based learning activities, provided that those activities meet the conditions of §§ 680.700 through 680.730.

Comments: To prevent hiring workers for the duration of the OJT with no job continuity afterwards, a commenter recommended there be a minimum standard to address performance relating to both employment and career pathways to which all Governors would be required to adhere.

Department Response: OJT participants are part of the performance accountability system under WIOA which includes employment related outcomes, and performance information will be collected on all participants in OJT. This approach will help to ensure that States and local areas are utilizing high quality training providers for both ITAs and work-based training. In addition to the required performance information, Governors may set additional performance criteria for work-based training under WIOA sec. 122(h). The Department will continue to support collaboration across all WIOA title I programs.

Comments: Regarding the duration of an OJT contract, a commenter recommended that OJT be used for 6 to 12 months with discretion resting with the Local WDB.

Department Response: The Department is not requiring specific OJT duration limitations. The Department agrees with the comment that the discretion should be left to the Local WDBs and declines to make changes to the regulatory text at § 680.700(c).

Comment: Two commenters requested that § 680.700 include a reference to agreements with registered apprenticeship programs under

§ 680.740(a), to make clear OJT can be provided by registered apprenticeship programs.

Department Response: The Department has added language to § 680.700 to be clear that OJT contracts may be written with registered apprenticeship program sponsors.

Section 680.710 What are the requirements for on-the-job training contracts for employed workers?

Comments: A commenter stated that the determination of a "self-sufficient wage" should be left to the State and local areas and driven by local circumstances.

Department Response: The Department maintains the self-sufficiency standard. States may develop a State self sufficiency standard, and local areas may adjust the standard, within the set parameters of WIOA sec. 134(c)(3) and (d)(1)(a).

Comments: A commenter recommended insertion of a reference to "workers with barriers to employment, including people with disabilities" in § 680.710(a) and broadening OJT contracts to include introduction of accessible technology and other workplace accommodations for workers with emerging disabilities in need to training to stay on the job.

Department Response: Title I adult and dislocated worker funds are to be used to target services to individuals with barriers to employment as defined in WIOA sec. 3(24). Individuals with disabilities are a part of this definition. The Department has added "reasonable accommodations for individuals with disabilities" as an allowable supportive service in § 680.900, which can be used to help enable an individual to participate in OJT training.

Section 680.720 What conditions govern on-the-job training payments to employers?

Comments: Several commenters concurred with the Department's decision not to define "extraordinary costs" through the regulation, allowing for flexibility. One commenter would leave the definition up to the States, while another recommended that it be left to local discretion to ensure their OJT arrangements are applicable to local market conditions.

One commenter recommended that "extraordinary costs" be defined according to the Association for Talent Development Guidelines, which divide expenses according to whether they are direct or indirect. The commenter suggested that at a minimum that the regulations provide explicit coverage of unrecoverable material expenses (*i.e.*, materials and articles nonproductively expended in training that do not create a usable product) and of participant trainees and trainers lost from productive work.

Two commenters recommended deleting proposed § 680.720(c), which specified that employers are not required to document the extraordinary costs associated with training OJT participants and replace it with a requirement that the Governor collect performance data regarding OJT to ensure that OJT contracts are fulfilling the purposes of WIOA.

Department Response: The Department declines to require additional cost or other documentation from employers to avoid creating an unnecessary burden. States and local areas may further define what constitutes an "extraordinary cost" at their discretion.

Section 680.730 Under what conditions may a Governor or Local Workforce Development Board raise the on-the-job training reimbursement rate up to 75 percent of the wage rate?

Comments: A commenter requested clarification about when a Local WDB may increase the rate for OJT contracts up to 75 percent, and specifically asked if a Governor may limit the Local WDB's authority to increase the reimbursement rate if all factors required in the regulation and under local policy are met.

Department Response: The Governor may not limit the Local WDB's authority to increase the reimbursement rate for OJT contracts provided with funds allocated to the local area. The difference between the Governor and the Local WDB with respect to OJT reimbursement rates is what funding source each is allowed to raise the reimbursement rate for. The Governor may increase the reimbursement rate for OJT contracts provided with Governor's Reserve funds or NDWG funds. Local WDBs may increase the reimbursement rate for OJT contracts provided with funds allocated to the local area.

Comments: A commenter suggested that employers paying above the median wage for the occupation should be eligible for increased reimbursement as follows: "Entry Level" at 50 percent, "Median" at 60 percent, and "Experienced" at 75 percent.

Another commenter described its current waiver that allows for a graduated rate of OJT reimbursements based on the size of the company, which it asserted has helped small businesses gain funding and skilled employees.

Department Response: The Department declines to add these factors into the regulatory text. They may be determined appropriate by the Governors or Local WDBs under § 680.730(a)(4).

Comments: One commenter asked if a State needs to seek a waiver to reimburse employers more than 75 percent of the OJT wage, and if the waiver could be obtained before July 1, 2015. This commenter described its current waiver to provide up to a 90 percent employer reimbursement rate.

Department Response: The Department is not considering waiver requests as part of this rule making. All WIOA title I adult and dislocated worker OJT projects going forward are expected to adhere to the reimbursement rates set forth in WIOA.

Comments: A commenter urged the Department to provide guidance to State and Local WDBs on coordinating the increased reimbursement criteria with high-road economic development strategies that improve wages, benefits, and other job quality factors for front-line employment in a State and region.

Department Response: The Department will issue guidance and technical assistance on work-based learning, including OJT, sector strategies, and industry partnerships.

Comments: A commenter recommended that the Department include a reference to individuals with disabilities in § 680.730(a)(1) to provide an incentive to State and Local WDBs to focus on this population.

Department Response: Paragraph (a)(1) of § 680.730 states that Governors may take the characteristics of the participants into consideration when raising the reimbursement rate, emphasizing "individuals with barriers to employment" as defined in WIOA sec. 3(24). Individuals with disabilities are included in this definition. No change is made to the regulatory text.

Comments: Some commenters stated that the factors to be considered regarding the relation of training to the competitiveness of the participant should be the size of the employer or the characteristics of the participant as determined by the Governor or Local WDB. A commenter agreed that employer size should be a factor related to increasing an OJT reimbursements rate, stating that smaller employers often need additional support.

Two commenters requested that the Department numerically clarify or define "small businesses" as it applies to the employer size factor under § 680.730(a)(2). Similarly, two commenters recommended that the Department clarify the meaning of "with an emphasis on small businesses" in § 680.730(a)(2). One commenter

recommended that the Department rely upon the Small Business Administration's (SBA's) definition of "small business." Another commenter requested that "size of the employer, with an emphasis on small businesses" be removed from § 680.730(a)(2), or at least clarified to ensure that it does not negatively impact medium and large employers seeking a higher OJT reimbursement rate.

Department Response: The Department included "the size of the employer" as a factor that Governors and Local WDBs may take into account when deciding to raise the reimbursement rate for a particular OJT project. The Department recognizes that providing these services to small businesses, which may need additional support in providing OJT, is an important factor in determining the reimbursement rate for OJT. However, there is not requirement that only small businesses may receive a higher reimbursement rate. The Department recommends that Governors and Local WDBs refer to SBA's definition of "small business" as a guide which varies by industry; it can be found at *https://www.sba.gov/content/summary-size-standards-industry-sector.*

Comments: A commenter stated that before entering training, all individuals should be thoroughly assessed to determine appropriateness of training—including demand of an occupation, post-training wages, and other individualized customer-level criteria—to be as efficient as possible with limited training resources. Several commenters specifically addressed the "competitiveness of the participant" factor (proposed § 680.730(a)(4)); including, its use in the provision of incumbent worker training, a measure used in determining wages for eligibility purposes, job retention, and credential attainment.

Department Response: In order for an individual to receive training, he or she must meet the criteria in WIOA sec 134(c)(3)(A). The Department notes that there is no sequence of service requirement; however, the eligibility for training must be established by the Local WDB. An assessment is one appropriate ways of determining training eligibility. The Department considers the "competitiveness of a participant" to be an appropriate factor that Governors or Local WDBs may use when determining the OJT reimbursement rate, under § 680.730(a)(4). The Department agrees with the commenters' recommendation and declines to define "competitiveness of a participant" through regulation. Governors and Local WDBs may develop a policy or criteria to be used in determining "competitiveness of a participant."

Section 680.740 How can on-the-job training funds be used to support placing participants into a registered apprenticeship program?

Comments: Many commenters addressed the issue of maximum amount of time for OJT funds to be used to support registered apprenticeships; including, what entity decides the duration, flexibilities in determining duration, and tailoring to the needs of the participant.

Department Response: The Department has considered these comments and declines to make changes to the regulatory text that would limit the flexibility of States and local areas to determine the appropriate duration for OJT funds used to support placing apprentices into a registered apprenticeship program. These decisions to be best made on a case-by-case basis at the State and local level based on individual need.

Comments: One commenter stated that WIOA funding for apprenticeship is useful only if it: (1) Could support a pre-apprenticeship class of 15 to 20 students for a 90-day training class; and (2) provide additional funding for State-approved apprenticeship training, and if funding could go directly to the program and not an intermediary like the State WDB. The commenter warned that most registered apprenticeship programs are multi-employer, which makes it difficult to offer OJT contracts to employers as a hiring incentive; instead, the commenter suggested that it would be more productive to use OJT contracts as an incentive to enroll OJT contract-eligible individuals in their apprenticeship programs.

Two commenters requested clarification regarding management of reimbursement to employers by the registered apprenticeship training program when relationships with multiple employers exist; for example, when registered apprenticeship participants work for multiple employers during an OJT to maintain full-time employment.

A commenter urged the Department to revise § 680.740 to provide that OJT contracts may be written with a registered apprenticeship program, an employer participating in a registered apprenticeship program, or both. This commenter stated that having registered apprenticeship programs as signatories to OJT contracts guards against OJT becoming an employer subsidy without advancing the worker's progress. Further, the commenter recommended that OJT funds initially be received by the apprenticeship program, then reimbursed to the participating employer for the "extraordinary costs."

Several commenters said that States would benefit from guidance and technical assistance on facilitation and implementation of apprenticeships.

Department Response: The Department recognizes the value of pre-apprenticeships and encourages pre-apprenticeship programs to become ETPs through WIOA sec. 122(d). Pre-apprenticeship programs do not automatically qualify to be on the ETPL like RA programs do; however, if they meet the requirements under the provisions of sec. 122(a-f) to become ETPs, they can be funded using ITAs. To provide information and new technical assistance resources for starting and enhancing registered apprenticeship programs, the Department issued Training and Employment Notice No. 20–15, dated January 11, 2016 (*http://wdr.doleta.gov/directives/attach/TEN/TEN_20-15.pdf*). The Department plans on issuing additional guidance and technical assistance clarifying pre-apprenticeship and registered apprenticeship use in the one-stop delivery system. The Department has changed the regulatory text in § 680.740(a) to make it clear that OJT contracts may be entered into with registered apprenticeship program sponsors or participating employers in a registered apprenticeship program for the OJT portion of the registered apprenticeship program.

Comments: Commenters urged the Department to revise the regulation to allow OJT funding to be used for non-registered apprenticeship programs. Similarly, two different commenters stated that § 680.740 should not limit OJT funds to registered apprenticeship programs.

Department Response: WIOA sec. 122(a)(2)(B) provides automatic qualification for registered apprenticeship programs on ETPLs and provides an overall emphasis on registered apprenticeship programs throughout the one-stop delivery system. The Department has used this emphasis to highlight the unique flexibilities the one-stop delivery system has in making use of registered apprenticeship programs to provide training services, including ITAs and OJT. The regulatory text in § 680.740 is designed to highlight those flexibilities for OJT. This in no way restricts other appropriate uses of OJT, including for use with non-registered apprenticeships. The Department declines to make a regulatory text change include all allowable training

types; however, because of WIOA's emphasis on registered apprenticeship, the Department has determined it appropriate to highlight.

Comments: A commenter expressed support for combining funds to support registered apprenticeship training under §§ 680.740 and 680.750.

Department Response: This allows for the combined use of OJT and ITAs to support placing participants in a registered apprenticeship program. The Department notes that there is no prohibition on the combined use of ITAs and OJT as well as any other contracted training services under WIOA sec. 134(c)(3)(G)(iv). However these decisions must be based on individual need, and they must be paying for separate program elements. No changes have been made to the regulatory text in response to the comment.

Section 680.760 What is customized training?

Comments: A commenter requested clarification of the "commitment" by the employer to employ all individuals upon successful completion of customized training; specifically, whether it must be by written letter or verbal, and whether an employer may use a temporary agency for the first 90 days of employment. Similarly, another commenter urged that the regulations address an employer's expectation to commit to hire.

Department Response: The "commitment" is a statutory requirement in WIOA sec. 3(14) and 134(c)(3)(g)(1) requires a contract between the employer and the Local WDB for customized training. Local WDBs have flexibility in determining what constitutes an appropriate commitment to hire the individuals on behalf of the employer.

Comments: One commenter requested that the Department include language in § 680.760 that would exempt the requirement that "the employer pays a significant cost of the training" when the Local WDB determines that the workers are "at-risk" for layoff. This commenter reasoned that customized training seems the most appropriate support to provide when workers are determined to be vulnerable to layoff or closure and have basic skills but may lack a preferred credential and/or industry-recognized certification.

Department Response: WIOA sec. 3(14) states that for customized training, employers must pay for a significant cost of the training, which is to be determined by the Local WDB. Customized training is generally for hiring new or recent employees and not for retraining existing employees. Incumbent worker training may be used to provide training for current employees as a layoff aversion strategy. No changes have been made to the regulatory text in response to the comments.

Comments: Two commenters asked if the § 680.760(c) requirement that an employer pay a "significant cost of the training" means the employer must pay for more than 50 percent of the cost of training. One commenter recommended that "significant cost of the training" should be eliminated as a criterion for customized training under § 680.760 because it is vague and arbitrary.

Department Response: WIOA sec. 3(14)(C) requires that employers pay a "significant cost of the training" of WIOA. Local WDBs have the discretion to define the term "significant cost of the training" as is appropriate for their local areas. No change is made in the regulatory text.

Comments: A commenter proposed adding a paragraph (d) to the definition of customized training in § 680.760 stating, "For which the training results in a degree, certificate, or industry-recognized credential."

Department Response: The requirements for customized training are defined in WIOA sec. 3(14). No change is made to the regulatory text. The Department encourages the use of customized training that leads to credentials, but this is not a requirement of customized training.

Section 680.770 What are the requirements for customized training for employed workers?

Comments: Two commenters recommended that the Department remove the requirement for employed workers to be under the self-sufficient wage to participate in customized training because it is a deterrent for many companies and does not provide an optimal situation for new hires. Other commenters asserted that the provision would prevent dislocated workers reemployed at a lower wage but still above the self-sufficiency wage from participating in customized training that could help them reach their prior wage levels. One commenter recommended that the Department eliminate "self-sufficient wage" as a criterion or standard for use by Local WDBs in determining work-based training arrangements under § 680.770 because it is arbitrary and holds different meanings in different communities. This commenter asserted that wage gain is a more objective measure.

One commenter expressed concern that the self-sufficient wage requirement and the requirement for training to incorporate new technologies, processes, or procedures are too restrictive.

Department Response: The Department is maintaining the self-sufficiency standard for employed workers to be eligible for customized training, consistent with eligibility for training services under WIOA sec. 134(c)(3)(A). The Department considers wage gain an important measure that a Local WDB may consider when determining if customized training would be appropriate.

Comments: A commenter recommended adding a criterion to the regulation that would allow customized training for individuals making more than self-sufficient wage if it would prevent them from being unemployed as a result of a layoff.

Department Response: The Department considers incumbent worker training to be the most appropriate type of training for layoff aversion. Customized training is generally for hiring new or recent employees and not for retaining existing employees, although there may be instances where customized training is appropriate in that circumstance. In those instances customized training may be used for individuals making more than self-sufficient wages if all appropriate criteria are met. Lastly, customized employment can be used for individuals making more than self-sufficient wages as long as it leads to comparable to or higher than previous employment.

Comments: A commenter cautioned that if customized training and incumbent worker training are differentiated for low-skilled workers below the self-sufficiency wage, the regulations should add language that requires local areas to fund and promote both options to employers.

Department Response: Under WIOA, both incumbent worker training and customized training are permissible activities, each with specific eligibility, funding, and allowable criteria. Local WDBs have the flexibility to provide the appropriate types of training and services needed by their local area.

Comments: One commenter recommended that small businesses and Local WDBs be given maximum flexibility to develop customized training programs tailored for their individual needs. This commenter stated that customized training should definitely include OJT. Expressing concern that proposed § 680.770 is overly burdensome and would erect a

significant barrier for access to training funds, another commenter stated that, by definition, if a manufacturer is providing the training then it is in-demand and valuable in the workplace.

Department Response: Customized training and OJT are two distinct types of allowable training. OJT participants learn on the job, while customized training is generally designed so that participants are trained by a third party for the employer. The regulatory text at § 680.770 is consistent with WIOA sec. 134(c)(3)(A) about how individuals may qualify to receive training services. Local WDBs determine training service investments based upon an analysis of the employment needs of the employers in current and emerging in-demand industry sectors and occupations and the needs of the area's labor force.

Comments: A commenter stated that for customized training involving multiple employers, opportunities must be offered to contract directly with a training provider without triggering procurement requirements.

Department Response: Grant recipients and subrecipients must adhere to the procurement standards set forth by the Uniform Guidance at 2 CFR 200.317 through 200.326. When procuring property and services under a Federal award, States must follow the same policies and procedures used for procurements from its non-Federal funds [2 CFR 200.317]. All entities that are not States must ensure that procurements are conducted in a manner that is consistent with 2 CFR 200.318 through 200.326.

Comments: Several commenters addressed the distinction between OJT and customized training; including, customization, use of classroom training, and needs of the participant and employer.

Department Response: WIOA defines both customized training and OJT at WIOA sec. 3(14) for customized training and sec. 3(44) for OJT and provides the differentiation, which is primarily OJT is focused on learning on the job, while customized training is generally classroom based and is often provided by a third party for the employer. There have been no changes to the regulatory text in response to this comment.

Section 680.780 Who is an "incumbent worker" for purposes of statewide and local employment and training activities?

Comments: One commenter expressed concern that the definition of "incumbent worker" was unclear and stated that if the definition of incumbent worker is to be refined by Governors, factors such as hours worked and skill level should be considered. Another commenter stated that there was confusion under WIA about the distinctions between "employed" and "incumbent" workers.

Department Response: While the Department agrees that hours worked and skill level are appropriate considerations that may be used by Governors and the Local WDBs when deciding when an employer is eligible to receive incumbent worker training under § 680.810. Any further definition may occur outside of the regulation, including by Governors and Local WDBs.

Incumbent worker training is designed to meet the workforce needs of an employer or group of employers. The employer must meet the eligibility criteria established in § 680.810. The incumbent worker must meet the requirements established in § 680.780 and the incumbent worker training requirements described in § 680.790, which discuss the requirements for incumbent worker training for individuals receiving training and the standard by which incumbent worker training should be provided. An incumbent worker does not have to meet the eligibility criteria for WIOA title I adult and dislocated worker programs. An employed worker must meet title I eligibility criteria for adult and dislocated worker programs in order to receive career services, and/or must meet the wage requirements of WIOA sec. 134(c)(3)(A)(i) and § 680.210(a)(1) and (2) to receive training services while also being employed at the beginning of participation in career and training services. No changes have been made to the regulatory text in response to these comments.

Comments: Many commenters addressed the issue of the appropriate amount of time an employee must have worked for an employer before being eligible for incumbent worker training. There was a range of timeframes recommended, ranging from 3 months to 1 year, and some commenters recommending no minimum timeframe. Some commenters stated that it should be when an employee is off of probationary status or once the employer-employee relationship is established. One commenter discussed that new employees are often the most in need of training. One commenter wanted Local WDBs to develop policies on employee tenure with a company. A commenter recommended that the Department utilize a standard that is based on the company's tenure in a community as the standard not to incentivize business relocation. Lastly, a commenter wanted the Department to ensure there was no maximum duration of time an employee could work for a company and not be eligible for incumbent worker training.

Department Response: Incumbent worker training is intended for workers with an established work history with the current employer, and who have the knowledge, skills, and abilities needed by their current employer but because of changes in the necessary skills to remain in their position, to advance in the company, or to avoid a layoff, the employees now need additional training. Thus, the Department has decided to retain the 6-month requirement for incumbent workers.

The Department does not consider incumbent worker training to be part of the occupational training for the position in which the new employee was hired. This type of training is most appropriate for an OJT or customized training. However, given that some incumbent worker training may be provided for a cohort of employees, the Department recognizes the concern about excluding certain members of a cohort based on this criterion and has added language into the regulatory text in § 680.780 to create an exception for cohort training, stating that a majority of the cohort must meet the 6-month requirement.

Comments: Many commenters recommended adding specific language to § 680.780 recognizing the need for incumbent training services to assist long-term workers who were hired when skill level requirements were much lower.

Department Response: While the Department has established a 6-month rule for the minimum duration of employment for incumbent worker training eligibility, it has not set a maximum duration of employment. Long-term workers who are looking to gain new skills may benefit from incumbent worker training.

Comments: The Department received a number of comments on the requirement incumbent worker training "must satisfy the requirements in WIOA sec. 134(d)(4) and § 680.790 and increase the competitiveness of the employee or employer." Because this sentence is more properly included in § 680.790, which discusses what incumbent worker training is, the Department removed the text from § 680.780 and instead included it in § 680.790. The comments received about this text are discussed below, in the discussion of § 680.790.

The Department made one final clarifying change at the end of § 680.780. The NPRM stated that an

incumbent worker does not necessarily have to meet the eligibility requirements for career and training services for adults and dislocated workers under WIOA. The Department has added language to make clear that if the worker is receiving other services in addition to incumbent worker training, the individual must meet the eligibility requirements like all other adult or dislocated worker participants.

Section 680.790 What is incumbent worker training?

Comments: Two commenters urged the Department to define how incumbent worker training should "increase the competitiveness of the employee or employer" and recommended that such training be designed to retain a skilled workforce or avert the need to lay off employees. Another commenter urged the Department to define "improving the skills and competitiveness of the participant" and "increasing the competiveness of the employer" and to stipulate how competitiveness will be initially assessed and continuously measured. One commenter recommended that "increasing the competitiveness of the employee or employer" be defined in State policy to allow for flexibility or, alternatively, be defined as training that retains and advances a skilled workforce.

Department Response: The Department agrees that the phrase "increase the competitiveness of the employee or employer" may be defined under State and Local WDB policy, as consistent with the discussion below, and with any future guidance provided by the Department. No change is made to the regulatory text.

Comments: A commenter stated that incumbent worker training should be "employer driven" and "competitiveness of the participant" should be a factor only for determining if incumbent worker training is appropriate.

Another commenter recommended that States be allowed to develop incumbent worker training policies while the Department provides technical assistance and guidance. This commenter urged against relying on layoff aversion and recommended using available labor market data and sector strategies to target occupations for training.

Some commenters urged the Department to omit layoff aversion as a criterion for incumbent worker training, asserting that it would have a chilling effect and would not be offered during healthy economic times. One commenter asserted that proposed § 680.790 is too restrictive in focusing only on averting layoffs or retaining employment. This commenter recommended that the Department add specific language allowing incumbent training "to promote the competitiveness of both the participant and the employer" and "to ensure an employee's skill set is advanced."

One commenter stated that incumbent worker training should be used for individuals who are at a self-sufficient wage and require training that helps the employer stay competitive and retain a skilled workforce or avert a layoff.

Department Response: WIOA sec. 134(d)(4)(B) states that incumbent worker training is to assist workers in obtaining the skills necessary to retain employment or avert layoffs. The Department considers these to be two distinct, although not mutually exclusive, types of requirements for the training, and the regulatory text retains the requirements at § 680.790. Further definition of these terms may be articulated in State and local policies. There have been no changes to the regulatory text in response to this comment.

Comments: Some commenters recommended using earnings growth in the 6 months following incumbent worker training to measure increased competitiveness of the employee. One commenter recommended measuring increased competitiveness by higher wages 1 year after training, portability, layoff aversion, and progress toward self-sufficiency.

Another commenter recommended measuring "competiveness of the employee" by documented wage increases; access to other documented benefits, bonuses, or commissions; obtaining industry-recognized certificates or credentials; or ascension of the worker into an advanced job classification or pay grade. This commenter stated that identifying opportunities for increased competitiveness of employers might require access to confidential business information.

One commenter recommended that the Department require the following to "increase the competitiveness of the employee and employer": (1) Training takes place on company time and trainees are compensated at no less than their normal rate of pay while attending training; (2) training is short-term and ideally 6 months or less; (3) training focuses on occupational skills; and (4) businesses must demonstrate that the costs of training are reasonable.

Department Response: Section 680.810 outlines the factors that a Local WDB must consider when determining eligibility for an employer to receive incumbent worker funds and provides flexibility to the Local WDB to establish other factors in making such a determination. The Department notes that some ideas commenters provided about how to provide incumbent worker training have merit, and the Department will include them in guidance and technical assistance. No changes have been made to the regulatory text in response to these comments.

Comments: One commenter recommended the following metrics for evaluating the effectiveness of incumbent worker training: Revenue increase, contracts awarded, sales data, geographic expansion, wage increase, increased education attainment, and increased credential attainment. Another commenter stated that incumbent worker training arrangement should be flexible, with success measured by metrics such as earnings gains, new skills and competencies gained, new certifications received and/or number of employees migrating into new employment, especially in the case of layoff aversion. One commenter recommended that an employer should demonstrate where incumbent worker training would increase revenue and lead to an increase in wage level within 90 days of training completion.

Department Response: With respect to eligibility for incumbent worker training, many of these metrics are what the Department considers to be possible factors for a State or local area in determining incumbent worker training eligibility for training providers, employers, and employees, as included under §§ 680.780 and 680.810. The Department may issue further guidance on this subject.

The Department clarifies that, because of the unique nature of the Incumbent Worker Training Program, where the Local WDB only evaluates the employers for eligibility consistent with § 680.810, individuals receiving Incumbent Worker Training are not subject to the eligibility criteria that apply to participants in the adult or dislocated worker programs, unless they are also receiving other services under those programs. Therefore, individuals who only receive incumbent worker training and no other WIOA title I service do not fall within the definition of "participant" in 20 CFR 677.150(a) (*see* Joint WIOA Final Rule). As such, they are not included in calculations for the State Primary Indicators of Performance. The Department is making a change to be consistent with this in § 680.810(a) and (b) by removing the word "participant" and inserting "individual" to reflect that incumbent

worker training eligibility is decided at the employer level.

States and Local WDBs are, however, required to report on individuals who receive incumbent worker training, including employment status after training, wages after training, and credential attainment, the details of which are provided through the Department's ICR process and subsequent guidance. As part of future collections and guidance, the Department may seek to collect additional employer data, such as employer size, industry, and other information that may be used to evaluate the effectiveness of Incumbent Worker Training programs for both the employer and employee.

Regarding the development and provision of Incumbent Worker Training by States and local areas, the Department encourages States and local areas to cultivate opportunities and develop policies that can appropriately support employers in their efforts to develop a more competitive workforce or avert potential layoffs and that provide incumbent workers with opportunities for advancement and wage gains within their company. Incumbent Worker Training policies must be aligned with State and Local Plans, as well as with sector strategy approaches for in-demand occupations.

In addition to the required performance indicators, WIOA sec. 122(h)(2) says that the Governor may require and use performance information relating to incumbent worker training and other work-based training to determine whether providers meet such performance criteria as required by the Governor. More detailed information on performance definitions and metrics are in 20 CFR part 677 (*see* Joint WIOA Final Rule).

Comments: Several commenters said that it is unrealistic to expect incumbent worker training to result in the employee being promoted; instead, local areas need flexibility on timing of training and hiring new workers that coincides with the needs of business. In response to the NPRM preamble statement that ideal incumbent worker training would result in promotion and hiring to backfill the incumbent worker's position, two commenters asked if it is realistic to expect a company, through a round of training to retain workers, to also be able to add new employees. One of these commenters stated that this is an ideal structure that would be better served under customized training for employed workers. However, one commenter agreed with the Department's goal of using incumbent worker training to "advance-and-backfill" to benefit two employees.

Department Response: The Department clarifies that the ideal incumbent worker training strategy of upskilling and backfilling employee positions is meant as an illustrative example of an ideal incumbent worker opportunity and not as the only type of successful incumbent worker training strategy. In a situation where incumbent worker training is needed to avert a layoff, the alternative of upskilling and backfilling positions would be unlikely. The Department is committed to ensuring that the regulations maintain flexibility for States and local areas to develop incumbent worker training strategies that best fit the needs of their State and community.

Comments: One commenter asked if the definition of incumbent worker training would allow for contracted training through business and industry, adult education, etc.

Department Response: The Department declines to specify all of the incumbent worker training contracting options in regulatory text. However, to secure incumbent worker training, grant recipients and subrecipients must adhere to the procurement standards set forth by the Uniform Guidance at 2 CFR 200.317 through 200.26. When procuring property and services under a Federal award, States must follow the same policies and procedures it uses for procurements from its non-Federal funds [2 CFR 200.317]. All entities that are not States must ensure that procurements are conducted in a manner that is consistent with 2 CFR 200.318 through 200.326.

Comments: A commenter recommended that incumbent worker training be structured to incorporate the biggest return on investment for Local WDBs, workers, and businesses by using economies of scale to upskill many workers at a time.

Department Response: The Department agrees with this concern and has added language to § 680.780 to clarify that cohort training is an acceptable use of incumbent worker training funds.

Comments: A commenter stated that apprenticeship should be an approved expense for incumbent worker training if it would lead to a higher paid, higher skilled job.

Department Response: The Department considers apprenticeship training to be an allowable incumbent worker training expense, provided the requirements for incumbent worker training in §§ 680.780 and 680.790 are met.

Comments: A commenter recommended that cost reimbursement be limited to: Costs of outside vendors or in-house trainers; costs of textbooks and training materials; distance learning fees; and credentialing exam fees. This commenter stated that trainees should be full-time or part-time employees with a permanent, year-round attachment to the business, so that temporary employees, seasonal employees, public employees, and volunteers would not be eligible.

Department Response: Allowable costs of incumbent worker training are consistent with the allowable costs rules for all types of training. The allowability regulations are explained in Departmental guidance. To be eligible, the incumbent worker must be employed, meet the Fair Labor Standards Act requirements for an employer-employee relationship, and have an established employment history for more than 6 months. The Department may utilize guidance to clarify specific types of employment relationships that are eligible for employers to receive incumbent worker training funds.

Section 680.800 What funds may be used for incumbent worker training?

Comments: A commenter asked the Department to clarify if the 20 percent in proposed § 680.800(a) refers to total dollars or program dollars and does not include administrative funds. Another commenter recommended that the regulations clearly indicate the difference between employed workers and incumbent workers and that the 20 percent limitation on training for incumbent workers would not apply to employed workers.

Department Response: WIOA sec. 134(d)(4) allows Local WDBs to set aside up to 20 percent of their total allocation of title I adult and dislocated worker funds on incumbent worker training, this includes administrative funds. The Department agrees with the commenter about the 20 percent restriction only applying to incumbent workers and not employed workers.

Comments: A commenter asked for clarification to distinguish customized from incumbent worker training, and commented that §§ 680.800, 680.810, and 680.820 seem to apply to customized training for employed workers rather than incumbent worker training.

Department Response: Customized training, as defined in WIOA sec. 3(14), is used to train individuals who are not employed with the participating employer at the start of participation. Incumbent worker training, as defined

in WIOA sec. 134(d)(4), is used to enhance the competitiveness of the employee/employer and/or avert a layoff. Incumbent workers are employed with the participating company when the training begins consistent with § 680.780. The Department will provide further clarification through guidance and technical assistance.

Comments: A commenter stated that it may be difficult, if not impossible, to determine accurately the amount of administrative funds that were spent on incumbent working training and transitional jobs.

Department Response: WIOA allows Local WDBs to set aside up to 10 percent of their adult and dislocated worker funds on Pay-for-Performance contract strategies (see WIOA sec. 134(d)(1)(A)(iii)), Up to 20 percent on incumbent worker training (see WIOA sec. 134(d)(4)), and up to 10 percent on transitional jobs (see WIOA sec. 134(d)(5)). These provisions are discussed in § 680.140(b)(1)(v), (b)(4), and (b)(8). Administrative activities necessary to initiate or procure a Pay-for-Performance contract strategies, incumbent worker training, and transitional jobs must be consistent with § 683.215, which also discusses how to determine whether an activity is administrative or programmatic for purposes of WIOA. If the activity would be considered programmatic under § 683.215, then the cost would be subject to the caps discussed above. If the activity would be considered administrative under § 683.215, it may be paid for out of the Local WDBs' usual administrative funds, and it is not subject to the caps. Therefore, the Local WDB would not need to specifically account how much of the administrative funds are spent on these particular programs.

Section 680.810 What criteria must be taken into account for an employer to be eligible to receive local incumbent worker funds?

Comments: A commenter asserted that proposed § 680.810 would impose a burden on States to write a policy for use of funds for incumbent worker training and asked what is the requirement for performance.

Department Response: The Department acknowledges that State and local policy must be developed to govern the use of funds for incumbent worker training; however, since this activity was required to properly perform incumbent worker training under WIA, it is not an increase in burden. Incumbent worker training is a permissible activity; if a State or Local WDB decide to utilize incumbent worker training as a workforce strategy for local businesses then they need to have clear State and local policies on its use.

The Department declines to add specific language to the regulatory text addressing the concern about performance requirements. Specific definitions of metrics that will be used to evaluate performance are defined through the WIOA Joint Performance ICR. More detailed information on performance definitions and metrics are at 20 CFR part 677 (*see* Joint WIOA Final Rule). The Department plans to issue guidance on incumbent worker training, including how it is impacted by performance.

The Department notes, as explained above, that it made a clarifying change to § 680.810 to replace the word "participant" with "individual" to reflect that incumbent worker training eligibility is decided at the employer level; individual workers participating in incumbent worker training are not considered "participants" under 20 CFR 677.150(a), unless they receive other adult or dislocated worker services (*see* Joint WIOA Final Rule).

Comments: Two commenters requested that the Department add a paragraph (d) directing that incumbent worker training contracts may not be entered into with employers that have unpaid unemployment insurance and workers compensation taxes.

Department Response: The Department declines to add specific language to the regulatory text addressing this concern. The Department considers the suggested factor to be an allowable consideration under § 680.810(c).

Section 680.820 Are there cost sharing requirements for local area incumbent worker training?

Comments: A commenter suggested that the required non-Federal share for incumbent training be waived for companies that are close to a layoff.

Department Response: The non-Federal share for incumbent worker training is required under WIOA sec. 134(d)(4). The Department expects Local WDBs to adhere to the requirements for non-Federal share contributions as set forth in WIOA. Thus, the Department declines to discuss waivers of this provision and makes no change to the regulatory text.

Comments: A commenter asked if § 680.820 is meant to ensure that no other funding source is contributing to the cost of the incumbent worker training or that the employer is paying 100 percent of the cost from its own funds, excluding the Federal contribution.

Department Response: Under WIOA sec. 134(d)(4) employers participating in incumbent worker training are responsible for paying the non-Federal share of the cost of providing training to their incumbent workers. Employers have flexibility in how they arrange to pay for these costs; however, the payments must not come out of any other Federal funds.

Section 680.830 May funds provided to employers for work-based training be used to assist, promote, or deter union organizing?

Comments: The Department received comments in support of § 680.850 (renumbered as § 680.830) as proposed, regarding the relationship between work-based training funds and union organizing.

Section 680.840 May funds provided to employers for work-based training and other work experiences be used to fill job openings as a result of a labor dispute?

Comments: A commenter suggested that for transitional jobs there should be protections around the displacement of workers.

Department Response: The Department has added a new section to the regulatory text at § 680.840 entitled "May funds provided to employers for work-based training and other work experiences be used to fill job openings as a result of a labor dispute?" This section clarifies that funds for work-based training may not be used for this purpose. It is consistent with WIOA and with the Wagner-Peyser Act regulatory text in § 652.9 to remain neutral in matters relating to union organizing and activities that would promote or deter organization.

8. Subpart G—Supportive Services

This section defines the scope and purpose of supportive services and the requirements governing their disbursement. A key principle in WIOA is to provide local areas with the authority to make policy and administrative decisions and the flexibility to tailor the public workforce system to the needs of the local community. To ensure maximum flexibility, the regulations provide local areas the discretion to provide the supportive services they deem appropriate subject to the limited conditions prescribed by WIOA. Local WDBs must develop policies and procedures to ensure coordination with other entities to ensure non-duplication of resources and services and to

establish limits on the amount and duration of such services. Local WDBs are encouraged to develop policies and procedures that ensure that supportive services are WIOA-funded only when these services are not available through other agencies and that the services are necessary for the individual to participate in title I activities. Supportive services may be made available to anyone participating in WIOA title I activities.

A commenter expressed support for the proposed regulations in subpart G.

Section 680.900 What are supportive services for adults and dislocated workers?

Comments: A commenter recommended that § 680.900 include an exhaustive list of available support services consistent with the approach in the section on support services for youth. Another commenter strongly supported the inclusion of legal aid services in the Department's list of examples of supportive services, noting that legal aid can uniquely address certain barriers to employment, including access to driver's licenses, expunging criminal records, and resolving issues with debt, credit, and housing. One commenter recommended that supportive services involving WIOA funding be available to cover all steps/aspects of the licensing process (*e.g.,* testing and transcripts).

Because access to many supportive services is an impediment to individuals with disabilities in entering or re-entering the workforce, one commenter recommended specific reference to this population in subpart G.

Department Response: The Department agrees with the commenter that supportive services for adults and dislocated workers under WIOA title I programs be aligned with the supportive services available under the title I youth program. The Department has modified the regulatory text to include a list of supportive services that may be made available at § 680.900(a) through (l). This list is not intended to be exhaustive, but rather to illustrate the types of supportive services that may be made available. The changes to the regulatory text also include a couple of suggestions that commenters provided regarding the addition of providing assistance with books, fees, school supplies, and other necessary items for students enrolled in postsecondary education classes. The Department concurs that legal aid can uniquely address certain barriers to employment, as enumerated by the commenter. Therefore, the Department has included legal aid services under § 680.900 and made a corresponding change to the list of supportive services allowable in the youth program in § 681.570. Additionally, the Department added that payments and fees for employment and training-related applications, test, and certifications be covered, because these costs may be a barrier to entry for individuals looking for unsubsidized employment. The Department also has added "Reasonable accommodations for individuals with disabilities" as § 680.900(g).

Comments: Citing the requirement that participants first obtain supportive services through other programs before relying on WIOA title I funding, a commenter stated that it is vital that the programs covered by WIOA work closely together to ensure that job seekers receive all the benefits to which they are entitled under all aspects of the law.

Department Response: The Department agrees with this comment and encourages that programs work closely together in order to align programs better and leverage resources as WIOA is intended to do to serve job seekers better.

Section 680.910 When may supportive services be provided to participants?

Comments: The Department received a comment regarding the importance of coordinating across programs allowed in § 680.140, because § 680.910 states that supportive services must be provided through non-WIOA programs first. The commenter particularly emphasized the need for coordinating services with vocational rehabilitation programs so individuals with disabilities receive the supportive services they need.

Department Response: The Department agrees with the commenter that coordinating services across the WIOA core programs, as well as non-core programs is vital to help individuals with barriers to employment, including individuals with disabilities, obtain the support they need to successfully participate in and complete WIOA career and training services and ultimately, obtain unsubsidized employment. Local WDBs are responsible for developing supportive service policies, and the Department considers how these services are coordinated to be a key part of those policies.

Section 680.920 Are there limits on the amount or duration of funds for supportive services?

Comments: A commenter recommended that the definition of supportive services and extended case management include ongoing, extended services as participants proceed through training and employment.

Department Response: Supportive services under WIOA sec. 134(d)(2) are provided to allow an individual to participate in career and training services. The commenter was interested in extending supportive services after the period of exit from the WIOA title I adult and dislocated worker programs; however, this is outside of the authority of WIOA. Supportive services are provided to enable participation in career and training services. No changes have been made to the regulatory text in response to the comment.

Comments: Two commenters raised a similar concern about the authority related to the one-stop center determining what supportive services may be provided if the one-stop center is not the WIOA service provider in a local area.

Department Response: To guide supportive service determinations, the Local WDB ultimately is responsible for developing a supportive service policy for the area, including eligibility, types of supportive services to provide, and the methods of service delivery.

Section 680.930 What are needs-related payments?

Comments: A few commenters provided input on needs-related payments. One commenter suggested that the Department consider whether the underemployed should be considered for needs-related payments. One commenter stated that funding levels are not adequate to support needs-related payments, which the commenter stated will result in these services being provided on a very limited basis. Some commenter focused on funding levels for needs-related payments.

Department Response: To receive needs-related payments, individuals must be unemployed and must not qualify for (or have ceased to quality for) unemployment compensation. While underemployed individuals are not eligible for needs-related payments under WIOA sec. 134(d)(3), there is no prohibition on providing supportive services to the underemployed, other than needs-related payments. Additionally, WIOA sec. 134(d)(1)(B) allows for work support activities for low-wage workers. The Department may provide additional guidance on how to ensure quality services to individuals who are underemployed. No changes have been made to the regulatory text in response to the comments. The Department notes that needs-related payment levels are permissible and

thus, are left to the discretion of the Local WDB.

Section 680.970 How is the level of needs-related payments determined?

Comments: Two commenters recommended that States be allowed to determine the amount for needs-related payments for State funded projects.

Department Response: The Department agrees with the suggestion that States be allowed to make determinations for needs-related payments for State funded projects and has added language to the regulatory text at § 680.970(a) to reflect this change. No other changes have been made to the regulatory text in response to the comments.

Other Comments on Adult and Dislocated Worker Activities Under WIOA Title I

Limited English Proficiency Individuals

Comments: A commenter encouraged the Department to provide additional guidance, whether through regulation or other types of policy directives, to States and localities regarding the alignment of WIOA title I and title II services to improve services to immigrant and limited English proficiency (LEP) individuals. This commenter recommended that the guidance acknowledge and allow for differences in eligibility criteria across the titles, encouraging States and localities to align services without precluding participation by individuals who may be eligible for services under one title but not another.

Department Response: The Department agrees with the commenter on the importance of aligning services among titles to ensure that individuals receive the services they need. The Department will provide guidance and technical assistance on this issue.

Industry or Sector Partnerships

Comments: A few commenters recommended the establishment of a new subpart H covering industry or sector partnerships. These commenters discussed at length the topics they believed should be addressed in this proposed new subpart, including, the purpose of industry and sector partnerships, permissible partners, who may lead partnerships, evaluating effective partnerships, and ensuring minimum standards.

Department Response: The Department recognizes the importance of the industry and sector partnerships as an important strategy for economic and workforce development. Due to the constantly changing nature of business and industry, these partnership strategies continue to be most appropriately addressed through guidance and technical assistance issued by the Department.

E. Part 681—Youth Activities Under Title I of the Workforce Innovation and Opportunity Act

1. Introduction

WIOA affirms the Department's commitment to providing high quality services for youth and young adults beginning with career exploration and guidance; continuing support for educational attainment, opportunities for skills training in in-demand industries and occupations; and culminating with a good job along a career pathway or enrollment in postsecondary education. All of the Department's youth-serving programs continue to promote evidence-based strategies that also meet the highest levels of performance, accountability, and quality in preparing young people for the workforce.

WIOA maintains WIA's focus on out-of-school youth (OSY) in Job Corps and YouthBuild, while greatly increasing the focus on OSY in the WIOA youth formula-funded program. The shift in policy to focus on those youth most in need is based on the current state of youth employment. In 2015, an estimated 5.5 million or 13.8 percent of 16 to 24 year olds in our country were not employed or in school. WIOA youth programs provide a continuum of services to help these young people acquire skills and pursue careers. The Department, working with its Department of Education and Health and Human Services partners, plan to provide intensive technical assistance around meeting the needs of this population.

WIOA calls for customer-focused services based on the needs of the individual participant. This includes the creation of career pathways for youth in all title I youth programs, including a connection to career pathways as part of a youth's individual service strategy (ISS) in the youth formula-funded program. The ISS must directly link to one or more of the performance indicators. WIOA also calls for participants to be intimately involved in the design and implementation of services so the youth voice is represented and their needs are being met.

This integrated vision also applies to the public workforce system's other shared customer—employers. Employers have the opportunity to build a pipeline of skilled workers: They are critical partners that provide meaningful growth opportunities for young people through work experiences that give them the opportunity to learn and apply skills in real-world settings and ultimately jobs.

WIOA includes a number of significant changes for the youth formula-funded program. WIOA shifts to focus resources primarily on OSY, increasing the minimum percentage of funds required to be spent on OSY from 30 to 75 percent. The Department recognized the transition to serve more OSY would take time to implement, and, as explained in WIOA operating guidance TEGL No. 23–14 ("*Workforce Innovation and Opportunity Act (WIOA) Youth Program Transition*"), found at *http://wdr.doleta.gov/directives/All_WIOA_Related_Advisories.cfm*, the Department has provided States and local areas a year to show progress towards meeting the 75 percent minimum OSY expenditure rate requirement. In addition, WIOA increases the focus on providing youth with work experience opportunities, with a requirement that local areas must spend a minimum of 20 percent of local area funds on work experience.

Under WIOA, work experience becomes the most critical of the program elements. WIOA also introduces 5 new program elements: Financial literacy; entrepreneurial skills training; services that provide labor market and employment information about in-demand industry sectors or occupations available in the local areas; activities that help youth prepare for and transition to postsecondary education and training; and education offered concurrently with and in the same context as workforce preparation activities and training for a specific occupation or occupational cluster.

During the 60-day comment period for the NPRM, the Department received hundreds of comments that expressed general support for the proposed youth program regulations as well as some constructive feedback that made the Final Rule clearer.

The most significant change between the NPRM and the Final Rule occurs in § 681.400. This section clarifies that youth activities may be conducted by the local grant recipient and that only when the Local WDB chooses to award grants or contracts to youth service providers, such awards must be made using a competitive procurement process in accordance with WIOA sec. 123. While this revision represents a significant change in that it provides Local WBDs with flexibility in determining which WIOA youth services to procure, the Department expects Local WDBs to continue to

contract with youth service providers to provide the program elements that youth service providers are best positioned to offer participants based on prior success in serving youth.

The analyses that follows provides the Department's response to public comments received on the proposed part 681 regulations. If a section is not addressed in the discussion below, it is because the public comments submitted in response to the NPRM did not substantively address that specific section and no changes have been made to the regulatory text. Further, the Department received a number of comments on this part that were outside the scope of the regulation and the Department offers no response. Lastly, the Department has made a number of non-substantive changes to correct grammatical and typographical errors to improve the readability and conform the document stylistically that are not discussed in the analysis below.

2. Subpart A—Standing Youth Committees

Section 681.100 What is a standing youth committee?

This section describes a standing youth committee. WIOA does not require Local WDBs to establish a youth council; however, the Local WDBs are encouraged to establish a standing youth committee to provide information and to assist with planning, operational, and other issues relating to the provision of services to youth (WIOA sec. 107(b)(4)(A)(ii)). The Department received many comments on standing youth committees and in response to the comments made a small addition to the regulation text as explained here.

Comments: One commenter expressed support for all of the proposed regulations regarding standing youth committees. Several commenters also supported the proposed language that would allow Local WBDs to maintain existing effective youth councils as standing youth committees. Several commenters recommended that the proposed language allow Local WDBs the flexibility to maintain existing effective youth councils, have the Local WDB secure the role of the standing youth committee, or create a new standing youth committee.

Department Response: The Department notes the comments received about standing youth committees. The language in §§ 681.100 and 681.110 provides Local WDBs with the flexibility to maintain existing effective youth councils; have the Local WDB take on the role of the standing youth committee; or create a new standing youth committee.

Comments: One commenter expressed disappointment with the removal of mandated youth councils and stated that the Department should strongly encourage Local WDBs to establish standing youth committees.

Department Response: The Department recognizes the challenges some local areas experienced in finding and retaining the required youth council members. In the final regulations, the Department accepted the suggestion to "encourage" Local WDBs to establish standing youth committees rather than the proposed language, "a Local WDB may choose to establish a standing committee." This change recognizes that Local WDB have a choice as to whether or not they have a standing youth committee while at the same time reflects the Department's support of such entities.

Comments: A couple of respondents stated that because the proposed regulations did not mandate the implementation of a standing youth committee or any other youth organization, a Local Workforce Development Board (WDB) should be able to assemble a group to oversee youth activities without having to formally create a standing youth committee that would be subject to regulations.

Department Response: As discussed above, the Department recognizes the challenge of bringing together required partners and understands the local area's interest in taking advantage of the flexibility under WIOA to form an ad hoc group that would informally advise the Local WDB on youth matters. The Department supports Local WDBs seeking outside youth expertise to inform the programs. If such groups do not have the required members as outlined in § 681.110, however, they may not call themselves standing youth committees.

Comments: Second, a commenter raised the concern over how a Local WDB could efficiently oversee youth activities without the expertise of a standing youth committee with prior experience in handling the youth activities. This commenter requested additional clarification as to how the Local WDB would provide efficient oversight. The commenter further asked if the Department would provide recommended models in order to ensure that they were implementing youth activities effectively and if the Department will provide recommended approaches in future technical assistance activities.

Department Response: If a Local WDB chooses not to delegate this function to a standing youth committee, it is still responsible under WIOA sec. 107(d)(8)(A)(i) for conducting oversight in partnership with the CEO for the local area of youth workforce investment activities under WIOA sec. 129(c). The Department notes the commenter's concern and recognizes that without youth experts it may be hard for a local area to oversee its youth program properly. The Department will address this commenter's concerns through technical assistance.

Section 681.110 Who is included on a standing youth committee?

This section describes the members of a standing youth committee.

Comments: Two commenters recommended that Local WDBs be given the maximum flexibility possible when determining membership requirements for their standing youth committee, stating that the Local WDBs would have the best understanding of their local area's needs. One of these commenters reasoned that there should be no rigid membership requirements for standing youth committees because the committees would be optional under the proposed language. Similarly, another commenter remarked that Local WDBs should be able to define the appropriate level of experience needed for members of the standing youth committee. This commenter stated that Local WDBs also should have the ability to establish the standards for what a community-based organization's (CBO's) "demonstrated record of success" must be.

One respondent suggested that the Department provide more specific guidance on committee membership requirements. This commenter further recommended that the committee should include individuals from CBOs who serve youth with disabilities, as well as individuals from the local education system.

Department Response: The Department concurs with the commenters that said the Local WDBs need the maximum flexibility possible when establishing membership requirements for their standing youth committee. The NPRM and Final Rule reflect the WIOA requirements found in sec. 107(b)(4)(A)(ii). The Department does not define a CBO's demonstrated record of success in the proposed regulation or Final Rule. The Department did accept the suggestion to add disability organizations and local education entities to the list of possible standing youth committee members.

Section 681.120 What does a standing youth committee do?

This section describes the duties of a standing youth committee. Commenters expressed support for the proposed roles of standing youth committees.

Comments: Several commenters suggested that the Department include a list of suggested tasks in the final regulation that a standing youth committee could be charged with. These commenters recommended that the Department reemphasize that if the Local WDB chooses not to establish a youth council or standing youth committee, oversight of the suggested activities listed in the regulations will fall under the jurisdiction of the Local WDB, which will then be responsible for overseeing the activities and providing opportunity for stakeholder comment. These commenters also suggested that the Department should require that Local WDBs and/or their standing youth committees state how they will:

- Facilitate co-enrollment of individuals across core programs, especially for those individuals between the ages of 18 and 24 who could be served under WIOA titles I, II, and IV.
- Implement specific provisions related to career pathways requirements.
- Adapt the procurement and request for proposal processes, in order to encourage longer-term and more thorough services for OSY.
- Align Temporary Assistance for Needy Families (TANF) with WIOA youth programs, so that TANF recipients who are under 25 can benefit from OSY programs when appropriate.

Department Response: The Department concluded that standing youth committees need as much flexibility as possible to reflect the needs of their local area. The Department will provide technical assistance to local areas and plans to incorporate many of the commenters' ideas. No change to the regulatory text was made in response to these comments.

3. Subpart B—Eligibility for Youth Services

Section 681.210 Who is an "out-of-school youth"?

This section describes how one meets the eligibility for an OSY for purposes of the title I WIOA youth program. OSY youth must not attend any school, be between the ages of 16 and 24 at time of enrollment, and meet one or more of a list of nine criteria. The section clarifies that age is based on time of enrollment and as long as the individual meets the age eligibility at time of enrollment he or she can continue to receive WIOA youth services beyond the age of 24. Low income is not a requirement to meet eligibility for most categories of OSY under WIOA. Low income is, however, a part of the criteria for youth who need additional assistance to enter or complete an educational program or to secure or hold employment. Also, WIOA has made youth with a disability a separate eligibility criterion.

Comments: A few commenters expressed their support of the expansion of the age requirements from 21 to 24. One commenter stated that this increase would be a positive change as it continues to see greater numbers of older young adults who are seeking employment and training services. Another commenter expressed support of the proposed regulations' focus on the needs of OSY. The Department recognizes that many youth service providers moved to serving more OSY under WIA. In Program Years 2011 and 2012, the national OSY expenditure rate was 57 percent.

On the other hand, a number of commenters noted that the proposed regulations mark a substantial change in the delivery of services to youth, specifically shifting service priorities from ISY to OSY. These commenters stated that because of this significant change, Governors and Local WDBs should have jurisdiction over defining the eligibility requirements for OSY.

Department Response: The Department acknowledges that WIOA's focus on OSY represents a significant change in the focus of the youth formula program. The Department also acknowledges the important role State and local leaders play in implementing the law. Nonetheless, WIOA clearly defines the eligibility requirements for OSY. No change was made in the regulatory text in response to these comments.

Comments: Several commenters proposed additions to the OSY definition. A few commenters offered that any individual who does not pass the high school exit exam should automatically be considered an OSY as well.

Department Response: The impact of high school exit exams on individual youth represents only one reason why the Department has concluded that under WIOA, local areas will need to work closer than ever with the local education providers to ensure the success of their participants. In-school or out-of-school eligibility status is determined at the time of enrollment. Therefore, a student enrolled in high school when taking high school exit exam, would count as an ISY.

Comments: Another commenter recommended that the definition of OSY be broadened to include "youth ages 16–24 who may be enrolled in school, but in fact are spending less than 10 hours per week at that school or adult education center," noting that often students are technically enrolled in school but in reality hardly ever attend. Similarly, a commenter expressed concern that "if compulsory school attendance is defined by State law as 16, what happens to 14 and 15 year olds who are out-of-school?"

Department Response: The Department understands that many students attend high school irregularly and are at great risk of becoming disconnected. In the cases where compulsory-age students do not attend school on a regular basis, under WIOA they count as ISY. WIOA clearly defines the eligibility requirements for OSY. No changes were made to the regulatory text in response to these comments.

Measuring Attendance by School Year Quarters

WIOA includes a new criterion for determining OSY eligibility: A youth who is within the age of compulsory school attendance, but has not attended school for at least the most recent school year calendar quarter. The school year quarter is based on how a local school district defines its school year quarters.

Comments: One commenter asked the Department to include an alternative definition for OSY requirements for schools that do not utilize school year quarters. This commenter suggested that the Department could use calendar year quarters as an alternative benchmark. Another commenter expressed a concern over the proposed language's reliance on school year quarters as a benchmark to measure OSY eligibility because it would require local areas to have an understanding of the local school district's school year quarters.

Department Response: In Final Rule text, the Department added language clarifying that when schools do not use a quarter system, schools must use calendar year quarters. The Department encourages local areas to know their local school system's leaders as a strategy to ensuring that all youth know about the public workforce system and maximizing the limited resources available in an area. Conversations around school year calendars may serve as an entry point for future collaboration. Both commenters requested further clarification from the Department as to the measurement of length of attendance by school year

quarters. The Department will issue additional guidance on school year quarters.

Definition of Attending

Comments: A number of commenters recommended that the Department define what "attending" means when determining the eligibility of an individual. These commenters asked the Department for clarification as to whether taking one course at a community college would count as "attending" and thus, render an individual ineligible for OSY services. These commenters also asked the Department whether or not being enrolled in a non-credit granting course or continuing education class would be classified as attending school, making those individuals ineligible for OSY services.

Another commenter requested clarification around the definition of OSY and a concern that youth with disabilities who are involved in remedial, non-credit coursework would be excluded from title I youth programs under WIOA. The commenter noted that non-credit education and remedial coursework often provide a vital opportunity to strengthen basic skills needed in order to enroll in credentialing programs and to maximize independence. The commenter suggested the Department include language creating an exception to ensure that students with disabilities in need of remedial coursework will remain eligible for title I youth programs under WIOA.

Another commenter noted that the OSY definition language includes "an individual that is not attending any school as defined under State law" and it creates inconsistency in the application of State regulations resulting in a different treatment of youth from one State to the next. The commenter proposed clarification to the regulation to include attendance at an alternative high school for eligibility in the OSY component, for all States.

Department Response: The Department will provide further guidance around "attending" and non-credit granting courses, continuing education classes, and one community college course.

General Education Development (GED) & Dropout Prevention/Recovery Program Eligibility

Comments: A few commenters expressed support for the proposed language that would classify individuals enrolled in a GED class as OSY. These commenters further recommended that youth in GED programs be classified as "high school drop-outs" in the proposed regulations so that they would not be subjected to compliance with the low-income eligibility requirements, and suggested that because they did not complete their high school education, it would be illogical to define them as ISY. Two commenters recommended that individuals enrolled in GED or high school equivalency programs be considered OSY.

Two other commenters suggested that individuals enrolled in a dropout re-engagement program also be classified as OSY under the proposed regulations. Specifically, a commenter recommended adding the following language, ". . . for purposes of WIOA, the Department does not consider providers of dropout re-engagement programs or providers of adult education . . . to be schools." This commenter stated that this language would provide clarification that after an individual has dropped out of school, he or she can continue his or her education in an alternative form without being considered an ISY. Another commenter suggested that youth in these programs are not participating in traditional schools and therefore should not be classified as ISY.

Department Response: Based on the recommendation of commenters, the Department has added high school equivalency programs and dropout re-engagement programs as additional types of programs in § 681.230 that are not considered "schools" for the purposes of determining school status.

Comments: Other commenters asked for clarification from the Department as to whether an individual recruited and persuaded to return to school through a dropout recovery program would be considered an OSY under the proposed regulations, even if he or she had not missed an entire semester of school. One commenter also asked for clarification from the Department regarding why an individual would be required to wait an entire semester to be classified as an OSY.

Department Response: As a point of clarification, WIOA does not require a person to miss an entire semester; rather, the law considers school year quarters. Further, the Department reminds service providers that ISY or OSY status determination occurs when a youth enrolls into the WIOA Youth Formula Program and does not change as the youth moves though the program. Therefore, an OSY who returns to school through a dropout recovery program remains classified as an OSY for WIOA purposes.

Foster Care Individuals/Individuals in the Justice System

Comments: Regarding the eligibility requirements for individuals in the foster care or justice systems, one respondent commented that the proposed regulation's definition of OSY would not efficiently serve individuals in the foster care or juvenile justice systems, stating that the proposed language would require individuals in the juvenile justice system or foster care system to drop out of school in order to be eligible to receive WIOA youth services, which the commenter suggested would put them at an even greater risk. Another commenter recommended that the Department amend the OSY eligibility criteria regarding youth in foster care to include youth who were formerly in foster care, but may have returned to their biological families before turning 18, sharing that although these individuals are no longer in foster care and did not technically "age out" of the system, they are still disadvantaged and in need of assistance. Two commenters recommended that any incarcerated youth be automatically considered an OSY.

Department Response: Although the Department recognizes that a few State-level foster care policies may result in this practice occurring, the Department does not interpret WIOA to require individuals in the juvenile justice system or foster care system to drop out of school in order to be eligible to receive WIOA youth services. Nor is it the Department's intent to have youth leave school in order to receive WIOA youth program services.

Relating to the comment that individuals who stay in foster care until late adolescence may not technically "age out" of the system but remain disadvantaged, the Department agrees. The Department consulted with the Department of Health and Human Services John H. Chafee Foster Care Independence Program and added "or an individual who has attained 16 years of age and left foster care for kinship guardianship or adoption," to the final regulation for §§ 681.210 and 681.220 to encompass this fragile population.

Further, to make the regulation easier to understand, the Department separated foster care youth and homeless and runaway youth into two separate eligibility categories. In addressing the comments around individuals involved in the juvenile justice system, WIOA uses slightly different wording between ISY and OSY eligibility criteria. For OSY eligibility WIOA at sec. 129(a)(1)(B)(iii)(IV) states,

"An individual who is subject to the juvenile or adult justice system," while for ISY, sec. 129(a)(1)(C)(iv)(III) says, "offender." WIOA sec. 3(38) defines "offender" as "an adult or juvenile—(A) who is or has been subject to any stage of the criminal justice process, and for whom services under this Act may be beneficial; or (B) who requires assistance in overcoming artificial barriers to employment resulting from a record of arrest or conviction." The Department changed the wording in the Final Rule to use "offender" for the eligibility criteria for both ISY and OSY, to clarify that the OSY eligibility criterion at § 681.210(c)(4) includes all individuals who fit the definition of "offender" under sec. 3(38). The Department concluded that the intent of the OSY eligibility criterion is not to treat youth who were subject to the juvenile or adult system differently from those who are currently subject, but rather to call attention to the fact that both the juvenile and adult justice systems may include OSY.

Homeless Individuals

Comments: A commenter expressed support for the inclusion of homeless individuals as one of the possible eligibility criteria for OSY in the proposed regulations. This commenter further recommended that the definition of homeless individual in § 681.210(c)(5) be derived from the Runaway and Homeless Youth Act (42 U.S.C. 5601 *et seq.*) and read ". . . a homeless child or youth (as defined in sec. 725(2) of the McKinney Vento Homeless Assistance Act (42 U.S.C. 11434a(2))), a runaway or homeless youth (as defined by 42 U.S.C. 5601 *et seq.*) who is referred to the labor board by an RHY provider . . . ." This commenter also suggested that homeless status of an individual should be determined by referral from a runaway or homeless youth (RHY) or other homeless youth provider, but that pure self-attestation by the individual should also count as sufficient evidence of homelessness.

Department Response: Runaway and Homeless Youth programs serve individuals as young as 12 years old, which is younger than permitted by WIOA youth formula program statute. Therefore, no changes were made in the regulatory text in response to these comments. The Department will provide future guidance and technical assistance around provider referrals and self-attestation when determining program eligibility. The Department did add language to clarify that for the OSY category, all homeless individuals qualify up to the age of 24.

Individual Who Is Pregnant or Parenting

Comments: A commenter asked the Department to clarify that an "individual who is pregnant or parenting" includes noncustodial parents, such as fathers. Suggesting that re-engagement of fathers and noncustodial parents is critical to supporting children, this commenter pointed out that because youth served by its members often are parenting a child whose paternity has never been determined, these partners are in fact parenting, even if not legally custodial.

Department Response: The Department recognizes the role all parents, custodial and non-custodial, play in the lives of their children and plans to provide future technical assistance on this subpopulation.

Disability

Comments: Another respondent noted that the NPRM defines OSY as an individual who meets criteria in paragraphs (a) and (b) in this section, as well as one or more of the criteria identified in paragraph (c). Two of the criteria described in this part are: (8) An individual with a disability; (6) a low-income individual who requires additional assistance to enter or complete an educational program or to secure or hold employment. The commenter further described that low income is a part of the criteria for youth who need additional assistance to enter or complete an educational program or to secure or hold employment, and WIOA has made youth with a disability a separate eligibility criterion. The commenter asked the Department to state specifically that low income is not an eligibility requirement for serving youth with a disability.

Department Response: The commenter's observation does not necessitate a change to the Final Rule. For OSY, low income is not an eligibility requirement for serving youth with a disability. For ISY with disabilities, low-income eligibility requirements exist. However, for ISY with disabilities, WIOA sec. 3(36)(A)(vi) provides that the income level for eligibility purposes is based on the individual's own income rather than his/her family's income. The Department plans to provide additional technical assistance around serving youth with disabilities.

Section 681.220 Who is an "in-school youth"?

This section describes how one meets the eligibility for an ISY for purposes of the WIOA title I youth program. ISY youth must be attending school, including secondary or postsecondary school, be between the ages of 14 and 21 at time of enrollment, be low-income, and meet one or more of a list of eight criteria. These are essentially the same criteria as under WIA but the disability criterion has been separated from the "needs additional assistance" criterion. The section clarifies that age is based on time of enrollment and as long as the individual meets the age eligibility at time of enrollment, he or she can continue to receive WIOA youth services beyond the age of 21. WIOA includes a youth as low-income if he or she receives or is eligible to receive a free or reduced-price lunch under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751, *et seq.*).

Foster Care Individuals

Comments: A commenter recommended that the Department amend the OSY eligibility criteria regarding youth in foster care to include youth who were formerly in foster care, but may have returned to their biological families before turning 18 because although these individuals are no longer in foster care and did not technically "age out" of the system, they are still disadvantaged and in need of assistance.

Department Response: The Department concluded that same logic applies to § 681.220: Individuals who leave foster care after remaining there until late adolescence may not technically "age out" of the system and yet remain disadvantaged. The Department, in consultation with the Department of Health and Human Services John H. Chafee Foster Care Independence Program, added "or who has attained 16 years of age and left foster care for kinship guardianship or adoption," to the final regulation for §§ 681.210 and 681.220 to encompass this fragile population.

Homeless Individuals

Comments: A commenter expressed support for the inclusion of homeless individuals as one of the possible eligibility criteria for OSY in the proposed regulations. This commenter further recommended that the definition of homeless individual in § 681.210(c)(5) be derived from the Runaway and Homeless Youth Act (RHYA) (42 U.S.C. 5601 *et seq.*) and would read ". . . a homeless child or youth (as defined in sec. 725(2) of the McKinney Vento Homeless Assistance Act (42 U.S.C. 11434a(2))), a runaway or homeless youth (as defined by 42 U.S.C. 5601 *et seq.*) who is referred to the labor board by an RHY provider. . . ." This commenter also suggested that homeless

status of an individual should be determined by referral from an RHY or other homeless youth provider, but that pure self-attestation by the individual should also count as sufficient evidence of homelessness.

Department Response: The Department consulted with the Department of Health and Human Service's Administration for Children and Families when considering this comment. The Department learned that the Runaway and Homeless Youth programs serve individuals as young as 12 years old which is younger than permitted by WIOA youth formula program statute. No changes were made to the regulatory text in response to this comment. The Department will provide future guidance and technical assistance around provider referrals and self-attestation when determining program eligibility.

Similar to the OSY criteria, the Department added language to clarify that for the ISY category, homeless individuals aged 14–21 qualify. Also similar to the OSY criteria, to make the regulation easier to understand, the Department separated foster care youth and homeless and runaway youth into two separate eligibility categories. This more accurately distinguishes between the types of barriers youth may experience.

Individual Who Is Pregnant or Parenting

Comments: A commenter asked the Department to clarify that an "individual who is pregnant or parenting" includes noncustodial parents, such as fathers. Suggesting that re-engagement of fathers and noncustodial parents is critical to supporting children, this commenter pointed out that because youth served by its members often are parenting a child whose paternity has never been determined, these partners are in fact parenting, even if not legally custodial.

Department Response: An individual who is pregnant or parenting does include noncustodial parents, such as fathers. The Department recognizes the role all parents, custodial and non-custodial play in the lives of their children and plans to provide future technical assistance on this subpopulation.

Section 681.230 What does "school" refer to in the "not attending or attending any school" in the out-of-school and in-school eligibility criteria?

The eligibility criteria for the WIOA title I youth program for out-of-school youth at WIOA sec. 129(a)(1)(B)(i) requires that the individual is "not attending any school (as defined in State law)," and for in-school youth, sec. 129(a)(1)(C)(i) requires that the individual is "attending school (as defined in State law)." The Department has changed the title of § 681.230 to clarify that the terms the section uses are from those eligibility criteria. The term "school" refers to both secondary and postsecondary school as defined by the applicable State law for secondary and postsecondary institutions. Section 681.230 provides that for purposes of title I of WIOA, the Department does not consider providers of adult education under title II of WIOA, YouthBuild programs, or Job Corps programs as schools. Therefore, if the only "school" the youth attends is adult education provided under title II of WIOA, YouthBuild, or Job Corps, the Department will consider the individual an OSY youth for purposes of title I of WIOA youth program eligibility.

Comments: The Department received comments on several provisions within this section. Some commenters expressed concern over the proposed allowance of State law to determine the definition of "school." Discussing the fact that their particular State's laws only apply to grades K–12 and do not include postsecondary school, these commenters suggested that the definition of "school" should be clarified, and amended to address potential inconsistencies that would arise due to varying State laws. One commenter recommended that each State WDB should be given the flexibility to determine whether to include postsecondary education as in-school or out-of-school, if the State does not specify it in its statutes. A number of commenters suggested that the definition of OSY be expanded to include individuals who are enrolled in postsecondary education. Similarly, a commenter stated that States do not support the definition in the proposed regulations that would classify youth engaged in postsecondary programs as ISY because the proposed language would lead to fewer youth in postsecondary education being served due to the 75 percent OSY expenditure requirement. Another commenter suggested that youth enrolled in postsecondary developmental education courses be considered OSY.

Department Response: WIOA's increased OSY expenditure rate is designed to increase focus on disconnected youth. All State education agencies recognize 2- and 4-year colleges as "schools," and the Department has determined that both secondary and postsecondary institutions are considered "schools" for the purpose of determining school status for WIOA youth program eligibility.

Comments: A number of commenters recommended that the definition of OSY include individuals attending alternative schools. One of these commenters stated that an individual who attends an alternative school is at as great a risk as those who are attending no school. Some of these commenters suggested that an individual's enrollment at an alternative school is an implicit indicator of need for WIOA youth services because of the low graduation and high dropout rates associated with alternative schools. A commenter recommended that the Department enhance the definition of school to include: Individuals in court-mandated programs, alternative schools, community schools, incarcerated youth, those who have not passed the high school exit exam, and individuals who attend independent studies programs.

Department Response: The Department did not incorporate the term "alternative school" into the definition of an OSY because alternative school is a general term that may encompass many different types of programs. Rather, the Department has incorporated into the Final Rule additional types of programs that it does not consider schools, such as high school equivalency programs and dropout re-engagement programs.

Comments: A number of commenters recommended that youth participating in a dropout re-engagement program be considered out of school for the purposes of WIOA and suggested clarifying that in § 681.230. Another commenter encouraged the Department to clarify further that youth in high school equivalency programs, such as GED programs, also are considered dropouts.

Department Response: Based on the recommendation of commenters, the Department has added high school equivalency programs and dropout re-engagement programs as additional types of programs that are not considered "schools" for the purposes of determining school status.

Comments: With regard to the eligibility of individuals who are enrolled in adult education programs, a number of commenters expressed support for these individuals' eligibility as OSY. Several of these commenters stated that the potential for co-enrollment would be very beneficial to youth in need of these services. Citing data from a survey that found low rates of co-enrollment, two commenters stated that because of this past evidence of low percentages of co-enrollment, they supported the proposed

regulations, which would not define adult education programs as schools. Another commenter recommended that the Department expand the provision to include those individuals who are officially enrolled in school, but who in actuality only are receiving an education at an adult education center. A number of commenters requested that individuals who are enrolled in an adult education program would be considered OSY under WIOA title I, regardless of how the adult education services are funded. Several commenters suggested that many individuals attend adult education programs that are not funded by title II of WIOA, and that limiting eligibility for OSY services solely to those who attend programs funded by title II would limit the number of youth who would be eligible for co-enrollment.

Department Response: The Department agrees that the determination of whether an adult education program is considered a "school" should not be based on funding source. Providers of adult education under title II of WIOA do not need to be wholly funded by title II in order to meet the provision described in § 681.230.

Comments: Regarding the school status of individuals participating in YouthBuild programs not funded by the Department of Labor, a few commenters recommended that the Department revise the proposed regulation to apply to all YouthBuild programs regardless of how they are funded. Another commenter also stated that the exception of not classifying YouthBuild programs as schools should be applied to all YouthBuild programs, suggesting that many YouthBuild programs have a variety of funding sources outside of Department grants and that the individuals enrolled in those programs should not be penalized because of how their program is funded.

Department Response: The Department agrees that the determination of whether a YouthBuild program is considered a "school" should not be based on funding source. All YouthBuild programs, whether funded by the Department of Labor wholly, partially, or not at all meet the provision described in § 681.230 and are not considered schools for purposes of WIOA youth program eligibility determination.

Comments: One commenter stated that all individuals enrolled in Job Corps programs should be considered OSY for WIOA youth services. A number of commenters requested clarification from the Department as to whether individuals involved in all Job Corps programs would be considered OSY, since Job Corps students may finish accredited high school diploma program or complete a high school equivalency certificate or diploma.

Department Response: The Department does not consider any Job Corps program to be a "school" for purposes of determining WIOA youth program eligibility regardless of whether students in the Job Corps program are pursuing a high school diploma a high school equivalency certificate.

Section 681.240 When do local youth programs verify dropout status?

This section provides that dropout status is determined at the time of enrollment for eligibility as an OSY and that once a youth is enrolled as an OSY, that status continues, for purposes of the minimum 75 percent OSY expenditure requirement, for the duration of the youth's enrollment, even if the youth later returns to a school.

Comments: Several commenters expressed their support for the proposed language. A number of these commenters specifically expressed their support for the allowance of youth who are determined eligible to receive services at the time of their enrollment to continue to receive services and maintain eligibility even if they are placed later in an alternative school. These commenters recommend that an individual's status be portable when moving across other WIOA funding streams as long as that movement is part of the individual career plan and part of an articulated agreement among the partners. One commenter recommended changing an individual's school status from ISY to OSY when a youth graduates from high school as this would assist States with achieving the required minimum 75 percent OSY expenditure rate and will accurately reflect the status of youth with WIOA expenditures.

Department Response: The Department has concluded that the most straightforward and least burdensome approach is for school status to remain the same throughout the program. In addition, this policy will encourage local programs to assist OSY re-engage in school without concern that re-engaging them in school would negatively impact their minimum OSY expenditure rate.

Comments: A number of commenters expressed concerns over the provision that would allow States to define the term "alternative school." Some of those commenters suggested that States with broad definitions of schools could end up preventing youth who have dropped out of school and are attending alternative schools from receiving WIOA OSY services. One of the commenters recommended that the Department not leave the definition of alternative schools up to States, saying that there should be a consistent definition across States. Another commenter recommended that, consistent with the State's definition of alternative education, any youth that attends an alternative school also be considered an OSY.

Department Response: The Department agrees on the importance of consistent definitions across States. Because the term "alternative school" is a general term that may encompass many different types of programs, the Department deleted all references to the term "alternative school" in § 681.240, and it is no longer required to be defined in State Plans. Rather, as discussed in § 681.230 above, the Department has added high school equivalency programs and dropout re-engagement programs as additional types of programs that are not considered "schools" for the purposes of determining school status.

Section 681.250 Who does the low-income eligibility requirement apply to?

This section discusses the low-income eligibility criteria for OSY and ISY. All ISY must be low-income with the exception that up to 5 percent of ISY youth who meet all the other eligibility requirements need not be low-income. The up to 5 percent is calculated based on all newly enrolled youth who would ordinarily be required to meet the low-income criteria in a given program year. For OSY, only those youth who are the recipient of a secondary school diploma or its recognized equivalent and are either basic skills deficient or an English language learner and youth who require additional assistance to enter or complete an educational program or to secure or hold employment must be low-income.

Comments: Commenters expressed support for the amended low-income eligibility requirements, and their streamlined documentation and process requirements, with one commenter remarking the change would be beneficial to youth. Another commenter stated that the OSY low-income eligibility criteria would be confusing.

Department Response: The Department concurs with these commenters that the new low-income eligibility requirements will lead to streamlined documentation and process requirements.

Comments: A commenter expressed concern over needing to document low-income status for ISY, fearing it may

create a challenge in working with schools on career pathway activities. The commenter noted that schools prefer to provide all students with the same experience regardless of family income.

Department Response: The Department notes the concern expressed about the compatibility between how schools and workforce partners approach youth. The Department cannot change the ISY income level requirements as WIOA defines them. The Department plans to provide tools on approaches to implementing career pathways.

Comments: A commenter recommended that all OSY be exempt from having to meet low-income eligibility requirements, stating that there is a high correlation between being disconnected from school and work and the likelihood of entering poverty, especially at a young age. Similarly, a commenter recommended that the low-income requirement be removed from the OSY eligibility criteria for individuals who need additional assistance to complete an educational program or to secure or hold employment, and for recipients of a secondary school diploma who are basic skills deficient or an English language learner, asserting that the OSY requirements would be more effective if the low-income criteria were removed from these two categories of individuals.

Department Response: The Department recognizes the high correlation between being disconnected from school and work and the likelihood of entering poverty. It also understands that removing low-income criteria from all of the OSY eligibility criteria would simplify the program. Nonetheless, these eligibility requirements are statutory comments in WIOA, and therefore the Department cannot change them in regulation.

Comments: Another commenter requested that the Department revise the proposed regulations so that OSY may be considered low-income if they receive or are eligible to receive free or reduced lunches, asserting that currently the proposed regulations are written so that only ISY who are eligible for free or reduced price lunches are considered to be low-income.

Department Response: The Department considered the commenter's suggestion that OSY may be considered low-income if they receive or are eligible to receive free or reduced lunches. The Department decided not to change the Final Rule because youth must be enrolled in school to be eligible for the Richard B. Russell National School Lunch Act.

Comments: A commenter requested clarification from the Department concerning the criteria that would be used to determine if an individual is an English language learner for the purposes of the low-income eligibility requirement.

Department Response: The Department understands the need for criteria for determining if an individual is an English language learner for the purposes of the low-income eligibility requirement. There will be guidance and technical assistance provided on this topic in the future. No regulatory change was made in response to this comment.

Comments: A person commented that the proposed regulations would make youth with a disability a separate eligibility requirement from low-income requirements. This commenter and another commenter suggested that the Department specifically clarify that for youth with a disability, low income would not be an eligibility requirement under the proposed regulations for OSY with a disability.

Department Response: Upon analyzing these comments the Department discovered a technical error in the NPRM. The Final Rule clarifies that OSY with disabilities do not need to meet low-income eligibility requirements and the Department has changed the regulatory text to read as follows: "All other OSY meeting OSY eligibility under § 681.210(c)(1), (2), (4), (5), (6), (7) and (8) are not required to be low-income. Additionally, the Department clarified in § 681.280 that OSY with disabilities are not required to be low income. For ISY with a disability, the youth's own income rather than his or her family's income must meet the low-income definition and not exceed the higher of the poverty line or 70 percent of the lower living standard income level.

Comments: A commenter suggested that any youth who attends a school that is considered by the U.S. Department of Education to be a "designated low-income school" should be considered a low-income youth for the purpose of WIOA services. Similarly, another commenter requested that the Department add to the regulations that any youth who attend a title I school would automatically be considered low-income for eligibility purposes for WIOA youth services.

Department Response: The Department analyzed these two similar suggestions and did not modify the regulation text. The Department reviewed the Department of Education's title I designation and concluded that the WIOA high poverty threshold represents a more impoverished area than the Department of Education's title I school status.

Comments: A commenter asked for clarification as to whether this 5 percent of youth means new youth enrollees in a given program year or 5 percent of all youth enrolled. Another commenter asked whether the 5 percent who do not have to be low income includes youth that are eligible because of non-income applicable criteria such as being homeless, a member of the juvenile justice system, or having dropped out of high school.

Department Response: The Department clarified in the regulation text that for the 5 percent low-income exception, the 5 percent of youth means new youth in a given program year. In addition, the Department has clarified in regulatory text that the calculation for the 5 percent exception is based on only those youth who would ordinarily need to be low income. It is not based on all youth since many of the OSY categories do not require low-income status. In fact, all nine categories at § 681.210(c) except for paragraphs (c)(3) and (9) do not require low-income status. Because not all OSY are required to be low-income, the 5 percent low-income exception under WIOA is calculated based on the 5 percent of youth enrolled in a given program year who would ordinarily be required to meet the low-income criteria. For example, a local area enrolled 200 youth and 100 of those youth were OSY who were not required to meet the low-income criteria, 50 were OSY who were required to meet the low-income criteria (*i.e.*, either § 681.210(c)(3) or (9)), and 50 were ISY. In this example the 50 OSY required to be low income and the 50 ISY are the only youth factored into the 5 percent low-income exception calculation. Therefore, in this example, 5 of the 100 youth who ordinarily would be required to be low-income do not have to meet the low-income criteria based on the low-income exception. This percent is calculated at the end of a program year based on new enrollees in that program year.

Comments: A few commenters were concerned that setting a limit on the percent of youth that may be deemed eligible based on needing additional assistance limits who can be served when there is not an abundance of youth that have one of the other eligibility characteristics. A number of commenters requested that the Department consider recommending that the 5 percent limitation be removed at such time that WIOA is amended that states that 5 percent of youth who meet all other WIOA youth services eligibility

requirements do not have to be low income.

Department Response: While the Department did not include language in the NPRM relating to the 5 percent limitation on the "requires additional assistance" criterion for ISY, that was an unintentional omission. The Department has added § 681.310(b), which describes the 5 percent ISY limitation for the "requires additional assistance" criterion. The Department will take the concerns about the 5 percent limitation into consideration when providing any technical assistance to Congress on WIOA reauthorization.

Comments: A few commenters asked for clarification regarding a definition for "family" for the purposes of determining low-income eligibility for WIOA title I youth program. Another commenter recommended that the Department incorporate the definition of "family" from WIA sec. 101(15) into the WIOA regulations. A request was made that the Department provide an updated version of the WIA definition that is more inclusive of all family types, including same-sex marriages and domestic partnerships.

Department Response: In response to the comments seeking clarification of "family" in WIOA, the Department added a definition of family in 20 CFR part 675, and it is further discussed in the preamble that applies to that part.

Comments: Some commenters asked what items would be included for determining if an individual is in a family with total family income that does not exceed the poverty line. In particular, these commenters asked the Department if sources of funding such as pensions, foster care child payments, or unemployment compensation would be included when determining a family's low-income status. A commenter asked the Department what the definition of a dependent child would be for purposes of determining income eligibility and up to what age could an OSY be considered a dependent child of the parent or guardian.

Department Response: When determining up to what age an OSY could be considered a dependent child of the parent or guardian use the IRS definition of dependent. The Department will provide additional guidance on eligibility.

Section 681.260 How does the Department define "high poverty area" for the purposes of the special rule for low-income youth in the Workforce Innovation and Opportunity Act?

WIOA contains a new provision that allows for youth living in a high poverty area to meet automatically the low-income criterion that is one of the eligibility criteria for ISY and for some OSY.

Comments: The Department received many comments on how to define "high poverty area." A number of the commenters focused on the 30 percent rate as set every 5 years using American Community Survey 5-Year data and if that was the appropriate threshold. For example, a few commenters expressed their support for the proposed language in this section, suggesting that the 30 percent threshold for defining a high poverty area would be an accurate measure. In particular, an entity commented that the proposed regulation would help to relieve some of the burden of meeting income eligibility requirements on youth.

However, another commenter wrote that the proposed 30 percent threshold would be unreasonable, and requested additional clarification regarding the calculation methods of contiguous tracts in determining high poverty areas. Specifically, this commenter asked the Department whether it would measure high poverty thresholds for a contiguous tract using an average of the contiguous tracts, or just whether a contiguous tract meets the threshold.

Citing data from the American Community Survey, another commenter suggested that there are actually few census tracts that would meet the 30 percent poverty threshold. This commenter further stated that census data, particularly for low-income neighborhoods, often includes a large margin of error. This commenter recommended that the Department modify the definition of high poverty area to reflect actual geographic concentrations of OSY better.

A few commenters suggested that the definition of high poverty area should not be higher than 20 percent of the population meeting the low-income threshold. Other commenters recommended that the proposed high poverty area definition be lowered from 30 percent of the population to 25 percent.

Citing statistics a commenter said that in Maine, there are no areas in which the 30 percent poverty threshold would be met, one commenter recommended that the Department lower the low-income threshold from 30 percent in order to accommodate more rural and less densely populated States.

One commenter recommended that the regulations be modified to state that if any measure of poverty in a census tract exceeds 30 percent, the census tract should be considered a high poverty census tract, stating that in some cases the overall high poverty may be under 30 percent but certain measures within the overall tract could be over 30 percent.

Two commenters recommended that the Department allow States to define their own poverty area thresholds between 20 and 40 percent that is consistent with the State's demographics. Another commenter recommended that the Department allow Local WDBs to determine the thresholds for poverty in their local areas.

Another commenter recommended that Local WDBs submit documentation to the Department concerning extenuating circumstances in their area that would cause them to need to lower their low-income threshold.

Department Response: After analyzing the many comments received on the proposed regulation, the Department concluded that a poverty rate of at least 30 percent as set every 5 years using American Community Survey 5-Year data was too high. The regulation text was changed to reflect a poverty rate of at least 25 percent as set every 5 years using American Community Survey 5-Year data. Local areas must decide how to combine census tracts into larger contiguous areas and the weighted average of the poverty rates of the census tracts in each contiguous area to meet the threshold. The Census Bureau defines a "poverty area" as a census tract where at least 20 percent of the residents are poor. Therefore, the term "high poverty" must be greater than 20 percent; the Department concluded that 25 percent was the most appropriate threshold. Because allowing States to define their own poverty threshold would lead to inconsistencies in eligible youth across the country, the Department did not include that recommendation in the Final Rule.

Comments: Citing statistics regarding the high poverty rates in Merced County and all of San Joaquin valley, a commenter recommended that the "area" measured when determining whether an area is high poverty, be amended from using counties to cities. A different commenter recommended that the Department modify the proposed regulations to include "city" as an additional geographical division that could be used when determining low-income status of an area. Another commenter recommended that any city with more than 20 percent of its census tracts considered "high poverty" should be considered a high poverty area, expressing that poverty areas are not always contiguous and can be separated by land occupied by government buildings, shopping malls, and colleges.

Department Response: Because most cities include multiple neighborhoods and census tracts that can vary greatly in their levels of poverty, the Department decided that using city as the geographical area is too large of an area to use.

Comments: A commenter recommended that the Department should use zip codes to determine low-income levels instead of census tracts, asserting that there are often sub-areas of high poverty within a census tract and that census tracts often do not reflect these concentrated area of high poverty.

Department Response: The Department analyzed the effect of adding city and zip code as an additional geographic division and decided to stay with the proposed set of contiguous census tracts as the Census Bureau defines poverty areas using census tracts. The conclusion will result in a more consistent implementation of the regulation.

Comments: A few commenters suggested that the Department revise the proposed regulations so that the 30 percent poverty threshold is defined using the numbers from the population in an area who are eligible to participate in the program (ages 16 through 24), and not using the percentage from the general population. Two commenters also recommended that high poverty areas be defined by the youth poverty rate of an area, stating that census tract data are minimally useful for the purpose of determining the level of poverty in an area. Similarly, one commenter asserted that using the American Community Survey 5-Year data for all ages in an area could be limited in its usefulness. This commenter suggested that the data be limited to individuals who are under 18 living in an area. This commenter recommended that the Department clarify whether the American Community Survey data should be limited to youth in an area or whether States have discretion to decide which data to use.

Department Response: While the Department acknowledges the value behind using poverty data that reflect the population the program serves, it concluded that because this measure applies to ISY (14–21) and OSY (16–24), and these age ranges are not currently easily accessible with the American Community Survey, it would not specify that the data need to reflect a specific subpopulation as a requirement in the regulatory text.

Comments: Another respondent sought clarification from the Department regarding the proposed method of defining high poverty areas. Similarly, one commenter stated that the Final Rule would need to be clearer as to how a local area can determine whether or not they are considered a high poverty area. Another commenter asked the Department to clarify how a service provider would document that an individual has met the income eligibility requirements for WIOA youth services by living in a high poverty area. One commenter asked if Local WDBs could use the U.S. Department of Housing and Urban Development (HUD) Web site to determine if an area is high poverty.

Department Response: The Department recognizes that several commenters want directions and tools on how a local area could determine whether they are considered a high poverty area. The Department will provide technical assistance to youth service providers, making it easier to calculate if an area qualifies as a high poverty area for WIOA purposes.

Comments: Several commenters recommended that the regulations include a variety of measures to determine whether an area is "high poverty." Specifically, some of these commenters recommended that the Department revise the NPRM to include additional high poverty area proxies to capture low-income youth such as living in areas contiguous to high poverty areas, living in public housing, or living in an area where over a certain percent of the student population is eligible for free or reduced price lunches. An entity recommended using additional low-income proxies for high poverty area, sharing that the current proposed language would exclude individuals from participation in these services based on their zip code.

One commenter suggested that school district borders be used to define areas of high poverty instead of State or county borders, asserting that this would decrease economic disparity between communities.

Another commenter recommended that the Department use the most current data available to determine high poverty areas. This commenter suggested using data from other sources instead of solely relying on data from the American Community Survey, and recommended also using data from Empowerment Zones and other partner agency information systems.

Department Response: The Department considered all of the alternative measures suggested and decided to use the proposed calculation method, with a slight adjustment to 25 percent from 30 percent poverty rate in order to keep the calculation relatively straightforward, easy to understand, and not burdensome to document or implement.

Comments: Another commenter stated that the proposed method of classifying high poverty areas is not consistent with WIOA's intent of serving the neediest youth, asserting that eligibility should be based on individual needs instead.

Department Response: The Department appreciates the concern regarding serving the neediest youth. WIOA sec. 129(a)(2) includes the phrase "high poverty area," which the Department interpreted to mean a geographic area and not an individual determination.

Comments: Finally, a commenter suggested that the Department revise proposed § 681.260 to make it more precise and eliminate ambiguity in the term "tribal area."

Department Response: The Department accepted the commenter's suggestion and replaced, "Indian Reservation, tribal land, or Native Alaskan Village" with "an American Indian Reservation, Oklahoma Tribal Statistical Area (as defined by the U.S. Census Bureau), Alaska Native Village Statistical Area or Alaska Native Regional Corporation Area, Native Hawaiian Homeland Area, or other tribal land as defined by the Secretary in guidance" in the Final Rule.

Section 681.270 May a local program use eligibility for free or reduced price lunches under the National School Lunch Program as a substitute for the income eligibility criteria under title I of the Workforce Innovation and Opportunity Act?

This section explains that WIOA sec. 3(36) defines a low-income individual to include an individual who receives (or is eligible to receive) a free or reduced price lunch under the Richard B. Russell National School Lunch Act.

Comments: A number of commenters expressed support for the proposed language's acceptance of eligibility for free or reduced price lunch as a substitute for WIOA youth income eligibility requirements criteria.

One commenter asked the Department whether an OSY with a sibling receiving free or reduced lunches would be considered eligible under the proposed regulations. Similarly, another commenter requested clarification from the Department regarding whether an OSY high school graduate could use their family's participation in the National School Lunch Program as fulfillment of their low-income requirements. Yet another commenter recommended that a youth who lives in a household where his or her family

member(s) receive or are eligible to receive free or reduced price lunch should automatically also be eligible for WIOA youth services.

Department Response: The Department analyzed the requests to use family member's eligibility to receive free or reduced price lunch as a proxy allowing a youth not enrolled in school to automatically meet low-income eligibility criteria for WIOA youth services. The Department did not change the Final Rule because WIOA states "an individual must receive or is eligible to receive a free or reduce-priced lunch" and youth must be enrolled in school to be eligible for Richard B. Russell National School Lunch Act. Furthermore, low-income is not an eligibility requirement for significant portions of the OSY program.

Comments: A few commenters requested clarification from the Department as to whether in a city or a town in which 100 percent of students are eligible for free or reduced lunches, any student who lives in the area would be considered low-income automatically and therefore, eligible for WIOA youth services, and only would need to prove his or her residency. Further, these commenters requested clarification from the Department regarding whether an individual who attends a school that qualifies for a Community Eligibility Provision (CEP) under the Healthy, Hunger-Free Kids Act of 2010 would be considered low-income for WIOA youth program eligibility purposes. Another commenter also discussed the requirements of the CEP and asked how a school district's participation in a CEP would affect the low-income eligibility of youth for WIOA services.

Department Response: The Healthy, Hunger-Free Kids Act of 2010 (Pub. L. 111–296, December 13, 2010, 124 Stat. 3183) amends the Richard B. Russell National School Lunch Act which includes the CEP, but does not replace it. The Department found that many cities, towns, and schools that participate in the CEP have relatively low poverty rates as compared to the WIOA determined high poverty area. As a result of this research, the Department decided not to change the Final Rule to include the CEP.

Section 681.280 Is a youth with a disability eligible for youth services under the Workforce Innovation and Opportunity Act if his or her family income exceeds the income eligibility criteria?

This section reiterates the WIOA provision that, for an ISY with a disability, income level for eligibility purposes is based on his/her own income rather than his/her family's income. For OSY with a disability, income is not an eligibility criterion.

Comments: Two commenters expressed support for this provision, noting that it would eliminate barriers for individuals with disabilities for accessing necessary support services.

Another commenter stated that there was an inconsistency between proposed §§ 681.250 and 681.280. Specifically, the commenter said that § 681.250 indicates that the low-income requirement would not apply to OSY with disabilities. However, § 681.280 states that for an individual with a disability, the income level for eligibility purposes would be based on the person's individual income as opposed to his or her family's income. This commenter recommended that the regulatory text be rewritten to clarify that the low-income requirement for individuals with disabilities would be applicable only to ISY and not OSY.

Department Response: The Department concurs that the proposed regulation did not factor in the OSY eligibility criteria. To address the commenter's concern, the final regulation includes the following line, "Furthermore, only ISY with a disability must be low income. OSY with a disability are not required to be low income."

Section 681.290 How does the Department define the "basic skills deficient" criterion in this part?

This section reiterates the basic skills deficient criterion that is part of the eligibility criteria for both OSY and ISY, for purposes of title I of WIOA. The section also provides that local programs must use valid and reliable assessment instruments and provide reasonable accommodations to youth with disabilities in the assessment process in making this determination.

Comments: A commenter recommended that the Department revise the phrase provided in § 681.290(a)(2), "(2) Are unable to compute or solve problems, or read, write, or speak English at a level necessary to function on the job, in the individual's family, or in society. (WIOA sec. 3(5))."

Department Response: The Department declines to revise this language because it comes directly from the statutory language of WIOA.

Comments: A commenter recommended that the Department include language in § 681.290(b), which governs the State WDBs' policies to determine if a youth is basic skills deficient, to require the use of age and/or developmentally appropriate criteria. Another commenter recommended that the Department clarify that local areas must state in the local plan how they will assess individuals, and that States should establish State policies for how to define basic skills deficient.

Department Response: The Department addressed these comments in State planning guidance, TEGL No. 14–15 ("*Workforce Innovation and Opportunity Act (WIOA) Requirements for Unified and Combined State Plan*"), which can be found at *http://wdr.doleta.gov/directives/All_WIOA_Related_Advisories.cfm*.

Comments: One commenter requested clarification regarding the § 681.290(c) requirement that in assessing basic skills, local programs must use assessment instruments that are valid and appropriate for the target population. One commenter expressed its support for the explicit inclusion of "valid and reliable assessment instruments" and "reasonable accommodations" for individuals with disabilities, saying that this language would create the opportunity for State and Local WDBs to put metrics-driven services and supports into place. This commenter recommended, however, that the § 681.290 language be further modified to provide State and Local WDBs with guidance on how to connect youth with disabilities with the resources they need if they are deemed skills deficient. A number of commenters asked about the types of basic skills assessments that are allowable.

Department Response: The Department will provide guidance or technical assistance on ways to help youth with disabilities access the resources they need.

Comments: A commenter recommended that the Department revise § 681.290(c) to include assessment instruments that are valid and appropriate for the target population and must provide reasonable accommodation in the assessment process, if necessary, for people with disabilities.

Department Response: The Department concluded that local programs need flexibility to use assessments they choose as long as they are valid and appropriate. Requiring assessments only approved by the Department of Education's National Reporting System would be overly burdensome for local youth programs. No change has been made to the regulatory text in response to the comment.

Comments: A commenter suggested that the language of this section be amended to provide further guidance if

a youth with a disability is unable to demonstrate basic skills, and that language should be included that will guide State and Local WDBs as they work to meet the needs of youth who are basic skills deficient. The commenter suggested specific procedures should be put into place to connect skills deficient youth with disabilities with the training and resources they need in order to succeed.

Department Response: The Department acknowledges the concerns about serving basic skills deficient youth, including those with disabilities, and will provide guidance and technical assistance to address these concerns. No change is made to the regulatory text in response to this comment.

Comments: Another commenter suggested that local programs should be able to use the Individual Education Program (IEP) to determine individuals' basic skills, because it is a summary of their reading, writing, and math skills. Finally, a commenter recommended that the Department remove the basic skills deficient criteria for the time being, noting that all other program requirements are beginning in July 2015.

Department Response: Regarding the use of an IEP, the Department will issue further guidance describing the use of previously conducted assessments. In addition, the Department cannot remove the basic skills deficient criteria because the criteria are set forth in the statutory language of WIOA. No changes were made to the regulatory text in response to these comments.

Section 681.300 How does the Department define the "requires additional assistance to enter or complete an educational program, or to secure and hold employment" criterion in this part for OSY?

The Department added this section in the Final Rule to be more clearly consistent with the "requires additional assistance" eligibility criteria in WIOA secs. 129(a)(1)(B)(iv)(VIII) (for OSY) and 129(a)(1)(C)(iv)(VII) (for ISY). The criterion is slightly different for ISY and OSY, in that the OSY section contains the phrase "to enter or complete an educational program" while the ISY language states "to complete an educational program." Therefore, the Final Rule includes two separate sections for the ISY and OSY "requires additional assistance" criteria. The new § 681.300 is the OSY section, while proposed § 681.300 is now § 681.310, the ISY section. Proposed § 681.310 has also been renumbered to § 681.320.

Section 681.310 How does the Department define the "requires additional assistance to complete an educational program, or to secure and hold employment" criterion in this part for ISY?

This section allows States and/or local areas to define the "requires additional assistance . . ." criterion that is part of the ISY eligibility. It clarifies that if this criterion is not defined at the State level and a local area uses this criterion in its ISY eligibility, the local area must define this criterion in its local plan. The Department received comments on this section as discussed below.

Comments: A number of commenters recommended that the Department provide additional guidance, such as including an acceptable list of possible "additional assistance" in order to set national standards for what "additional assistance" means. Many of these commenters expressed concern about the proposed language being overly broad, with the potential to expand services beyond the high-risk populations envisioned by WIOA. For this reason, these commenters recommended that the educational program that the individual needs should be geared to the achievement of basic skills at the secondary level and that "requiring additional assistance to secure or hold employment" should mean that there are deficits in basic academic skills (not technical skills, or advanced academic skills) that are needed to secure employment or succeed on the job.

Another commenter recommended that States and/or local areas should have an established definition for an "individual requiring additional assistance to complete an education program or to secure or hold employment" and include a student who is significantly over-aged and under-credited, (*i.e.,* 2 or more years below grade level or off track from high school graduation). One commenter recommended that the Department require State and Local WDBs to establish policy using age and/or developmentally appropriate criteria to determine when a youth requires additional assistance to complete an educational program or to secure and hold employment.

Department Response: The Department understands the need for more specific language to define the "requires additional assistance" criterion and plans, and further guidance on the need for more specific definitions at the State and local level will be issued. No change to the regulatory text, however, was made in response to these comments.

Comments: A few commenters asked about the 5 percent limitation on ISY using the "requires additional assistance" provision.

Department Response: It was an oversight that the Department did not include this new limitation in the NPRM. Therefore, the Final Rule includes § 681.310(b) that describes the 5 percent ISY limitation on the use of the "requires additional assistance" criterion.

Section 681.320 Must youth participants enroll to participate in the youth program?

This section clarifies that there is no self-service concept for the WIOA youth program and every individual receiving services under WIOA youth must meet ISY or OSY eligibility criteria and formally enroll in the program. It defines participation as an eligibility determination, the provision of an objective assessment, development of an individual service strategy, and participation in any 1 of the 14 program elements.

Comments: The Department received a number of comments, as discussed below, recommending the Department clarify the point of participation for a WIOA title I youth program participant.

Department Response: The Department has added § 681.320(b)(2) to clarify that the point of program participation does not begin until after the youth is determined eligible, the youth receives an objective assessment, and the youth participates in 1 of the 14 program elements. In addition, the Department made a minor language change in § 681.320(b) in order to be consistent with language in the performance section of the Final Rule.

Comments: A number of commenters expressed their support for the NPRM's specification that there would be no self-service for WIOA youth and that every individual must enroll formally in the program. These commenters also stated that they support the proposed language's definition of enrollment as the collection of information.

Several commenters expressed concern regarding the burden placed on individuals who have to demonstrate their eligibility through documentation. Some of these commenters requested that the Department clarify and make explicit that the "collection of information" associated with enrollment can be supported with self-attestation, in order to ensure upfront eligibility, especially for high-risk individuals. Although acknowledging the improvements in burden associated

with certification of income eligibility brought about by WIOA, many commenters suggested that requiring individuals who are at high risk to prove their status before they receive services that they rely on would be detrimental to those in need. These commenters suggested that the Department use the guidance for self-attestation that was included in the "*Advisory Training and Employment Guidance Letter No. 6–14 Program Year (PY) 2013/Fiscal Year (FY) 2014 Data Validation and Performance Requirements and Associated Timelines.*" Discussing how self-attestation is defined in this document, these commenters recommended that the Department amend the proposed language to state that the collection of information that triggers enrollment could include self-attestation, and that self-attestation is even preferable to other methods of information collection.

Department Response: The Department does allow self-attestation for the collection of a number of data elements. The Department will provide further guidance on documentation requirements for data elements in the Department's forthcoming data validation guidance.

Comments: Commenters also recommended that the Department modify the proposed regulations to state that an individual is not enrolled in WIOA title I programs with the collection of information, and that local areas are allowed to begin assessment activities and other efforts through the one-stop delivery system. These commenters also recommended the Department apply a consistent definition of point of enrollment across all WIOA titles and recommended that the point of enrollment should be activated with the individual's participation in a program activity, not just their involvement in initial assessment activities.

A commenter recommended that the Department clarify that staff assisted activities such as assisting youth post-exit in transition, navigation, and support are encouraged and do not trigger enrollment for individuals in WIOA youth programs. Another commenter stated that the point at which the Department defines when an individual is enrolled is critical to data collection and validation. This commenter suggested that collecting an individual's data at the time of eligibility verification and at enrollment would be redundant and provide increased opportunity for inconsistent data reporting.

Another commented that the time of enrollment needs to be clarified, as they were concerned that the proposed regulations as they stand would allow the process of taking a WIOA application and determining its eligibility to be categorized as a "basic career service", therefore, counting the individual as enrolled. This commenter recommended that the regulations be amended so that enrollment into WIOA title I services would be the first service provided, after eligibility has already been determined.

Department Response: The Department has clarified in § 681.320(b) of this DOL WIOA Final Rule that the point of participation is after an eligibility determination, and added in § 681.320(b) that the point of participation occurs after the provision of an objective assessment, development of an individual service strategy, and participation in any of the 14 WIOA youth program elements. In addition, the Department will ensure consistency in the point of participation across all WIOA titles through the performance section in 20 CFR 677.150(a)(2) (*see* Joint WIOA Final Rule).

Other Eligibility Issues

Comments: A commenter recommended that the Department explicitly clarify that youth who are eligible to work under Deferred Action for Childhood Arrivals (DACA) also would be eligible for WIOA programs.

Department Response: The Department declines to address DACA in the WIOA Final Rule (due to pending court decisions). The Department issued guidance on DACA in TEGL No. 02–14 ("*Eligibility of Deferred Action for Childhood Arrivals Participants for Workforce Investment Act and Wagner-Peyser Act Programs*"), which can be found at *https://wdr.doleta.gov/directives/attach/TEGL/TEGL_2-14.pdf.*

Comments: Two commenters noted that WIOA sec. 132 (b)(1)(B)(v)(I) defines an adult to mean an individual who is not less than age 22 and not more than age 72. The commenters identified that in other instances (title I sec. 3, title II), adults are defined as being 18 and not 22. These commenters requested further clarification from the Department as to whether this age difference was an oversight on the part of the Department.

Department Response: WIOA sec. 132 discusses the allotment formula for States and outlying areas used each program year and refers to the adult age range used in the statutory formula to determine the amount of funds a State or outlying area receives in a given program year. The other references to WIOA titles I and II the commenters cite relate to eligibility age for specific services and is not a Department oversight. No changes have been made to regulatory text in response to these comments.

4. Subpart C—Youth Program Design, Elements, and Parameters

Section 681.400 What is the process used to select eligible youth service providers?

This section clarifies that youth activities may be conducted by the local grant recipient and that when the Local WDB chooses to award grants or contracts to youth service providers, such awards must be made using a competitive procurement process in accordance with WIOA sec. 123.

The Final Rule clarifies that the grant recipient/fiscal agent has the option to provide some or all of the youth workforce investment activities directly themselves rather than entering into a grant or contract to provide the activities. The competitive procurement provision discussed in WIOA sec. 123 is only applicable if the Local WDB chooses to award grants or contracts to youth service providers. The Department encourages Local WDBs to continue to award contracts to youth service providers when local areas have access to experienced and effective youth service providers. The revision also uses the terminology "youth service providers" consistently to refer to these providers. While this revision represents a significant change in that it provides Local WDBs with flexibility in determining which WIOA youth services to procure, the Department expects Local WDBs to continue to contract with youth service providers to provide the program elements which youth service providers are best positioned to offer. The intent of this flexibility is to allow for Local WDBs to directly provide the WIOA youth program elements that they can most efficiently and cost-effectively provide, such as labor market and employment information and framework services including assessment, intake, supportive services and follow-up services. The Department received a number of comments on this section as discussed below. Based on these comments, the Department has made a significant revision to this section in the Final Rule.

Comments: A number of commenters asked the Department to provide specific guidance as to which WIOA youth services must be competitively procured and when this regulation would take effect. One commenter requested additional clarification from the Department regarding the

competitive selection requirement, specifically inquiring as to what the framework required by local areas would be.

In addition, since the proposed regulation stated at § 681.400(b) that competitive selection requirements do not apply to "the design framework services when these services are more appropriately provided by the grant recipient/fiscal agent," a couple of commenters asked the Department to clarify framework services. One of these commenters stated that framework services are described differently in the NPRM preamble discussion and the proposed regulatory text at §§ 681.400(b) and 681.420(a). One commenter asked the Department for clarification as to whether a county within a local area that is not a fiscal agent could perform framework activities, suggesting that disallowing this would not be cost effective.

Department Response: The Department determined a need for greater clarity about the specific youth services that must be competitively procured. In addition, the concept of framework services in the NPRM was overly complex. The Final Rule clarifies that the competitive procurement requirements in sec. 123 of WIOA apply only if the Local WDB chooses to award grants or contracts to youth service providers to provide some or all of the youth program elements. For example, a Local WDB could choose to procure competitively all youth program elements or it could choose to competitively procure a few of the youth program elements, and provide the remaining program elements themselves. This simplification in the Final Rule eliminates the need for the discussion of framework services in § 681.400(b).

Comments: With regard to proposed § 681.400(a)(3), which would allow a Local WDB to sole source awards if it determines there is an insufficient number of eligible training providers of youth activities in the local area, a commenter asked the Department how a Local WDB would determine that there is an insufficient number of youth providers. Further, this commenter asked if a determination that a local area is "rural"—for example, by using the Census Bureau, Office of Rural Health Policy, or Office of Management and Budget definition—alone provides justification for sole sourcing. Some commenters recommended that the Department expand the proposed § 681.400(a)(3) language to allow for the Local WDB to allow the grant recipient/fiscal agent to deliver the elements when there are no eligible training providers available, as this would be most useful in rural areas.

Department Response: The Final Rule in § 681.400(b)(4) does not address how to determine an insufficient number of eligible youth providers. Rather, the Local WDB should have a policy that defines what would constitute an insufficient number of eligible youth providers. Based on the changes made in the Final Rule, the grant recipient/fiscal agent will have the flexibility to deliver youth program elements as recommended by the commenter.

Comments: A number of commenters recommended that the Department expand the § 681.400 language to encourage Local WDBs to ensure that the competitive process does not discourage or limit co-enrollment of youth participants in other core or partner programs. One commenter recommended that the youth provider selection process should include suggested quality criteria for Local WDBs and/or States to use when selecting eligible training providers. This commenter also suggested that the Department provide in the regulation examples of public or private entities that have demonstrated effectiveness in providing regionally accredited secondary level educational programs providing entry-level workforce preparation and/or leading to recognized postsecondary education and training activities.

Department Response: The Department agrees that it is important not to discourage co-enrollment and to incorporate quality criteria. The Department concluded that this type of language is more appropriate in guidance. The Department also agrees with the importance of competitively selecting high quality youth service providers, as appropriate, and will address this issue in future guidance.

Comments: A commenter asked whether waivers for providing intake, assessment, development of ISS, case management, and follow-up services are still recognized under the regulation. Finally, one commenter observed that the term "local program" is used throughout subpart C without a clear definition, and recommended that the Department add a definition of "local program" to § 681.400.

Department Response: Because of the revisions to the Final Rule that provide additional flexibility in delivering youth program elements, waivers related to WIOA sec. 123 are no longer necessary. In addition, the Department declines to add a new definition of "local program"; the term "local program" refers to a local workforce area's WIOA title I youth formula-funded program. No changes were made to the final regulation in response to these comments.

Section 681.410 Does the requirement that a State and local area expend at least 75 percent of youth funds to provide services to out-of-school youth apply to all youth funds?

This section describes the new requirement under WIOA that States and local areas must expend a minimum of 75 percent of youth funds on OSY. This section also clarifies the guidelines by which a State that receives a minimum allotment under WIOA sec. 127(b)(1) or under WIOA sec. 132(b)(1) may request an exception to decrease the minimum expenditure percentage to not less than 50 percent.

Comments: Numerous commenters expressed their support for the increase in mandatory minimum OSY expenditure from 30 to 75 percent, asserting that this change along with others would lead to improved outcomes for OSY. One commenter expressed its support for the proposed regulations, but further encouraged the Department to provide guidance as to how programs can transition to help the OSY population now that they are a priority. This commenter cautioned that without such guidance, providers with experience meeting Federal requirements and/or with expertise in hybridized "earn and learn" models could be excluded from the system. In addition to supporting the proposed regulations regarding the 75 percent funding requirement, one commenter expressed support for the Department's attempts to limit opportunities for waivers that would reduce this funding requirement. A few commenters expressed their support of the language that would allow organizations a transition period before they have to reach the 75 percent OSY funding goal. One of these commenters suggested that allowing for this gradual transition would help public workforce systems to decrease their expenditures on ISY slowly. Another commenter was concerned about the 75 percent requirement because for its State and others with low-dropout rates, reaching the requirement would be unrealistic and would fail to serve many at-risk ISY. This commenter recommended that the requirement be reduced to 40 percent for the first year after implementation and increased to 60 percent at the third year and thereafter.

Department Response: While the Department notes the commenters' concerns about the shift to spending more funds on OSY, the Department issued TEGL No. 23–14 ("*WIOA Youth*

Program Transition Guidance''), which can be found at *http://wdr.doleta.gov/directives/All_WIOA_Related_Advisories.cfm*, on March 26, 2015. This guidance discusses transitioning to the minimum 75 percent OSY expenditure requirement that allows a gradual transition in the first WIOA program year. The Department plans to issue additional guidance and technical assistance to help programs serve more OSY.

Comments: A commenter expressed concern that transitioning to the 75 percent OSY requirement would decrease performance outcomes throughout the youth services system because the OSY population is often difficult to retain contact with, especially after they have exited the program. Therefore, this commenter predicted that local areas would enroll a limited number of youth, except that those youth have a relatively high prospect for success, and devote significant resources to tracking and reporting on that limited population. This commenter requested confirmation that the Department would prefer that local areas forgo volume considerations and do everything possible for the few OSY that could meet these expectations.

Department Response: The Department recognizes that OSY may require additional resources for services and expects local programs to provide the necessary resources to ensure the success of OSY. There is no specific expectation on the number of OSY programs must serve, only on the percentage of funds spent on OSY. States and local areas will have the opportunity to set performance targets based on the population they serve.

Comments: Commenting that many ISY are at risk regardless of the fact that they are attending school, a commenter stated that the proposed regulations would not give enough support to areas who want to continue to help serve ISY. Further, this commenter was concerned that some ISY may end up dropping out in order to be eligible for OSY services and assistance and, therefore, suggested that local areas should be able to determine the needs of their own areas and serve those individuals as such.

Department Response: The Department recognizes the concerns about serving fewer ISY. However, the focus in WIOA is on expending additional resources on OSY. Local WDBs do not have the authority under WIOA to determine ISY and OSY expenditure rates based on the needs of their own area. Local areas must spend a minimum of 75 percent of youth funds on OSY, with the exception that local area administrative expenditures are not a part of the 75 percent OSY minimum expenditure calculation.

Comments: Describing the impact the 75 percent OSY minimum expenditure requirement would have on its summer transition program, one commenter opposed the OSY minimum expenditure requirement, stating that it would prevent 15 ISY who have been identified as high-risk from participating in its program due to a lack of funding for ISY.

Department Response: The Department recognizes concerns regarding continuing to serve ISY and issued TEGL No. 23–14 (''*WIOA Youth Program Transition Guidance''*) on March 26, 2015, which can be found at *http://wdr.doleta.gov/directives/All_WIOA_Related_Advisories.cfm*, which addresses transitioning ISY and ensures they can successfully complete the program and are not exited from the program prematurely.

Comments: A number of commenters recommended that the Department provide additional detail about what is required in the analysis of ISY and OSY populations in a local area that would be required as part of the waiver process to reduce the OSY minimum expenditure percentage for States that receive the small State minimum allotment (proposed § 681.410(b)(1)).

Department Response: The Department will provide guidance on what is required when submitting waivers to reduce the required OSY minimum expenditure rate for States that receive the small State minimum allotment.

Section 681.420 How must Local Workforce Development Boards design Workforce Innovation and Opportunity Act youth programs?

This section describes the framework for the WIOA youth program design. This section also describes the requirement that Local WDBs must link to youth-serving agencies and adds local human services agencies to the list that WIA required.

Objective Assessment

Comments: One commenter recommended that the Department clarify that the proposed § 681.420(a)(1) requirement that the youth program design framework services must provide for an individual objective assessment does not require testing to determine an individual's Grade Level Equivalent or Educational Functioning Level unless needed to determine that the participant is basic skills deficient or to document a measurable skill gains for purposes of measuring performance. Another commenter recommended that the objective assessments and individual services planning process be completed using ''strength-based'' approaches that focus on the strengths of the individuals instead of their faults.

Department Response: The Department has incorporated language into § 681.420(a)(1) to review youth strengths as part of the assessment process. It is also the intention of the Department to clarify the requirements around the youth program design framework in system guidance.

Individual Service Strategy

Comments: A commenter recommended that a participant's ISS be developed with the individual's needs in mind and not on the time constraints or structure of the provider.

Department Response: The Department has incorporated language into § 681.420(a)(2) to develop the ISS based on the needs of the participant.

Career Pathways

Comments: Several commenters recommended that the Department clarify that the Local WDB may require that youth services be aligned with specific career pathways identified by the Local WDB. Further, these commenters suggested that the regulations should clarify that the requirement under WIOA sec. 3(7)(F) that a career pathway must enable an individual to attain a secondary school diploma or its equivalent, and at least one recognized postsecondary credential, does not limit the ability of local areas to serve youth who have already attained a secondary school diploma or its equivalent.

A number of commenters requested clarification from the Department about the activities that States and Local WDBs must carry out regarding career pathways, and whether they have to establish specific processes and policies concerning career pathways. Additionally, many of these commenters requested that the Department clarify whether Local WDBs must implement each element outlined in the WIOA definition and stated that WIOA does not indicate whether the identification of career pathways as part of the assessment and individual service strategy would create any additional requirements for local areas or youth service providers. Some of these commenters also recommended that the regulation clarify that the WIOA sec. 3(7)(C) requirement relating to counseling does not create an affirmative requirement for Local WDBs or youth service providers to provide counseling to every individual, but only to the extent that such counseling

would be consistent with the objective assessment and the ISS.

One commenter agreed that Local WDBs should foster relationships with secondary and postsecondary education providers regarding the implementation of local career pathway strategies, stating that because of the shift in focus to OSY, Local WDBs should consult with experts that understand youth needs to design effective career pathway strategies.

Department Response: The Department agrees that additional guidance is necessary to describe WIOA requirements for incorporating career pathways into the WIOA title I youth program, although the Department has determined that additional regulatory text on career pathways is not necessary. The Departments of Labor, Education, Health and Human Services in coordination with nine other Federal agencies plan to provide additional guidance and technical assistance on the implementation of career pathways in WIOA.

Follow-Up Services

Comments: A couple of commenters expressed concern that proposed § 681.420(a) listed follow-up services as part of the design framework services and proposed § 681.460(a)(9) listed follow-up services as 1 of the 14 program elements because design framework services do not have to be procured, while program elements do. These commenters requested that the Department clarify that youth program operators have the flexibility to include follow-up services in the design framework or as a youth program element.

Department Response: The Department clarified the procurement requirements for all program elements, including follow-up services, in § 681.400.

Involvement of the Community

Comments: One commenter requested that the Department clarify the term "actively involved" in the proposed § 681.420(g) requirement that Local WDBs ensure "that parents, youth participants, and other members of the community with experience relating to youth programs are actively involved in both the design and implementation of its youth programs." Another commenter stated that requiring those individuals be "actively involved" is overly prescriptive and not required in legislation. The commenter expressed concern that public meetings allow open access and it would be impossible to ensure engaged participation.

Department Response: The Department agrees with this comment and has deleted the word "actively" from the Final Rule.

Comments: Another commenter recommended that the Department amend § 681.420 to better reflect the diverse range of stakeholders and perspectives of youth with disabilities. Specifically, this commenter recommended that the requirement that specific members of the community be involved with the establishment of program design should include youth with disabilities.

Department Response: The Department has not added additional language based on this comment as § 681.420(c)(6) already specifically names local disability-serving agencies.

Pay-for-Performance

Comments: One commenter asked about the performance and reporting requirements of the pay-for-performance provision, specifically whether the Department will change how States report.

Department Response: The Department plans to issue further guidance about the Pay-for-Performance contract strategies provision of WIOA and the requirements of subpart E of part 683.

Section 681.430 May youth participate in both the Workforce Innovation and Opportunity Act (WIOA) youth and adult programs concurrently, and how do local program operators track concurrent enrollment in the WIOA youth and adult programs?

This section provides that youth may participate in both the WIOA youth program and the adult program at the same time if they are eligible for both and it is appropriate. The section also provides that youth who are eligible under both programs may enroll concurrently in WIOA title I and II programs.

Comments: Several commenters expressed support for the proposed language that clarifies that youth may be co-enrolled in WIOA title I and II programs. However, many of these commenters also recommended that the Department strengthen the language to encourage Local WDBs to incorporate co-enrollment with other core programs as part of the overall youth program design. One of these commenters also stated that co-enrollment would create difficulties in terms of data collection and capacity. Specifically, this commenter said that to move successfully between systems without significant disruption, data collection, and storage must track the individual youth themselves, instead of just the programs they are in. This commenter suggested that additional funding and technical support may be necessary to assist States and local areas in developing comprehensive data systems.

Some commenters also expressed their support of the proposed regulations' encouragement of co-enrollment, especially because of how it could extend more services to OSY. However, these commenters expressed concerns that potential disincentives for co-enrollment exist related to inconsistencies across funding streams in how enrollment, exit, and participation in activities are defined and how performance is measured in programs across the different titles.

Department Response: The Department acknowledges the concerns regarding disincentives for co-enrollment due to data tracking issues and performance measure implications. However, the Department intends to provide additional guidance and technical assistance to support co-enrollment across core programs. No changes were made to the regulatory text to reflect these comments.

Comments: One commenter expressed its support for the proposed regulation's allowance of dual eligibility in WIOA title I and II programs, but recommended that the Department issue additional guidance to Local WDBs about how to coordinate their resources effectively for individuals who could co-enroll in both title I and title II services. Further, this commenter asked the Department for clarification as to whether co-enrolled individuals would need Individual Training Accounts (ITAs) and whether States should have to maintain documentation of providers who have expertise in services under both titles I and II. A few commenters expressed their support for the option of co-enrollment in WIOA title I and II programs, stating that this allowance would be particularly beneficial for youth under the Deferred Action for Childhood Arrivals policy who have not yet received their high school equivalency certificate because their participation in youth services under title I could further instill in them a greater educational work ethic. Further, these commenters recommended that the Department search for potential methods for how State and Local WDBs could recruit and ensure that they are providing services to eligible immigrants.

Department Response: On November 17, 2015, the Department provided preliminary guidance regarding partnering between WIOA titles I, II,

and IV in TEGL No. 08–15 ("*Second Title I WIOA Youth Program Transition Guidance*"), which can be found at *http://wdr.doleta.gov/directives/All_WIOA_Related_Advisories.cfm.*

The Department will provide additional technical assistance regarding partnering across the WIOA programs on an on-going basis, including services to eligible immigrants. No changes were made to the regulatory text in response to these comments.

Comments: Another commenter recommended tracking expenditures individually by each program.

Department Response: The Department already does require tracking expenditures by each program, and no changes were made to the regulatory text in response to this comment.

Section 681.440 How does a local youth program determine if an 18 to 24 year old is enrolled in the Workforce Innovation and Opportunity Act (WIOA) youth program or the WIOA adult program?

Individuals aged 18 to 24 are eligible for the WIOA adult and youth programs. This section provides that local youth program needs to determine whether to enroll an 18 to 24 year old in the youth program or adult program based on the individual's career readiness as determined through an assessment of his or her occupational skills, prior work experience, employability, and participant needs.

Comments: A commenter recommended that, given the intent of WIOA, individuals should be able to determine the programs in which they will participate. However, this commenter further recommended that the Department modify the proposed language to give guidance to States in terms of how to present materials on program choice to individuals and ensure that the materials presented would be understood by a wide variety of individuals, including those with disabilities.

Another comment stated that determining in which program an 18 to 24 year old should enroll would impose a burden on local areas to establish processes to ensure that services are provided to an individual in the appropriate program.

A commenter suggested that, in cases of eligibility for co-enrollment in WIOA title I and II activities, it would not be suitable for an 18 to 24 year-old youth to be enrolled in the adult program without first undergoing an assessment to determine whether the adult program would be appropriate for meeting his or her needs.

Department Response: The Department does not intend to require local WDBs to establish specific processes to ensure that individuals are served in the appropriate program. Rather the Department wants to emphasize that youth may be served by either program depending on the young adult's individual needs, knowledge, skills, and interests. Local WDBs need a process in place to assist in determining the appropriate program for participants between the ages of 18 and 24.

Based upon the comments received, the Department updated the Final Rule and removed the word "objective" from in front of assessment to indicate that a formal evaluation is not needed and the Department removed the reference to WIOA sec. 129(c)(1)(A).

Section 681.450 For how long must a local Workforce Innovation and Opportunity Act youth program serve a participant?

The Department has continually provided guidance and direction that youth programs serve participants for the amount of time necessary to ensure they are successfully prepared to enter postsecondary education and/or unsubsidized employment. While there is no minimum or maximum time a youth can participate in the WIOA youth program, programs must link program participation to a participant's ISS and not the timing of youth service provider contracts or program years.

Comments: Some commenters expressed their support for the proposed regulations' allowance to serve youth until their needs have been met, stating that this would alleviate stress on participants from having to deal with time constraints.

A few of these commenters also stated, however, concerns about the use of the word "must." These commenters recommended that the language be amended to say, "Local youth programs must provide service to a youth participating in their individual service strategy in good faith for the amount of time necessary to ensure successful preparation to enter postsecondary education, registered apprenticeships, and/or unsubsidized employment."

In addition to allowing an individual to remain enrolled in WIOA youth services until he or she completes his or her plan of service, a commenter recommended that youth may remain enrolled in their services regardless of whether they are experiencing a period of inactivity in a program, as long as they are active in their career counseling services.

Another commenter stated that the proposed regulations would not allow individuals who do not abide by the rules of their program to discontinue services and re-enroll in the program as long as they were within the age requirement. This commenter recommended that the Department revise this regulation to focus on the needs of individuals who must temporarily suspend their services for legitimate reasons.

Department Response: The Department recognizes that at times youth face obstacles that make it hard for them to commit to a program, however the services that all youth receive should still align with their ISS. The program should review the ISS with the youth and determine if the program has the appropriate services available for the young adult. Additionally a youth may remain in the program for as long as he or she is receiving at least one program element, other than follow-up services. Therefore, because WIOA sec. 129(c)(2)(M) includes career counseling services, the scenario described above with a youth only participating in career counseling would be acceptable under the Final Rule. No change has been made in the regulatory text in response to these comments.

Comments: Two commenters requested additional clarification from the Department about how they would measure and explicitly define "successful preparation to enter postsecondary education and/or unsubsidized employment." One of these commenters further recommended that they not measure successful preparation by an individual's actual entry into either postsecondary education or unsubsidized employment, stating that there may be outside, uncontrollable factors that are preventing them from engaging in those activities, other than their level of readiness.

Department Response: The required reported outcomes for individuals entering postsecondary education and/or unsubsidized employment do not differ from the other WIOA youth program performance indicators. Additional information on required performance indicators is found in 20 CFR part 677 (*see* Joint WIOA Final Rule).

Section 681.460 What services must local programs offer to youth participants?

This section lists the 14 program elements, including 5 new youth program elements in WIOA sec. 129(c)(2) that were not included under WIA. These new elements are (1)

education offered concurrently with and in the same context as workforce preparation activities and training for a specific occupation or occupational cluster; (2) financial literacy education; (3) entrepreneurial skills training; (4) services that provide labor market and employment information about in-demand industry sectors or occupations available in the local area, such as career awareness, career counseling, and career exploration services; and (5) activities that help youth prepare for and transition to postsecondary education and training. In addition, WIOA revised some of the WIA program elements. For example, the element on tutoring, study skills training, and instruction leading to the completion of secondary school, including dropout prevention strategies, has been revised to provide that the dropout prevention (and recovery) strategies must be evidence-based and to make clear that the completion of secondary school can be accomplished by attainment of a secondary school diploma or its recognized equivalent, including a certificate of attendance or similar document for individuals with disabilities.

WIOA also combines the two WIA elements of summer youth employment programs and work experiences so that summer youth employment programs become one item in a list of work experiences and adds pre-apprenticeship programs to the list of work experiences. Finally, WIOA expands the description of the occupational skill training element to provide for priority consideration for training programs that lead to recognized postsecondary credentials that are aligned with in-demand industry sectors or occupations if the programs meet WIOA's quality criteria. This change is consistent with WIOA's increased emphasis on credential attainment. The section clarifies that while local WIOA youth programs must make all 14 program elements available to WIOA youth participants, local programs have the discretion to determine which elements to provide to a participant based on the participant's assessment and ISS.

The Department received many comments, which are discussed below, on provisions within § 681.460.

Comments: A commenter asked for clarification from the Department regarding the reasons for WIOA's increase in the number of required program elements that a local area must be able to provide. Another entity commented that not all of the 14 proposed program elements are available in every local area, citing mentorship programs as a primary example.

Another commenter stated that local areas should be allowed to choose which of the 14 program elements to provide, reasoning that local areas will have the best insight into what is needed for the individuals in their particular area.

Department Response: The Department understands that in some local areas it takes effort to identify quality providers for all program elements; however, WIOA explicitly requires these 14 elements for youth programs. While all 14 program elements must be available in a local area, every youth does not have to receive every element. For instance, only youth that have mentoring included on their ISS need to receive the program element.

The Department acknowledges that in some areas mentoring is particularly challenging and has changed § 681.490 to allow case managers to serve as adult mentors.

Comments: Another commenter recommended that the Department clarify that youth programs may bring in multiple public/private partners and evidence-based programs that support the attainment of a secondary school diploma or its recognized equivalent, entry into postsecondary education, and career readiness for participants.

Department Response: The Department agrees that partnering with other organizations to provide some program elements can be valuable and has added § 681.460(c), that reads, "When available, the Department encourages local programs to partner with existing local, State, or national entities that can provide program element(s) at no cost to the local youth program."

Comments: One commenter said that services offered to an individual must be in the area where the youth live because too often programs' inability to relieve transportation challenges has resulted in program non-completion. The commenter suggested that the Department include language regarding the need for State and Local WDBs to support investments in transportation services and program operations beyond non-traditional hours of operation.

Department Response: The Department recognizes the need for program operation during non-traditional hours as well as the challenge transportation presents across the country. As described in § 681.570(b) supportive services may include transportation costs. The Department did not change the proposed regulation, though through technical assistance it will emphasize the possibility of using WIOA funds to cover transportation needs.

Comments: Another commenter recommended that the Department clarify that providers must incorporate a number of items in their dropout recovery services (proposed § 681.460(a)(2)), such as credit recovery opportunities leading to postsecondary education; flexible scheduling; various learning models; performance-based assessments; mentoring; and "comprehensive" support service.

Department Response: The Department recognizes the value of dropout recovery services for youth and its success in reconnecting disconnected youth. Because many of the items suggested by the commenter are either WIOA program elements or allowable under other program activities, the Department decided not to change the regulatory text about alternative secondary school services. The Department plans to provide technical assistance on the program elements, including those that contain dropout recovery services.

Comments: One commenter recommended that, in order to clarify that neither the Governor nor the State WDB should impose policies that require a sequence of services, the Department should revise proposed § 681.460(a)(3) to clarify that "academic and occupational education as a component of work experience" may be provided on a concurrent or sequential basis based upon a participant's ISS, stating that local areas should have the flexibility to meet participants' individual needs.

Department Response: The Department concurs that youth may receive academic and occupational education as a component of work experience on a concurrent or sequential basis based upon the ISS. The Department included new language in the Final Rule text of § 681.600(b) that clarifies that the academic and occupational education of work experience may occur on a concurrent or sequential basis.

Section 681.470 Does the Department require local programs to use Workforce Innovation and Opportunity Act funds for each of the 14 program elements?

This section clarifies that local WIOA youth programs must make all 14 program elements available to youth participants, but not all services must be funded with WIOA youth funds. Local programs may leverage partner resources to provide program elements that are available in the local area. If a local program does not fund an activity

with WIOA title I youth funds, the local area must have an agreement in place with the partner to offer the program element and ensure that the activity is connected and coordinated with the WIOA youth program if enrolled youth participate in the program element.

Comments: A few commenters suggested the proposed language would require that local programs that are not using WIOA funds to fund an activity establish agreements with the partner with which they are engaging in the activity. These commenters stated that a referral should be sufficient in this case, adding that if services outside of WIOA funding streams are present in the community, an agreement would be unnecessary and is overly regulative.

Department Response: While the Department does not require a local youth service provider to pay for all program elements, the Department does require the program elements provided to a youth to align with the goals the youth set forth in the ISS. Case managers must update the ISS on an on-going basis and document, among other items, the services provided and participant's progress, activities completed, benchmarks reached, and any other accomplishments. Case managers must document this information regardless of who provides the element. Therefore, the Department did not change the proposed regulation; the information needed for the ISS necessitates an agreement between the partner organization and the program.

Comments: A couple of commenters asked for clarification regarding the proposed regulations' requirement for the creation of agreements between youth services providers and partner organizations outside of WIOA funding. Specifically, these commenters asked for clarification from the Department about what "monitor" means in this language, and when this requirement would be necessary.

Department Response: The Department notes that the term "monitor" came from the NPRM preamble and was not a proposed requirement. It appeared in the following context, "By closely connected and coordinated, the Department means that case managers must contact and monitor the provider of the non-WIOA-funded activity to ensure the activity is of high quality and beneficial to the youth participant." The case manager must check on the provider of the non-WIOA-funded activity and make sure the youth participant gets quality services that match the program, element requirements.

Comments: A commenter recommended that the Department issue guidance on performance requirements and a reporting process for each of the required youth program elements to help local areas and States in the creation of their plans.

Department Response: The Department is including guidance and specifics on the performance requirements and reporting through the ICR process, which was done for 20 CFR part 677 (*see* Joint WIOA Final Rule). The Department is providing additional information regarding the required reporting of data elements, including each of the 14 youth program elements through that process. More information is also available in the Joint WIOA Final Rule discussion of 20 CFR part 677.

Section 681.480 What is a pre-apprenticeship program?

A pre-apprenticeship is a program or set of strategies designed to prepare individuals to enter and succeed in a registered apprenticeship program and has a documented partnership with at least one, if not more, registered apprenticeship program(s).

Comments: A couple of commenters requested clarification regarding what constitutes a partnership for the purposes of this section, asking further whether it is direct entry into a partnership or whether a form of collaboration would be sufficient for these purposes. Other commenters sought clarification regarding pre-apprenticeship and performance indicators.

Department Response: The Department further edited the pre-apprenticeship regulation to provide a more detailed and consistent explanation of the components of pre-apprenticeship programs as described throughout this Final Rule. The type of required reported outcomes for individuals engaging in pre-apprenticeship programs do not differ from the other WIOA youth program performance indicators. Additional information on required performance indicators is found in 20 CFR part 677 (*see* Joint WIOA Final Rule).

Section 681.490 What is adult mentoring?

This section describes the adult mentoring program element. The Department received many comments on proposed § 681.490 and made changes to the Final Rule as discussed below.

Comments: A number of commenters recommended that the Department provide flexibility for States in how the mentoring programs are arranged and length of time participants receive mentoring. Some of these commenters reasoned that adult mentoring is difficult for small States to establish because mentoring services with which to partner are not widely available and because of limited funds. With regard to the language that would require the inclusion of a mentor other than the individual's case manager (proposed § 681.490(a)(3)), a commenter suggested that a case manager should be suitable for consideration as an individual's mentor if he or she is providing the guidance and support that would be required of a mentor. This commenter explained that in rural areas, mentoring programs are rare and oversubscribed if they exist, so the WIOA case manager is, in fact, the chief adult mentor for the youth.

In addition, several commenters did not like the proposed minimum 12-month requirement for adult mentoring (proposed § 681.490(a)(1)), recommending that the length of mentoring should instead be evaluated and defined on a case-by-case basis and determined by the individual, his or her mentor, and his or her case manager. One commenter said that the timeframe for adult mentoring is better suited for local control to allow for direct assessment of participant needs. Another commenter stated that the language in this section should be no more prescriptive than the WIOA statute.

Department Response: Under WIA, most local areas were able to secure qualified mentors, other than case managers, for youth participants. Nonetheless, the Department acknowledges that in a few areas of the country finding mentors may present a burden to a program. While the Department strongly prefers that case managers not serve as mentors, it changed the final regulation deleting proposed § 681.490(a)(3), "include a mentor who is an adult other than the assigned youth case manager". The Final Rule allows case managers to serve as mentors in areas where adult mentors are sparse. Because WIOA defines the length of time required for mentoring as not less than 12 months, no changes were made in the regulatory text.

Comments: Another commenter suggested that local areas study evidence-based models that they may implement when designing their mentorship programs. Suggesting that the purpose of adult mentoring should be clarified to indicate expected results of the mentor relationship and guide the types of activities and engagement that should result. A commenter

recommended that the Department revise § 681.490 to clarify that adult mentoring should result in effectively engaging students in high-quality, career relevant instructions and establishing clear connections between work-based learning and classroom experiences.

Department Response: The Department supports the use of evidence-based models. The Department anticipates that the expected outcomes of a mentoring relationship will connect to the goals set forth in the individual participant's ISS. Therefore, mentoring results will vary by participant.

Citing their use of "advocates" in lieu of mentorship programs to engage with youth, one commenter recommended that the Department amend proposed § 681.490 to include that mentorship services may include activities such as providing transportation or transportation assistance, aid in attaining work experience opportunities, court advocacy, foster care support, tutoring help, fostering of community relationships, and engagement with family.

Department Response: The Department affirms activities such as providing transportation, aid in attaining work experience opportunities, court advocacy, foster care support, tutoring help, fostering of community relationships, and engagement with family care. However, other WIOA youth program elements cover several of these activities. While mentors may help participants attain their goals, the additional suggested activities above go beyond the basic WIOA adult mentoring requirements. No changes were made in the regulatory text in response these comments.

Section 681.500 What is financial literacy education?

This section describes the financial literacy program element, new under WIOA. The Department received many comments on the new program element. Several of the comments described below resulted in changes to the Final Rule text.

Comments: A few commenters expressed their support for the proposed regulations' description of the elements of financial literacy education. In particular, one expressed its support particularly for the inclusion of identity theft education.

Some commenters stated that as the proposed language as written, it appears as though all of the elements listed are requirements that must be present within the financial literacy program element itself. These commenters recommended that the § 681.500 introductory language be amended to State, "The financial literacy education program element may include activities which. . . ." Similarly, another commenter asked the Department to clarify that the list of activities for financial literacy education (proposed § 681.500) and entrepreneurial skills training (proposed § 681.560) are illustrative and that each individual topic is not required for every participant. Other commenters expressed their support for the proposed language's flexibility regarding the activities related to financial literacy education, and that the list included in the proposed regulations is not required, but provides guidance. Alternatively, one commenter recommended that the Department eliminate the requirements of proposed § 681.500(g) and (h), stating that these proposed requirements are overly prescriptive and limit flexibility.

Department Response: The Department understands the commenters' concern that providing all of the financial literacy sub-elements to every participant that receives this program element may be overly prescriptive. The Department anticipates each item will be available in locations implementing a robust financial literacy program. However, the Department did not intend for every youth to receive each sub-element. Instead, every youth, based on his/her individual needs, would receive many of the items included in this regulation. The actual services delivered may vary by program participant. As a result, the Department accepts the proposed language change and replaced "must" with "may" in the Final Rule.

Comments: One commenter recommended the addition of an element to the list in proposed § 681.500 to assist individuals about the impact that employment has on their receipt of public benefits. This commenter reasoned that educating individuals of this impact may lessen the fear they may have of losing their Medicaid or other public benefits if they are competitively employed. Another commenter recommended that § 681.500 should specifically state that for youth who are receiving disability Social Security benefits, their financial literacy education must include benefits planning and work incentives counseling from a qualified provider.

Department Response: The Department concurs with the suggested addition and added § 681.500(g), "Support activities that address the particular financial literacy needs of youth with disabilities, including connecting them to benefits planning and work incentives counseling;" to the Final Rule text.

Comments: One commenter shared that this proposed program element requirement would place a burden on local areas related to identifying a financial literacy program that includes an identity theft component.

Department Response: By changing "must" to "may" at the beginning of § 681.500, the Department addresses this commenter's concern about finding a local entity that addresses identity theft.

Comments: Several commenters provided suggestions on how to implement the element. In response to the Department's request for comments on how to achieve the goal of equipping workers with the knowledge and skills they need to achieve long-term financial stability, one commenter recommended that the Department survey programs that have been funded and implemented by companies and their foundations in the financial services sector. Another commenter responded that many banks have an effective financial literary curriculum and recommended that the Department foster partnerships with banks that would be willing to provide the curriculum for free to local organizations.

Another commenter recommended that financial literacy education be implemented in an online or in-person classroom setting where retirement requirements, banking, debt, lease, and mortgage information are covered. This commenter also suggested that these programs must result in the issuance of certification of completion and should be developed by a recognized financial planning authority, but not an entity with investment products on the market.

Department Response: The Department has found that a number of local and national entities want to help make this element relevant to youth and a success. Many financial literacy tools and curriculums are readily available for use and include formats that engage youth. The Department has begun to provide technical assistance on financial literacy element and has engaged with many Federal financial agencies about supporting the public workforce system in implementing this program element.

Comments: Citing a 2014 Consumer Financial Protection Bureau report that described the components necessary for successful youth employment programs, one commenter recommended that the Department amend the language in this section from referring to "financial literacy education" to using the term "financial capability services," reasoning that the latter term would align more closely with the WIOA

requirement because it focuses on knowledge, skills, and access. Further, this commenter recommended that the Department use the definition provided by the President's Council on Financial Capability to define financial capability services ("the capacity based on knowledge, skills and access, to manage financial resources effectively"). This commenter also recommended that the Department ensure it is connecting youth employment programs with resources that highlight best practices and financial institutions that could be key partners. Regarding the measuring of financial capability outcomes for youth programs, this commenter suggested that the Departments of Labor and Education provide youth programs with resources and guidance to ensure they are able to effectively track clients' progress and outcomes and that workforce organizations also may need additional tools and resources to improve the financial education services they offer. Given the varied outcomes associated with the § 681.500 list of allowable financial literacy education activities, the commenter encouraged States and localities to collect outcome data as related to their provided service.

Department Response: The Department decided that a name change from "financial literacy education" to the term "financial capability services" will confuse youth programs and did not change the regulatory text. The Department continues to work with the Consumer Financial Protection Bureau to help local areas implement this new WIOA requirement with the goal of connecting youth employment programs with resources, best practices, and financial institutions that can become workforce partners. The Department captures information about youth participating in this program element as described in WIOA State Plan ICR and uses the same youth WIOA performance indicators discussed in 20 CFR part 677 (*see* Joint WIOA Final Rule). The Departments note that the Governor also has the authority to identify, in their Unified or Combined State Plan, additional performance accountability indicators.

Comments: A few commenters recommended that the Department grant local areas the role of determining the necessary elements for financial literacy education programs. Similarly, a commenter recommended that the Department grant States the jurisdiction to create their own policies regarding financial literacy education.

Department Response: With the change in the final regulation from "must" to "may" at § 681.500, local areas may determine the necessary elements for financial literacy education programs. The Department analyzed the suggestion to give States the jurisdiction to create their own policies regarding financial literacy education and concluded that with the above regulation text change, it was not needed.

Comments: Finally, a commenter requested clarification from the Department concerning the difference between personal financial literacy and entrepreneurial financial literacy. Further, this commenter suggested that youth would be best served by learning financial literacy through practice rather than pure instruction.

Department Response: The Department concurs that a hands-on approach to financial literacy is best and entrepreneurial financial literacy is one way to provide a practical financial literacy application. The Department, along with other Federal partners, will provide further technical assistance around this element.

Section 681.510 What is comprehensive guidance and counseling?

Comprehensive guidance and counseling provides individualized counseling to participants. This includes drug and alcohol abuse counseling, mental health counseling, and referral to partner programs, as appropriate. (WIOA sec. 129(c)(2)(J).) When referring participants to necessary counseling that cannot be provided by the local youth program or its service providers, the local youth program must coordinate with the organization it refers to in order to ensure continuity of service.

Comments: Citing the activities that YouthBuild offers about counseling services, a commenter stated the importance of counseling and its beneficial impact on youth's success. Another commenter requested clarification from the Department as to the credentials and training that would be required for guidance counselors under the proposed regulations.

Department Response: The Department acknowledges that accessing counseling services impacts the success of many youth who receive program services. The Department understands that counselors' education and experience will vary depending on the type of guidance and counseling offered and did not address it in the final regulation.

Comments: Citing the proposed language that would require that local youth programs "when referring participants to necessary counseling that cannot be provided by the local youth program or its service providers, the local youth program must coordinate with the organization it refers to in order to ensure continuity of service," a commenter said that coordination with multiple organizations would be unnecessary and that a referral should be sufficient in and of itself. Along the same line, a commenter asked for clarification concerning the requirement that youth service providers collaborate with the outside services they use for counseling in order to ensure the continuity of service for individuals. This commenter requested that the Department provide additional guidance for how service providers should interpret these requirements.

Department Response: The Department views a referral as one part of the comprehensive guidance and counseling element; the local service provider must coordinate with the organization to which the referral was made in order to ensure youth receive comprehensive services. The Department plans to provide additional technical assistance on comprehensive guidance and counseling. No changes were made to the regulatory text in response to this comment.

Comments: A commenter asked for guidance from the Department about whether comprehensive guidance and counseling encompasses academic counseling as is stated in § 681.510, suggesting that it is not included in the language in § 681.460.

Department Response: The Department considered this input and agreed with the commenter that the proposed regulation duplicated counseling types found in other program elements. As a result, the Department removed "career and academic counseling" from the comprehensive guidance and counseling element.

Section 681.530 What are positive social and civic behaviors?

While WIA included positive social behaviors as part of the description of leadership development opportunities, WIOA adds "civic behaviors" to the description of the leadership development program element. This section provides examples of positive social and civic behaviors.

Comments: Citing the list of positive social and civic behaviors that YouthBuild programs are based on, a commenter expressed their support over the proposed list of behaviors and recommend that WIOA youth services programs incorporate their list into the proposed regulations. On the other hand, citing the language listing some of

the indicators of positive social and civic behaviors, a commenter stated that only paragraph (i), "positive job attitudes and work skills," is measurable and relevant to the goal of workforce training. This commenter suggested that the other listed potential indicators of these behaviors are irrelevant, and that paragraphs (h) and (j) could be considered inappropriate.

Department Response: Comprehensive in nature, the WIOA youth program provides a wide array of supports and services. The Department finds the sub-elements in positive social and civic behaviors relevant and connected to the workplace traits employers seek. It recognizes that the list is not all-inclusive and other personal attributes contribute to positive social and civic behavior. The Department did not add additional items to the final regulation. Noting the strong objection to proposed paragraphs (h) and (j), the Department did delete proposed paragraphs (h) ("Postponing parenting and responsible parenting, including child support education") and (j) ("Keeping informed in community affairs and current events") from the final regulation text.

Comments: A commenter suggested that the behaviors in this section would be difficult to measure, which may result in the measurement through default indicators such as the individual didn't get arrested or isn't a youth parent.

Department Response: The Department appreciates the commenters concerns about the difficulty of measuring positive social and civic behaviors. From the Department's perspective these behaviors contribute to characteristics that businesses seek in their employees. No change is made in the regulatory text in response to this comment.

Section 681.540 What is occupational skills training?

This section provides a definition for the occupational skills training program element. WIOA sec. 129(c)(2)(D) further sharpens the focus on occupational skills training by requiring local areas to give priority consideration for training programs that lead to recognized postsecondary credentials that align with in-demand industries or occupations in the local area.

Comments: Commenters expressed concern that the regulations in the section are too prescriptive, stating that the attainment of postsecondary credentials or other credential training would be inappropriate for some individuals. Further, this commenter suggested that as they are written, the proposed regulations would not allow for training that would be a step towards a postsecondary degree but does not in and of itself result in one. Similarly, a couple of commenters expressed their support for the proposed regulations' emphasis on occupational skills training, but stated their concern with the language that requires that all occupational skills training result in a postsecondary level education. The commenters suggested that requiring postsecondary education would not be appropriate for everyone, and recommended that instead, the regulations allow for individuals to result in one of the three options instead of all three. This commenter further recommended that the language, ". . . result in the opportunity to obtain a recognized postsecondary credential, or a certificate of job readiness, or an industry credential," be added to the section.

Department Response: The Department notes the concerns around occupational skills training needing to result in attainment of a recognized postsecondary credential. The Department has changed this language in the Final Rule to state that occupational skills training must lead to the attainment of a recognized postsecondary credential.

Comments: One commenter recommended that the Department clarify that service providers should put into effect activities that include *work experience to prepare for employment that leads to self-sufficiency, a sequenced series of work-based learning opportunities, a college and career ready curriculum, dual enrollment, and supplemental instruction.*

This commenter also recommended that the implementation of these activities should result in collaboration between WIOA youth service providers, Local WDBs, and educational institutions.

Department Response: The Department concluded that these recommendations are more appropriate for technical assistance; as such, no changes were made in the regulatory text in response to these comments. The Department will provide guidance and technical assistance on all program elements, including occupational skills training.

Comments: A commenter recommended that the Department modify the proposed text to state, ". . . and result in attainment of a recognized postsecondary credential, job readiness certificate, or industry credential," suggesting that this language would still encourage individuals to participate in experiences that will help them to gain certifications and credentials, but gives them flexibility they may need to demonstrate success, depending on their choice of field.

Department Response: The Department modified Final Rule text, as discussed above, regarding the attainment of a recognized postsecondary credential. An "industry credential" is encompassed in the term "recognized postsecondary credential." A job readiness certificate relates to foundational work readiness skills and does not result from occupational skills training. Therefore, the Department did not incorporate language referring to a job readiness certificate in the regulatory text.

Comments: Another commenter requested that the Department include entry-level career preparation training services that are taught or led by regionally accredited secondary-level education programs.

Department Response: The Department determined that career preparation services are not a type of occupational skills training and did not make a change in the regulatory text in response to this comment.

Section 681.550 Are Individual Training Accounts permitted for youth participants?

This section allows ITAs for OSY aged 16 to 24.

The Department received a number of comments about ITAs that resulted in a final regulation change discussed below.

Comments: A number of commenters expressed their support for the allowance of OSY aged 18–24 to use ITAs in the proposed regulations. Many commenters suggested that the allowance of these ITAs is important for youth aged 18–24, as they may be receiving services from multiple WIOA title funding streams. A few commenters expressed their support for the use of ITAs for both ISY and OSY. Further, stating that it would reduce the burden of duplicative administrative work, a few commenters recommended that the proposed regulations be amended to allow ITAs for youth aged 18–24.

A commenter offered that ITAs be expanded to include OSY 16–24 instead of 18–24. This commenter said that individuals who drop out of high school at 16 and have received their high school equivalency, are left dislocated until they reach the age of 18 and can then pursue an ITA, on-the-job training, or a career; therefore this commenter said that lowering the age limit to 16 would allow these youth to remain engaged.

A commenter requested clarification from the Department regarding whether

or not OSY with ITAs would have to use the State permitted Eligible Training Provider List (ETPL) under these proposed regulations.

Two commenters requested clarification from the Department regarding ITAs for OSY. A commenter stated that the proposed regulations indicate that only OSY would be allowed to use ITAs, but that the regulations also include occupational skills training as one of the 14 required youth program elements. This commenter asked the Department to explain what the difference would be in using an ITA or occupational skills services for an ISY who has graduated from high school and wants to pursue a postsecondary education. This commenter further requested guidance from the Department concerning how providers could provide occupational skills training service to all WIOA eligible youth, regardless of whether they are ISY or OSY.

Stating that ITAs can help to close the gap between Federal contracting requirements and individuals with disabilities, a commenter recommended that this section be modified to encourage State and Local WDBs to connect Federal contracts with youth with disabilities and use ITAs for meeting employer requirements.

Department Response: The Department analyzed the comments received and expanded the ITA language to allow all OSY, ages 16–24, access to ITAs. Upon reflection of the above comments, the Department concluded the final regulation change made policy and administrative sense by expanding training options, increasing program flexibility, enhancing customer choice, and reducing paperwork for all OSY. When using youth funds for ITAs, the Eligible Training Provider List (ETPL) must be used. Accessing the ETPL allows the program to avoid further procurement processes.

The Department did not expand ITAs to ISY. However, ISY ages 18 or older may access ITAs through the adult program.

Finally, the Department did not change the regulatory text to encourage State and Local WDBs to connect Federal contracts with youth with disabilities because the request is outside the scope of ITAs. The Department will provide further guidance on youth ITAs and related topics.

Section 681.560 What is entrepreneurial skills training and how is it taught?

This section discusses entrepreneurial skills training, a new program element under WIOA. The Department received a number of comments on the proposed entrepreneurial skills training regulation which resulted in a minor word change in the final regulation as explained below.

Comments: Two commenters expressed their support over the proposed examples of entrepreneurial skills training activity options. In contrast, a number of commenters stated that the Department should not be dogmatic in determining specific methods and processes for how entrepreneurial skills would be taught under the proposed regulations.

Department Response: The Department did not intend to be limiting in the list of ways to develop entrepreneurial skills. To emphasize that this list is not all-inclusive, the Department added the word "may" to the final regulation at § 681.560(a).

Comments: Several commenters provided thoughts on other skills to develop under this program element as discussed in the next several paragraphs.

One commenter shared its support of the inclusion of entrepreneurial skills training, citing the programs it has created in its State and programs that engage with small business centers, suggesting that the Department should use such services and programs for teaching these skills. Another commenter recommended that the Department use Junior Achievement and other organizations in their entrepreneurial skills training services, and stated that the Department also should include presentations and training sessions from local entrepreneurs in their skills training programs.

Similarly, a commenter expressed their support of the inclusion of entrepreneurial skills training in the proposed regulations. This commenter further cited: Experiences that provide individuals with the knowledge of how to start their own business, the creation of a business plan, education on applying for loans and grants for business operations, and experiences related to running a business day-to-day, as potential activities used to teach individuals entrepreneurial skills.

A commenter recommended that healthy relationship skills classes be included in the entrepreneurial training program, stating that building strong and healthy relationships are a key component to being a successful entrepreneur.

In addition, a commenter recommended that Local WDBs use experiential learning programs to teach individuals entrepreneurial skills, stating that using hands-on experiences is most effective for training individuals. Further, this commenter specifically recommended that entrepreneurial skills training include the following: Education assessment and pathway identification; leadership development activities; and soft skills training based on industry demand.

A commenter expressed its support over the inclusion of these skills training, and recommended that it include the development of business plans and lessons on the various ways an entrepreneur can obtain start-up funding.

Department Response: The Department acknowledges the many suggestions about how to local area may provide entrepreneurial skills training in a meaningful, relevant way to youth. The Department will provide technical assistance on this new element.

Comments: A commenter recommended that the Department amend the proposed language so that "enterprise development" is removed as a skill that would be included in this entrepreneurial training, and be replaced with "crowd-funding," sharing that crowd sourced funding would be a more viable option if a youth individual were trying to build a business as he or she would be unlikely to secure a loan.

Department Response: While the Department did not change the regulatory text, the Department agrees with suggestion to include skills such as "crowd-funding" that may be more relevant for the youth population and will address them in future technical assistance.

Comments: A commenter wondered about the reliability of wages for participants in these programs as well as how participants' wages would be tracked, and requested clarification from the Department regarding these issues.

Department Response: The Department notes that the performance indicators for youth engaged in this program element remain the same as the youth performance indicators explained in the joint regulation at 20 CFR part 677 (*see* Joint WIOA Final Rule).

Comments: A commenter requested clarification from the Department about the definition of entrepreneurial skills training and what the requirements are around certification at the program's completion. Similarly, a commenter recommended that the skills and techniques involved with

entrepreneurial skills training should be in line with local postsecondary school curriculums and standards.

Department Response: Postsecondary institutions and other training providers that develop entrepreneurial programs are best positioned to identify standards upon which certificates could be awarded. No changes were made in the regulatory text in response to this comment.

Comments: Another commenter asked the Department if entrepreneurial skills training would only be provided to older youth.

Department Response: Entrepreneurial skills training, similar to the other youth program elements, is available to youth regardless of age and must align with their ISS goals.

Section 681.570 What are supportive services for youth?

This section lists examples of supportive services for youth. The Department received a few comments on proposed §§ 681.570 and 680.900, which discusses supportive services in the context of adult programs. The Department chose to align these regulations which resulted in the addition of "Assistance with books, fees, school supplies, and other necessary items for students enrolled in postsecondary education classes"; and "Payments and fees for employment and training-related applications, tests, and certifications," to the regulation at § 681.570(k) through (l).

Comments: One commenter recommended that the Department include groceries, on-site meals, hygiene products, clothing, and items for postsecondary education courses in the definition of supportive services. Another commenter recommended that transportation be provided to individuals in these programs, and that the transportation services available should include transportation to one-stop centers. This commenter stated that in some areas the one-stop center may be miles away from where the youth providers are located, and reaching these one-stop centers to receive necessary services may be difficult for disengaged or homeless youth. This commenter also recommended that food services (other than food banks and soup kitchens) and subsidized services for document attainment be provided as support services for youth.

One commenter recommended that healthy relationship skills should be included in the workforce development training programs for disconnected youth, including supportive services. This commenter reasoned that relationship skills help participants build crucial interpersonal skills that are valued by employers and specifically mentioned skills including communications, problem solving, conflict resolution, reliability, and teamwork. The commenter also stated that learning healthy relationship skills can help participants prevent unplanned pregnancy and therefore avoid dropping out of school due to pregnancy. A commenter recommended that the Department align supportive services across the youth, adult, and dislocated worker programs. Another commenter strongly supported the inclusion of legal aid services in the Department's list of examples of supportive services in § 680.900, noting that legal aid can uniquely address certain barriers to employment, including access to driver's licenses, expunging criminal records, and resolving issues with debt, credit, and housing.

Department Response: The Department analyzed the suggested additions to supportive services and decided, as noted above, to add three new paragraphs (h), (k), and (l) to the Final Rule. The Department determined that some suggested items such as tutoring, apprenticeship programs, work-place interpersonal skills, work-related hygiene products and clothing attire, and addiction may be encompassed by other program elements. Assistance with transportation is allowable under supportive service. As discussed above, the Department has included legal aid services under the list of supportive services in § 680.900 for the adult and dislocated worker programs; we made a corresponding change to the list of supportive services allowable for the youth program in § 681.570 for the same reason as for the addition to § 680.900 and to align the list of supportive services across programs. Groceries and on-site meals for program participants are beyond the scope of WIOA.

Comments: Citing the language about supportive services in this section, a commenter requested clarification from the Department concerning whether needs related payments are allowed for youth aged 18–24 in WIOA youth services.

Department Response: Yes, the Department affirms that needs related payments are allowed for youth ages 18–24 enrolled in WIOA youth services.

Section 681.580 What are follow-up services for youth?

This proposed section discusses the importance of follow-up services and lists examples of follow-up services for youth.

The Department received a number of comments on this section as discussed below.

Comments: A commenter expressed its support of the proposed regulations in this section and another commenter expressed support citing all of the benefits of follow-up services. Citing the benefits and purposes behind follow-up services, another commenter agreed that follow-up services can be extremely beneficial to youth and help to ensure that they focus on and accomplish their long-term goals. Another commenter expressed their support of the follow-up requirements, but recommended that the Department create and distribute guidance to States regarding how they should document an individual who is unresponsive under the proposed regulations.

A couple of commenters expressed concern over the requirements for follow-up services, suggesting that often when youth no longer access services, they no longer communicate with their providers, regardless of the efforts of the case manager. Therefore, these commenters recommended that States' youth follow-up activities be evaluated on the quality of follow up services provided to engaged youth and not be viewed negatively when follow up does not happen. Further, these commenters recommended that States be allowed to establish policies that when a provider has exhausted all options in an attempt to engage a youth individual in follow-up services with no results, he or she may end follow-up activities. Likewise, one commenter recommended that in instances where the service provider attempts to reach the individual with no contact made for 90 days, he or she should be able to receive an exemption or waiver for needing to provide follow-up services for that individual.

A number of commenters expressed concern with the proposed regulations, suggesting that the language concerning follow-up services should give more flexibility and account for those individuals who have moved and provided no contact information. These commenters recommended that in situations such as those stated above, follow-up contact attempts should end, and the attempts to make contact should be documented. One of these commenters also suggested that if multiple attempts at contact are made with no response, the provider should not be punished for being unable to contact the individual. Further, some of these commenters recommended that the regulations be modified to reduce the 12-month minimum to 6 months. Another commenter stated that follow-up services should allow for decreasing

concentration for follow-up contact with individuals after 6 months after end of enrollment in the program. Further, this commenter stated that text messaging and contact through social media should be considered contact for the purposed of follow-up services. Another commenter recommended the Department not be overly prescriptive with its follow-up services requirements.

Department Response: The Department recognizes the concerns that some youth may not be responsive to attempted contacts for follow-up, and other youth may be difficult to locate making it impossible to provide follow-up services for such individuals. Based on the comments received, the Department has added language to the regulatory text to § 681.580(c) clarifying that follow-up services must be provided to all participants for a minimum of 12 months unless the participant declines to receive follow-up services or the participant cannot be located or contacted. This alleviates the concern expressed by many commenters about youth who are not able to be located or who refuse follow-up. Local programs should have policies in place to establish when a participant cannot be located or contacted. The Department did not incorporate the recommendation to reduce follow-up to 6 months as WIOA sec. 129(c)(2)(I) requires follow-up services for not less than 12 months. The Department will issue further guidance on follow-up services.

Comments: One commenter recommended that the Department create guidance that would allow local areas to establish orientations for youth participants that would inform them of the follow-up services and recommended that the Department provide incentives for an individual's participation in follow-up services. Stating that WIOA does not list all of the youth services offerings as being available for follow-up services, one commenter recommended that all WIOA program services be available for any individual in their follow-up services. Another commenter recommended that follow-up services should begin while an individual is still enrolled in the program, suggesting that follow-up services include supportive and other services that could ensure a participant's success after the program. One commenter noted that the follow-up services listed in this section are significantly more intensive than under WIA and more closely resemble active programming and recommended guidance on managing the transition from active programming to follow-up services, particularly under the proposed definition of "exit" in 20 CFR 677.150 (*see* Joint WIOA Final Rule).

Department Response: At § 681.580(b), the Department clarified which specific program elements may be provided during follow-up. The Department plans to issue further guidance on follow-up services; it will clarify that follow-up services do not trigger re-enrollment in the WIOA youth program.

Comments: Another commenter recommended that the follow-up services provided be concentrated on individuals gaining employment or postsecondary education. A couple of commenters also recommended that the Department clarify that incentive payments and supportive services would be allowed to be provided to youth during the period of follow-up services. Further, a commenter stated that in order to complete follow-up services as they are currently written, youth providers would need to be given additional funding.

Department Response: The Department clarifies in the regulatory text that supportive services are allowed to be provided during follow-up. Incentive payments are covered in § 681.640.

Comments: One commenter recommended adding the following language to this section, "Follow-up plans should be set by youth and their case manager allowing the youth to have an active voice in setting such plans. Follow-up plans for youth should be re-assessed and flexible and may include . . . ," saying that this language would encourage case managers to educate the youth they are responsible for as to the benefit of follow-up services and allow youth to become more engaged with his or her services. This commenter also recommended that youth be able to opt out of their follow-up services due to relocation without negatively impacting the performance scores of their provider.

One commenter recommended that the language that states that follow-up services must be "provided" by youth programs should be amended to say that they must be "offered." Finally, one commenter recommended that during the required 12-month follow-up period, multiple employees be allowed to administer follow-up services.

Department Response: As discussed above, the Department has amended regulatory text to state that follow-up services must be offered to all participants and added language to address participant relocation.

Section 681.590 What is the work experience priority and how will local youth programs track the work experience priority?

The section discusses the 20 percent minimum expenditure requirement on the work experience program element in WIOA sec. 129(c)(4) and how local WIOA youth programs track program funds spent on work experiences and report such expenditures as part of the local WIOA youth financial reporting.

The Department received a few comments on this section as discussed below.

Comments: Multiple commenters expressed their support for this section. One commenter requested that the Department clarify in the proposed regulations that career pathways must lead to a postsecondary credential, and that the requirements for these credentials will be aligned with the current State college and workplace readiness standards in place for each specific State. Another commenter expressed their support for the proposed regulations' emphasis on work experiences; however, this commenter further recommended that the Department clarify in the regulations that youth service providers are strongly encouraged to "coordinate work experiences with employers participating in industry or sector partnerships developed and implemented in the local area."

Department Response: The Department agrees that career pathways in coordination with employers are important. The Department will continue to emphasize employer engagement in career pathways in future guidance or technical assistance. Please see TEN 17–15, building upon its "*Career Pathways Toolkit: A Guide for System Development*" (2015) found at *https://wdr.doleta.gov/directives/attach/TEN/TEN_17-15_Attachment_Acc.pdf.*

Comments: A number of commenters expressed their concerns regarding whether the proposed 20 percent work experience expenditure requirement would include leveraged resources. These commenters stated the requirement would negatively impact the support they receive from non-WIOA funding streams and the proposed language would require them to spend their WIOA funds first on work-based experience programs, which could be detrimental to their ability to attract private funds. Thus, the commenters recommended that the proposed regulations be amended to allow waivers that would allow Local WDBs to count non-WIOA funds towards the 20 percent work experience

expenditure requirement. Similarly, a few commenters recommended that the 20 percent work experience requirement be extended to include other funding sources, instead of relying only on WIOA funds to meet this requirement. Some of these commenters further stated that staff who are engaged in creating these strategies, as well as implementing them, should also be included in the minimum 20 percent expenditure requirement, while another commenters asked the Department to clarify if staffing or administrative costs count toward the expenditure requirement. Likewise, one commenter recommended that the academic component of the work experience requirements can be included in the 20 percent expenditure requirement. Another commenter recommended that the proposed regulations be amended so that the minimum 20 percent work experience expenditure requirement also includes the administrative and recruitment costs spent in order to place an individual in his or her work experience. Conversely, a commenter suggested that staffing costs should not be an allowable expenditure in the minimum 20 percent work experience expenditure requirement; rather, funds should be focused on direct participant costs.

Similarly, the Department received very few comments on § 681.610. One commenter noted that § 681.610 clearly states to not include administration in this calculation which should be made consistent with § 681.590 instead of in a separate section of the regulations. Another commenter recommended that the term "incentives payments" be added to this section in order to ensure consistency. Stating that in many cases local areas utilize funding from a variety of funding sources, a few commenters recommended that Local WDBs should be able to use these funds for the purpose of the costs included in work experiences such as wages for individuals and training, and that these funds should be included in the work experience minimum expenditure requirement.

Department Response: The Department recognizes that it is important to clarify further the types of expenditures that count toward the work experience expenditure rate. The Department issued TEGL No. 08–15 ("*Second Title I WIOA Youth Program Transition Guidance*") in November 2015, which can be downloaded at *http://wdr.doleta.gov/directives/All_WIOA_Related_Advisories.cfm*. The TEGL discussed the types of costs that count toward the work experience expenditure requirement. The Department has added § 681.590(b) that describes the types of expenditures that count toward the work experience minimum expenditure requirement and how to calculate the minimum expenditure requirement. Leveraged resources cannot count toward the expenditure requirement; WIOA sec. 129(c)(4) clearly states that the expenditure requirement is based on WIOA youth funds allocated to the local area. Because the Department has incorporated the language from proposed § 681.610 into § 681.590, the Department deleted proposed § 681.610 and has renumbered proposed §§ 681.620 through 681.660 as §§ 681.610 through 681.650.

Comments: A commenter recommended that the Department allow a transition period for local areas to move funding to comply with the minimum 20 percent expenditure requirement. Another commenter expressed their support of the proposed emphasis on work experience, but recommended that the language be strengthened to emphasize the importance of connecting youth with disabilities to work experiences.

Department Response: The Department did not provide for a transition period for the minimum expenditure requirement as part of its guidance. The Department agrees on the importance of connecting youth with disabilities to work experience opportunities and will emphasize it in future guidance or technical assistance.

Section 681.600 What are work experiences?

The section defines the work experience program element and includes the four work experience categories listed in WIOA sec. 129(c)(2)(C). The Department received a few comments on this section as discussed below.

Comments: A commenter expressed its support for this section, especially due to its inclusion of on-the-job training eservices. Another commenter expressed its support for the proposed language in this section, especially that the inclusion of both academic work experience and occupation training are important for an individual's success. A commenter expressed its support of the inclusion of a variety of activities that could be included as work experience in the proposed regulations, and one commenter expressed its support over the allowance of on-the-job training as an appropriate work experience.

A number of commenters requested clarification from the Department concerning the requirement that work experiences have to include academic and occupational education experiences, whether those education experiences can be provided by the individual's employer, and whether the education experience has to be provided in the individual's workplace. One of these commenters further recommended that these experiences be allowed to take place outside of the traditional workplace and could be provided by an educational provider other than the employer. A few commenters recommended that the language stating, "Work experience must include academic and occupational education" be amended to state, "work experiences must not deter from a participant's academic and occupational education goals. Ensuring all youth receive academic and occupational education is at the forefront of the goals of WIOA," suggesting that the current language's use of the words "and" and "must" may dissuade individuals from participating as they are at high risk and are concerned about feeding their families. A commenter requested clarification from the Department as to whom the occupational and academic training experiences must be provided by and recommended that the regulations allow for the employer to provide these training experiences. Further, this commenter recommended that if these training and educational experiences incur any costs, that they be included in the minimum 20 percent work experience expenditure requirement.

Department Response: Based on comments requesting clarification on the academic and occupational education component of work experiences, the Department has added language to the Final Rule at § 681.600(b) clarifying that the educational component may occur concurrently or sequentially with the work experience, and that the academic and occupational education may occur inside or outside the work site. The Department does not have any requirement about who provides the academic and occupational education, and such education may be provided by the employer. States and local areas have the flexibility to decide who provides the education. Because WIOA states this program element as "paid and unpaid work experiences that have as a component academic and occupational education," the Department does not have the flexibility to amend the regulatory text to the suggested "work experiences must not deter from a participant's academic and occupational education."

Comments: A commenter recommended that the Department remove the following language from the

section, "work experience may be paid or unpaid, as appropriate." The commenter further recommended that the Department should clarify that youth will be protected under the Fair Labor Standards Act and wage and hour laws.

Department Response: WIOA sec. 129(c)(2)(C) states that work experiences may be paid or unpaid. The Final Rule contains language regarding the Fair Labor Standards Act at § 680.180.

Comments: One commenter recommended that the Department clarify skills needs and how to assess skill mismatches. This commenter recommended more updates to the O*NET system and State/local work on job vacancies, analysis of "real time" labor market information, better projections data, new/emerging occupations, and wage record research on use of occupational title enhancements.

Department Response: The Department agrees with the importance of using labor market information to plan work experiences and will continue to encourage its use in future guidance and technical assistance.

Section 681.610 Does the Workforce Innovation and Opportunity Act require Local Workforce Development Boards to offer summer employment opportunities in the local youth program?

This section discusses that while summer employment opportunities are an allowable activity and a type of work experience that counts toward the work experience priority, they are not a required program element as they previously were under WIA. Note that this provision was proposed as § 681.620. However, as noted above, because the Department has incorporated the language from proposed § 681.610 into § 681.590, the Department deleted proposed § 681.610 and has renumbered proposed §§ 681.620 through 681.660 as §§ 681.610 through 681.650.

The Department did not receive any comments on this section. No changes were made to the regulatory text.

Section 681.620 How are summer employment opportunities administered?

This section discusses how summer employment opportunities are administered. Note that this provision was proposed as § 681.630. However, as noted above, because the Department has incorporated the language from proposed § 681.610 into § 681.590, the Department deleted proposed § 681.610 and has renumbered proposed §§ 681.620 through 681.660 as §§ 681.610 through 681.650.

The Department received only one comment on this section. The commenter stated that in rural areas it would be more cost effective for a case manager to arrange work experiences for youth than for the provider to arrange a work experience through the procurement process. This commenter asked for further clarification from the Department regarding whether or not a case manager would arrange a work experience during the school year.

Department Response: As discussed in § 681.400, the Final Rule clarifies that Local WDBs have the option of competitively procuring youth service providers or providing services directly. This additional flexibility will allow case managers to arrange work experiences directly. This section includes language changes to be consistent with the changes in § 681.400, and to make it clearer that the requirements of § 681.400 apply to the selection of youth service providers who administer the work experience program element in a local area.

Section 681.630 What does education offered concurrently with and in the same context as workforce preparation activities and training for a specific occupation or occupational cluster mean?

This section describes the new program element at WIOA sec. 129(c)(2)(E): "education offered concurrently and in the same context as workforce preparation activities and training for a specific occupation or occupational cluster." The Department notes that this provision was proposed as § 681.640. However, because the Department has incorporated the language from proposed § 681.610 into § 681.590, the Department deleted proposed § 681.610 and has renumbered proposed §§ 681.620 through 681.660 as §§ 681.610 through 681.650.

The Department received a few comments on this section as discussed below.

Comments: A few commenters expressed their support for the proposed language, particularly that the simultaneous offering of education service and workforce training can help individuals to gain skills at a much faster pace than if they were engaged in these activities separately. One commenter expressed its support with this proposed language and recommended that the Departments collaborate to ensure that the language in the WIOA title II regulation in 34 CFR 463.37 is aligned with the title I regulation in § 681.630.

One commenter requested clarification from the Department regarding the definitional language in this section. This commenter further stated that the definitions for this program element and the work experience program element need to be amended to provide more distinction between the two if they are meant to be separate.

Another commenter recommended that the Department provide specific examples of "a high-quality, integrated education and training model that requires integrated education and training to occur concurrently and contextually with workforce preparation activities and workforce training." This commenter further recommended a number of such examples. This commenter also suggested that the involvement of youth providers in these activities should help to create relationships between the providers and CBOs.

A commenter suggested the Department include a statement that these educational programs include entry-level workforce preparation and/or preparation for recognized postsecondary education and training activities.

Department Response: The Department plans to provide future guidance on all of the WIOA youth program elements, including the education program element defined in this section. The Department will incorporate in the guidance some examples of high-quality integrated education and training models and ensure consistency with the language in 34 CFR 463.37. While the Department did not incorporate any suggested additions to the regulatory text, it has made minor language changes to this section to make the section clearer.

Section 681.640 Are incentive payments to youth participants permitted?

This section clarifies that incentives under the WIOA youth program are permitted. The Department has included the reference to the Uniform Guidance at 2 CFR part 200 to emphasize that while incentive payments are allowable under WIOA, the incentives must be in compliance with the requirements in 2 CFR part 200. For example, Federal funds may not be spent on entertainment costs. Therefore, incentives may not include entertainment, such as movie or sporting event tickets or gift cards to movie theaters or other venues whose sole purpose is entertainment. Additionally, there are requirements related to internal controls to safeguard

cash, which also apply to safeguarding of gift cards, which are essentially cash. As noted above, because the Department has incorporated the language from proposed § 681.610 into § 681.590, the Department deleted proposed § 681.610 and has renumbered proposed §§ 681.620 through 681.660 as §§ 681.610 through 681.650.

Comments: A couple of commenters expressed support for the allowance of incentive payments for youth, citing the effect they can have on low-income and homeless individuals in WIOA youth services programs as well as the positive effect incentive payments have on YouthBuild programs.

One commenter requested clarification about whether incentive payments would be allowed for activities other than just training and work experiences, and for short-term youth programs. Further, this commenter recommended that the Department give local areas flexibility in the creation of their own policies for providing incentives to youth. Another commenter recommended that the Department allow incentive payments for youth engaging in the literacy and numeracy post-tests for Program Year 2015.

A commenter expressed support of the inclusion of incentive programs and support services for individuals in the WIOA youth program, stating that the eligibility determination process is often difficult for youth as they sometimes struggle to obtain documentation, especially those who have experienced loss or abuse of their identity documentation in the past. Therefore, this commenter recommended providing incentives to youth for maintaining their documentation or attempting to obtain their documentation. Further, this commenter suggested that the Department should provide incentives to youth for providing word-of-mouth marketing to their peers about the WIOA youth services available, as incentives for referrals and recruitments could be very beneficial to the Department's efforts to reach youth.

One commenter expressed concern with this section due to its allowance for incentive payments only under the circumstances of work experience and training activities. This commenter suggested that incentive payments should be granted for achievements such as employment placement and retention, or improvements marked by testing. This commenter recommended that the incentive payments should be granted in those circumstances and not on the basis of engaging in training activities and work experiences. Similarly, a couple of commenters expressed concern with the proposed regulation's allowance of incentives for activities only related to training and work experiences, and recommended that the language regarding incentive payments not be amended from its original form in WIA and suggesting that incentives are needed to reach and engage youth.

Department Response: While the Department recognizes the importance of incentives as motivators for various activities such as recruitment, submitting eligibility documentation, and participation in the program, the Department concluded that incentives must be connected to recognition of achievement of milestones in the program tied to work experience or training. Such incentives for achievement could include improvements marked by testing or other successful outcomes. While WIOA funds cannot be used for incentives for recruitment and eligibility documentation, local areas may leverage private funds for such incentives.

Comments: Another commenter recommended that the Department amend the proposed regulations to allow for incentive payment for ISY who graduate from a regular high school, suggesting the current language is inconsistent in its provision of incentives to students who receive their high school equivalency or GED certificates, but not to those who receive a traditional high school diploma. Further, this commenter recommended allowing for the provision of incentive payment for youth who participate or complete leadership activities, suggesting that not offering incentives for leadership activities will infringe upon the provider's ability to engage youth.

Department Response: There is no specific language in the regulatory text limiting incentive payments to students who receive their high school equivalency. Incentive payments may be provided to both ISY and OSY as long as they comply with the regulations stated in this section.

Comments: One commenter recommended that the Department amend the language at the start of this section in order to make it more encouraging. Specifically, this commenter recommended that the section read, "Incentive programs are crucial to keeping homeless and disconnected youth engaged in programs and should be provided to youth participants for recognition."

Department Response: The Department agrees that incentives can be a critical tool to keep youth participants engaged in the program. However, no changes were made to the regulatory text in response to this comment.

Comments: Another commenter recommended that a definition of incentive payments should be added to this section to retain consistency throughout the proposed regulations.

Department Response: The Department concluded that the existing regulatory text adequately defines incentive payments. No further definition is necessary in the Final Rule. The Department did make minor edits to the first paragraph of the regulatory text to clarify this section.

Section 681.650 How can parents, youth, and other members of the community get involved in the design and implementation of local youth programs?

This section discusses the requirement in WIOA sec. 129(c)(3)(C) for the involvement of parents, participants, and community members in the design and implementation of the WIOA youth program and provides examples of the type of involvement that would be beneficial. The Department also has included in this proposed section the requirement in WIOA sec. 129(c)(8) that Local WDBs also must make opportunities available to successful participants to volunteer to help other participants as mentors or tutors, or in other activities. The Department notes that this provision was proposed as § 681.660. However, as noted above, because the Department has incorporated the language from proposed § 681.610 into § 681.590, the Department deleted proposed § 681.610 and has renumbered proposed §§ 681.620 through 681.660 as §§ 681.610 through 681.650.

Comments: The Department received a few comments on the proposed regulation. One commenter suggested that the language in this section be strengthened to show the importance of including individuals with disabilities in the design and implementation of these programs, stating that their involvement is vital.

One commenter suggested that making opportunities available to youth peer volunteers be removed, and be replaced with language that would make the service an option for Local WDBs to choose to make, suggesting that the supervision and background investigation needed for volunteers to provide services to youth would be potentially too costly for WDBs and therefore shouldn't be a requirement. Another commenter requested clarification from the Department

concerning the extent to which the population and community of an area must be involved in the creation of these programs and services and the type of involvement that is required of them, suggesting that requiring the community to be involved is contradictory to the intent of WIOA, which abolished the requirement of youth councils.

Department Response: No changes were made in the regulatory text in response to these comments. The Department values the input of individuals with disabilities. Nothing in the proposed regulation precludes them from getting involved in the design and implementation of a local youth program. The populations identified in the regulation (parents, youth, and other members of the community) come directly from WIOA sec. 129(c)(3)(C), which clearly states the intent to have them involved in the design and implementation of the programs. The Department understands that this might seem to contradict the law's approach to youth councils; however, this requirement does not have the time commitment and obligatory structures that were required of WIA's youth councils. The Department will provide additional guidance and technical assistance on involvement in youth program design and implementation.

5. Subpart D—One-Stop Center Services to Youth

Section 681.700 What is the connection between the youth program and the one-stop delivery system?

This section describes the WIOA youth program's required role in the one-stop delivery system, and includes examples of the connections between the youth program and the one-stop delivery system.

Comments: Several commenters expressed their support for these provisions and their focus on collaboration across programs and the requirement of WIOA youth programs to serve as a one-stop partner. A number of commenters expressed their support for the regulations' encouragement of partnerships between WIOA youth programs and one-stop centers, suggesting that under WIA the one-stop delivery system was not encouraging of youth engagement. These commenters further recommended that the Department encourage training of one-stop operator staff for effectively serving youth. Similarly, one commenter suggested that this proposed language would require either equipping and training staff at one-stop centers with information on serving youth, or colocation of WIOA youth service providers at one-stop centers.

Department Response: The Department does encourage training of one-stop operator staff and added language to the Final Rule at § 681.700(c) encouraging one-stop center staff be trained to build their capacity in serving youth.

Section 681.710 Do Local Workforce Development Boards have the flexibility to offer services to area youth who are not eligible under the youth program through the one-stop centers?

This section clarifies that Local WDBs may provide services to youth through one-stop centers even if the youth are not eligible for the WIOA youth program.

The Department received a few comments on this section as discussed below.

Comments: One commenter expressed their support of the proposed regulation's requirement that one-stop centers provide services for individuals who are ineligible for WIOA youth programs, suggesting that providing these services would allow for youth to receive services they need while still working to obtain documentation that would make them eligible for WIOA youth services.

A few commenters requested clarification regarding whether WIOA youth program funding would be allowed to support these services at one-stop centers without enrollment and whether Local WDBs would provide youth services if they are ineligible for WIOA title I youth services, and if so, which program would be funded through the provision of those services. These commenters further recommended that the Department give States the authority to use WIOA funding for the purposes of supporting workforce market information and career awareness education to ISY, as is indicated in this section under the proposed regulations. Similarly, one commenter requested clarification from the Department about whether WIOA youth funds could be used to provide support for services if the support is for materials, general information, or relationships with local businesses. This commenter further recommended that the Department allow States to use WIOA youth funds to support general labor market information to promote career awareness for ISY, reasoning that providing this information would help to prepare these ISY for their transition out of school and into their career and/or postsecondary school.

Department Response: While providing labor market information and career awareness are allowable uses of WIOA youth funds, WIOA youth funds may be used to provide services only to eligible youth enrolled in the WIOA youth program. As described in this section, one-stop centers may provide basic labor exchange services such as the ones suggested under the Wagner-Peyser Act to any youth.

Comments: Suggesting that often times individuals who are not eligible for WIOA youth services fall within the eligibility of WIOA adult services, a number of commenters recommended that Local WDBs be required to ensure that youth aged 18–24 have access to one-stop center services and are not simply referred to WIOA youth services instead.

Department Response: The Department agrees that youth aged 18–24 should have access to one-stop center services. The Department has concluded that this recommendation does not necessitate any changes to the Final Rule language and instead, will incorporate this recommendation in future guidance or technical assistance. The Final Rule adopts the provision as proposed.

F. Part 682—Statewide Activities Under Title I of the Workforce Innovation and Opportunity Act

1. Introduction

WIOA provides a reservation of funds from the adult, dislocated worker and youth programs to be undertaken by States, for statewide activities. States have both required and allowable activities to be undertaken on a statewide basis for adults, dislocated workers and youth. These funds support States to innovate, continually improve their comprehensive workforce programs, oversee a public workforce system that meets the needs of job seekers, workers and employers, and contribute to building a body of evidence to improve the effectiveness of services under WIOA. WIOA designates the percentage of funds that may be devoted to these activities from annual allotments to the States—up to 15 percent must be reserved from youth, adult, and dislocated worker funding streams, and up to an additional 25 percent of dislocated worker funds must be reserved for statewide rapid response activities. The up to 15 percent funds from the 3 funding streams may be expended on employment and training activities without regard to the source of the funding. For example, funds reserved from the adult funding stream may be used to carry out statewide youth activities and vice versa.

2. Subpart A—General Description

This subpart describes what is encompassed by the term "statewide employment and training activities." It explains that States have both required and allowable activities to be undertaken on a statewide basis for adults, dislocated workers and youth. States have significant flexibility in the development of policies and strategies for the use of their statewide funds.

Section 682.110 How are statewide employment and training activities funded?

The Governor has authority to use up to 15 percent of the adult, dislocated worker, and youth funds allocated to the State for statewide activities. The regulation provides that the adult, dislocated worker and youth 15 percent funds may be combined for use on required or allowed statewide activities regardless of the funding source. These activities are funded in the same manner as they were under WIA.

Comments: Several commenters expressed concern regarding the appropriation-based restriction of 10 percent availability for the required and allowable statewide activities. These commenters recommended that funding be increased to a level that covers the costs of the required activities and, at a minimum, that statewide funds be fully funded at the 15 percent level. In addition, the commenters recommended that the Department provide a waiver process for States on required activities if the full appropriation is not made available. Several of these commenters also suggested that the required State activities would necessitate resources in excess of Federal funding, and the program therefore could be considered an unfunded mandate. Lastly, one commenter expressed confusion about whether subrecipients may incur costs for administrative functions, as set forth in § 683.215, with statewide activities funds.

Department Response: The allowable percentage of funding for statewide activities is governed by the authorizations and appropriations established by Congress, not by the Department. Furthermore, the regulation contains no unfunded mandates as defined in 2 U.S.C. 658(b). Waivers are covered at §§ 679.600 through 679.620, for waivers to States or local areas in a State, and at §§ 684.900 through 684.920, for waivers relating to Indian and Native American programs. Waivers are considered on an individual basis and granted as appropriate, with such conditions as the Department may require. Subrecipients may incur costs for administrative functions consistent with the administrative cost limitation provisions at §§ 683.205 and 683.215. No changes have been made to the regulatory text as a result of these comments.

3. Subpart B—Required and Allowable Statewide Employment and Training Activities

This subpart first discusses required statewide activities. WIOA continues the activities that were required under WIA, but adds several additional required activities, such as assistance to State entities and agencies described in the State Plan, alignment of data systems, regional planning, and implementation of industry or sector partnerships. Required statewide activities under WIA and continued under WIOA include: Dissemination of information regarding outreach to businesses, dissemination of information on the performance and cost of attendance for programs offered by ETPs, and conducting evaluations.

This subpart also discusses allowable statewide activities. The Department provides States with a significant amount of flexibility in how these funds may be used for statewide activities. States can test and develop promising strategies. The regulation at § 682.210 is not designed to be an exhaustive list, but more illustrative of the types of allowable statewide activities that may be provided with these funds.

Section 682.200 What are required statewide employment and training activities?

Comments: One commenter asked for a definition of "non-traditional training" services and for the statutory basis for the requirement that the ETPL include providers of nontraditional training services. This commenter further stated that § 682.200(b)(5) would require collection and dissemination of cost of attendance information for youth and for on-the-job and other training programs that is exempted from the ETP requirements (WIOA sec. 122(h)), and asked what the statutory authorization was for this requirement. Finally, this commenter asserted that there was a conflict over proposed requirements for these WIOA sec. 122(h) programs/data between proposed §§ 682.200 and 680.340.

Department Response: Nontraditional training is defined as training activities leading to employment in occupations or fields of work in which individuals of one gender comprise less than 25 percent of the individuals so employed. The statutory basis for this definition is found in the definition of nontraditional employment at WIOA sec. 3(37). The statutory requirement for disseminating information regarding the State list of eligible training providers of training services (including those providing non-traditional training services) is found at WIOA sec. 134(a)(2)(B)(v)(I). The Department has revised § 682.200(b)(5) for consistency with §§ 680.490 and 680.530, which specify the reporting requirements for certain providers of training services, such as providers of OJT.

Comments: The commenter stated that there might be a conflict between proposed §§ 682.200 and 680.350 and referred to the title of § 680.350 as "What is meant by 'provision of additional assistance' in the Workforce Innovation and Opportunity Act?"

Department Response: There was no section numbered § 680.350 in the NPRM, and there is no conflict between the requirements of §§ 682.200 and 682.350. However, the commenter may have been referring to the requirement of § 680.340, specifically paragraph (b), which states that the Local WDBs must make available to customers the State list of eligible training providers required in WIOA sec. 122(e), including local area information on work based training providers under WIOA sec. 122(h). This could be read to conflict with § 682.200(b), which includes disseminating the list of ETPs and information identifying other eligible training providers of training as a required statewide activity. There are two sections of WIOA that cover the dissemination of the list of ETPs, secs. 134(a)(2)(B)(v) and 134(c)(3)(F)(ii). The first requires the State to disseminate the list. The latter requires that Local WDBs make the list available through the one-stop centers. Operationally, States are tasked with maintaining the list and disseminating it to the Local WDBs. The task of the Local WDBs is to make sure that this information is readily available through the one-stop delivery system. No changes have been made to the regulatory text as a result of these comments.

Comments: Two commenters also questioned the proposed § 682.200(b)(2) requirement to disseminate information identifying eligible training providers of work-based training, reasoning that disclosing information about employers could negatively impact the working relationships that case managers and business specialists have developed. Further, these commenters stated that if the Governor does not require collection of performance information from these training providers, it is not necessary to provide information about such providers to the public. A separate

commenter expressed concern that the performance reporting requirements could result in disclosure of personally-identifiable information.

Department Response: WIOA sec. 122(h) exempts providers of on-the-job training and other employer-based training from the requirements at WIOA sec. 122(a)–(f). However, the identity of employers that access WIOA funds for employer-based training, as well as any performance information required by the State under WIOA sec. 122(h)(2), may not be kept from the public and is disclosable. This statutory disclosure requirement under WIOA sec. 122(h)(2), which applies to recipients of funds to provide training services, promotes full transparency, reduces instances of conflict of interest, and ensures compliance with the sunshine provisions of WIOA. Performance report made available to the pubic requirements do not include any information that could be considered personally identifiable. There are no names, addresses, dates of birth or Social Security numbers. WIOA sec. 122(d)(4) prohibits disclosure of personally identifiable information without prior written consent of the parent or student. All other comments and responses involving eligible training providers are found at subpart D, §§ 680.400 through 680.530. No changes have been made to the regulatory text as a result of these comments.

Comments: A commenter recommended that § 682.200(b) specify that information about physical and programmatic accessibility for individuals with disabilities (proposed § 682.200(b)(7)) be made available in accessible formats.

Department Response: The requirement to make this information available in accessible formats is already required under the Americans with Disabilities Act and other provisions of WIOA. Therefore, no changes were made as a result of this comment.

Comments: Regarding proposed § 682.200(d), commenters asserted that conducting evaluations is not the best use of limited State funds and recommended that it be an allowable statewide activity or reserved for the Federal government.

Department Response: WIOA provides that evaluation is a required activity. Evaluation as a statewide activity is further discussed under § 682.220. The Department notes that there was a small edit to § 682.200(d) moving the statutory reference to the end of the regulatory text. However, no changes have been made to the regulatory text as a result of this comment.

Comments: One commenter recommended that the Department require that the one-stop delivery system receive technical assistance to help women entering apprenticeship and pre-apprenticeship programs, and recommended that § 682.200(f) be expanded to require technical assistance delivery to all front line and managerial staff at one-stop centers and to provide information on the economic benefits of nontraditional careers to one-stop participants.

Department Response: The Department has determined that there are sufficient references and requirements throughout WIOA and this Rule that provide an improved linkage to apprenticeship and pre-apprenticeship programs and that this specific requirement is not needed. Furthermore, § 682.210(e) already allows for the implementation of programs to increase the number of individuals training for and placed in nontraditional employment. No changes have been made to the regulatory text as a result of these comments.

Comments: A commenter recommended that § 682.200(f) specifically include individuals with disabilities in its statement of the requirement that States assist in local staff training to provide opportunities for individuals with barriers to employment. Also with regard to § 682.200(f), this commenter recommended that States should examine Federal contractors doing business in their States, as doing so is particularly important for job seekers with disabilities because of the regulations implementing sec. 503 of the Rehabilitation Act of 1973, as amended, at 41 CFR part 60–741.

Department Response: Individuals with disabilities are a target population of WIOA. The Department has determined that the reference to barriers to employment sufficiently includes individuals with disabilities based on the statutory definition contained in WIOA sec. 3(24)(D). With regard to States examining Federal contractors doing business in their area, they must follow the regulations governing the Rehabilitation Act of 1973, as amended. No changes have been made to the regulatory text as a result of these comments.

Comments: Regarding proposed § 682.200(g), several commenters recommended that the Department clarify how States are required to "assist" local areas. One commenter requested clarification of what it means to assist local areas in regional planning and service delivery, and whether this includes financial assistance.

Department Response: States must "assist" local areas through a variety of methods. This will include the provision of technical assistance, compliance assistance, strategic planning initiatives, or other activities designed to improve or enhance the workforce development system at the local level. The Department declines to define explicitly "assist" further. Doing so might limit the types of technical assistance and other efforts that a State may seek to provide. With regard to the provision of financial assistance, yes, an allowable use of statewide activities funds under § 682.200 could include financial assistance related to regional planning efforts.

Comments: Regarding proposed § 682.200(h), a commenter recommended that the Departments issue additional guidance on implementation of the industry or sector partnerships that are a required activity at the State and local levels. This commenter also expressed concerns that the NPRMs provided little guidance on how States and local areas can meet their statutory requirements with respect to industry or sector partnerships. This commenter predicted that limited instruction may lead to confusion and delayed implementation among stakeholders. A separate commenter recommended an emphasis on the needs of and opportunities for immigrant and Limited English Proficient workers and business owners.

Department Response: The Department is committed to the successful implementation of industry and sector partnerships throughout the nation's workforce development system. To accomplish this, significant technical assistance activities will occur in this area. The Department has strategically chosen not to further define the requirements around industry and sector partnerships in regulations as effective models and solutions are likely will evolve over time. Instead, the Department's efforts will be focused on the collection and dissemination of promising practices from States and local areas that have already developed successful models. The Department has determined that rather than a lack of instruction leading to confusion or delay, a lack of a more rigid definition will provide for the highest level of innovation possible. Additional guidance may be issued on this topic in the future. In addition, the Department will support various technical assistance efforts focusing on industry and sector partnerships based on successful models from around the

nation. Furthermore, there is no need to place additional emphasis on immigrant and Limited English Proficient populations since these individuals would generally be included in the definition of those with barriers to employment, whose needs are already emphasized throughout WIOA. No changes have been made to the regulatory text as a result of these comments.

Comments: A commenter recommended that § 682.200(k) clarify that providing "additional assistance" to local areas with a high concentration of eligible youth may include creation of a central coordinating body or use of a "qualified intermediary" defined as an entity with a demonstrated expertise in building partnerships. The commenter stated that qualified intermediaries serve an important role by streamlining services and filling gaps in support and services. Further, this commenter recommended that the Department clarify that "additional assistance" includes supporting development of credit transfers and articulation agreements between local education agencies (LEAs) and institutions of higher education within the State. The commenter reasoned that these programs bridge the connection between academics and career preparation, as well as between secondary and postsecondary school education.

Department Response: WIOA allows States to engage in any of the activities described by the commenter, as the provision of additional assistance under § 682.200(k). The regulation requires States to assist local areas with high concentrations of eligible youth. The assistance needed is likely to vary from local to local. This assistance might be provided in the areas of program design, partnering, resource sharing, and other areas. Providing a definitive list of assistance or specific examples might be limiting. Instead, the Department will continue its focus on technical assistance and regular guidance in the area of youth services. No changes have been made to the regulatory text as a result of these comments.

Comments: One commenter requested that the Department develop a common intake at the Federal level that covers all required partners and test it for customer satisfaction. Similarly, another commenter asked if States would be developing and disseminating common intake procedures and related items, including registration processes, across core and partner programs.

Department Response: Given the variety of State and local workforce development systems, a single, Federally mandated common intake process is not feasible. However, the Department remains committed to working with the Federal partners to limit the duplication of effort among and between core and partner programs relative to service design and eligibility requirements. The States are best positioned to develop common intake procedures through the State WDB. No changes have been made to the regulatory text as a result of these comments.

Section 682.210 What are allowable statewide employment and training activities?

In addition to the required statewide activities, States are provided with significant flexibility to innovate within the public workforce system with various allowable statewide employment and training activities. These allowable activities are vital to ensuring a high quality public workforce system, and can be used to ensure continuous improvement throughout the system. This regulation is not designed to be an exhaustive list, but more illustrative of the types of allowable statewide activities that may be provided with these funds. The Department has made a clarifying edit at the beginning of § 682.210.

Comments: A commenter expressed support for proposed § 682.210(c) because it emphasizes the State's role in developing and implementing strategies for serving individuals with barriers to employment and encourages States to partner with other agencies to coordinate services among one-stop partners. This commenter asserted that Governors have a vital role in coordinating different funding sources for training to enable effective service delivery. Another commenter supported the flexibility in § 682.210 for the types of statewide activities that States can implement using the Governor's Reserve. However, this commenter recommended that the Department amend this section or provide additional guidance to encourage States to consider programs that will help align core WIOA title I programs with one another and with title II programs (*e.g.,* career pathway programs and technology access programs). A separate commenter also expressed support for the Departments to issue guidance on the alignment of WIOA title I and title II services directed to immigrant and Limited English Proficiency individuals, and additionally in support of formal guidance affirming that all individuals with work authorization, including immigrant youth with Deferred Action for Childhood Arrivals (DACA) status, are eligible to participate in title I programs.

Department Response: The Department agrees that the Governors have a vital role in coordinating the different funding sources for training available in their State. Furthermore, the Department has concluded that this role extends well beyond WIOA and should include the coordination of all funding sources (Federal, State, foundations, etc.) available within the State. Additional guidance will be issued by the Department, outside of the regulations, to help Governors strengthen alignment of all programs contained under WIOA and all those related to workforce development. Based on the planning requirements at the State, regional and local level already contained in this regulation, the Department has determined that a change to this section is not warranted. Nothing in this statute or regulations prohibits States from acting independently to align the programs covered under WIOA or outside of it. WIOA and the implementing regulations provide only the minimum of what States must do to be compliant. WIOA and regulations should be seen as a starting point for further alignment of the workforce development, economic development, and educational systems within a State. With regard to youth with DACA status, the Department will consider issuing guidance as necessary. No changes have been made to the regulatory text as a result of these comments.

Comments: A commenter recommended that § 682.210 specify how activities can target individuals with disabilities wherever possible (*e.g.,* in paragraphs (c), (k), (m), and (n)(2)). Further, this commenter recommended that the Final Rule specifically identify State programs relating to intellectual and developmental disabilities, Statewide Independent Living Councils, and centers for independent living so that they are not overlooked in program coordination. In regard to developing strategies to serve individuals with barriers to employment as permitted by proposed § 682.210(c), this commenter detailed several core areas for States to focus their partnership building efforts, including supporting businesses in their efforts to employ individuals with disabilities, building capacity of front line staff to implement evidence-based practices in serving employees with disabilities and the employers who hire them, and preparing youth with disabilities for careers that use their full potential.

Department Response: The Department agrees that coordination

between and among the organizations listed by the commenter and the State and local workforce development systems are essential to improving services to individuals with disabilities. However, the Department has concluded that there is no need to list these organizations specifically in the regulatory text, and that each State and local area is uniquely positioned to determine which of these organizations and programs are included in their planning processes and service delivery models. However, the Department notes that WIOA sec. 3(24) defines "individual with a barrier to employment" to include "individuals with disabilities," and reminds the public that the emphasis throughout WIOA and this regulation on including, and tailoring services to meet the needs of, individuals with barriers to employment encompasses an emphasis on including, and tailoring services to meet the needs of, individuals with disabilities and other barriers to employment. By extension: the regulatory text at § 682.210(c), (k), and (m) should be understood to include programs carried out by local areas for individuals with disabilities. The Department also agrees that WIOA requires training for front-line staff and the identification and dissemination of promising practices on all areas of workforce development, including the provision of services to individuals with disabilities, including youth. [WIOA secs. 107(d)(11)(B), 108(b)(6)(C), and 134(a)(2)(B)(i)(IV).] No changes have been made to the regulatory text as a result of these comments.

Comments: Regarding the NPRM preamble discussion of § 682.210(d) and (e), a commenter requested that the Department clarify the term "real-time labor market analysis," commenting that real-time LMI is a commonly used term that often refers to current data but that the term has a lot of associations that are not well-defined in terms of data items, levels, and area of detail.

Department Response: Traditional labor market information (LMI) is based on data gathered through Federal and State surveys and administrative data. These surveys typically utilize rigorous sampling criteria and careful sampling frames. Traditional LMI provides significant insight into labor market trends and indicators, but the process of gathering the data is time-consuming and results in unavoidable lag-time for publication. Real-time labor market analysis, also referred to as real-time LMI, utilizes online job postings that are aggregated daily. Given the ever-increasing use of technology in the LMI field, the Department has determined not to define the term "real-time labor market analysis." The Department has supported previous evaluations and research products on real-time labor market analysis all of which are available online through the Web site of the Employment and Training Administration at *www.doleta.gov* and through the Workforce GPS platform at *www.workforcegps.org*. No changes have been made to the regulatory text as a result of these comments.

Comments: Two commenters supported including NFJP grantees among entities with access to Governors' 15 percent set-aside funds for statewide activities.

Department Response: NFJP grantees are awarded funds through various grant programs. Furthermore, there is no restriction on additional partnerships that States can make with NFJP grantees under the statewide activities section. The Department has concluded that a special reference to NFJP grantees is not warranted and no changes have been made as a result of these comments.

Comments: A commenter suggested that statewide activities funds should be accessible to a labor/management training fund of which the employer is a contributing member, and that apprenticeships should be an approved expense for incumbent worker training.

Department Response: The regulation does not restrict the States from engaging in the activities described by the commenter related to labor/management training funds and apprenticeship. The types of programs and partnerships that a State chooses to enter into are best left to the individual State WDBs to meet the specific workforce needs in their State. No changes have been made to the regulatory text as a result of these comments.

Comments: A commenter recommended that Governors be authorized to approve automatically public higher education schools as eligible training providers under WIOA, in a similar manner to the authority for automatic approval of apprenticeship programs. The commenter further urged that such approval should cover all programs of study and that the school not be subject to initial or subsequent designation.

Department Response: WIOA does not provide the authority for this type of automatic designation, so no changes have been made as a result of this comment.

Section 682.220 What are States' responsibilities in regard to evaluations?

Comments: The Department received a number of comments on the proposed regulations in § 682.220, concerning State responsibilities on evaluations under WIOA sec. 116(e) and the required use of State set-aside funds under WIOA sec. 129(b)(1)(A) and sec. 134(a)(2)(B)(vi) to conduct evaluations. Several commenters were supportive of provisions in this section, with one commenter expressing optimism about the possibility of States conducting longer-term impact studies of Vocational Rehabilitation. Another commenter supported the development of evaluations "to explore innovations surrounding integrated systems, coordinated services, career pathways, and multiple forms of engagement with businesses." However, many comments were critical of the requirements that States conduct evaluations using the State set-aside funds and provide data for Federal evaluations.

Regarding States' conducting their own evaluations, commenters cited a lack of sufficient funds from the Governors' set-aside as well as a lack of staff capacity. One commenter stated that the requirement "ignores the funding reality" and, along with other commenters, emphasized the many competing requirements for which set-aside funds must be used—a problem noted to be particularly acute in States with a small amount of set-aside funds. The commenters also noted that many States lack staff with requisite knowledge and skills to conduct an evaluation and cannot afford to use consultants. Three commenters noted that, with the exception of evaluations conducted and published by a few States, there is no "established broad-based record of State knowledge of research principles sufficient to effectively manage an evaluation agenda under WIOA." To remedy this situation, commenters suggested that States receive dedicated funding and Federal support to build their evaluation infrastructure and that the Department waive or suspend the requirement to conduct evaluations until States have sufficient funding and skills, and that the Department should assume primary responsibility for conducting evaluations. Another commenter suggested that conducting evaluations should be an allowable not a required statewide activity.

Department Response: The Department acknowledges that States must balance many priorities in their use of the set-aside, including multiple required activities. The lack of sufficient funds (in the set-aside or from a dedicated funding stream of some kind) to conduct evaluations, as well as lack of staff capacity or, in some cases, lack of available or reliable data, will

constrain many States' ability to conduct evaluations. However, WIOA sec. 129(b)(1)(A) and sec. 134(a)(2)(B)(vi) require States to use funds reserved by the Governor for statewide activities to conduct evaluations. Further, the Department has determined that State-conducted evaluations have the potential to be of great practical value to States, including informing service delivery strategies, improving performance, and meeting other requirements under WIOA. For example, evaluation could be used to assist State WDBs in systematically identify promising or proven practices, as required under § 679.130(e), or for analyzing data on the quality, effectiveness, and/or assist the State to prepare its strategic planning process under 20 CFR 676.105 (*see* Joint WIOA Final Rule). It could further be used for exploring, with other State agencies, how well integration and coordination of services and data systems is proceeding. Therefore, the regulations retain the requirement that States conduct evaluations.

Given the problems identified by commenters, the Department sees the development of States' capacity to conduct evaluation projects as a long-range and iterative process, which the Department intends to aid through various forms of technical assistance and guidance. An initial, primary goal is to enhance capacity by building knowledge among State staff regarding various methodologies, approaches for enlisting expertise, and the potential role of evaluations and research in meeting State goals and priorities. Further, the regulations at § 682.220(e) and (f) identify areas for State discretion in the methodology, duration and funding of evaluations, all of which may assist States to target their investment in a manner appropriate to the funding available to the State. The paragraphs describe flexibilities that States may use to leverage other funding, and to conduct such evaluation over multiple program years.

Despite flexibilities as to the types of evaluation, methodologies, phases, duration, and funding sources, some States may still be unable to fulfill the requirement to conduct evaluations and seek a waiver. Such a waiver request, like others submitted to the Department in regard to statutory provisions of WIOA, will be reviewed on a case-by-case basis, and will be subject to any appropriate conditions and limitations of the Secretary's waiver authority and procedures found at WIOA sec. 189(i)(3), and consistent with §§ 679.610 and 679.620. No changes have been made to the regulatory text as a result of these comments.

Comments: Several commenters objected to annual submission of evaluation reports, which they felt too excessive, given the requirements for annual submission of performance reports. One commenter suggested that States should instead make available to the public and to State and Local WDBs evaluation and research reports prepared by Federal evaluators with State-specific comments, in line with suggestions that evaluation be primarily a responsibility for the Federal government.

Department Response: While WIOA sec. 116(e)(3) requires the State to annually prepare, submit, and make available to the public reports containing the results of evaluations conducted using State set-aside funds, the Department recognizes that evaluations may be lengthy and not end neatly within a program year. For this reason, the regulation has been revised to clarify that the reports are to be prepared, submitted to State and Local WDBs, and made available to the public when results become available. The revision to the regulation at § 682.220(c) is described in more detail below. Also, since States retain the responsibility to disseminate reports on State-conducted evaluation, the Department declines to adopt the suggestion that States only distribute Federal evaluations with State comments.

Comments: Several commenters were critical of the regulation to implement the requirements in sec. 116(e) that States cooperate to the extent practicable in evaluations conducted by the Departments of Labor and Education (under WIOA secs. 169 and 242 and relevant sections of the Rehabilitation Act of 1973) by providing data, responding to surveys, allowing timely site visits, and informing the Secretary in writing if such cooperation was not practicable. A few commenters asserted that quantitative data was already available because the data elements and narrative reports provided to the Department and the other Federal agencies should provide an ample source of statistical data for evaluators without interrupting individual States with data requests. The commenters indicated that States' responsibilities regarding evaluations and research are only "to allow on-site observation and in limited circumstances provide supplemental qualitative data." Another commenter felt that the regulations were "adversarial" and would result in minimum levels of cooperation from States. The commenter stated that the regulation did not define the term "to the extent practicable," but noted that in the UI regulation, it is defined as non-interference "with the administration of State UC law." The commenter also stated that the Department's "intrusion into State evaluation activities is by its very nature 'interference' with non-UI State agency functions, since it is carried out pursuant to "adversarial rules" and for this reason, needed to be withdrawn.

Department Response: The Department notes that the regulation at § 682.220(d) implements a statutory requirement under WIOA sec. 116(e)(4) requiring State cooperation, to the extent practicable, in Federal evaluations. WIOA sec. 116(e)(4) specifically identifies such cooperation as including the provision of data and survey responses, and allowing site visits in a timely manner. As noted in the preamble to the NPRM, this requirement in WIOA sec. 116(e)(4) recognizes the vital role of States in providing various forms of quantitative and qualitative data and information for Federal evaluations that are not available at the Federal level. In order to conduct evaluations, individuals need to be tracked over time periods that do not align well with quarterly performance reporting. Depending on the research questions an evaluation is addressing, data on the same individuals or cohorts of individuals may be needed for timeframes within the same quarter or across multiple quarters, neither of which is feasible to track or match within the performance reporting structure of WIOA. High quality evaluations also involve the collection of data on control or comparison groups of individuals, so supplemental data may be needed to account for this. Frequently, individual level earnings information is critical for evaluations. Data, survey responses, and site visit information are often needed to understand, for example, participant characteristics, services, systems, labor market outcomes, the role of decision-makers, implementation issues, and the quality of the customer experience. In response to the commenters' suggestions, the Department notes that States may, in response to data requests for a Department of Labor or a Department of Education evaluation, identify other data already provided to the Federal government and of possible use in the evaluation, and the Departments will work with the State to determine if the other data are suitable. However, no change to the regulatory text has been made in response to the comments.

Further, the Department disagrees with the characterization of these

regulations, which implement a statutory requirement by requiring cooperation to the extent practicable, as adversarial or as interference. The Department also declines to further define "to the extent practicable" in the regulation. Rather, if a State determines that timely cooperation in data provision is not practicable, the State may proceed according to § 682.220(d)(3) and identify in writing the reasons it is not practicable, and cooperate with the Department to develop a plan or strategy to mitigate or overcome the problems preventing timely provision of data, survey responses and site visits, as statutorily required. The requirement at § 682.220(d)(3) was intended to afford a relatively easy method for communicating with the Department and allowing for an amicable resolution of any problems. No changes have been made to the regulatory text as a result of these comments.

Comments: Several comments were received regarding promoting specific evaluation and research projects to be conducted at the State level under sec. 116(e) or at the Federal level under sec. 169 (which sets forth the Department's role in evaluation and research and authorizes a wide array of studies). One commenter recommended that the regulations require States to focus evaluations on services to individuals with disabilities under WIOA title I and that customer feedback be developed from this population be developed to determine if programs are truly responding to their needs.

Department Response: The Department notes that while these proposed specific evaluation and research projects are permissible and desirable, WIOA sec. 116(e) allows States to determine the content of any evaluation. The Department will not reduce the States' flexibility by requiring particular evaluation or research projects. No changes have been made to the regulatory text as a result of these comments.

While the Department did not promulgate regulations for WIOA sec. 169, the Department is addressing comments relating to Departmental evaluation and other research activity, since it is similar to the evaluation functions required of States under WIOA sec. 116(e). There are no changes to the regulatory text as a result of these comments. The comments and the Department's response are as follows.

Comments: Several commenters expressed support for the requirement under WIOA sec. 169(b)(4)(I) that the Department conduct a multi-State project to develop capacity for, implement, and build upon career advancement models and practices for low-wage health care providers and providers of early education and child care.

Department Response: The Department notes that it has conducted and is currently engaged in research and evaluation projects related to career pathways programs in health care and child care occupations. Separately, the Department notes that developing and implementing career pathways is a function of State WDBs and Local WDBs under WIOA sec. 101(d)(3)(B) and sec. 107(d)(5)and has been promoted by ETA in guidance and various forms of technical assistance to the public workforce system.

Comments: Another commenter suggested that the regulations state that the Department undertake research into women's representation in nontraditional jobs covering and the means by which barriers to women's employment in these occupations can be removed. The commenter also suggested that guidance eventually be issued on the content of such studies and offered example of topics that could be covered in them, such one-stop capacity, training, and policies in regard to nontraditional careers for women.

Department Response: The Department notes that it is currently conducting a research project, under prior legislative authority, on employment in nontraditional occupations in order to identify, and evaluate evidence-based strategies to increase opportunities for traditionally under-represented groups.

For the convenience of the reader in understanding the totality of the regulation at § 682.220 and the changes made in the section, each part is discussed sequentially below. The revisions entailed reorganizing portions of the section to clarify the requirements and flexibilities for States, all in response to comments and to ensure conformity with statute.

In particular, the revisions reflect the distinction between the requirement that States conduct *evaluations* of title I core program activities (as per WIOA secs. 129(b)(1)(A) and 134(a)(2)(B)(vi)) and the permissible ability of States to conduct *research and demonstration projects* as an allowable statewide activity under WIOA secs. 129(b)(2)(A) and 134(a)(3)(A)(ix) Accordingly, the title of this section has been revised as "What are States' responsibilities in regard to evaluations?," with the concluding phrase "and research" removed. Likewise, the phrases "evaluations and research projects" and "evaluations and other research" have been consistently revised throughout this section to refer only to "evaluations." These revisions ensure that the requirements of § 682.220, including the coordination and reporting requirements, apply only to evaluations conducted as a required statewide activity. It should be noted that these the provisions of § 682.220 do not apply to research and demonstration projects conducted as an allowable statewide activity.

The Department made a number of revisions to the regulatory text to clearly identify certain options that States may, but are not required to, use in fulfilling the statutory requirement to conduct evaluations as a statewide activity. Some of these options were identified in the NPRM, while others have been developed in response to comments received. In order to distinguish between regulatory requirements and regulatory flexibilities, this section has been reorganized so that these options are now stated in revised § 682.220(e) and in the new § 682.220(f).

Section 682.220(a)

Section 682.220(a) describes the requirement under WIOA sec. 134(a)(2)(B)(vi) for States to use funds reserved by the Governor for statewide activities to conduct evaluations of activities under the WIOA title I core programs, according to the provisions of sec. 116(e). The paragraph has been revised to state that the purpose of evaluations is "to promote continuous improvement, research and test innovative services and strategies, and achieve high levels of performance and outcomes." The first and third purposes—promoting continuous improvement, and achieving high levels of performance and outcomes—reflect the statutory requirement of WIOA sec. 116(e)(1). The second purpose, as proposed by the Department in the NPRM, was to test innovative services and strategies. It has been revised to reflect the reality that rigorous tests of such services and strategies often are preceded or accompanied by related forms of research. This section has also been renumbered from § 682.220(a)(1) to § 682.220(a).

The paragraph proposed as § 682.220(a)(2) has been deleted. This paragraph was deleted to avoid any confusion about research and demonstration projects conducted as an allowable statewide activity, to which the provisions of § 682.220 do not apply. Also, § 682.220(a)(3), regarding the use of funds other than the Governor's Reserve, has been revised and relocated to a new § 682.220(f), as discussed below.

Section 682.220(b)

The regulations under § 682.220(b) describe a number of requirements for evaluation under the State Set-aside. The language at § 682.220(b) was revised from that in the NPRM to remove the reference to "research projects" and thus to clarify that the requirements are statutorily required only for evaluations. In addition, the Department made a technical revision to replace the reference to evaluations "funded in whole or in part with WIOA title I funds" with a reference to evaluations "conducted under paragraph (a)." The language was revised to clarify that the requirements in paragraph (b) apply to evaluations conducted pursuant to paragraph (a).

Paragraph (b)(1) of this section implements the statutory requirement for States to coordinate and design evaluations in conjunction with State and Local WDBs and with other agencies responsible for core programs, as set forth in WIOA sec. 116(e)(2). Paragraph (b)(2) implements the requirement for States to include, where appropriate, analysis of customer feedback and outcome and process measures in the statewide workforce development system, as set forth in WIOA sec. 116(e)(2). Where the Department requires specific information related to these requirements, it will do so through the ICR process. Paragraph (b)(3) implements the requirement for States, in conducting evaluations, to use designs that employ the most rigorous analytical and statistical measures such as the use of control groups, as set forth in WIOA sec. 116(e)(2). The regulation clarifies that these approaches should be used when appropriate and feasible, thus indicating they are not intended as a "one-size-fits-all" checklist of requirements for every evaluation project. Paragraph (b)(4) implements the statutory requirement set forth in WIOA sec. 116(e)(1) for States, to the extent feasible, to coordinate the State's evaluations with those provided by the Secretary of Labor and the Secretary of Education under the particular statutes as cited. These paragraphs are adopted as proposed.

Section 682.220(c)

Section 682.220(c) implements the statutory requirement for States to annually prepare, submit, and make available reports containing the results of the evaluations the States conduct, as set forth in WIOA sec. 116(e)(3). The Department has made two revisions to this section. First, as noted above, in response to comments received, the Departments has clarified that States must prepare, submit to the State and Local WDBs, and disseminate to the public results from these evaluations "as available." The Department recognizes that when evaluations are conducted over multiple program years, as permitted in revised paragraph (e)(3), results may not be available in every program year. Evaluation reports must be made publically available during the program year the final report is finalized. In light of the options States have in terms of the components and time needed for evaluations as clarified in § 682.220(e)(3), evaluations may extend into multiple program years. Second, the Department has revised this section to remove any reference to "other research" to avoid any confusion with research as an allowable statewide activity, for which the reporting requirements are not statutorily required under WIOA. However, the Department, in recognition of the benefits of disseminating research, strongly encourages States to make publicly available the reports emanating from such other research that States conduct.

Section 682.220(d)

Section 682.220(d) implements the statutory requirement for States to cooperate, to the extent practicable, in evaluations and related research projects conducted by the Secretaries of Labor and Education. The Department has made minor revisions, for the sake of clarity, to three aspects of this section. First, the Department has removed the reference to the "agents" of the "Secretaries of Labor and Education" because a reference to the Secretaries always implicitly includes their agents, such as sub-agencies, contractors, or grantees. Second, the Department has replaced the reference to "sec. 116(e)(4) of WIOA" with a reference to the "laws cited in paragraph (b)(4) of this section." This revision is non-substantive as the laws cited in paragraph (b)(4) of this section are those noted under sec. 116(e)(4) of WIOA, intended to simplify the language of the regulation.

Paragraph (d)(1) of this section describes the particular data, information, and assistance that States must timely provide in cooperation with evaluations and related research projects conducted by the Secretary of Labor and Secretary of Education. Paragraph (d)(2) describes the requirement for the States to encourage cooperation in data provision by one-stop partners at the local level. Paragraph (d)(3) describes the requirement for the Governor to provide written notification to the Secretary if it is not practicable for the State to timely provide the data described in paragraph (d)(1).

No comments were received regarding these paragraphs. However, paragraph (d)(2) has been revised to correct an erroneous reference to paragraph (f)(1)(a)–(c) to the appropriate citation to paragraphs (d)(1)(i)–(iv). These paragraphs are adopted as proposed, with the described revision.

Section 682.220(e)

Section 682.220(e) has been revised to identify allowable flexibilities in the types of studies, phases, and time frames that are available to States in fulfilling their obligation to conduct evaluations, all in response to the concerns expressed in the comments about this requirement.

Paragraph (e)(1) of § 682.220 clarifies that under WIOA sec. 116(e)(1) States, while required to use set-aside funds to evaluate activities under title I core programs, are permitted to conduct evaluations that jointly examine activities under title I and those under other core programs, so long as such evaluations are developed and designed in coordination with the relevant State agencies responsible for core programs under § 682.220(b)(1). Examples of evaluations of activities under multiple core programs include studies of referral processes, systems integration, or infrastructure cost sharing among the core programs.

Paragraph (e)(2) provides a new flexibility to permit States to conduct evaluations similar to those authorized for, or conducted by, the Departments of Labor and Education under the laws cited in § 682.220(b)(4), and cites as examples "process and outcome studies, pilot and demonstration projects that have an evaluative component, analyses of programmatic data, impact and benefit-cost analyses, and use of rigorous designs to test the efficacy of various interventions."

Paragraph (e)(3) was added to clarify flexibilities for States to conduct evaluations over multiple program years, involving multiple phases "such as a literature or evidence review, feasibility study, planning, research, coordination, design, data collection, and analysis, and report preparation, clearance, and dissemination." As noted above, the Department has added these flexibilities for States since, based on its own experiences in conducting evaluations, which have often entailed many such components and extended over multiple years.

Section 682.220(f)

Section 682.220(f) describes allowable flexibilities for the States in funding evaluations in the use of funds from sources other than the State set-aside. Section 682.220(f)(1) permits States to use funds from any WIOA title I through IV core program to conduct evaluations, as determined through the coordinative processes associated with paragraph (b)(1). This paragraph was, for the sake of clarity, relocated from § 682.220(a)(3) of the NPRM. Further, consistent with the decisions discussed above, the reference to "other research" was removed. The Department also revised the paragraph to clarify that States may use funds from any WIOA title I through IV core program (per WIOA sec. 116(e)(1)); the NPRM had referred to only title II through IV core programs. This revision clarifies that, while States must conduct evaluations using State set-aside funds under WIOA secs. 129(b)(1)(A) and 134(a)(2)(B)(vi)), they may additionally use available funds from other core programs for such evaluations. This flexibility may be of particular interest to States planning evaluations that jointly study WIOA title I core program and other core program activities (a flexibility identified in § 682.220(e)(1) above).

Section 682.220(f)(2) permits States to use or combine funds, consistent with Federal and State law, regulation and guidance, from other public or private sources, to conduct evaluations relating to activities under the WIOA title I through IV core programs. Such projects may include those funded by the Department of Labor and other Federal agencies, among other sources. This section was initially located at § 682.220(e) of the NPRM. In response to concerns expressed by commenters, the Department has revised this section slightly by adding language to clarify that these additional public or private funding sources can include Department of Labor or other Federal agencies' grants, cooperative agreements and contracts. The Department has also revised this section, consistent with the decisions discussed above, to remove the reference to "research, and other demonstration projects."

4. Subpart C—Rapid Response Activities

Introduction

This subpart discusses the important role that rapid response plays in providing customer-focused services to both dislocated workers and employers, ensuring immediate access to affected workers to help them quickly re-enter the workforce. The regulations reflect the lessons learned from the innovations by, and best practices of, various rapid response programs around the country in planning for and meeting the challenges posed by events precipitating substantial increases in the number of unemployed individuals in States, regions, and local areas. The regulations provide a comprehensive framework for operating successful rapid response programs in a way that promotes innovation and maintains flexibility to enable States to manage successfully economic transitions.

The Department is making a technical correction to § 682.300(a). Proposed § 682.300(a) made reference to rapid response being discussed in §§ 682.310 through 682.370. The reference to § 682.310 is corrected to reflect § 682.300. This technical correction makes it clear that the regulatory text in § 682.300 also is intended to be included in the description of rapid response.

The remaining analysis that follows provides the Department's response to public comments received on the proposed part 682 regulations. If a section is not addressed in the discussion below, it is because the public comments submitted in response to the NPRM did not substantively address that specific section and no changes have been made to the regulatory text. Further, the Department received a number of comments on this part that were outside the scope of the regulation and the Department offers no response. Lastly, the Department has made a number of non-substantive changes to correct grammatical and typographical errors to improve the readability and conform the document stylistically that are not discussed in the analysis below.

Section 682.300 What is rapid response, and what is its purpose?

Section 682.300 describes rapid response, which promotes economic development and vitality and delivers critically important solutions to workers and businesses in transition.

Comments: The Department received comments on other areas of part 682, subpart C, relating directly to rapid response, (*e.g.*, comments received on § 682.330(i) regarding Trade Adjustment Assistance (TAA) and a comment regarding Worker Adjustment and Retraining Notification (WARN), both discussed later in this preamble). The nature of some of these comments led the Department to conclude that clarifying information is needed regarding the circumstances under which rapid response must be delivered as well as the term "mass layoff."

Department Response: In order to provide this clarification, the Department made the following revisions to § 682.300 and other sections of subpart C: (1) The Department made a correction to the regulatory text in several places by adding the word "mass" to the text in §§ 682.330(j) and 682.350 to align the regulatory text with the statutory language in WIOA sec. 134(a)(2)(A)(i)(II), which refers to "mass layoffs," whereas the proposed regulatory text only referred to "layoffs"; (2) The Department has added new sections to the regulatory text to clarify the circumstances under which rapid response must be delivered (§ 682.302) and to reflect the definition of the term "mass layoff" for purposes of rapid response (§ 682.305); and (3) The text at § 682.300(a)(1) has been revised to include a reference to new section, § 682.302. As a result of the addition of § 682.302, paragraphs (i) and (ii) of § 682.300(a)(1) were deleted and incorporated into § 682.302, since these items are more relevant to that section. The Department also notes that the text that was previously at § 682.300(a)(1)(i) and incorporated into § 682.302 at § 682.302(a) has been revised. Where the previous text referred to "announcement of a closure or a layoff," the new text refers to "announcement or notification of a permanent closure, regardless of the number of workers affected." The Department has determined that these revisions more clearly relay its intent that Rapid Response services are required to be delivered in the case of a permanent closure and irrespective of whether information about the layoff is received via an announcement or other notification method. The revision also makes it clear that there is no numerical threshold for delivering rapid response in these instances. Rapid Response is required, regardless of the number of workers affected by the closure. Additional information regarding the circumstances under which rapid response must be delivered, are further explained in the preamble discussion in § 682.302 below.

Section 682.302 Under what circumstances must rapid response services be delivered?

This section explains the circumstances that trigger the delivery of rapid response.

As previously noted in the preamble discussion on § 682.300, the Department received comments that led the Department to add § 682.302 in order to clarify the circumstances under which rapid response must be delivered. Rapid Response must be provided when one or

more of the following circumstances occur:

(a) Announcement or notification of a permanent closure:

An announcement or notification of a permanent closure of a facility, store, enterprise, or plant, regardless of the number of workers affected;

(b) Announcement or notification of a mass layoff as defined in § 682.305 and discussed in that section of this preamble;

(c) A mass job dislocation resulting from a disaster:

Any natural or other disaster event, as defined by state or local emergency management policies, that results in job loss for a number of workers sufficient to meet a state's definition for mass layoff (see the discussion under number 4 below), or causing 50 or more workers to become dislocated. The Department encourages States to consider appropriate roles and responsibilities for rapid response activities following a natural or other disaster event and establish these roles and responsibilities as part of any emergency management plans that are developed;

(d) The filing of a TAA petition:

This is required in accordance with the requirement in sec. 221(a)(2)(A) of the Trade Act, which requires that the Governor ensure that rapid response services are delivered to all workers who are covered by the petition for TAA. Additionally, please see the discussion below in response to comments on § 682.330(i).

Although the regulatory text now reflects the circumstances that require delivery of Rapid Response and the Final Rule preamble clarifies the circumstances under which rapid response must be provided, the Department is not suggesting that these are the only instances for which States and local workforce areas may provide rapid response. Instead, the Department strongly encourages States or their designated entities to deliver rapid response services to as many workers and companies as possible and to adopt policies that maximize the opportunities for rapid response services to be provided in a manner that best supports the businesses and workers in their communities.

Section 682.305 How does the Department define the term "mass layoff" for the purposes of rapid response?

This section explains the definition of the term "mass layoff" for the purposes of rapid response.

As previously noted in the preamble discussion on § 682.300, the Department received comments that led the Department to define the term "mass layoff" for purposes of Rapid Response.

A mass layoff will have occurred for the purposes of rapid response when at least one of the following conditions have been met:

- A mass layoff, as defined by the State; however, under no circumstances may a State's definition of mass layoff exceed a minimum threshold of 50 workers. For example, in its definition, the State cannot set the minimum threshold of laid off workers at 75, but it can be set to as few as 1. The definition may be based upon factors such as the size of the company that is impacted, the percentage of workers impacted by a layoff, the income level of the employees, and other relevant factors;
- Where a State has not defined a minimum threshold for mass layoff, any layoff affecting 50 or more workers; or,
- Upon receipt of a WARN Act notice (see discussion in § 682.320 below in response to a comment on this subpart), regardless of the number of workers affected by the layoff announced.

Additionally, the Department notes that the definition of "mass layoff" discussed in this subpart and included in the new regulatory text at § 682.305, differs from the definition used in part 687, National Dislocated Worker Grants, which also refers to the term "mass layoff." For Rapid Response, the Department allows States more flexibility in defining mass layoffs. Rapid Response services encompass strategies and activities that States can provide to assist workers affected by layoffs and closures as described at § 682.300 (including information about available employment and training programs), and the Department encourages States to do so, regardless of the number of workers affected. In contrast, the DWG program is aimed at significant events that cannot reasonably be expected to be accommodated within the ongoing operations of the formula-funded dislocated worker program. Accordingly, for the purposes of the DWG program, the Department separately defines "mass layoff" as those affecting 50 or more workers from one employer in the same area. Additional details can be found in part 687.

Section 682.310 Who is responsible for carrying out rapid response activities?

Section 682.310 clarifies that the State or an entity designated by the State is responsible for carrying out rapid response activities.

The Department would like to clarify the intent in § 682.310(a). The regulatory text indicates that rapid response must be carried out by the State or by another entity designated by the State. The State or entity designated by the State must coordinate, communicate, and work with Local WDBs, CEOs, and other stakeholders as appropriate. The Department included "other stakeholders" because it has determined that the intent of the law is to ensure coordination with all relevant parties so rapid response services can be delivered effectively. Paragraph (b) of § 682.310 reinforces the requirement that regardless of whether a State designates a non-State entity or entities to carry out rapid response, the State must establish and maintain a rapid response unit to oversee this program.

Section 682.320 What is layoff aversion, and what are appropriate layoff aversion strategies and activities?

This section describes a comprehensive approach to layoff aversion, designed to prevent or minimize the duration of unemployment.

Comments: The Department received a few comments requesting some additional changes be made to the text of the NPRM.

One commenter requested an addition to § 682.320(b)(2) to insert language that States should work with both business and labor organizations in those instances where a collective bargaining agreement is in place and consult with unions in cases where no such agreement exists. The commenter also requested that language on partnering or contracting with labor organizations be added to § 682.320(b)(7). Lastly, the commenter recommended an additional provision that included language about working with labor organizations.

Department Response: Paragraph (b)(2) includes the following as an allowable layoff aversion activity: "ongoing engagement, partnership, and relationship-building activities with businesses in the community, in order to create an environment for successful layoff aversion efforts and to enable the provision of assistance to dislocated workers in obtaining reemployment as soon as possible." Developing strong relationships with businesses is critical in layoff aversion, and the Department has concluded the proposed regulatory text best supports the intent of this paragraph by maintaining its sole focus on the business partnership, since businesses are often the most critical players in helping avert layoffs. However, developing relationships with unions is important as well, and language to this effect can be found at § 682.330(h) which requires that States

develop partnerships with a variety of organizations, including unions, as *appropriate,* in order to exchange information among these partners so that rapid response is provided as early as possible. Information relating to the customization of layoff aversion activities is specifically highlighted in the regulation requiring these partnerships. No changes were made to the regulatory text in response to these comments.

Comments: One commenter suggested that allowable layoff aversion activities be organized into "core" and "complementary" activities. Core activities would be those that the commenter considers to be "true business disruption turn-around services," and complementary would be those "that are important, but would not avert closure . . . in an emergency business disruption."

Department Response: The Department concluded that making distinctions between types of layoff aversion activities does not meaningfully impact the ability of States or local workforce areas to conduct layoff aversion activities, and operators of rapid response programs are best suited to determine how they organize or manage their layoff aversion activities in accordance with the requirements. As a result, the Department has determined that the proposed regulatory text permits State and local rapid response operators the flexibility to meet these requirements based on the specific needs of the companies and workers being served and the particular characteristics of each event. The categories suggested by the commenter imply that some activities listed are more important than others. The Department has concluded that any allowable activities that are designed to prevent or minimize the duration of unemployment are equally important and valuable, and encourages State and local rapid response teams to develop strategies that maximize the ability to deploy the appropriate layoff aversion solutions for the challenges they face. No changes were made to the regulatory text in response to this comment.

Comments: A few commenters requested that the Department add language to § 682.320 that requires States to describe their layoff aversion strategies in their Combined State Plan or Unified State Plan.

Department Response: The Department does not agree that this language should be added to the regulatory text. Instead, the joint planning guidelines issued by the Secretaries of Labor and Education in March 2016 in TEGL No. 14–15, provides the overall content requirements for the WIOA Unified or Combined State Plans. The guidance is in TEGL No. 14–15, released March 2016, entitled "*Workforce Innovation and Opportunity Act (WIOA) Requirements for Unified and Combined State Plans*" and may be found at *http://wdr.doleta.gov/directives/All_WIOA_Related_Advisories.cfm.* No changes were made to the regulatory text in response to these comments.

Comments: One commenter requested that language regarding the WARN Act be included in § 682.320 or § 682.330 since WARN notification is an "automatic trigger" to conduct rapid response.

Department Response: The Department agrees that the receipt of a WARN notice is a trigger for rapid response as indicated previously and is clarifying that the issuance of a WARN notification, regardless of the number of workers affected by the layoff announced, generates the requirement to deliver rapid response. WARN Act notice is required generally for plant closures and mass layoffs as defined in the WARN Act or under State laws expanding the scope of notice requirements, and, thus, a WARN layoff meets the Department's general requirements for mass layoffs and this is reflected in § 682.305. Because WARN notification is covered in this section, no change is being made to the text at § 682.320 or § 682.330 to include WARN notice language.

In § 682.320(b)(4), incumbent worker training is identified as one of the allowable layoff aversion activities. Although no comments were received with regard to this text, the Department has determined that a correction to the regulatory text at § 682.320(b)(4) to insert the word "funding" is needed in order to align the regulatory text with another section of the regulations (§ 680.800(b)) and to clarify that the Department intended rapid response funds to be used to pay for this training to help ensure workers have the skills needed to conduct the work of the employer and that businesses are able to build a skilled workforce commensurate to their needs. An additional correction is made to the regulatory text to make it clear that any incumbent worker training program conducted with rapid response funding must be tied to a broader layoff aversion strategy or must be intended for the purpose of preventing workers from losing their jobs. Incumbent worker training is a critical layoff aversion approach and our intent is to allow rapid response funds to pay for these activities in order to help ensure that rapid response meets its primary goal, which is to prevent or minimize the duration of unemployment.

In order to demonstrate that the funds are being used as part of a layoff aversion strategy or activity, States must develop policies and procedures with respect to the use of rapid response funds for incumbent worker training, including the circumstances under which using rapid response funds for incumbent worker training would be applicable. As with all incumbent worker training funds, however, the use of rapid response resources to provide incumbent worker training as part of layoff aversion must be above and beyond the normal training offered by businesses to their employees. Rapid response resources must not supplant private funds in these situations.

Section 682.330 What rapid response activities are required?

This section describes the required rapid response activities.

Comments: One commenter requested that the introductory sentence in the regulatory text at § 682.330 be changed from "Rapid response activities must include" to "Rapid response services that must be made available include." The commenter explained that the reason for this request is due to the fact that the State cannot be compelled to deliver services if businesses refuse them.

Department Response: The Department understands that businesses might not always be open to participating in the rapid response process; however, the proposed regulatory text reflects a requirement that was also in effect under WIA and shows the significant responsibility that States have to ensure that rapid response staff establish relationships and develop the skills needed to be able to work with businesses that will enable successful delivery of rapid response services. No changes in regulatory text were made in response to these comments. However, the Department recognizes that businesses are under no obligation to allow or help ensure the smooth delivery of rapid response services, and this can present a significant challenge for rapid response staff. Therefore, the Department determined that States which make all reasonable efforts to deliver services to affected workers, will be determined to have met the requirements of this section. However, the Department considers reasonable efforts to include more than just cursory attempts. For example, if a business refuses to allow services to be delivered on site or during business hours, rapid response teams

should make every effort to ensure worker access to rapid response services at off-site locations and during convenient hours. As previously noted, the requirement that Rapid Response services include services to businesses existed under WIA and during the administration of that law the Department never found a State who had made all reasonable efforts to deliver services to be out of compliance.

Comments: One commenter remarked that the language at § 682.330(i) gives the impression that rapid response must be provided in parallel to Trade Adjustment Assistance (TAA), and this is often not the sequence. The commenter stated that these services are usually decoupled and that rapid response may occur prior to TAA application.

Department Response: The provision at § 682.330(i) is consistent with the requirement in the Trade Act and is included in this regulation to help ensure that this requirement is met. The regulatory text requires that, as appropriate, rapid response services be provided to trade-impacted workers for whom petitions have been filed. Rapid response operators, of course, may assist in coordinating with State TAA staff, local one-stop staff, employers, workers, or unions in filing a petition for TAA on behalf of a worker group negatively impacted by foreign trade. Thus, a delay between petition filing and petition certification will occur, and as petitions may be filed up to 1 year after a worker separation, there may be delays between a worker separation, a petition filing, and the petition certification. The regulatory text is not meant to imply that rapid response services may *only* be provided once the Trade petition has been filed. Like other workers impacted by layoffs, rapid response services may be provided upon notification of layoffs consistent with State or local procedure. A worker may receive rapid response services prior to the TAA petition filing and re-delivery of rapid response services may or may not be appropriate, depending on the individual circumstances or timing of the events. Additionally, the content of information provided to the worker group through rapid response may change due to the circumstances or timing of the event, or additional information, such as a TAA Orientation, may occur after petition certification. No changes were made to the regulatory text in response to this comment.

Comments: The Department received several comments on the provision at § 682.330(g)(3) regarding the tracking of information related to rapid response activities. The commenters expressed that it is difficult to track rapid response activities and funds separately.

One commenter opined that this level of detail should not be included as a requirement.

Department Response: The Department expects that its programs must be evidence-based, whenever possible, and rapid response is no different. Capturing and tracking performance and outcome data and information is critical for continuous improvement, for identifying promising practices, and for reporting, and this tracking is required to be done for rapid response activities, as appropriate. No changes were made to the regulatory text in response to this comment.

Comments: Another commenter gave an example of the difficulty involved in tracking rapid response activities. The example provided was visiting with the employer to present affected workers with services. The commenter noted that unless there is a way to track the employees' participation, it would be difficult to determine the outcomes of that activity.

Department Response: The Department does not specify what programmatic data and information States must capture and track; States are best suited to determine what they capture and track based upon the specific circumstances in each State. But, States *are* required to report to ETA some programmatic information (in accordance with § 682.360, further explained in the preamble) and report expenditure information, through the ETA 9130 form. Both of these requirements remain consistent from requirements under WIA. However, given the nature of some rapid response activities, the Department agrees that tracking outcome and performance data for all rapid response activities might prove difficult in some instances and the Department will provide, as necessary, guidance or technical assistance to support States with this requirement. No changes were made to the regulatory text in response to this comment.

Regarding the requirement at § 682.330(j) to provide additional assistance to local areas, although no comments were received about this text, the Department wishes to clarify the connection between WIOA and the regulatory text. WIOA refers to events "that precipitate substantial increases in the number of unemployed individuals" as the trigger for potential additional assistance. In the regulatory text, the Department has interpreted this to mean that additional assistance may be provided "when such events exceed the capacity of the local area to respond with existing resources" to address situations such as significant increases in unemployment that have resulted in, or have the potential to cause, a significant impact on the local area's resources. Therefore, additional assistance also may be used to support responses to major dislocation events, to provide layoff aversion efforts, and other allowable activities when these activities exceed the capacity of a local area's formula resources.

Finally, the Department is making several corrections to the regulatory text that includes an edit to § 682.330(e), to delete the reference to WIOA secs. 101(38) and 134(a)(2)(A). Because the paragraph is specifically referencing national dislocated worker grants, it now cites only to the part governing those grants, to be more clear. Also, an edit to § 682.330(h) was made by inserting the word "and" between § 682.330(h)(1) and (2) to reflect that both are expected benefits of developing and maintaining partnerships described at § 682.330(h).

Section 682.360 What rapid response, layoff aversion, or other information will States be required to report to the Employment and Training Administration?

Section 682.360 requires the reporting of rapid response information on the WIOA individual record.

Comments: The Department received several comments on the issue of reporting. One commenter requested that States and locals be given the opportunity to respond to proposed data collection requirements before they are enacted.

Department Response: The Department solicited feedback on proposed data collection requirements through the ICR process governed by the Paperwork Reduction Act (see 80 FR 43474 (July 22, 2015) and 80 FR 52798 (Sept. 1, 2015)) to ensure that those impacted by collection requirements would have an opportunity to comment on them. Should additional performance data reporting elements be required for rapid response, the Department will work with States and local areas to ensure that reporting burdens are minimized while still meeting program reporting goals. Any additional reporting requirements would be subject to public comment through the ICR process. No changes were made to the regulatory text in response to this comment.

Comments: Another commenter requested that the services required to be captured match the WIASRD.

Department Response: Much of what was collected and reported under WIA

will continue under WIOA. States will be required to collect and report in accordance with sec. 116 of WIOA and 20 CFR part 677 (*see* Joint WIOA Final Rule). In order to provide clarity on the performance data reporting expectations for rapid response, the Department has revised the text at § 682.360. The former text required States to report the receipt of rapid response services of individuals enrolled as dislocated workers on the WIOA individual record," whereas the text in the Final Rule clarifies that States are required to report the receipt of rapid response services for those individuals who have an existing WIOA individual record or for whom a WIOA individual record is created under programs that report through this mechanism. The new text also clarifies the population to be reported by revising the text from "individuals enrolled as dislocated workers on the WIOA individual record" to "individuals served under programs reporting through the WIOA individual record." These changes account for and align with the performance definitions for participant and reportable individual located at 20 CFR 677.150(a) and (b), provide consistency with the language on the reports, and also place a parameter to more clearly align with those programs that are required to fulfill reporting requirements under 20 CFR part 677 (*see* Joint WIOA Final Rule). The Department notes that § 682.360 does not independently require the creation of a WIOA individual record for individuals on account of their receipt of rapid response, layoff aversion, or other services under subpart C of this part; rather, § 682.360 requires that where a WIOA individual record exists for an individual served under programs reporting through the WIOA individual record, States must also report information regarding the receipt of services under subpart C. The Department has also added paragraph (b) to § 682.360, which relays that States are required to comply with these reporting requirements, as explained in the Department's guidance. The DOL Performance ICR contains further specifications regarding the collection and reporting of receipt of services under subpart C of this part.

Comments: A few commenters noted that there are difficulties involved with reporting rapid response activities through the WIOA individual record because rapid response services are not necessarily individualized. The commenters stated that the rapid response services are primarily employer and worksite based and that this information is collected retroactively at best and not likely to produce an accurate report.

Department Response: While the Department understands the challenges of using the individual record to report data on rapid response activities, which are often group-based rather than individualized, there are various methods by which rapid response operators may identify and report on individuals who receive rapid response services. The Department will provide States with technical assistance on this topic as needed. Additionally, the Department recognizes the challenges associated with retroactive collection of information from employers or worksites on rapid response activities and services; the importance of valid and reliable collection is an area that was established as a priority under WIA and continues to be under WIOA. The Department will continue to work across programs to identify best practices and effective means of collecting data and ensuring valid, accurate, and reliable reporting. No changes were made to the regulatory text in response to these comments.

Section 682.370 What are the statewide activities for which rapid response funds remaining unobligated after the first program year for which the funds were allotted may be used by the State?

Section 682.370 describes the statewide activities for which rapid response funds that are unobligated after the first program year for which the funds were allotted may be used.

Comments: The Department received a few questions from a commenter regarding this section. The commenter asked whether the term "unspent" (used in § 682.370 of the NPRM) means unobligated or unexpended.

Department Response: The Department agrees that using the term unspent was confusing and, as a result, has changed the regulatory text to use the term "unobligated" to reflect the provision in WIOA at sec. 134(a)(2)(A)(ii) in order to avoid confusion. The regulatory text was further changed to more closely align with the statutory text, providing a clearer explanation that the Governor may use these unobligated funds to carry out statewide activities as described in both §§ 682.200 and 682.210. For consistency with the WIOA provision, the section header has also been changed and now reads "What are the statewide activities for which rapid response funds remaining unobligated after the first program year for which the funds were allotted may be used by the State?"

Comments: The commenter also requested to know whether the provision at § 682.370 required governors to use unobligated rapid response funds for statewide activities, and whether statewide activities are only for "15 percent funds."

Department Response: To address the first question, the use of unobligated funds by the Governor for statewide activities is allowed, but is not a requirement. The Governor is not required to use the unobligated rapid response funds to carry out statewide activities, but has the option of doing so. In response to the commenter's second comment, the Final Rule text clarifies that the statewide activities for which the funds may be used include the required statewide activities described at § 682.200 and the allowable statewide activities described at § 682.210, which are often referred to informally as the 15 percent funds.

G. Part 683—Administrative Provisions Under Title I of the Workforce Innovation and Opportunity Act

This part establishes the administrative provisions for the programs authorized under title I of WIOA. Some of the provisions are also applicable to grants provided under the Wagner-Peyser Act, as indicated in specific sections of this part. The remaining Wagner-Peyser Act administrative rules are located in 20 CFR part 658. The Department notes that administrative provisions for Job Corps (subtitle C of title I of WIOA) contracts are addressed separately in 20 CFR part 686. The analysis that follows provides the Department's response to public comments received on the proposed regulations for Administrative Provisions Under Title I of WIOA. If a section is not addressed in the discussion below, it is because the public comments submitted in response to the NPRM did not substantively address that specific section and no changes have been made to the regulatory text. Further, the Department received a number of comments on this part that were outside the scope of the regulation and the Department offers no response. The Department has made a number of non-substantive changes to correct grammatical and typographical errors to improve the readability and conform the document stylistically that are not discussed in the analysis below. Lastly, the terms "performance measure" and "performance accountability measure" have been replaced throughout with "performance indicator" and references to the

implementing regulations for WIOA sec. 188 at 29 CFR part 37 have been updated to refer to 29 CFR part 38 per the Department's recent nondiscrimination rulemaking.

1. Subpart A—Funding and Closeout

Section 683.100 When do Workforce Innovation and Opportunity Act grant funds become available for obligation?

Section 683.100 describes the statutory requirements for the Department's release of formula funds under title I of WIOA and the Wagner-Peyser Act.

Comments: A commenter requested clarification on whether there is consideration for agencies that are not one-stop operators to operate after June 30, 2016, because their agency received "WIA" (Workforce Investment Act) funds from the State and were informed that they can no longer perform direct services.

Department Response: It is unclear from the comment to what agencies and what services the commenter is referring. Because the Department is unable to determine the meaning of the comment, the Department has adopted the provision as proposed. However, for additional information that may be useful, the commenter should see WIOA sec. 107(d)(10), which provides the local Workforce Development Boards' (WDBs) responsibilities in selecting operators and providers. WIOA sec. 107(d)(10) is further discussed in 20 CFR part 679. Additionally, WIOA sec. 122 details requirements for identifying eligible training providers. This section is further addressed in 20 CFR part 680. Finally, the Department provided guidance and instructions on the transition of participants, funds, performance reports, grants, and subrecipient contracts under title I of the Workforce Investment Act of 1998 and under the Wagner-Peyser Act to WIOA. This guidance can be found at TEGL No. 38–14 ("*Operational Guidance to Support the Orderly Transition of Workforce Investment Act Participants, Funds, and Subrecipient Contracts to the Workforce Innovation and Opportunity Act*") issued on June 8, 2015; *www.doleta.gov/WIOA/*.

The Department also received comments concerning the required obligation rate of WIOA funds and the reallotment process. The Department addresses these comments in § 683.135.

No changes were made to regulatory text in response to these comments.

Section 683.105 What award document authorizes the expenditure of funds under title I of the Workforce Innovation and Opportunity Act and the Wagner-Peyser Act?

This section recognizes the use of the three funding instruments that conform with the Uniform Guidance: Grant agreements, cooperative agreements, and contracts.

Comments: A few commenters requested the Department provide clarification to paragraph (e)(3) of this part regarding the length of time allowed for each award for research, studies, or multi-State projects under WIOA sec. 169.

Department Response: The Department added additional language in (e)(3) to clarify the timeline and application of competitive reevaluation. Awards made under WIOA sec. 169 that do not fall under the exceptions at paragraph (e)(3)(ii) or (iii) will require a competitive reevaluation after a 3 year period. This practice is generally consistent with the practices at other major Federal grantmaking agencies. Through this competitive reevaluation, the Department will ensure that the awardee would be competitive should the award be recompeted. The actual details of the competitive reevaluation process may vary by award. However, competitive reevaluations generally will consist of an examination of whether the awardee is meeting its performance goals and financial reporting obligations. The Department will not require competitive reevaluation for the types of awards described in paragraphs (e)(3)(ii) and (iii) because pursuant to the provisions of WIOA sec. 169(b)(6)(A), awards that meet these requirements do not need to be competitively evaluated when initially awarded. However, the regulation includes criteria that must be met for these types of awards to avoid the competitive reevaluation requirement. The Department notes that there will be a transition period while the Department puts in place the processes and procedures for competitive reevaluation described in this Final Rule.

Additionally, the Department clarified where the language in § 683.105 applies to grants, contracts, and cooperative agreements.

Comments: A commenter requested the Department provide clarification on whether local areas can utilize only funding to serve customers in their jurisdictions or if the State can set policy to allow a broader use of funds.

Department Response: WIOA does not prohibit or require local residency for an individual to receive services from a local area. Instead, whether a local area can serve individuals living outside their local area boundaries depends on State law and policy. Because the comment does not request a change to the language, no changes were made in the regulatory text.

Aside from the changes discussed above, the Final Rule adopts the remainder of the section as proposed with a technical edit to § 683.105(e)(4) to correct language that was inadvertently retained from the WIA regulations and make this regulation more reflective of the statutory language at sec. 169(b)(6)(D) of WIOA, and additional technical edits for clarity to § 683.105(f).

Section 683.110 What is the period of performance of Workforce Innovation and Opportunity Act title I and Wagner-Peyser Act funds?

This section describes the period of performance for different types of WIOA title I and Wagner-Peyser Act grant awards.

Comments: The Department received several comments requesting clarification concerning § 683.110. One commenter requested clarification regarding the period of time in which funds are available to carry out a Pay-for-Performance contract strategy.

Department Response: As provided in WIOA sec. 189(g)(2)(D) and discussed in § 683.530, funds used for a WIOA Pay-for-Performance contract strategy are available until expended. Because WIOA sec. 189(g)(2)(D) and § 683.530 provide the period of availability for funds used for WIOA Pay-for-Performance contract strategies, no changes were made in the regulatory text. The Department expects to provide future guidance on carrying out WIOA Pay-for-Performance contract strategies.

Comments: Several commenters discussed the applicability of § 683.110 to the National Farmworker Jobs Program (NFJP) grant recipients. Specifically the commenters recommended that the Department be consistent across programs when considering modifications to allow carryover of funding and not add restrictions for National Farmworker Jobs Program (NFJP) grant recipients. One commenter recommended that NFJP grant recipients have the same performance standard stringency as others and be offered in § 683.110(e) the carryover provisions that approximate available expenditure allowances by States in § 683.110(b), and that NFJP have the same flexibility as the Governor to adjust on-the-job training

(OJT) employer reimbursement levels from 50 to 75 percent.

Department Response: The Department addresses the issues concerning the NFJP program in the preamble discussion in part 685.

Comments: The Department also received comments concerning the applicability of § 683.110 for title II programs and State Adult Education and Family Literacy Act (AEFLA) agencies.

Department Response: The provisions found in § 683.110 are applicable to funds authorized under title I of WIOA and the Wagner-Peyser Act. The Department refers the commenters to the Department of Education's regulations for Programs and Activities Authorized by the Adult Education and Family Literacy Act at 34 CFR parts 462 and 463.for additional information regarding AAFLA and title II programs. Because § 683.110 only applies to WIOA title I and Wagner-Peyser Act funds, this DOL WIOA Final Rule adopts the provision as proposed.

The Department received no comments on the remaining provisions of § 683.110, and the Final Rule adopts the section as proposed with technical corrections. The Department has corrected the reference in § 683.110(c)(1)(ii) so that it refers to the provision governing the availability of funds used for WIOA Pay-for-Performance contract strategies, and it clarifies that this provision is referring specifically to WIOA Pay-for-Performance contract strategies, as defined in sec. 3 of WIOA and in subpart E of this part. The Department notes that the term "used" in § 683.110(c)(1)(ii) refers to the reservation and use of funds mentioned in WIOA secs. 129(c)(1)(D) and 134(d)(1)(A)(ii). Additionally, the Department has corrected § 683.110(f) so that it refers to award documents instead of terms and conditions of award.

Section 683.120 How are Workforce Innovation and Opportunity Act title I formula funds allocated to local areas?

This section describes the timeframe and formula factors a Governor must employ when allocating fund to local areas under secs.128 and 133. It also specifies the steps a Governor must take when issuing allocations, including consulting with Local WDBs and elected official prior to issuing the allocation.

Comments: The Department received a comment in support of this section. The Department also received several comments concerning the applicability of § 683.120 to title II programs and State AEFLA agencies.

Department Response: The provisions found in § 683.120 are applicable to funds authorized under title I of WIOA and the Wagner-Peyser Act. The Department refers the commenters to 34 CFR parts 462 and 463 for additional information regarding AEFLA and title II programs. Because § 683.120 does not apply to title II and AEFLA agencies, the Final Rule adopts the provision as proposed, with a technical amendment to § 683.120(a) to correct list format and an additional technical amendment to § 683.120(b) clarifying the application of WIOA secs. 129(b) and 134(a).

Section 683.125 What minimum funding provisions apply to Workforce Innovation and Opportunity Act adult, dislocated worker, and youth allocations?

This section addresses the minimum funding thresholds for States funded under title I, subtitle B of WIOA.

Comments: The Department received several comments regarding § 683.125. A few comments raised concerns about the application of a fiscal year basis versus a program year basis for the minimum funding provisions. Another comment raised a concern on the application of the minimum funding thresholds in local areas that have been impacted by geographical boundary changes.

Two commenters stated that § 683.125(a) should take effect Oct. 1, 2015, for fiscal year (FY) 2016. These commenters stated that the proposed regulations are silent on whether § 683.125(a) refers to program year (PY) or FY, but that the Department through TEGL No. 29–14 ("*Workforce Innovation and Opportunity Act (WIOA) Adult, Dislocated Worker and Youth Activities Program Allotments for Program Year (PY) 2015; Final PY 2015 Allotments for the Wagner-Peyser Act Employment Service (ES) Program Allotments; and Workforce Information Grants to States Allotments for PY 2015*") has specified that this section refers to PY 2016.

Department Response: The Department's fiscal year monies are distributed to grant recipients on a program year basis, as described in §§ 683.100 and 683.125. The youth and adult minimum funding provisions existed under WIA. The minimum funding provisions under the WIOA statute go into effect when the FY 2016 funds become available on July 1, 2016, consistent with TEGL No. 29–14 (*see http://wdr.doleta.gov/directives/All_WIOA_Related_Advisories.cfm*). However, the Department agrees that the language proposed for § 683.125 was confusing and has made changes to clarify the relationship between the fiscal year appropriations and the program year availability in relation to the minimum funding provisions.

Comments: A commenter also recommended that local areas that change boundaries should still be eligible for the minimum percentage provisions for the adult, dislocated worker, and youth programs.

Department Response: The Department agrees that this was a gap in the language of the proposed regulation and has added § 683.125(c) to address this issue. States may use WIOA minimum funding procedures even where the geographical boundaries of some or all local areas are different from the previous allocation. For example, this can be done for the PY 2016 WIOA allotment by (1) taking the amount allocated to WIOA local areas; (2) calculating the amount each local area would have received using the PY 2015 and PY 2015 WIA allocations (WIA proxy amounts); and (3) calculating 90 percent of the average WIA proxy amounts for each local area. Under either the permitted WIA hold harmless or the WIOA minimum funding (hold harmless) provision, the amount needed to provide the increased allocation(s) to the affected local areas is to be obtained by ratably reducing the allocations to the other local areas.

Section 683.130 Does a Local Workforce Development Board have the authority to transfer funds between the adult employment and training activities allocation and the dislocated worker employment and training activities allocation?

This section provides flexibility to local WDBs to provide services in the areas of greatest need by allowing fund transfers of up to 100 percent of a program year allocation between the local adult and the local dislocated worker allocations.

Comments: The Department received several comments regarding § 683.130. Some commenters were concerned with the Governor's approval of the transfer request and whether the Governor would complete the request timely or would unreasonably deny a request.

Department Response: The Department agrees that additional language ensuring that requests are timely and reasonably evaluated would be beneficial. Consequently, the Department has adopted new regulatory text for § 683.130 to address the comments regarding the grounds or criteria a Governor must consider when approving or denying a request for transfer. The modified text requires the Governor to establish written policy that

provides the criteria the Governor will utilize for approving a request to transfer adult or dislocated worker employment and training activity funds.

Comments: Another commenter expressed concern that the flexibility in § 683.130 could lead to local areas transferring 100 percent of funding away from title I adult programs and could result in drastic reduction in services to those who need them most. This commenter recommended a waiver requirement as a prerequisite to gaining funding transfer flexibility between adult and dislocated worker programs.

Department Response: The Department considered the comments and determined that a transfer of 100 percent of funds out of one program to another may drastically reduce services to that program. This recommendation is inconsistent with the statutory language for two reasons. First, sec. 133(b)(4) of WIOA explicitly states that 100 percent of the allocated adult and dislocated funds can be transferred. Second, WIOA states that the Governor is responsible for approving transfers between the adult and dislocated worker funds, which makes an additional waiver requirement inappropriate. With the exception of the previous paragraph, the regulatory text is unchanged.

Comments: Other commenters expressed concern regarding the performance of local areas and sought clarification whether performance indicator targets would be rescinded if 100 percent of funds were transferred from one program to the other.

Department Response: As addressed in 20 CFR part 677 Performance Accountability (*see* Joint WIOA Final Rule), the negotiated levels of performance for the primary indicators remain in effect and a local area must consider how it will meet adjusted levels of performance for the primary indicators before requesting such transfer. If the local area transfers 100 percent of a certain type of funding, it would still be responsible for meeting the adjusted levels of performance for any participants that it is required to serve. The Department also reiterates that when funds are transferred from one program to another, the transferred funds adopt the identity of the new fund source and are bound by all of the requirements of that source. The concerns of this commenter are addressed in part 680. No change was made in the regulatory text for part 683 in response to these comments.

Section 683.135 What reallotment procedures does the Secretary use?

This section implements secs. 127(c) and 132(c) of WIOA, and explains the Department's process for recapture and reallotment of formula funds awarded to the States under title I.

Comments: The Department received several comments requesting general clarification regarding the Department's procedure for recapturing and realloting WIOA funds. Additionally, the Department also received comments asking whether rapid response funds are considered obligated and whether the amounts allocated to the local areas must be reported as obligated on the ETA 9130 form.

Department Response: Upon reviewing the proposed language, the Department concluded that the proposed language was ambiguous because it (1) implied that certain interagency transfers and amounts allocated by the States to the local areas under secs. 128(b) and 133(b) of WIOA were not obligations under 2 CFR 200.71; and (2) inaccurately stated that certain obligations needed to be reported on the DOL financial form. Consequently, the Department has revised the language at § 683.135(c).

The Department has simplified the language at § 683.135(c) so that it simply states that the "term 'obligation' is defined at 2 CFR 200.71." This change was made because comments revealed that the specific inclusion of the items in paragraphs (c)(1) and (2) of the NPRM led readers to question why other obligations were not included in this list. This change is meant to clarify that everything that qualifies as an obligation under 2 CFR 200.71, including rapid response obligations under sec. 133(a)(2) of WIOA and the transfers and allocations referenced in paragraphs (c)(1) and (2) of the proposed regulation, should be counted for the purposes of the reallotment calculation in § 683.135(a).

In addition to simplifying § 683.135(c), the Department added § 683.135(d), which states that obligations must be reported on Department financial forms unless otherwise noted in guidance. Evaluation of the proposed language done in response to questions about whether amounts allocated to local areas must be included on the ETA 9130 form revealed that not all obligations for the purposes of reallotment calculation in § 683.135(a) need to be reported on the 9130 form. The Department has clarified the regulation so that it says all obligations must be reported on Department financial forms unless subsequent guidance from the Department includes instructions to the contrary.

Section 683.140 What reallocation procedures must the Governors use?

This section describes procedures for reallocating youth, adult, and dislocated worker funds among local areas in the State, in accordance with secs. 128(c) and 133(c) of WIOA.

Comments: The Department received a comment requesting clarification on who makes the funding reallocation decision and what is the maximum time frame for decision-making.

Department Response: WIOA secs. 128(c) and 133(c) provides that the Governor, after consultation with the State WDB, may reallocate to eligible local areas youth, adult, and dislocated worker funds. Section 683.140(a) mirrors the statutory language and provides that the Governor may reallocate local funds after consulting with the State WDB. Because WIOA identifies the reallocation decision-maker as the Governor, no change was made in the regulatory text in response to this comment.

Section 683.140(b) and (c) provide that the reallocation determination occurs for the prior program year after an evaluation of all local areas' obligation rates has occurred. However, there is no required timeframe for a Governor to make a decision as the regulation maintains the Governor's flexibility and responsibility to make reallocation decisions regarding the WIOA grant funds. No change was made to the regulatory text.

Section 683.145 What merit review and risk assessment does the Department conduct for Federal financial assistance awards made under Workforce Innovation and Opportunity Act title I, subtitle D?

This section includes requirements mandated by the Uniform Guidance.

Comments: The Department received several comments requesting a clarification of "merit review."

Department Response: Section 683.145(a) includes the requirements mandated by the Uniform Guidance at 2 CFR 200.204 that the Department utilize a merit review process when awarding competitive awards. Title 2 CFR 200.204 states that the process for merit review will be described in the funding opportunity announcement. The Department has determined that because the process necessary for ensuring a fair merit review may vary by competition, additional description of "merit review" is not appropriate for this regulation. No change was made to

the regulatory text in response to these comments.

Section 683.150 What closeout requirements apply to grants funded with Workforce Innovation and Opportunity Act title I and Wagner-Peyser Act funds?

This section addresses closeout, which is an important component to complete the grant lifecycle. This section paraphrases the Uniform Administrative requirement sections on closeout and post-closeout adjustments (2 CFR 200.343 through 200.344).

Comments: The Department received a comment requesting clarification of the period of time that the Federal government can disallow costs and for which the grant recipient remains liable for a Federal debt after grant closeout.

Department Response: Because WIOA of limitations for collection of a Federal debt depends on many variables not appropriate to regulate, no changes were made to the regulatory text in response to this comment.

2. Subpart B—Administrative Rules, Costs, and Limitations

Section 683.200 What general fiscal and administrative rules apply to the use of Workforce Innovation and Opportunity Act title I and Wagner-Peyser Act funds?

This section describes the application of Uniform Guidance and the corresponding exceptions authorized by the Department at 2 CFR part 2900 for all grant recipients and sub recipients, including for-profit organizations and foreign entities.

Comments: One commenter requested that an appeal process should be required when the State (pass-through entity) implements requirements outside the Federal guidelines in 2 CFR part 200.

Department Response: The Department has decided not to require an appeals process when pass-through entities implement requirements outside the Federal guidelines in the Uniform Guidance at 2 CFR part 200. This is consistent with 2 CFR part 200, which provides necessary flexibility to States by extending special considerations when administering grant funds. The Department determined that requiring an appeals process when a pass-through entity implements requirements not included in 2 CFR part 200 would be unduly burdensome and counter to the effective administration of the grants. The commenter should note that § 683.600 offers protections for subrecipients if a requirement imposed by a pass-through entity violates the requirements of title I of WIOA. Consequently, because the Department has determined that the proposed appeals process would not support the effective administration of the grants and adequate protections are already in place, no change was made in the regulatory text.

Comments: One commenter requested an explanation of the addition method in § 683.200(c)(6).

Department Response: The Department has determined that the description in § 683.200(c)(6) and reference to 2 CFR 200.307 adequately describes the addition method for the purposes of the regulation and that any additional description of the method would be better suited to guidance and technical assistance. No change was made to the regulatory text in response to comments.

Comments: One commenter requested clarification on how a State should determine compliance with the Buy American provisions. The same commenter also asked whether State oversight and monitoring responsibilities under § 683.200 include programmatic monitoring of local areas or simply financial monitoring and oversight, and if the latter, where programmatic monitoring expenses should be charged. Several commenters asked for clarification regarding the applicability of the section to title II funds, specifically to the requirement to use the addition method and the Buy American Act.

Department Response: Upon reviewing the commenter's request, the Department determined that the proposed language about "American-made equipment and products" was confusing. Consequently, the Department replaced this language with a reference to the relevant section of the Buy American Act. Additionally, the Department directs the commenter to § 683.410 of this part which addresses the issue concerning the classification of costs as either programmatic or administrative for purposes of WIOA. Section 683.200 describes the application of the Uniform Guidance and the corresponding exceptions authorized by the Department at 2 CFR part 2900 for all title I WIOA and Wagner-Peyser Act grant recipients and subrecipients, including for-profit organizations and foreign entities. The Department also directs the commenter to § 683.215(b)(2), which provides that monitoring and oversight activities related to administrative functions are defined as administrative. Because these issues are addressed elsewhere, no change was made to the regulatory text in response to this comment.

The Buy-American requirements apply to funds made available under title I, title II, or under the Wagner-Peyser Act. However, § 683.200(f) only applies to funds authorized under title I of WIOA and the Wagner-Peyser Act; no change was made in the regulatory text in response to this comment.

Section 683.205 What administrative cost limitations apply to Workforce Innovation and Opportunity Act title I grants?

This section specifies the statutory administrative cost limitations of title I grant funds.

Comments: The Department received a comment requesting clarification on whether it is allowable to combine the 10 percent administrative cost limitation in § 683.205 for all three WIOA programs into one pool as long as the administrative costs for all three combined do not exceed the pooled amount.

Department Response: Section 683.205(a)(2) mirrors the language in WIOA secs. 128(b)(4) and 134(a)(3) and provides flexibility to States and local areas by allowing administrative funds from the three WIOA formula funding streams awarded under title I, subtitle B of WIOA to be pooled and used together for administrative costs for any of the three programs at the State and locals' discretion. The statutory and regulatory language clearly state that local areas may pool funds for administrative costs. No changes were made to regulatory text in response to this comment.

Section 683.215 What Workforce Innovation and Opportunity Act title I functions and activities constitute the costs of administration subject to the administrative cost limitation?

This section defines the functions and activities that constitute administration in accordance with sec. 3(1) of WIOA, and therefore are subject to the administrative cost limitations discussed in § 683.205.

Comments: In issuing the NPRM, the Department requested comments on whether the Department should issue the proposed administrative costs list as a regulation or as a general description or guidance, whether the list should be stable or subject to periodic review, and whether indirect costs should be programmatic or administrative.

The Department received numerous and varied responses regarding its solicitation. The majority of the comments received concerned whether the regulation should use a static list to define administrative costs or whether the regulation should include a more flexible definition, with a majority of

the comments stating a preference to maintain a static list to define administrative costs.

Department Response: The Department reviewed and analyzed the comments received and decided to maintain a list of administrative functions in a defined, succinct list instead of adopting a more flexible definition because it agreed with commenters that it ensures consistency and clarity in the treatment of the expenditures for WIOA title I grant funded activities. No change was made in the regulatory text in response these comments.

Comments: Additionally, commenters also responded to the inquiry as to whether the Department should treat indirect costs as administrative or programmatic costs with many commenters suggesting that costs should be charged to administration or program depending on activity and function.

Department Response: After reviewing the comments, the Department concluded that charging of direct and indirect costs as administrative or programmatic depending on the function is consistent with statute. This results in an accurate classification of costs and is consistent with the Uniform Guidance at 2 CFR part 200. Consequently, indirect costs will be charged as administrative or program costs depending on activity and function. The proposed language was consistent with this conclusion. No changes were made to the regulatory text in response to these comments.

Comments: Several commenters suggested that the language in § 683.215(a) was an expansion from WIA and should not apply to one-stop operators.

Department Response: Section 683.215(a) provides that administrative costs are those expenditures incurred by State and Local Development WDBs, Regions, direct grant recipients, local grant subrecipients, local fiscal agents, and one-stop operators for the overall management of the WIOA system and are listed among the functions enumerated in the list in § 683.215(b). This definition is substantially the same as it was in WIA. The entities listed in § 683.215(a) are the same entities, with the exception of Regions, that are explicitly included in the definition of administrative costs in sec. 3(1) of WIOA. WIOA clearly requires the inclusion of one-stop operators, no change was made in the regulatory text in response to these comments.

Comments: Commenters suggested deleting certain language in § 683.215(b)(4) related to which travel costs should be considered administrative costs. Commenters suggested that the Department delete the language referring to overall management of the WIOA system as it was vague and potentially required certain program costs to be counted as administrative costs.

Department Response: Section 683.125(b)(4) defined administrative travel costs as travel costs "incurred for official business in carrying out administrative activities or the overall management of the WIOA system." The Department reviewed the section and determined that it agreed with the commenters. Consequently, the Department modified the language in § 683.215(b)(4). Two changes have also been made to § 683.215(c) from the proposed language.

Comments: The Department received a comment requesting a change to § 683.215(c)(2) so that grant recipients are not required to track personnel expenditures based on documented distributions of actual time worked or other equitable cost allocation methods because the language is inconsistent with the Uniform Guidance in 2 CFR part 200.

Department Response: The Department agreed with the commenter and removed the language from the Final Rule.

Comments: The Department received several comments concerning § 683.215(c)(4), asking for clarification as to which subgrantees are responsible for tracking administrative costs and are subject to administrative cost limitations; specifically, some commenters were inquiring about the treatment of local grant subrecipients.

Department Response: The Department determined that the proposed language was ambiguous about how costs incurred for the functions and activities of local grant subrecipients, as identified in § 683.215(a), should be categorized. Consequently, the Department modified § 683.215(c)(4) and added language to clarify how the administrative costs of subrecipients listed in § 683.215(a) should be categorized. The added language states that costs of contractors and subrecipients that meet the requirements of (c)(4), other than subrecipients listed in (a), are program costs. The addition of the language in the Final Rule will ensure that the intent of WIOA for the entities responsible for the management of the public workforce system to track their administrative expenses is clear. The change also reflects that incidental administrative costs incurred by a contractor or subgrantee whose intended purpose is to provide identifiable program services do not have to be identified, broken out from other costs incurred under the contract or subaward, and tracked against the administrative cost limitation. Finally, this change does not alter the requirement provided in § 683.215(c)(1) that costs incurred under contracts whose intended purpose *is* administrative must be charged to the administrative cost category.

Comments: The Department received a request to clarify the guidelines on infrastructure funding. The Department also received several comments concerning the applicability of § 683.215 to title II programs and State AEFLA agencies.

Department Response: The Department notes that infrastructure funding is discussed in 20 CFR part 678 (*see* Joint WIOA Final Rule). Because another part governs infrastructure funding, no change was made to the regulatory text. The provisions found in § 683.215 are applicable to funds authorized under title I of WIOA. The Department refers the commenters to 34 CFR part 462 and 463 for additional information regarding AEFLA and title II programs. No changes were made to the regulatory text in response to this comment.

Section 683.220 What are the internal control requirements for recipients and subrecipients of Workforce Innovation and Opportunity Act title I and Wagner-Peyser Act funds?

This section describes the internal controls that recipients and subrecipients must install and have in place when expending WIOA and Wagner-Peyser Act funds, and is based on 2 CFR 200.303.

Comments: The Department received comments requesting clarification with regard to the internal control requirements of § 683.220. One commenter requested a clear definition of the personally identifiable information (PII) and sensitive information, including documentation allowed for financial and program data and participant-specific verification. Another commenter requested clarification of the "tools and assistance" for improving internal control structure under § 683.220.

Department Response: The Department determined that additional guidance on the definition of PII and available tools and assistance are not appropriate regulatory text because of the detail that would be required and the flexibility that is necessary for these definitions. The Department previously issued guidance on handling Personally

Identifiable Information (PII) which is found in TEGL No. 39–11 ("*Guidance on the Handling and Protection of Personally Identifiable Information (PII)*"), issued on June 28, 2012 (*see http://wdr.doleta.gov/directives/attach/TEGL/TEGL_39_11.pdf*).

The Department will provide additional guidance on this issue. No change was made to the regulatory text.

Section 683.230 Are there special rules that apply to veterans when income is a factor in eligibility determinations?

This section addresses the laws governing the determination of eligibility for veterans and their spouses for WIOA funded services with income qualification requirements.

Comments: Two commenters expressed concern about simply referring questions to the Veterans' Employment and Training Service (VETS) without further guidance and recommended that the Department explicitly state the procedures and exceptions in regulations. These commenters also recommended specific training for one-stop operators and one-stop staff.

Department Response: The Department agrees with the commenters that language clarifying procedures and exceptions would be more appropriate to the regulation than the language referring questions to VETS. Consequently, the Department has struck the language referring questions regarding the applicability of 38 U.S.C. 4213 to VETS. In its place, the Department added language that states that a veteran must still meet each program's eligibility criteria to receive services under the respective employment and training program. This same language also appears in part 680 (Adult and Dislocated Worker Activities Under Title I of the WIOA). Changing the language in part 683 compliments what is provided in the regulations for the adult and dislocated worker section and ensures that both sections are congruent with regard to the Military Pay Disregard for Eligibility Determination. The added language also clarifies that a veteran must meet all eligibility criteria to receive services. Finally, although the Department deleted the language referring questions about the applicability of 38 U.S.C. 4213 to VETS from the text of the regulation, the Department encourages interested parties to reach out to VETS if they have any questions about 38 U.S.C. 4213.

The Department does not agree with the necessity of adding eligibility and income procedures to the regulation because their detailed and technical nature is better suited for guidance developed with the Assistant Secretary for VETS. The Department will consider the request future for training. No change to the regulatory text was made in response to these comments.

Section 683.235 May Workforce Innovation and Opportunity Act title I funds be spent for construction?

This section is based on the requirements in the Uniform Guidance at 2 CFR 200.439(b)(3), and states that WIOA title I funds must not be spent on construction, purchase of facilities or buildings, or other capital expenditures for improvements to land or buildings except with prior approval of the Secretary.

Comments: A few commenters requested the Department add language to this section to clarify the allowability of WIOA funds for construction.

Department Response: Section 683.235 is written to allow the Secretary to approve the use of title I WIOA funds in the circumstances provided for in WIOA, including, disaster relief projects under WIOA sec. 170(d), YouthBuild programs under WIOA sec. 171(c)(2)(A)(i), grant recipients' responsibilities in meeting obligations to provide physical and programmatic accessibility, reasonable accommodations, and the provision of repairs, renovations, alterations, and capital improvements of property, as well as for other projects that the Secretary determines necessary to carry out WIOA, as described by under sec. 189(c) of WIOA.

The Department intended to provide the Secretary with the flexibility authorized under WIOA to use funds for construction in any situation where it might be necessary and has determined that it would not be prudent to limit this flexibility by imposing any requirements or exclusive lists of use of funds. No change is made in the regulatory text in response to these comments.

Comments: One commenter suggested that the Department amend this section to impose a requirement that WIOA funding only be allowed if the recipient confirms that all contractors and subcontractors that support a registered apprenticeship program meet the on-the-job training contract requirements of § 680.700, and are deemed "responsible contractors" under E.O. 13673 and the related Federal Acquisition Regulations (FAR).

Department Response: The Department will provide additional guidance on using funds for construction. Because the Department concludes that the detailed nature of the suggested addition is better suited to guidance and technical assistance, no change was made to the regulatory text.

Section 683.240 What are the instructions for using real property with Federal equity?

This section provides rules on State Employment Security Act (SESA) properties, Reed Act-funded properties, and JTPA-funded properties.

Comments: The Department received two comments requesting the Department to give priority to UI and WP when transferring or disposing of real property with Federal equity.

Department Response: The Department does not agree with the commenters' suggestion to establish priority upon transfer or disposition as this would undermine the language in sec. 192(a) of WIOA that allows for the portion of real property that is attributable to the Federal equity to be used to carry out UI, WP, or WIOA activities. The use of the buildings, including the proceeds related to their disposition or transfer, is intended to maximize available resources and provide flexibilities to UI, WP and WIOA programs. However, the Department recognizes that the proposed regulation language did not include guidance as to how proceeds from the disposition of property with a Reed Act equity should be treated. Consequently, the Final Rule contains language that clarifies that when there is a disposition of Reed Act property, that Reed Act equity must be returned to the State's account in the Unemployment Trust Fund.

Section 683.245 Are employment generating activities, or similar activities, allowable under title I of the Workforce Innovation and Opportunity Act?

This section implements sec. 181(e) of WIOA, which restricts the use of WIOA funds for employment generating activities except where the activities are directly related to training for eligible individuals.

Comments: Several commenters requested that the Department define "employment generating activities" to guide relationships with economic development partners that also assist with business outreach and services.

Department Response: Section 683.245 identifies several examples of employer outreach and job development activities that are considered "directly related to training for eligible individuals," including employer outreach and job development activities and therefore, are not prohibited employment generating activities. The list is an illustrative, but not an

exhaustive list of examples because the Department does not want to be overly prescriptive, limiting the discretion of grant recipients in making decisions about what is "directly related to training for eligible individuals" in their areas. The Department has determined that additional definition of "employment generating activities" is not necessary. However, the Department will provide future guidance or technical assistance on this subject.

Comments: Additionally, commenters also recommended that the Department clarify that business services are an allowable activity for WDBs and are chargeable to the program cost category.

Department Response: It is unclear as to what business services activities the commenters are referring. However, the Department has determined that WIOA and regulations provide sufficient guidance about which activities are allowable and whether those activities qualify as program costs. In addition to the guidance found in this section, WIOA sec. 107(d)(4) provides that local WDBs shall conduct business engagement and lead efforts to engage with a diverse range of employers. The employer engagement activities are further defined in § 679.370(e). Furthermore, the determination of whether an activity is administrative or programmatic for purposes of WIOA is discussed in § 683.215. Because WIOA and regulation already provide sufficient clarity, no change was made in the regulatory text.

Section 683.250 What other activities are prohibited under title I of the Workforce Innovation and Opportunity Act?

This section describes other activities that are expressly prohibited in title I of WIOA, including foreign travel paid for by WIOA formula funds (sec. 181(e) of WIOA), payment of wages of incumbent workers participating in economic development activities (sec. 181(b) of WIOA), contracts with persons falsely labeling products as made in America (sec. 502(c) of WIOA) and others.

Comments: The Department received comments requesting the Department clearly define prohibited economic development activities in § 683.250.

Department Response: The language in § 683.250 mirrors the language in WIOA sec. 181(b)(1) in prohibiting WIOA funds from being used for the wages of incumbent employees during their participation in economic development activities provided through a statewide workforce development system. The Department determined that additional clarification, because of its technical and detailed nature, is not appropriate for the regulatory text. However, the Department will provide additional guidance on this subject.

No changes were made to the regulatory text in response to these comments.

Section 683.260 What prohibitions apply to the use of Workforce Innovation and Opportunity Act title I funds to encourage business relocation?

This section describes the prohibitions on the use of WIOA title I funds to encourage business relocation, including specific timeframes when entities can begin working with such businesses. This section also describes the States' obligation to develop procedures to implement these rules.

Comments: The Department received a comment recommending that the Department add language to § 683.260(b) to indicate that a State's pre-award review criteria must be explained in their Unified or Combined State Plan, which is available for review by all stakeholders.

Department Response: Section 683.260(b) requires States to complete a pre-award review to verify that WIOA funds are not used to encourage or induce a business to relocate from another area if the relocation results in any employee losing his or her job at the original location. Section 683.260(b) permits States to develop the criteria for the pre-review but also requires, in § 683.260(b)(1), that certain elements must be included.

The Department has determined that it is not necessary to require that the pre-award criteria be explained in the State's unified or combined State plan because § 683.260 already requires the State to create a standardized procedure. The Department will provide additional guidance and technical assistance on this matter. No change was made to the regulatory text.

Comments: The Department also received a comment requesting clarification regarding whether a company that relocates one of its offices to another State is eligible for WIOA funds to train workers that are relocating, as long as funds are used to upgrade skills and not to induce relocation or displace workers, or if this prohibited under § 683.260.

Department Response: The Department has determined that it is not appropriate to address such a detailed and fact-specific scenario in regulatory text. However, the Department will provide additional guidance on this concern. No change was made in the regulatory text in response to this comment.

Section 683.275 What wage and labor standards apply to participants in activities under title I of the Workforce Innovation and Opportunity Act?

This section describes the wage and labor standards that apply to WIOA title I participants, including the requirements under the Federal Fair Labor Standards Act (FLSA) and State and local minimum wage laws.

Comments: Comments requested that the Department define and distinguish which types of work-based learning, including apprenticeship and pre-apprenticeship, are subject to the wage and labor standards in § 683.275.

Department Response: Section 683.275(a) states that it is applicable to individuals in the work-based learning opportunities who are determined to be employed in activities under title I of WIOA. The FLSA, as amended, 29 U.S.C. 201, *et seq.*, applies in determining whether participants are employees who are covered by the FLSA's minimum wage and overtime provisions. The Department plans to provide detailed guidance on when participants must be considered employees protected under the FLSA. Consequently, the Department has determined that it would not be appropriate to contain additional clarification on this point in the text of the regulation.

Section 683.275(c) applies to work-based learning and employment under title I of WIOA. As described above, whether a particular job triggers these requirements and protections is a fact-specific enquiry. The Department has determined it would not be appropriate to analyze the application of this provision to the two types of jobs submitted by the commenter. Such analysis is better suited for guidance and technical assistance.

Section 683.275(d) applies to all allowances, earnings, and payments to individuals participating in programs under title I of WIOA. Because the application of this provision does not depend on the types of jobs involved, the Department has determined that this provision does not need additional clarification. Consequently, for the reasons described above, the Department adopts the provision as proposed.

The commenter should note that the Department previously issued guidance on the application of the FLSA to work-based training programs. In addition, the Department will provide additional guidance on this section.

No changes were made to the regulatory text in response to these comments.

Section 683.280 What health and safety standards apply to the working conditions of participants in activities under title I of the Workforce Innovation and Opportunity Act?

This section explains what health and safety standards and workers compensation laws apply to WIOA title I participants.

Comments: The Department received a comment requesting a change in the regulatory text of § 683.280 to specify that the health and safety protections in the regulation are also applicable to student workers.

Department Response: Section 683.280 mirrors the language in WIOA sec. 181(b)(4). WIOA and this regulation provide that the health and safety standards established under Federal and State law otherwise applicable to working conditions of employees are equally applicable to working conditions of participants engaged in programs and activities under title I of WIOA.

WIOA utilizes the word "participant" throughout the statute and specifically in sec. 181(b)(4). The term "participant" encompasses the student workers referred to by the commenter and the students are covered by health and safety laws to the extent that those laws cover students. Because whether students are covered by the protections at sec. 181(b)(4) and § 683.280 depends the applicable Federal and State laws and regulations and cannot be succinctly summarized, the Department has determined to retain the use of "participant" in this section. No changes were made to the regulatory text in response to this comment.

Section 683.285 What are a recipient's obligations to ensure nondiscrimination and equal opportunity, and what are a recipient's obligations with respect to religious activities?

This section describes the nondiscrimination, equal opportunity, and religious activities requirements that, as defined in WIAO sec. 188 and at 29 CFR part 38, must adhere to when using WIOA title I funds.

Comments: The Department received a comment in support for this provision as well as two comments requesting the Department to provide boilerplate language as technical assistance for the required provision under § 683.285 because it is useful to the States.

Department Response: The Department intends to provide additional guidance and ongoing technical assistance. Additionally, the Department is not modifying the non-discrimination provisions in the section because this subject is covered in much greater detail in the WIOA sec. 188 nondiscrimination regulations at 29 CFR part 38. Finally, the grant agreements issued by the Department, as described in § 683.105, describe the terms and conditions applicable to the award of title I WIOA funds and Wagner–Peyser funds, including the non-discrimination provisions of § 683.285. No changes were made to the regulatory text in response to these comments.

WIOA sec. 188(a)(5) refers to immigrants authorized by the Attorney General to work in the United States. Pursuant to the Homeland Security Act of 2002, Pub. L. 107–296, that authority has been transferred to the Department of Homeland Security. Section 1517 of the Homeland Security Act (codified at 6 U.S.C. 557) provides that reference in any other Federal law to any function transferred by the Homeland Security Act "and exercised on or after the effective date of the Act" shall refer to the official to whom that function is transferred. Consequently, the Final Rule contains a reference to the Secretary of Homeland Security.

Section 683.295 Is earning of profit allowed under the Workforce Innovation and Opportunity Act?

This section addresses earning profit under WIOA.

Comments: The Department received a comment requesting confirmation that WIOA allows profit for a one-stop operator.

Department Response: The Department has outlined in § 683.295(a)(2) a requirement for grants and other Federal financial assistance awarded under secs. 121(d), 122(a), and 134(b) of WIOA, which allows awardees of Federal financial assistance, such as one-stop operators, service providers, or ETPs, to earn profit. The pass through entity must follow 2 CFR 200.323 to ensure that the entities' charges are reasonable and fair. No changes were made to the regulatory text in response to this comment.

3. Subpart C—Reporting Requirements

683.300 What are the reporting requirements for programs funded under the Workforce Innovation and Opportunity Act?

Section 683.300 specifies the reporting requirements for programs funded under WIOA and the deadlines for such reports.

Comments: The Department received comments regarding what data standards and performance indicators the Department should require and how to define and assess the data standards and performance indicators.

Department Response: Section 683.300 does not detail the program performance elements that a grant recipient should report to the Department; these elements are discussed in 20 CFR part 677 (*see* Joint WIOA Final Rule). The Department will also provide additional guidance on this section and 20 CFR part 677. No changes were made to the regulatory text in response to these comments.

Comments: The Department received several comments on § 683.300 concerning the amount of data collection required under WIOA and the value of the data collected. The commenters suggested that agencies instead share the information they already have and also periodically review the reported data to ensure its value to the program and eliminate any unnecessary reporting of data.

Department Response: The Department's goal is to promote the government's initiative to manage information as an asset to increase operational efficiencies, reduce costs, improve services, support mission needs, safeguard personal information, and increase public access. The Department intends to use data collected from the financial, performance, and annual reports to empower our public workforce system while providing transparency and accountability to our stakeholders. The Department is not seeking to burden the public workforce system by the data collection. While the Department implements its reporting requirements, it will work to ensure that the reporting is not unnecessarily duplicative while still ensuring that the interest described above is protected. However, the Department has determined that additional detail on reporting requirement implementation is not appropriate for regulation. Consequently, the Final Rule adopts the provision as proposed.

Comments: A comment was received that requested that the Department explicitly clarify that reporting requirements may be waived for libraries when developing lists of ETPs during the first year of WIOA implementation.

Department Response: WIOA sec. 122 details requirements for identifying eligible training providers. This section is further addressed in 20 CFR part 680. The Department did not receive any other comments on this section. The Final Rule adopts the provision as proposed with a technical amendment made to § 683.300(a), because it is unnecessary to clarify that the Department's reporting requirements would be consistent with governing

statutes, and a technical amendment to § 683.300(e)(2) and the addition of § 683.300(h), so as to more clearly reflect the requirements in 2 CFR part 200.

4. Subpart D—Oversight and Resolution of Findings

Section 683.410 What are the oversight roles and responsibilities of recipients and subrecipients of Federal financial assistance awarded under title I of the Workforce Innovation and Opportunity Act and the Wagner-Peyser Act?

This section defines the roles and areas in which oversight must be conducted by the recipients and subrecipients, including ensuring compliance with relevant rules and developing a monitoring system.

Comments: The Department received several comments in support of this section and explicitly in support of the Department's requirements for recipients and subrecipients to comply with the EEO requirements of WIOA as well as the Assistive Technology Act of 1998. A comment was received recommending that the Department be notified to work with their State Assistive Technology Act Program (ATAP) with regard to physical and programmatic accessibility issues.

Department Response: It is unclear from the comment what notification to the Department the commenter is requesting. No changes were made to the regulatory text in response to the comments regarding ATAP. However, the Department will consider State ATAPs as potential resources while implementing this section.

Comments: A comment received requested clarification on what kind of grant monitoring is proposed under § 683.410 and whether recipients and subrecipients will have access to clear monitoring and oversight standards.

Department Response: Section 683.410(a) requires that each recipient and subrecipient of title I WIOA funds and Wagner-Peyser Act funds conduct regular oversight and monitoring of its WIOA and Wagner-Peyser Act funded programs to ensure compliance with the stated requirements of title I of WIOA, the Wagner-Peyser Act, the Uniform Guidance at 2 CFR part 200, and the Department exceptions to the Uniform Administrative Requirements at 2 CFR part 2900. Section 683.410(b) further requires that Governors are responsible for developing a State monitoring system that meets the requirements set forth in § 683.410(b)(2).

The Department is providing grant recipients the flexibility with designing the monitoring process and procedures to meet the requirements of § 683.410 and does not want to limit this flexibility by imposing a specific monitoring process. However, the Department will continue to provide technical assistance and guidance on this subject.

No changes were made to the regulatory text in response to these comments. Additionally, the Department would like to note that although § 683.410(b)(2)(iii) requires States to have a monitoring system that enables Governors to determine if subrecipients and contractors have demonstrated substantial compliance with Wagner-Peyser Act requirements, violations of Wagner-Peyser Act requirements will be handled pursuant to the authority and processes in the Wagner-Peyser Act, as amended, and the implementing regulations at 20 CFR part 658.

5. Subpart E—Pay-for-Performance Contract Strategies

Section 683.500 What is a Workforce Innovation and Opportunity Act Pay-for-Performance contract strategy?

This section describes the components of a WIOA Pay-for-Performance contract strategy and describes WIOA Pay-for-Performance contract as a specific type of performance-based contract.

Comments: The Department received several comments regarding § 683.500. Several comments requested clarification as to what was required for a WIOA Pay-for-Performance contract strategy. Some of the comments received inquired as to the meaning of "independently" validating in § 683.500(a)(3) and requested clarification and guidance as to the Department's intended definition of independent. Additionally, commenters questioned the affordability of conducting the feasibility study given the 10 percent funding limitation. Finally, commenters asked the Department to allow local areas to use existing studies instead of commissioning new studies. Many of the comments received concerned the feasibility study requirements. Some comments requested the elimination of the feasibility study; some comments questioned its affordability; some comments requested the Department prescribe what is contained in the feasibility study, and other comments requested that the Department allow local areas to use existing studies instead of commissioning new studies.

Department Response: The Department decided against prescribing a definition of independent validation in order to retain flexibility. The WIOA Pay-for-Performance contract strategy is one of several innovative strategies WIOA adopts to place a higher emphasis on performance outcomes and provider accountability, drive better results, and incorporate rigorous evaluation and evidence-based practice into the delivery of workforce services. The WIOA Pay-for-Performance contract strategy can benefit local areas, job seekers, and business customers when used to support interventions that either have a high probability of success based on prior evidence or that have potential as a promising innovation; have measurable outcomes supported with authoritative data and strong evaluation methodologies; and are overseen by experienced managers that have flexibility to adjust their approach. As authorized by WIOA, the Department intends to provide local areas with the flexibility needed to implement a WIOA Pay-for-Performance contract strategy that meets the needs and challenges in each local area. The Department will provide additional guidance on this subject to address the scope and minimum requirements of independent validation.

WIOA sec. 3 provides that the WIOA Pay-for-Performance contract strategy is a procurement strategy for funds allocated to local areas for the provision of adult, dislocated worker, or youth training services. WIOA limits the amount of local allocations available for WIOA Pay-for-Performance contract strategies to 10 percent of the local area's allocation available under secs. 128(b) and 133(b)(2)–(3) of WIOA. WIOA sec. 189(g)(2)(D) specifies that funds used for WIOA Pay-for-Performance contract strategies shall remain available until expended.

The NPRM defined the WIOA Pay-for-Performance contract strategy as having four distinct characteristics, including in § 683.500(a)(2) a feasibility study to determine whether the proposed intervention is suitable for a WIOA Pay-for-Performance contract strategy. The Department required the feasibility study because it determined that, prior to beginning a WIOA Pay-for-Performance contract strategy, a local area needs to conduct an analysis to determine whether a WIOA Pay-for-Performance contract strategy is the right approach. Upon reviewing the comments, the Department retains its conclusion that the feasibility study is necessary. Consequently, the regulatory text retains the feasibility study requirement.

In analyzing the comments received and reviewing the proposed language, the Department concluded that the

definition of a WIOA Pay-for-Performance contract strategy and the requirement of a feasibility study as part of the strategy could potentially limit the availability of this innovative strategy because local areas would not have enough funds available under the 10 percent limit to do both the feasibility study and the rest of the WIOA Pay-for-Performance contract strategy.

To address this issue, the Department modified that language in § 683.500(a) and removed the feasibility study requirement from the WIOA Pay-for-Performance contract strategy definition. However, because the Department has determined that a feasibility study is necessary, the Department added a new paragraph (b) in § 683.500 that requires a local area to conduct a feasibility study prior to implementing a WIOA Pay-for-Performance contract strategy. Because the feasibility study is not included in the definition of "WIOA Pay-for-Performance contract strategy" in the Final Rule, the feasibility study is not subject to the 10 percent limitation.

In addition, the Department decided against prescribing what should be included in a feasibility study in order to retain flexibility. The Department intends to provide local areas with flexibility authorized under WIOA needed to implement a WIOA Pay-for-Performance contract strategy that meets the needs and challenges in each local area. The Department does not want to limit this flexibility by imposing any other requirements or exclusive definitions for WIOA Pay-for-Performance contract strategies. However, the Department will provide additional guidance on this subject to address the scope and minimum requirements of the feasibility study.

The Department decided against prescribing whether local areas can use existing studies for the reasons described in the previous paragraph.

Comments: Other commenters recommended adding a phrase to proposed § 683.500(b) to indicate that a WIOA Pay-for-Performance contract strategy must include a prohibition against a short-term training activity and placement into low-wage job strategy for harder to serve participants.

Department Response: The Department decided against prescribing prohibitions or outcomes for locals who employ the use of a WIOA Pay-for-Performance contract strategy in order to retain the local areas' flexibility authorized under WIOA. However, the Department will provide additional guidance on this subject.

Comments: Commenters also asked for clarification on whether NFJP providers or WIOA title II providers are included in WIOA Pay-for-Performance contracting strategy.

Department Response: WIOA sec. 3(47) is clear that WIOA Pay-for-Performance contract strategies only include strategies for the provision of training services under WIOA secs. 134(c)(3) and 129(c)(2). Neither the NFJP program nor title II are located at sec. 134(c)(3) or 129(c)(2). Because WIOA is clear that NFJP and title II providers are not included in the definition of a WIOA Pay-for-Performance strategy, the Final Rule adopts the provision as proposed. However, as described in the NPRM, a WIOA Pay-for-Performance contracting strategy is only one specific type of a performance-based contract strategy. Neither WIOA nor the Final Rule is meant to foreclose NFJP providers, title II providers, or any other providers from pursuing performance-based contracts or strategies as they are generally understood, and they are encouraged to do so. The strategies are considered WIOA Pay-for-Performance contract strategies only if they fit within the strict requirements of WIOA sec. 3(47) and this subpart.

No changes were made to the regulatory text in response to these comments.

Section 683.510 What is a Workforce Innovation and Opportunity Act Pay-for-Performance contract?

This section defines the requirements associated with a WIOA Pay-for-Performance contract, which would be awarded under a WIOA Pay-for-Performance contract strategy.

Comments: The Department received numerous comments regarding § 683.510 and what is an allowable WIOA Pay-for-Performance contract.

Several comments either equated the WIOA Pay-for-Performance contract strategies in WIOA to a Pay for Success financing strategy (sometimes referred to as social impact bonds) or inquired as to the allowability of a Pay for Success financing model in WIOA, specifically the allowability of social impact bonds. Other comments recommended that the Department specify in greater detail the WIOA Pay-for-Performance contract requirements and that the Department issue requirements for applications.

Department Response: Pay for Success financing models are an available WIOA Pay-for-Performance contract type under § 683.510 as long as the requirements of § 683.500 are met; the Department will issue future guidance. The Department intends to provide local areas with flexibility authorized under WIOA needed to implement a WIOA Pay-for-Performance contract strategy that meets the needs and challenges in each local area. The Department does not want to limit this flexibility by imposing any other requirements or exclusive definitions for WIOA Pay-for-Performance contracts and contract strategies. However, the Department will provide additional guidance on this subject. Because § 683.510 does not prohibit the use of a Pay for Success model and the Department wants to maintain flexibility, the Department has determined that no additions to the proposed text are necessary. No changes were made to the regulatory text.

Comments: A few commenters requested that the Department eliminate the requirement that organizations be eligible service providers to qualify for WIOA Pay-for-Performance contract funding.

Department Response: WIOA sec. 3(47) limits the WIOA Pay-for-Performance contractors to those organizations that are eligible under WIOA secs. 122 or 123. Because this requirement is part of WIOA, the Department cannot eliminate it. No changes to the regulatory text were made in response to these comments.

Comments: One comment requested clarification on what providers are eligible service providers and whether YouthBuild could form a consortium in an area to provide the services.

Department Response: The requirements for Eligible Training providers are discussed in 20 CFR part 680. Because another part governs eligible training providers, the Final Rule adopts the provision as proposed.

Comments: Another comment sought clarification on whether for-profits and not-for-profits are treated the same under this section.

Department Response: Section 683.510(f) provides that local entities may enter into WIOA Pay-for-Performance contracts with training providers that are eligible under WIOA secs. 122 or 123. Because WIOA secs. 122 and 123 state, and § 683.295 further clarifies, that for-profit agencies are eligible to be an eligible training provider, the Department has determined that these provisions do not need additional clarification regarding the treatment of for-profits and non-for-profits agencies. No changes were made in the regulatory text in response to this comment.

Comments: One commenter requested clarification on whether the § 683.510(e) requirement that the primary indicators of performance in sec. 116(b)(2)(A) of

WIOA be used for performance outcomes means that these primary indicators of performance are the only indicators that may be utilized.

Department Response: Section 583.510(e) mirrors the language the WIOA sec. 3(47) which states that the performance elements that must be included in any WIOA Pay-for-Performance contract are the primary indicators of performance described in WIOA sec. 116(b)(2)(A). As WIOA requires the elements at sec. 116(b)(2)(A), they are mandatory for all WIOA Pay-for-Performance contracts. The Department will provide additional guidance on whether additional performance outcomes can be used in determining the amount to be paid a service provider under a WIOA Pay-for-Performance contract.

Comments: Another comment stated that WIOA Pay-for-Performance contracts should give priority to innovative interventions that aim to help hard-to-serve participant populations find jobs and careers that lead to family-sustaining wages.

Department Response: The Department intends to provide local areas with flexibility authorized under WIOA that is necessary for the implementation of a WIOA Pay-for-Performance contract strategy that meets the needs and challenges in each local area. For that reason, the Department has decided against adding the proposed priority to the regulation. The Department does not want to limit this flexibility by imposing any other requirements or exclusive definitions for WIOA Pay-for-Performance contracts. However, the Department will provide additional guidance on this subject.

Comments: A commenter recommended replacing "must" in § 683.510(d) with "may only" because the use of WIOA Pay-for-Performance contracts for adult training services or youth activities is optional under WIOA.

Department Response: The Department is maintaining the language as proposed because although the WIOA Pay-for-Performance contracts strategy is optional under WIOA, if it is implemented, it must be used to provide the services as described in § 683.510(d).

Comments: Commenters urged the Department to clarify the use of the bonus payments as described in § 683.510(h).

Department Response: The Department has determined that the inclusion of incentive payments in this provision confused the Department's description of bonuses. Consequently, the Department has removed references to incentive payments from this provision. Because the Department has determined that any additional clarification would result in an amount of detail not appropriate to this regulation, the Final Rule adopts the remainder of paragraph (h) as proposed.

Comments: Another comment suggested that requiring independent validations from an independent evaluator without providing adequate funding would force local areas to cut services. This commenter recommended that the Department contract for nationwide local area evaluation and rotate areas every year that are evaluated.

Department Response: As discussed in the preamble to § 683.500, the parameters of independent validation will be addressed in future guidance. However, the local areas will have flexibility in entering into strategies to validate independently the outcomes achieved under the WIOA Pay-for-Performance contracts, which should allow local areas to manage the cost of this external validation while maximizing the benefits Pay-for-Performance can yield. Independent validation must meet the statutory requirement of ensuring the performance outcomes were achieved, thus ensuring the integrity of the payments. No changes were made to the regulatory text in response to this comment.

Section 683.520 What funds can be used for Workforce Innovation and Opportunity Act Pay-for-Performance contract strategies?

This section restates the WIOA requirements that funds allocated under secs. 133(b)(2) and (3) of WIOA can be used for WIOA Pay-for-Performance contract strategies providing adult and dislocated worker training, and funds allocated under sec. 128(b) of WIOA can be used for WIOA Pay-for-Performance contract strategies providing youth activities.

Comments: The Department received several comments requesting clarification regarding § 683.520.

One commenter requested clarification concerning the WIOA Pay-for-Performance contract strategy limits and performance-based contracting. This same commenter requested clarification of on what expenses are included in the 10 percent limit for WIOA Pay-for-Performance contract strategies.

Department Response: Ten percent of the local adult, dislocated, and youth funds allocated under WIOA secs. 128(b) and 133(b)(2)–(3) are available for WIOA Pay-for-Performance contract strategies, as described in § 683.520. However, these caps only are applicable to WIOA Pay-for-Performance contract strategies, as discussed in this subpart, and do not impact a local area utilizing performance-based contracting. Under WIA, many Workforce Investment Boards (Workforce Development Boards (WDBs) under WIOA) utilized elements of performance-based contracts with training providers. These contracts incorporated performance outcomes that contractors were required to meet to obtain payment. However, these contracts did not contain required elements of a WIOA Pay-for-Performance contract strategy articulated in this subpart.

Performance-based contracts are still an available option for local areas and there is no limit on the use of funds for typical performance-based contracts, as defined in the Federal Acquisition Regulations (FAR). Contracts that are not executed under the WIOA Pay-For-Performance contracting authority may continue to include performance incentives, either positive or negative or both, in compliance with the Federal Acquisition Regulations. However, funds used for performance-based contracts that do not qualify as Pay-For-Performance contracts do not remain available until expended under WIOA sec. 189(g)(2)(D). The Department does encourage local areas to refocus these traditional performance-based contracts to place an emphasis on the contractor achieving outcomes like participants obtaining and retaining good jobs, rather than outputs like the number of people served.

The Department has determined additional clarification on what is included in the 10 percent limit is not necessary because the regulation already contains this information. The 10 percent limit applies to WIOA Pay-for-Performance contract strategies, a term that is defined in § 683.500(a). Because the regulation already describes what expenses are included in the 10 percent limit, the Final Rule adopts the provision as proposed.

Comments: Another commenter requested clarification as to whether Individual Training Accounts (ITA) are viewed as typical performance-based contracts and, thus, there is no limit on use of funds for them under § 683.520.

Department Response: ITAs are defined in § 680.300 and are payment agreements established on behalf of an individual participant with a training provider for the provision of training services. ITAs are not contracts entered into by a local area for the provision of services to multiple people for the

provision of all of the performance outcomes in sec. 116(b)(2)(A) of WIOA; therefore they do not meet the requirements of this subpart.

Comments: A commenter requested clarification on whether the 10 percent limitation in § 683.520 references allotment of funds at the local level.

Department Response: The Final Rule makes changes to § 683.520(b) to replace the word "expended" with "reserved and used," to be more consistent with WIOA secs. 129(c)(1)(D) and 134(d)(1)(A)(iii). Section 683.520(b) provides that no more than 10 percent of the total local adult and dislocated worker allocations can be reserved and used on the implementation of WIOA Pay-for-Performance contract strategies for adult training services described in sec. 134(c)(3) of WIOA. Section 683.520(b) further provides that no more than 10 percent of the local youth allocation can be reserved and used on the implementation of WIOA Pay-for-Performance contract strategies for youth training services and other activities described in sec. 129(c)(2) of WIOA. Sections 129(c)(1)(D) and 134(d)(1)(A)(iii) of WIOA make clear that this limitation applies to funds allocated to the local areas. Therefore, the regulation as proposed is clear that the 10 percent limits apply to allocations at the local level. The Final Rule adopts the remainder of § 683.520(b) as proposed, with technical corrections to better align it with secs. 129(c)(1)(D) and 134(d)(1)(A)(iii) of WIOA. The Department will issue guidance to explain these new practices in § 683.520.

Section 683.530 How long are funds used for Workforce Innovation and Opportunity Act Pay-for-Performance contract strategies available?

This section discusses how long funds used for WIOA Pay-for-Performance contract strategies are available.

Comments: The Department received several comments requesting that the Department clarify the length of time funds are available for Pay-for-Performance contract strategies.

Department Response: WIOA sec. 189(g)(2)(D) specifies that funds used for WIOA Pay-for-Performance contract strategies are available until expended. This is meant to allow local areas to structure contracts that include time-intensive service delivery strategies and/or to structure payments based on outcomes that may take longer to achieve, measure, and validate than the typical 2-year funding availability of local area funds. Funds that are obligated but not expended due to a contractor not achieving the levels of performance specified in a WIOA Pay-for-Performance contract may be reallocated for further activities related to WIOA Pay-for-Performance contract strategies only. The Department will issue guidance to explain these new practices. WIOA and regulation sufficiently describe the length of time funds are available for WIOA Pay-for-Performance contract strategies. No changes were made to the regulatory text in response to these comments.

Section 683.540 What is the State's role in assisting local areas in using Workforce Innovation and Opportunity Act Pay-for-Performance contract strategies?

This section describes both allowable and required State activities related to WIOA Pay-for-Performance contract strategies.

Comments: Commenters requested clarification if WIOA Pay-for-Performance contracts would need to be reported under a new line item on the Summary of Expenditures Report, or if this is tracked during the procurement process.

Department Response: This information is being issued under separate Paperwork Reduction Act ICRs. Additionally, the Department expects to put performance and implementation requirements in place in the future and will issue guidance to explain these new practices. Because the Department is still analyzing how to implement the reporting requirements, no changes were made to the regulatory text.

Comments: Another commenter urged the Department to align the regulations at § 683.540 with WIOA and Congressional intent in order to make clear that the Governor's statewide reserve is an acceptable funding source for Pay-for-Performance core end-payments—which the commenter defines as the success payments at the end of a Pay-for-Success contract.

Department Response: This comment raises two potential issues: (1) the use of Governor's Reserve funds to pay for State performance-based contract strategies that do not fit within the strict requirements of WIOA "Pay-for-Performance contract strategies" as defined in WIOA sec. 3(47) and this subpart and (2) the use of Governor's Reserve funds to support WIOA Pay-for-Performance contract strategies.

This part of the regulation does not limit the ability of the State to use the statewide reserve funds to carry out various kinds of performance-based contracts, as defined in the Federal Acquisition Regulations (FAR). Rather, this part of the regulation addresses how Governor's reserve funds may be used to support WIOA Pay-for-Performance contract strategies, a term defined in sec. 3(47) of WIOA and § 683.500. State and local funds may be used to support performance-based contracting, including projects that involve "core-end payments" so long as these funds are used consistently with any restrictions and requirements that might govern those funding sources. However, grantees should note that unlike the 10 percent of local funds identified in WIOA secs. 129(c)(1)(D) and 134(d)(1)(A)(iii) as being available for WIOA Pay-for-Performance contract strategies, funds used for other types of performance-based contracting do not have the potential extended period of availability identified in WIOA sec. 189(g)(2)(D) as applying to the 10 percent of funds described in WIOA secs. 129(c)(1)(D) and 134(d)(1)(A)(iii).

In response to the issue of the use of Governor's Reserve funds to support WIOA Pay-for-Performance contract strategies, the Department has added a paragraph (a)(3) to clarify that the items listed in § 683.540(a) are not an exhaustive list of ways in which Governor's Reserve funds can be used to support WIOA Pay-for-Performance contract strategies. As the addition explains, Governor's Reserve funds can be used for other activities supporting WIOA Pay-for-Performance contract strategies if those uses otherwise comply with limitations that govern the use of those funds.

For example, as provided in § 683.540(a), Governors may provide technical assistance to local areas, including assistance with structuring WIOA Pay-for-Performance contract strategies, performance data collection, meeting performance data entry requirements, and identifying levels of performance. This technical assistance can help local areas move forward in using this contract strategy. Additionally, the State may either conduct evaluations of such strategies and/or provide technical assistance to locals regarding the importance of evaluation of WIOA Pay-for-Performance contract strategies. The State and local areas may conduct their own evaluations of the WIOA Pay-for-Performance contracts, or procure an independent evaluator.

Governor's Reserve funds used to support Pay-for-Performance contract strategies, like Governor's Reserve funds used for other types of performance-based contracting, do not have the potential extended period of availability identified in WIOA sec. 189(g)(2)(D). The Department will issue additional guidance on how these funds may be used to support WIOA Pay-for-

Performance contract strategies, including utilizing the Governor's Reserve for "core-end payments," in compliance with the law. No other changes were made to the regulatory text in response to these comments.

6. Subpart F—Grievance Procedures, Complaints, and State Appeals Processes

Section 683.600 What local area, State, and direct recipient grievance procedures must be established?

This section requires local areas, States, outlying areas, and direct grant recipients of WIOA title I funds to establish and maintain a procedure for grievances and complaints, including appeals as appropriate, and describes what the procedure must include, as required by WIOA sec. 181(c)(1).

Comments: The Department received a comment in support of the regulation as proposed and another comment requesting clarification whether Local WDBs or CEOs are considered "other interested parties affected" by the recipient's WIOA programs under § 683.600.

Department Response: Local WDBs and CEOs are among the parties that qualify as "other interested parties." The Department has determined that no additional changes to the regulatory text are necessary to clarify that the broad term "other interested parties" includes Local WDBs and CEOs. No changes were made to the regulatory text in response to this comment.

7. Subpart G—Sanctions, Corrective Actions, and Waiver of Liability

Section 683.700 When can the Secretary impose sanctions and corrective actions on recipients and subrecipients of title I Workforce Innovation and Opportunity Act funds?

This section describes the procedures and circumstances under which the Department will impose sanctions or take corrective actions, as described in WIOA sec. 184(b) and (e), against States, local areas, and grant recipients and subrecipients.

Comments: The Department received several comments on § 683.700 that cited a reference to the "amount that would be reserved by the Governor" and stated that this is currently the Governor's 5 percent set-aside, then asked for clarification of what portion of funds are subject to the 5 percent reduction and if this amount is affected by failure to meet performance standards under Vocational Rehabilitation. The commenters also requested clarification as to which programs the 5 percent reduction affected.

Department Response: Section 683.700 clarifies that the procedures described at 20 CFR part 677 will be used to impose a sanction or corrective action for a violation of WIOA sec. 116 (*see* Joint WIOA Final Rule). The cited language in the comment is not in § 683.700 and appears to reference sanctions for a violation of WIOA sec. 116 and the procedures established in 20 CFR part 677. The preamble to 20 CFR part 677 addresses issues concerning performance and any applicable sanctions related to WIOA sec. 116. Because these comments do not appear to relate to this section, no changes were made to the regulatory text in response to these comments.

Section 683.710 Who is responsible for funds provided under title I and the Wagner-Peyser Act?

This section identifies the recipient as the responsible party for title I and Wagner-Peyser Act funds.

Comments: The Department received a comment requesting clarification as to § 683.710's application to planning regions. Specifically, the commenter requested clarification as to what protections exist if one service area in a region has a corrective action plan in place.

Department Response: Section 683.710(a) provides that the recipient of funds is responsible for all funds under its grant award. Section 683.710(b) further provides that where a planning region includes two separate units of local government, the chief elected official (CEO) of each unit of local government is the responsible party and that the individual jurisdictional liability must be established in a written agreement between the CEOs. The regulation as proposed clearly states that the potential liability of any unit of general local government in a planning region is dependent on what the CEOs agree to in the written agreement required under § 683.710(b)(2). No changes were made to the regulatory text in response to these comments.

Section 683.720 What actions are required to address the failure of a local area to comply with the applicable uniform administrative provisions?

This section requires the Governor to take corrective action and impose sanctions on a local area if it fails to comply with the requirements described in this section.

Comments: The Department received a comment requesting a change to § 683.720(a)(2) to add language that prior to imposing sanctions, the Governor should find a substantial violation and that the local area has failed to take corrective action. The commenter suggested that the additional language would align to § 683.720(a)(2) with WIOA sec. 184(b)(1).

Department Response: The Department analyzed the comment as well as all of the language in WIOA sec. 184 and determined that § 683.720(a)(2) is consistent with WIOA sec. 184. WIOA sec. 184(a)(5) provides that if a Governor determines that a local area is not in compliance with the uniform administrative requirements, the Governor must require corrective action to secure prompt compliance with the requirements and impose the sanctions found at WIOA sec. 184(b). WIOA sec. 184(a)(5) requires corrective action regardless of whether the violation of the Uniform Administrative Requirements is substantial. In contrast, WIOA sec. 184(b) only requires action by the Governor for violations of title I of WIOA if those violations are substantial. WIOA clearly requires corrective action for violations of the Uniform Administrative Requirements even if those violations are not substantial. No changes were made to the regulatory text in response to this comment.

Comments: The Department received a comment requesting a change in § 683.720(c)(1) to add language stating that if the Secretary finds that a Governor has failed to meet the requirements in § 683.720(c)(1), then the Secretary must take the action required in § 683.700(b) consistent with procedures established in § 683.440.

Department Response: The Department determined that adding the language in § 683.720(c)(1) is not necessary as § 683.700 adequately outlines the necessary actions the Secretary should take if a Governor fails to take actions against a local area and includes the requirement that the Grant Officer use the procedures outlined in § 683.440 (except in certain circumstances not applicable to violations of WIOA sec. 184(a)). No changes were made to the regulatory text in response to this comment.

Section 683.730 When can the Secretary waive the imposition of sanctions?

This section permits a recipient to request a waiver of liability, and describes the factors the Grant Officer will consider when determining whether to grant the request.

Comments: The Department received comments regarding § 683.730. The comments requested the Department fix a clerical error in § 683.730(b)(1) by

removing the word "is" after the word "waiver" to better clarify the meaning of the provision.

Department Response: The Department agrees about the need to make a non-substantive textual edit to § 683.730(b)(1) and has made the suggested change.

The Department received no comments on the remaining provisions in § 683.730, and has adopted each as proposed.

H. Part 684—Indian and Native American Programs Under Title I of the Workforce Innovation and Opportunity Act

1. Introduction

This part of the Final Rule governs the Indian and Native American Programs authorized under sec. 166 of WIOA. This Final Rule section-by-section discussion details the Department's responses to public comments on the proposed part 684 regulations. The analysis that follows provides the Department's response to public comments received on proposed part 684 regulations. If a section is not addressed below, it is because the public comments submitted did not substantively address that specific section and no changes have been made to the regulatory text. Further, the Department received a number of comments on this part that were outside of the scope of the regulation and the Department offers no response. Lastly, the Department has made a number on non-substantive changes to correct grammatical and typographical errors to improve the readability and conform the document stylistically that are not discussed in the analysis below.

In this part, one conforming edit was made throughout to replace the term, "performance measures" with the term "performance indicators."

2. Subpart A—Purposes and Policies

Section 684.110 How must Indian and Native American programs be administered?

Comments: Multiple commenters recommended that § 684.110 include language that would require the Department to utilize staff with a particular competence in Federal policies that have tribal implications and address the government-to-government relationship between the United States and Indian tribes.

Department Response: The Department agrees with the commenter that it is in the best interest of the INA program to utilize employees that have a particular competence in INA employment and training programs. The Department makes every effort to ensure staff are fully competent in the relevant field to administer all of the Department's programs, including the INA program authorized by sec. 166 of WIOA. As part of this effort, the Department actively recruits experienced and knowledgeable staff, including through recruitment of individuals eligible for Indian hiring preference for positions within the Division of Indian and Native American Programs. This effort also targets those who have experience in working with Indian tribes and communities in the development and administration of INA employment and training programs.

The Department seeks to hire competent individuals for all of its programs and has determined that it is not appropriate to include a competency requirement in regulation for just the INA program. No changes to the regulatory text were made in response to these comments.

Section 684.120 What obligation does the Department have to consult with the Indian and Native American program grantee community in developing rules, regulations, and standards of accountability for Indian and Native American programs?

Comments: A commenter expressed concern about whether the WIOA primary indicators of performance had been developed with input from the INA communities and the Native American Employment and Training Council (NAETC) and whether the new WIOA indicators removed the requirement of consultation. This commenter further stated that the NAETC has been working to develop realistic performance goals and suggested that INA programs should not be evaluated on national standards that cannot be attained in Native communities.

Department Response: Per secs. 166(h) and 166(i)(2) of WIOA and §§ 684.120, 684.460, 684.620, and 684.940, the Department is required to consult with NAETC and INA communities. The Department conducted town hall meetings, tribal consultations, and listening sessions with the NAETC and INA communities and will continue to ensure that INA programs and the NAETC be consulted. No changes to the regulatory text were made in response to this comment.

Comments: The comment also references the requirement that INA program grantees report on the primary indicators of performance described in sec. 116(b)(2)(A) of WIOA.

Department Response: As described in sec. 116(b)(2)(A) of WIOA, the performance indicators are mandated by WIOA. The Department does not have the authority to change the statutorily required performance indicators in WIOA. However, it fully intends to continue meaningful discussions and consultation with the NAETC as well as with INA program grantees and other stakeholders in the implementation of the indicators, including the establishment of targets and levels of performance for each indicator as well as the potential for waivers.

Section 684.130 What definitions apply to terms used in this part?

Comments: Regarding the "high-poverty area" definition's reference to the American Community Survey (ACS) 5-year data, one commenter said that this is misstated because the Department has not initiated using the ACS 5-year data as it has not replaced the Census 2000 tab with more recent required data.

Another commenter stated that ACS raises questions about the reliability of data for the Indian population, asserting that State Data Centers and Census Information Centers nationwide express concerns for the high margin of error in small populations and small geographic areas. Stating that changes were made in 2011 to improve the data and that the full effect of these improvements will not be known until 2017, this commenter urged the Department to allow tribes to use their own census statistics in the interim until reliable data are available.

Multiple commenters also proposed a different definition of "high-poverty area" that uses specific terms as defined by the U.S. Census Bureau: "a Census tract, a set of contiguous Census tracts, an American Indian Reservation, Oklahoma Tribal Statistical Area (as defined by the US Census Bureau), Alaska Native Village or Alaska Native Regional Corporation Area, Native Hawaiian Homeland Area or country." In addition, these commenters recommended that in the Native American supplemental youth services program, the definition of "high-poverty area" should relate specifically to poverty rates for the Native American population as that is the target population for this program.

Department Response: As of the date of these Final Rules, the Department is using special tabulations from the Census Bureau for the INA funding formulas described at §§ 684.270(b) and 684.440(a). As stated by the commenter, these special tabulations are based on 2000 decennial census data and have not been updated with ACS 5-year data; however, the special tabulations for the

formula are a different calculation than the one for determining high-poverty. The calculation for determining high-poverty can be obtained by INA program grantees using ACS 5-year data from the Census Bureau's Web site.

Comments: A commenter raised concerns regarding the use of ACS 5-year data in determining the poverty rate for a given census tract.

Department Response: The Department recognizes there will be margins of error inherent to the ACS 5-year data and that the margin of error is likely to be greater for census tracts with smaller sub-populations, such as Native Americans living in rural and remote reservation areas. The ACS 5-year data are administered by the U.S. Census Bureau and is subject to a uniform methodology for collecting population and poverty data for all census tracts throughout the United States. Conversely, allowing tribes to use their own census statistics does not provide for such uniformity, as the method that one tribe uses to count individuals could be different than how another tribe counts individuals. Because the methodology for counting individuals must be the same across all of the United States to ensure fairness, and because the U.S. Census Bureau is the only source that can provide such uniformity, the Final Rule continues to reference ACS 5-year data.

Regarding the remainder of the definition of "high-poverty area," the Department agrees with the commenter and has adopted more precise U.S. Census Bureau language. The Department also has added language that permits the Secretary to identify other areas that an applicant can use to calculate the poverty rate, which allows flexibility in case the areas change for which ACS5-Year data are available.

The Department also agrees that INA program grantees should be able to look to the poverty rate of INA individuals when determining if an area is "high-poverty." The Department recognizes that it is possible for the overall poverty rate in a census tract to be below the 25 percent poverty threshold for the general population while the poverty rate among the INA sub-population in that same census tract is greater than 25 percent. Consequently, the Department added language to the definition of high-poverty area permitting INA program grantees to claim "high-poverty" status for a particular area if the poverty rate of the INA population is at least 25 percent; however, the Department has retained language that allows an area to be considered high-poverty where 25 percent or more of the general population is in poverty. The Final Rule retains this language in order to allow INA program grantees the flexibility of selecting the methodology that is more advantageous for its participants. Therefore, grantees may calculate the poverty rate using the following two methodologies: (1) The number of low-income individuals in a census tract divided by the total number of individuals in the same census tract; or (2) the number of low-income INA individuals in a census tract divided by the total number INA individuals in the same census tract.

While no comments were received on this section about the 30 percent threshold used in determining high poverty, the Department received many comments about the 30 percent threshold in a similar section of the regulation (§ 681.260). As a result of the numerous comments on § 681.260 and the analysis of the comments, the Department determined that a poverty rate of at least 30 percent was too high, and the Final Rule requires a poverty rate of at least 25 percent. Consequently, the Department has changed the percentage requirement for this section to be consistent with § 681.260.

The Department also made clarifying edits to § 684.130 to the meaning of and Indian-Controlled Organization.

3. Subpart B—Service Delivery Systems Applicable to Section 166 Programs

Section 684.200 What are the requirements to apply for a Workforce Innovation and Opportunity Act grant?

Comments: A commenter requested that the Department eliminate or lower the $100,000 threshold in proposed § 684.200(a)(2). This commenter stated that the proposed threshold would eliminate 36 small, long-time grantees and would leave many rural people unserved on their reservations. The commenter also questioned the reasoning behind allowing tribes participating in the consolidation program under Public Law 102–447 to receive funding under sec. 166 for less than $100,000 but greater than $20,000 but not afford a similar exception for INA program grantees that are not participating in Public Law 102–447 but receive funds from multiple sources.

Department Response: The Department has determined that grants of less than $100,000 are not sufficient to operate an employment and training grant effectively. The Department has made an exception for certain incumbent grantees whose funding was less than $100,000, because the Department recognizes that many of these entities are well-established in the community and have been operating an employment and training program for many years. Because incumbent grantees can continue to operate grants even if those grants are for less than $100,000, the Department has determined that implementation of this provision as proposed would not eliminate the 36 incumbent grantees to which the commenter refers.

As for allowing tribes that participate in the Public Law 102–477 program to have a lower funding threshold than grants administered through the Department, the Department reached this decision because Public Law 102–477 allows for Federal employment and training related funds to be consolidated into one grant. This consolidation results in administrative savings that make smaller grant amounts administratively manageable. Therefore, while the WIOA portion of the consolidated grant can be as low as $20,000, all Federal resources combined under the plan must total at least $100,000. Because the Department has determined that § 684.200(a)(2) would not eliminate the 36 incumbent grantees and because tribes participating in Public Law 102–477 also have the same $100,000 Federal funding threshold under a consolidated grant, no changes have been made to regulatory text except for re-numbering and non-substantive edits to paragraphs (c), (d), and (g) for clarity.

Section 684.220 What is the process for applying for a Workforce Innovation and Opportunity Act grant?

Comments: As part of a Council resolution submitted as a public comment, the NAETC wrote "the NAETC agrees and recommends that 4 year eligibility of American Indian, Alaska Native and Native Hawaiian grantees may be designated for such periods, except as the Secretary may choose to waive competition for select grantees who have performed satisfactorily."

Department Response: The NAETC's resolution suggests that the Secretary may choose to waive competition for select INA program grantees that have performed satisfactorily. Although that authority existed under sec. 166(c)(2) of WIA, WIOA removed that provision. Accordingly, sec. 166(c) requires a grant competition to be held every 4 years for all grantee service areas, and § 684.220 is consistent with sec. 166(c) of WIOA. No changes to the regulatory text were made in response to this comment.

4. Subpart C—Services to Customers

Section 684.310 What are Indian and Native American program grantee allowable activities?

Comments: A commenter indicated that the allowable activities reference to 20 CFR 678.430 could not be found.

Department Response: The Department has determined that the reference to 20 CFR 678.430 was correct. Proposed regulations for WIOA were issued in two separate NPRMs in the **Federal Register**. One NPRM includes proposed rules for Department of Labor programs only; this NPRM included regulations for the INA program. The other NPRM provides proposed joint rules for the Department of Education and the Department of Labor. Language referenced at 20 CFR 678.430 was published in the Joint WIOA NPRM (80 FR 20574, Apr. 16, 2015). No changes to the regulatory text were made in response to this comment.

Section 684.350 What will the Department do to strengthen the capacity of Indian and Native American program grantees to deliver effective services?

Comments: A commenter requested that the Department expand on the language that the Department will provide technical assistance and training (TAT) to "assist INA program grantees to improve program performance and improve the quality of services to the target population(s), as resources permit." Specifically, this commenter asked for clarification regarding available resources to provide such TAT and asked how the "quality of services" would be defined—specifically and culturally appropriate—within Indian country.

Department Response: The Department has decided to retain the regulatory text as proposed to preserve flexibility if additional resources become available. The Department notes that the regulatory text identifies two resources that can be used for TAT: (1) Funds reserved under § 684.270(e) and (2) unawarded funds under § 684.260.

Comments: The commenter also asked about the definition of "quality of services."

Department Response: Quality services can take many forms such as high quality career and guidance counseling, helping individuals with job search and job placement assistance, mentoring, financial support for quality training and education, and providing the necessary supportive services to help individuals overcome barriers, etc. The Department notes that grantees are required to describe the quality of services that will meet their customers' needs in their 4-year strategic plan and provides guidance on the content of that plan. The Department then monitors grantees to ensure they are providing the quality services reflected in their plan, provides rigorous technical assistance to improve quality in the course of these reviews and ongoing, and disseminates best practices that exemplify quality services.

5. Subpart D—Supplemental Youth Services

Section 684.410 What entities are eligible to receive supplemental youth services funding?

Comments: Multiple commenters opposed the exclusion of Federally recognized tribes that do not have a land base, commenting that this limitation fails to recognize the unique history of California Indians and would adversely impact the Federally recognized tribal communities that do not yet have land in trust but have been eligible for funding and have received services under prior workforce legislation. Explaining some of the land history of California tribes, a commenter suggested that Federally recognized tribes without a land base in California should not be prevented from receiving funding or offering supplemental youth services to their members and asserted that the exclusion of the California tribal communities within the service area would have discriminatory effects on Federally recognized tribes without a land base in California.

Department Response: Upon review of the comments, the Department has included new language similar to the regulatory language that was in effect under WIA. The Department notes that, currently, recipients of youth funding are limited to entities with a land base per the formula that The Department has established with the input of the NAETC pursuant to the requirements of § 684.440. The youth funding formula is based on demographic data from the U.S. Census Bureau using the geographic boundaries of American Indian reservations, Oklahoma Tribal Statistical Areas (OTSAs), Alaska Native Village Statistical Areas (ANVSAs), Alaska Native Regional Corporations (ANRCs), and the State of Hawaii. During the conversion process from the 1990 census to the to the 2000 census under WIA, the Department consulted with the NAETC's census workgroup on the youth funding formula. The 2000 census workgroup made no recommendations to change this methodology. Therefore, the methodology of awarding youth grants continues to be based on American Indian reservations, OTSAs, ANVSAs, ANRCs, and the State of Hawaii. Finally, INA program grantees should note that even if they are not required to have land base to receive youth supplemental funds, sec. 166(d)(2)(A)(ii) still limits participants in INA youth programs to "youth on or near Indian reservations and in Oklahoma, Alaska, or Hawaii."

Section 684.430 What individuals are eligible to receive supplemental youth services?

Comments: A commenter supported the increase in age from 21 to 24 and asked whether additional funding will be considered to best serve this population that has been defined by the Department as most in need and having barriers to employment.

Department Response: Program funding is ultimately determined by Congress through annual funding appropriations for Federal employment and training programs. Consequently, there is not necessarily a relationship between an increase in the number of individuals eligible for a program and an increase in funding. No changes to the regulatory text were made in response to this comment.

Section 684.460 What performance indicators are applicable to the supplemental youth services program?

Comments: Several commenters expressed concerns with the performance accountability indicators applicable to the Native American supplemental youth services program. These concerns fall into three categories: (1) Concerns about the feasibility of implementing the performance indicators given the limited amount of funding available for the youth supplemental program, (2) concerns about the applicability of the youth performance indicators given that most tribes use INA youth funds operate a summer employment program only, and (3) specific concerns about regulation language. Several commenters suggested that the Department retain the WIA performance measures or waive the WIOA performance indicators.

Multiple commenters raised concerns about expense and feasibility of data collection for the performance indicators, particularly that the current performance reporting system used by INA program grantees (Bear Tracks) is not adequate for the proposed performance requirements and would be costly to upgrade. Specifically, a commenter asserted that the total update cost may exceed $1 million,

stating that the current Microsoft Access platform does not allow the Department to obtain real-time data across the INA grant community because it is not Web-based. This commenter also asserted that training would be necessary for INA program grantees on a nationwide basis on the new performance reporting system.

Multiple commenters stated that, given the disparity in funding between the INA youth grants and the State grants, it is not reasonable or practical to require the same level of service and effort in collecting performance data given the small median size of grants. A commenter stated that the INA youth program currently does not have the ability to do wage matching through the Wage Record Interchange System (WRIS). This commenter expressed concern regarding the burden on INA program staff over following up with participants to determine the "unsubsidized employment" aspect of certain performance indicators.

A commenter expressed concern that maintaining current regression models for the INA program grantees that factor in local economic conditions is an additional cost that must be considered.

A commenter said that such programs are not conducive to meeting several of the State performance indicators, stating that most INA program grantees only operate summer employment programs for high school-aged youth,. Because the INA program is not a core program, a commenter suggested that the "effectiveness in serving employers" performance indicator should not apply to INA programs, citing WIOA sec. 116(b)(2)(A)(iv).

A commenter proposed that the Department allow the INA program to modify the definitions for the indicators to better fit a summer employment program that primarily serves high school-aged youth that return to high school in the fall and that the regulations or ETA policy clarify that the indicators cannot be used to determine INA program grantee performance. This commenter suggested that while the Department develops performance indicators for the INA youth programs in consultation with the INA program grantee community and the NAETC, the Department should establish a waiver process under which INA program grantees would continue to use the current Tribal Supplemental Youth Services performance indicators and goals under WIA as part of the 4-year strategic plan.

Commenter concerns about other specific regulation language included: Multiple commenters asked for more specificity on what is considered an "education or training" activity and whether high school is considered an "education" activity. Another commenter expressed opposition to proposed § 684.460(b), which would require the Secretary, in consultation with the NAETC, to develop additional performance indicators (in addition to the primary indicators of performance). A commenter encouraged the expansion of the median earnings performance measure in § 684.460(a) to include consideration of a participant's economic self-sufficiency level or economic security level in addition to median earnings. Another commenter stated that the reference in § 684.620(a)(6) to WIOA sec. 116(b)(2)(A)(iv) is incorrect. Instead, the reference should be to sec. 116(b)(2)(A)(i)(VI).

Department Response: The Department held two tribal and grantee consultations on WIOA in which stakeholders raised concerns with the youth performance indicators similar to the concerns expressed in these comments. The Department recognizes that there are significant challenges in implementing the youth performance indicators at sec. 116(b)(2)(A)(ii) of WIOA. While the Department cannot change statutory requirements such as performance indicators, consideration has been given to how youth performance indicators can be implemented in a way that is realistic and feasible for INA program grantees while also maintaining the requirements in WIOA.

Because WIOA requires the use of the performance indicators at WIOA sec. 116(b)(2)(A) for the recipients of funds under WIOA sec. 166, including the youth performance indicators at 116(b)(2)(A)(ii), no changes have been made to the regulatory text in response to these comments.. However, the Department notes that recipients of youth funds under sec. 166 of WIOA may request a waiver of the youth indicators of performance pursuant to waiver procedures that will be established under sec. 166(i)(3) of WIOA. The waiver procedures established pursuant to sec. 166(i)(3) of WIOA generally will be consistent with, but not identical to, the waiver requirements under sec. 189(i)(3)(B) of WIOA. The Department will consult with the NAETC before developing guidance on the waiver process. The Department anticipates that this guidance will include youth performance indicators that may be substituted for the performance indicators identified at WIOA sec. 116(b)(2)(A). Finally, the Department also envisions that waivers to the youth performance indicators will be requested at the beginning of a 4-year grant award cycle, in the 4-year strategic plan and will waive youth performance indicators for the duration of the 4-year grant cycle plan. Through this process, the Department anticipates that recipients of youth INA funding can establish performance indicators that address both the grantees' feasibility and applicability concerns.

Comments: Commenters' requested more specificity on what is considered an "education or training" activity and whether high school is considered an "education" activity.

Department Response: The Department will provide clarification on this and other performance-related terms in guidance. Finally, the Department also will work with the NAETC to update the INA programs' current MIS system or develop a new MIS system to collect the data necessary (including wage records) to report on the outcomes of the INA youth indicators, (as well as the outcomes of INA adult performance indicators).

Comments: Commenters expressed concerns about establishing a statistical regression model.

Departments Response: The Department acknowledges the commenters concerns about the cost of maintaining a statistical regression model. The cost of developing a statistical adjustment model is the responsibility of the Department and the Department continues to seek ways to develop accurate and fair statistical adjustment models that are cost effective and maintainable. As the Department continues to implement WIOA and refine the application of the model for sec. 166 grantees the Department will provide additional information.

As for the concern about the applicability of the performance indicator regarding effectiveness of serving employers under § 684.460(a)(6), the Department has determined that WIOA sec. 166(h) requires the use of all performance indicators under WIOA sec. 116(b)(2)(A), including the indicator on effectiveness in serving employers at sec. 116(b)(2)(A)(i)(VI). That WIOA sec. 116(b)(2)(A)(iv) references the core programs does not limit the applicability of the indicator on the effectiveness in serving employers to the core programs. Because WIOA clearly requires the application of the indicator on effectiveness of serving employers for recipients of funds under sec. 166, no changes have been made to the regulatory text.

Regarding the incorrect reference in § 684.620(a)(6), the Department has examined the reference to sec. 116(b)(2)(A)(iv) in § 684.460(a)(6) and has determined that the reference is correct.

Concerning the opposition to § 684.460(b), which requires the development of performance indicators that are in addition to the primary indicators of performance, this is a statutory requirement and cannot be altered here.. However, as part of a waiver request, the Department envisions that these additional indicators which will be developed in consultation with the NAETC, may be used in lieu of the primary indicators of performance specified at §§ 684.460(a)(1)–(6) and 684.620(a)(1)–(6). Please see further discussion of the adult performance indicators in the preamble corresponding to § 684.620.

Comments: A commenter encouraged the Department to expand the median earnings performance indicator at § 684.460(a)(3), to include a participant's economic self-sufficiency level or economic security level.

Department Response: The Department determined that there is not an accurate way of converting a self-sufficiency/economic security level into an average earnings amount. No changes have been made to regulatory text in response to these comments.

6. Subpart F—Accountability for Services and Expenditures

Section 684.620 What performance indicators are in place for the Indian and Native American program?

Comments: The comments on the performance indicators in § 684.620 raise many of the same issues as the comments on the youth performance indicators in § 684.460. For example, many commenters expressed concerns about the cost of implementing the performance indicators and suggested that the Department should develop performance indicators with the help of INA program grantees. Additionally, commenters noted challenges with the proposed use of reporting following the State reporting mechanisms and urged the Department to negotiate with and assist INA program grantees in developing a culturally amenable system of reporting that does not impede grantees ability to prioritize services to participants.

Another commenter expressed concerns that the proposed performance indicators would require a significant re-design (or replacement) of the current performance reporting system used by INA program grantees (Bear Tracks).

A commenter noted that more than one-third of the WIOA sec. 166 INA program grantees are allocated less than $100,000. The commenter expressed concerns that WIOA increases the reporting burden for WIOA sec. 166 programs by using a more complex set of indicators and expressed concern for the statistical regression model.

A commenter suggested that INA programs should have their own performance indicators that they help to develop and another commenter suggested that a waiver provision for performance is necessary.

Additionally, a commenter suggested that the Department may have violated E.O. 13175's requirements to consult with tribal officials in the development of Federal policy that has tribal implications. This commenter reasoned that the WIOA-mandated primary indicators of performance removes the step of consultation with WIOA sec. 166 INA programs and the NAETC to develop performance indicators in accordance with the purpose and intent of WIOA sec. 166.

A commenter also expressed concern that WIOA could be construed to require greater reporting requirement of INA program grantees than States and municipalities. This commenter requested that the regulations clarify that tribes and tribal organizations do not have any greater reporting requirements than States or local governments.

Finally, a commenter suggested that § 684.620(a)(6) contains an incorrect reference.

Department Response: The Department continues to seek an appropriate balance of being accountable for Federal funds through tracking and reporting outcomes while not over-burdening the recipients of Federal funds with undue reporting costs and other administrative requirements. Maintaining such a balance between performance accountability and burden will be important to WIOA implemented.

The performance indicators at § 684.620 implement six statutorily required performance indicators and also require the Department (in consultation with the NAETC) to develop an additional set of performance indicators and standards that are applicable to the INA program. To the extent that a commenter requested that the Department clarifies in the regulations that sec. 166 recipients do not have reporting requirements in addition to those of recipients of State adult, youth and dislocated worker funds, the Department notes that such a clarification would be contrary to the statutory language of WIOA. Section 166(h)(1)(A) of WIOA requires that a set of performance indicators be developed "in addition" to the performance indicators described in sec. 116(b)(2)(A). Therefore, WIOA requires that INA program grantees be subject to additional performance indicators.

However, to the extent that commenters are asking for the Department to waive performance indicators for the INA adult program, the Department recognizes that there are challenges in applying the indicators to the INA program. As discussed in the preamble to § 684.460, the Department is considering a waiver policy for the youth program for these indicators pursuant to the waiver process at § 684.910. The Department recognizes that WIOA provides broad waiver authority for the INA program; however, WIOA sought to hold programs accountable for performance by requiring common performance indicators to compare across programs. Any waivers for the adult program will be considered on a case-by-case basis to account for the needs and circumstances of individual grantees.

The Department also recognizes that updates will need to be made to the information collection and reporting software known as Bear Tracks and understands that an investment may need to be made in the software to move it from a Microsoft Access platform to a web-based platform. Training also will need to be provided to grantees on the new performance indicators and the new updates to the software. In addition, baseline data will need to be established before target levels for performance can be established. The Department is providing technical assistance and guidance to support grantees in transitioning to the new performance indicators under WIOA.

Additionally, as noted in the response to § 684.620, the Department has taken the commenters concerns about establishing a statistical regression model under consideration. As the Department continues to implement WIOA and refine the application of the model for sec. 166 grantees, the Department will provide additional information.

Additionally, a commenter proposed that § 684.620(a)(6) contains an incorrect reference. The Department has reviewed the provision and determined that the reference is correct.

The Department also will ensure compliance with the requirements of the Privacy Act. Because the Department is already bound by the requirements of the Privacy Act, the Department has

determined that it is not necessary to add language to the regulation confirming this requirement. No changes to the regulatory text were made in response to these comments.

As for the comments on E.O. 13175, the Department notes that E.O. 13175 requires each Federal agency to have an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications. The primary indicators of performance are required by WIOA and are not the result of a policy or regulation implemented by the Department. Therefore, the Department did not violate E.O. 13175 or the consultation requirement at sec. 166(i)(2). Please see the DOL WIOA NPRM preamble and the introductory text at the beginning of the preambles for the Joint and DOL WIOA Final Rules for additional discussion of the steps taken to fulfill the Department's consultation requirements. In its implementation of the primary indicators of performance, the Department will continue to comply with the requirements of E.O. 13175 by ensuring input by tribal officials and the NAETC, which represents Indian tribes, tribal organizations, Alaska Native entities, Indian-controlled organizations serving Indians, and Native Hawaiian organizations.

7. Subpart I—Miscellaneous Program Provisions

Section 684.910 What information is required in a waiver request?

No public comments were received for this section; however, the Department has made changes to this regulation in response to comments on §§ 684.460 and 684.620 to clarify that the requirements for submitting a waiver under sec. 166(i)(3) are not identical to the waiver requirements under sec. 189(i)(3)(B) of WIOA. Instead, they generally follow the requirements under sec. 189(i)(3)(B). The Department will address this issue further in overall guidance on the 4-year strategic plan.

Section 684.950 Does the Workforce Innovation and Opportunity Act provide any additional assistance to unique populations in Alaska and Hawaii?

Comments: A commenter urged the Department to issue Requests for Proposal (RFPs) as soon as possible to implement WIOA sec. 166(k), which authorizes additional funding for competitive grants "to entities with demonstrated experience and expertise in developing and implementing programs for the unique populations who reside in Alaska and Hawaii . . . to improve job training and workforce investment activities for such unique populations." As part of this competitive RFP process, this commenter urged the Department to prioritize the expertise and cultural sensitivity of tribes, tribal organizations, and Native Hawaiian-serving organizations, particularly any WIOA sec. 166 grantees. The commenter asserted that such a preference priority would ensure that the entities with the greatest experience and success in addressing employment and training issues in Alaska Native and Hawaiian populations would drive the programs.

Department Response: The Department plans to issue a Funding Opportunity Announcement (FOA) in PY 2016 (beginning July 1, 2016) to award grant funding to entities in accordance with WIOA sec. 166(k). The Department will consider establishing a priority under advisement when creating the FOA.

I. Part 685—National Farmworker Jobs Programs Under Title I of the Workforce Innovation and Opportunity Act

1. Introduction

The purpose of part 685 is to implement WIOA sec. 167, which authorizes migrant and seasonal farmworker (MSFW) programs. MSFW programs include career services and training, housing assistance, youth services, and related assistance to eligible MSFWs. In drafting these regulations, the Department consulted with States and MSFW groups during stakeholder consultation sessions conducted in August and September 2014, as required by WIOA sec. 167(f).

The Department received numerous comments on part 685. Many commenters supported the Department's focus on serving MSFW youth and the broad definition of "dependents," who can be served through the program. General concerns raised regarding part 685 included how the Department treats the NFJP operationally and administratively compared to other WIOA programs, and the need for additional emphasis on co-enrollment opportunities for NFJP participants with other WIOA authorized programs, including the dislocated worker program.

Based on the comments received, the Department made the following significant changes to part 685 as proposed:

- The Final Rule permits an NFJP grantee some flexibility to increase the OJT reimbursement rate up to 75 percent of the wage rate of a participant, provided that such reimbursement rates are consistent with the rates set by the Governor in the State or Local WDB(s) in the Local Area(s) which the grantee operates in accordance with WIOA sec. 134(c)(3)(H)(i);
- The Final Rule revises § 685.360(d) to clarify that NFJP-funded permanent housing development activities that benefit eligible MSFWs do not require individual eligibility determinations;
- The Final Rule clarifies in § 685.360 that development of on-farm housing located on property owned and operated by an agricultural employer is an allowable activity; and
- In response to commenters' concerns regarding the negative impact that would result on performance indicator calculations by including individuals who receive only certain minimal "related assistance" services which do not require a significant investment of staff time and resources, the Department has added language to § 685.400 that puts the NFJP program in alignment with other WIOA authorized programs regarding performance accountability.

The analyses that follows provides the Department's response to public comments received on the proposed INA program regulations. If a section is not addressed in the discussion below, it is because the public comments submitted in response to the NPRM did not substantively address that specific section and no changes have been made to the regulatory text. Further, the Department received a number of comments on this part that were outside the scope of the regulation and the Department offers no response. Lastly, the Department has made a number of non-substantive changes to correct grammatical and typographical errors to improve the readability and conform the document stylistically that are not discussed in the analysis below.

2. General Comments on NFJP

The Department received a number of comments on NFJP addressing the following issues: Administration of the NFJP, co-enrollment of participants, portable eligibility and a national records system, uniform program branding, treatment of NFJP as compared to other WIOA programs, and one-stop infrastructure payments.

Administration of the NFJP

Several commenters expressed concerns regarding the administration of the NFJP. One NFJP grantee commented on the lack of consistency it has experienced when interacting with

Federal representatives from different regions and said there is often a disconnect in regulatory interpretation among these representatives. To address this confusion, the commenter suggested that multi-regional grantees should be assigned only one Federal Project Officer based on the grantee's primary location. Multiple commenters stated that the Department should not allow grant officers to place additional administrative or operational restrictions on NFJP grantees.

The Department has not revised part 685 in response to these comments. The Department is committed to ensuring that grantees are treated consistently across regions. The Department's national office coordinates with all Employment and Training Administration (ETA) regional offices to identify program issues and technical assistance needs, and coordinates guidance with Federal Project Officers (FPO) on a regular and ongoing basis. A regulatory fix is not required to ensure uniformity.

Co-Enrollment

Comments: Several commenters requested the Department emphasize the importance of co-enrollment opportunities across programs. One commenter remarked that they would like co-enrolled farmworkers to receive training and cost support from other Department programs for which they are eligible, in addition to NFJP. Another commenter said that one-stop centers should increase co-enrollment opportunities for NFJP-enrolled farmworkers, and asserted that grantees often are not able to provide these opportunities and resources. Similarly, a few commenters suggested that one-stop centers should provide services to unemployed farmworkers instead of automatically referring them to NFJP services, and urged adult, youth, and dislocated workers programs to open their services to farmworkers.

Department Response: The Department strongly encourages service delivery alignment across the one-stop delivery system and other workforce partner programs to ensure that services are tailored to meet each individual's needs. As described further in 20 CFR part 678 (*see* Joint WIOA Final Rule), to better align service delivery and coordination between the one-stop delivery system and other workforce partner programs, the Department encourages NFJP grantees and other title I programs to develop specific language in the memoranda of understanding (MOUs) with Local Workforce Development Boards (also referred to as Local WDBs) and other partners addressing co-enrollment. The MOU may describe how co-enrollments will be accomplished to meet the needs of participants best, address operational issues such as eligibility determination and documentation, co-case management, specific services provided by each partner, and coordinated fiscal and performance tracking. Additionally, 20 CFR 678.500 (*see* Joint WIOA Final Rule) provides a detailed description of what must be included in the required MOU between the Local WDBs and required one-stop partners. No change has been to the regulatory text here in response to these comments.

Portable Eligibility and a National Records System

Comments: Two commenters stated that if NFJP grantees had a unified, Department-supported data collection system, not only would it be easier to help farmworkers qualify for service, but it also would establish a more unified national presence for the NFJP and ensure continuity of services and eligibility across regions. One commenter remarked that issues of confidentiality and privacy should be considered during the creation of a common eligibility system.

Department Response: The Department agrees that an integrated performance reporting system would assist farmworkers to qualify for service, and facilitate co-enrollment and assessment of WIOA performance across States and programs. Section 116(d)(1) of WIOA requires the Departments to provide a performance reporting template and the Departments will seek public comment on the reporting templates through the Paperwork Reduction Act (PRA) process. Aligning reports and performance definitions will create a performance accountability system that is easier to understand and assess the effectiveness of all service providers in achieving positive outcomes for individuals served across WIOA programs.

The regulations also established an integrated, individual record system.

Comments: Elaborating on continuity of services and emphasizing the inherent migratory nature of farmwork, some commenters urged the Department to establish a clear mechanism that ensures that grantees' performance will not be negatively affected when farmworkers leave or transfer to another grantee or State, and a few commenters stated that farmworkers, especially migratory farmworkers, should be allowed to transfer services easily if they move to a new State. Some commenters suggested creating a uniform branding so that farmworkers can locate services in different States more easily.

Department Response: The Department acknowledges that providing a continuity of program services to migrant farmworker populations moving from State to State may be challenging, and tracking participants and reporting on grantee performance indicator outcomes may be difficult in cases where an NFJP participant has moved to another State.

The Department is continually looking to improve performance reporting policies and systems, and is interested in additional feedback on assistance the Department can provide for establishing mechanisms to track the eligible MSFWs they serve in the NFJP and reporting program outcomes.

Uniform Program Branding

Commenters suggested creating a uniform branding so that farmworkers can locate services in different States more easily.

Department Response: The term *NFJP* provides nationwide uniformity across employment and training grants and housing grants while providing flexibility for grantees to tailor their outreach efforts to the unique needs of the farmworker communities they serve. The use of one-stop center brand for one-stop centers nationwide will also help farmworkers find services. The Department encourages grantees in one State or service area to consider establishing memoranda of understanding (MOUs) with partner grantees in other States or service areas, or a joint MOU with multiple grantees, to ensure continuity of program services to participants, and support outcome tracking as participants move from State to State.

Treatment of NFJP as Compared to Other WIOA Programs

Comments: Many commenters expressed concern that farmworkers are considered a niche population and, thus, do not have the same access to the public workforce system as do other workers, and further commented that there should not be more restrictions on MSFWs or the NFJP system than there are on the main workforce development system. Discussing equalization of treatment of NFJP with other WIOA programs, some commenters expressed concern that the Department allows carryover funds for grantees of adult, youth, and dislocated workers but not for NFJP grantees, and one commenter suggested that the Department allow line item budget variance with no more restrictions than those placed on the mainline public workforce system. Two

commenters remarked that because the NFJP grant period is 4 years under WIOA, the Department should stop treating NFJP grants as one-time discretionary grants. And finally, one commenter, commenting on proposed § 685.430 (grantee program plan modifications) stated that NFJP grantees should be allowed to spend out the grant over the entire period of performance, using oldest funds first, just as States are permitted to do in proposed § 683.110 (period of performance of WIOA title I and Wagner-Peyser Act funds.)

Department Response: The NFJP is authorized under sec. 167 of WIOA, and is not included as a core formula program as defined in WIOA sec. 3(12). Therefore, the NFJP does not have the all of the same requirements, obligations, and flexibilities as States or core programs. As described in § 683.110(e) "funds awarded by the Department under WIOA sec. 167 are available for expenditure for the period identified in the grant award document, which will not exceed 4 years," which is consistent with other National Programs authorized under WIOA title I, subtitle D. NFJP grantees currently have the ability to use carry over funds through the current grant cycle which ends June 30, 2016, and the Department will continue to establish guidelines for the use of carry-over funds through the grant award documents as described in § 683.110(e).

Comments: Some commenters mentioned the 1974 Judge Richey Court Order when discussing their arguments for providing farmworkers with equal access to system services. Multiple commenters urged the Department to allow farmworkers to be eligible for the dislocated worker program, and some of those commenters stated that the dislocated worker program should not be considered an exclusively "mainline" resource. Commenters remarked that many farmworkers are unlikely to return to agricultural work because of inconsistent employment, seasonal layoff, and low income, and commented that these conditions should make farmworkers eligible for dislocated worker services.

Department Response: The Department is committed to ensuring that farmworkers have equal access to the public workforce system via the State Monitor Advocate System established in the 1974 Judge Richey Court Order. Farmworkers qualify to receive career services as a dislocated worker in adult and dislocated worker program if they meet the definition of "dislocated worker" at WIOA sec. 3(15). However, as described in § 680.130, Governors and Local WDBs have discretion to establish policies and procedures for one-stop operators to use in determining an individual's eligibility as a dislocated worker, consistent with the definition at WIOA sec. 3(15), and this flexibility may result in interstate differences in who may qualify for dislocated worker services. No changes have been made to regulatory text in response to these comments.

Comments: Several commenters opposed NFJP grantees' lack of access to Unemployment Insurance (UI) records. Commenters stated that allowing NFJP grantees to access UI records as other programs do would decrease the amount of time and resources that staff expends to find the necessary wage record information.

Department Response: Part 603 (confidentiality and disclosure of State Unemployment Compensation (UC) information) of the Final Rule permits State agencies to disclose confidential UC information, including UI wage information, to "public officials," defined at § 603.2(d) (UC program definitions), under limited circumstances. These limitations are in place to ensure that confidential UC information including personally identifiable information, such as Social Security numbers, are appropriately safeguarded. Any NFJP grantees that are included in the § 603.2(d) definition of public official may request UI wage information from State agencies. NFJP grantees who are not included in the definition of public official have indirect access to UI wage records through a common reporting information system (CRIS) administered by the Department. The Department anticipates providing extensive guidance on part 603 throughout the implementation of WIOA.

One-Stop Infrastructure Payments

Comments: Multiple commenters urged the elimination of the one-stop delivery system proposed infrastructure payments described in 20 CFR 678.700 (one-stop infrastructure costs) (*see* Joint WIOA Final Rule), and some remarked that the NFJP should be exempt from this requirement because NFJP grantees often operate in satellite locations in rural areas where the communities face transportation barriers. Several commenters stated that, if deemed necessary, infrastructure payments should be no greater than the value received by NFJP programs, and some commenters suggested that in-kind contributions should be an acceptable payment option towards infrastructure costs. One commenter suggested that NFJP grantees should continue to be required partners on State and Local WDBs if the NFJP is required to contribute to the one-stop infrastructure costs.

Department Response: As described in WIOA sec. 121(b)(1)(B), NFJP grantees are a required one-stop partner, and as such, must contribute to the infrastructure funding of one-stop operations in the local workforce areas in which they operate. The Department does not require that NFJP grantees be in every affiliate one-stop center (described in 20 CFR 678.310 (what is an affiliated site and what must be provided there) of this Final Rule); however, all one-stop partners must provide access to their programs and activities through the comprehensive one-stops described in 20 CFR 678.305 (one-stop centers and what they must provide), as defined in 20 CFR 678.305(d), and therefore should be contributing their proportionate share to the one-stop infrastructure costs based on the relative benefit received by the program in these centers (*see* Joint WIOA Final Rule). Regarding the suggestion that in-kind contributions be an acceptable payment option towards infrastructure costs; 20 CFR 678.700 (one-stop infrastructure costs) describes infrastructure costs, shared costs, and in-kind contributions, and includes the non-personnel costs necessary for the general operation of the one-stop center. In-kind contributions may be used to cover additional costs relating to the operation of the one-stop delivery system as described in 20 CFR 678.760 (funding of one-stop partner's shared costs). Regarding the suggestion that NFJP grantees should continue to be required partners on State and Local WDBs if the NFJP is required to contribute to the one-stop infrastructure costs, under WIOA sec. 101(b) and sec. 107(b), NFJP grantees are no longer required members of State or Local WDBs, and the Department does not have the authority to require their membership. No changes have been made to the regulatory text here in response to these comments.

3. Subpart A—Purposes and Definitions

This subpart describes the general purpose and definitions relevant to MSFW programs authorized under WIOA sec. 167, the role of the Department in providing technical assistance and training to grantees, and the regulations applicable to grantees.

Section 685.110 What definitions apply to this program?

Proposed § 685.110 provided definitions of terms relevant to the

implementation and operation of workforce investment activities authorized for MSFWs and their dependents under WIOA.

The Department received comments on several definitions in this section and these comments are discussed below. All other definitions in § 685.110 did not receive substantive comments; therefore, they are not discussed below.

The definition of family included in § 685.110 did not receive any comments: However, it is important to note that this definition is specific to this part. The term is included for the sole purpose of reporting NFJP housing assistance grantee indicators of performance as described in § 685.400 (indicators of performance for the NFJP), and differs from the definition of *family* found at § 675.300 (applicable definitions for WIOA title I regulations). The definition of family found at § 675.300 applies to the regulations in 20 CFR parts 675 through 688. For example, if an NFJP grantee is using "family income" to determine if an MSFW qualifies as "low income" as defined in WIOA sec. 3(36), the definition of family at found at § 675.300 should be utilized.

Additionally, the Department added the term "supportive services" as defined by WIOA sec. 3(59) to the list of defined terms provided in § 685.110 to clarify how the term is used in the preamble to part 685 and specifically in §§ 685.330, 685.420, 685.440, and 685.510.

Eligibility Determination Period

Comments: Proposed § 685.110 defined eligibility determination period as "any consecutive 12-month period within the 24-month period immediately preceding the date of application for the MSFW program by the applicant MSFW." The definition was adopted from the first clause of WIOA sec. 167(i)(3)(A)(i), which defines "eligible seasonal farmworker."

Numerous commenters suggested that the definition of eligibility determination period should include an exception to the consecutive 12-month period in situations when a farmworker has been hospitalized or incarcerated during the 24-month period preceding the date of the application. In those cases in which a farmworker has been hospitalized or incarcerated during the most recent 24-month period, one commenter recommended that the Department extend the qualifying 24-month period to include the balance of the time the farmworker was unable to work.

Department Response: "Eligibility determination period" is defined by statute as any consecutive 12-month period within the 24-month period immediately preceding the date of application for the MSFW program by the applicant MSFW. The definition was adopted from the first clause of WIOA sec. 167(i)(3)(A)(i), which defines "eligible seasonal farmworker."

Eligible Seasonal Farmworker

Comments: Proposed § 685.110 defined Eligible Seasonal Farmworker as a low-income individual who for 12 consecutive months out of the 24 months prior to application for the program involved, has been primarily employed in agricultural or fish farming labor that is characterized by chronic unemployment or underemployment; and faces multiple barriers to economic self-sufficiency; and dependents of the seasonal farmworker as described in WIOA sec. 167(i)(3).

One commenter asked the Department to provide a definition of chronic unemployment/underemployment as that term is used in the definition of "eligible seasonal farmworker." This commenter also requested clarification as to whether the condition of chronic unemployment/underemployment applies to the individual or to an industry.

Department Response: These terms as used in WIOA sec. 167(i)(3)(A)(i) refers to the nature of the agricultural or fish farming labor force as a whole and whether it experiences either chronic unemployment or underemployment. In the past, the Department has issued additional guidance explaining NFJP participant eligibility and will continue to issue such guidance under WIOA.

Emergency Assistance

Comments: Proposed § 685.110 defined Emergency Assistance as a form of "related assistance" and means assistance that addresses the immediate needs of eligible MSFWs and their dependents, provided by grantees. An applicant's self-certification is accepted as sufficient documentation of eligibility.

One commenter, while agreeing with the acceptance of self-certification, suggested that the Department reinforce self-certification rather than increase documentation standards when developing any TEGL on data validation.

Department Response: The Department will address WIOA data validation requirements in future guidance. Additionally, the Department clarified the definition for "Emergency Assistance" by adding language that mirrors the statute and the definition for "Related Assistance."

National Farmworker Jobs Program (NFJP)

Comments: Some commenters suggested that the program's name be changed to the "National Farmworker Opportunity Program" so that the program's name is consistent with the Workforce Innovation and Opportunity Act, and to acknowledge the NFJP program's origins via the Economic Opportunity Act of 1964.

Department Response: The term NFJP was initially developed in 1999 by the Secretary's MSFW Advisory Committee to distinguish the NFJP from the other workforce investment grants and activities funded under WIA sec. 167, such as the farmworker housing assistance grants; however, since that time the NFJP has come to be the accepted term for both employment and training grants and housing grants. Rebranding the program in the initial years of WIOA could create confusion for the MSFW populations the program serves who have come to know the program as the NFJP. No changes have been made to the regulatory text in response to these comments.

Section 685.140 What Workforce Innovation and Opportunity Act (WIOA) regulations apply to the programs authorized under WIOA?

The Department did not receive any comments on this section; however, because the list of applicable regulations is not meant to be exhaustive, and to avoid any inference otherwise, the Department revised § 685.140 in the Final Rule to make clear that the list is not all-encompassing.

4. Subpart B—The Service Delivery System for the National Farmworker Jobs Program

This subpart describes the service delivery system for the MSFW programs authorized by WIOA sec. 167 including who is eligible to receive grants and the role of the NFJP in the one-stop delivery system. Termination of grantee designation is explained. This subpart also discusses the appropriation of WIOA sec. 167 funds and establishes that a percentage of the total funds appropriated each year for WIOA sec. 167 activities will be used for housing assistance grants.

Section 685.200 Who is eligible to receive a National Farmworker Jobs Program grant?

Proposed § 685.200 set forth the three characteristics required of an entity in order to be eligible to receive NFJP grants. Paragraph (a) stated that an eligible entity must have an understanding of the problems of

eligible MSFWs. Paragraph (b) required eligible entities to have a familiarity with the agricultural industries and the labor market needs of the proposed service area. Paragraph (c) stated that an eligible entity must have the ability to demonstrate a capacity to administer and deliver effectively a diversified program of workforce investment activities, including youth workforce investment activities, and related assistance for eligible MSFWs.

Comments: The Department received numerous comments regarding the eligibility requirement set forth in proposed paragraph (c) of this section. In particular, these commenters recommended that this requirement should take into account the relative youth farmworker population in each State.

Department Response: The Department agrees that the relative youth MSFW population in each State should be accounted for when considering an applicant's ability to demonstrate a capacity to administer and deliver effectively a diversified program of workforce investment activities. This issue is more appropriately addressed through the NFJP funding allocation formula. Currently funds for NFJP career services and training grantees are dispersed based on the funding formula the Department published in the **Federal Register** on May 19, 1999. *Job Training and Partnership Act: Migrant and Seasonal Farmworker Programs; Final Allocation Formula,* 64 FR 27390. The Department intends to revise this funding formula through a public comment process and plans to address this and other issues.

Section 685.210 How does an eligible entity become a grantee?

Proposed § 685.210 described the process by which an entity may become a grantee under this part and explained that an applicant whose application for funding has been denied in whole or in part may request an administrative review per § 683.800 of this title.

Comments: The Department received one comment suggesting that this section include measures of accountability for purposes of selecting a grantee.

Department Response: Measures of accountability for purposes of selecting a grantee will be described in the Funding Opportunity Announcement (FOA) for NFJP grantees following the process described in this section. No changes have been made to the regulatory text in response to this comment.

Section 685.220 What is the role of the grantee in the one-stop delivery system?

Proposed § 685.220 described the role of the grantee in the one-stop delivery system and provided that in those Local WDBs where the grantee operates the NFJP, as described in its grant agreement, the grantee is a required one-stop partner, and is subject to the provisions relating to such partners described in 20 CFR part 678 (description of the one-stop delivery system under title I of the Workforce Innovation and Opportunity Act) of this title (*see* Joint WIOA Final Rule). Consistent with those provisions, the grantee and Local Workforce Development Board must develop and enter into an MOU which meets the requirements of 20 CFR 678.500 of this title (regarding what must be included in the Memorandum of Understanding) and sets forth their respective responsibilities for providing access to the full range of NFJP services through the one-stop delivery system to eligible MSFWs (*see* Joint WIOA Final Rule).

Comments: The Department received several comments concerning this section. Some commenters acknowledged the importance of establishing roles and responsibilities through MOUs and urged the Department to provide additional guidance on the specific requirements of an MOU between the NFJP grantees and key partners, such as the Local WDB or State Monitor Advocates (SMAs). One of these commenters reasoned that because Local WDBs do not always understand or fully appreciate the needs of the farmworker population, they do not aggressively ensure that community and partner agencies provide meaningful services, suggesting that the creation and implementation of MOUs would help.

Department Response: Title 20 CFR part 678, subpart C (Memorandum of Understanding for the One-Stop Delivery System), provides information regarding the required MOU(s) that must be established between Local WDBs and required one-stop partners (*see* Joint WIOA Final Rule). Title 20 CFR 678.500 describes what must be included in the MOU executed between the Local WDB and the one-stop partners relating to the operation of the one-stop delivery system in the Local Area, and 20 CFR 678.510 describes the collaborative and good-faith approach Local WDBs and partners are expected to use to negotiate MOUs, including fully and repeatedly engaging partners, transparently sharing information, and maintaining a shared focus on the needs of the customer. The Department intends to issue additional guidance regarding the development of MOUs between Local WDBs and required one-stop partners as well as between NFJP grantees and State Monitor Advocates.

Comments: Regarding the NFJP grantee serving as a required one-stop partner, two commenters *stated* that the decision to colocate services can be beneficial but grantees need to consider the financial viability of colocation. If it is more beneficial to locate NFJP programs outside of a one-stop center, these commenters maintained that grantees should be given the flexibility to do so, and that grantees can still develop a close partnership with the one-stop delivery system without necessarily being colocated. Another commenter remarked that traditionally there has been a cost increase associated with operating NFJP services in conjunction with a one-stop delivery system, leaving less funding available for training programs and participant services.

Department Response: Title 20 CFR 678.305 (*see* Joint WIOA Final Rule) provides a description of the services that must be provided in a one-stop center, including access to partner programs and activities carried out by required one-stop partners. One-stop partner program services may be provided through the one-stop center either by: (1) Having partner program staff physically present at the one-stop center to provide information to customers about the programs, services, and activities available through partner programs; or (2) providing direct linkage through technology to program staff who can provide meaningful information or services. NFJP grantees, in collaboration with Local WDBs, must determine on a case-by-case basis, whether colocation, or another form of direct linkage, is the most effective approach in the local workforce area in which they operate. A description of what the Department means by direct linkage is found at 20 CFR 678.305(d)(3) (*see* Joint WIOA Final Rule).

Section 685.230 Can a grantee's designation be terminated?

Proposed § 685.230 explained that a grantee may be terminated for cause by the Department in emergency circumstances when such action is necessary to protect the integrity of Federal funds or ensure the proper operation of the program, or by the Department's Grant Officer, if the recipient materially fails to comply with the terms and conditions of the award.

Comments: The Department received one comment requesting that the Department define the "*emergency*

circumstances'' under which the Department may terminate a NFJP grantee's designation for cause in proposed § 685.230.

Department Response: The term emergency circumstances may cover a variety of contingencies that are too broad to include specifically in a definition; no changes have been made to regulatory text in response to this comment. When emergency circumstances arise in which the Department deems it necessary to protect the integrity of Federal funds or to ensure the proper operation of the program, the Department would undertake further investigation and thoroughly document the circumstance before termination for cause would be considered. Under WIOA sec. 184(e), any grantee so terminated would be provided with written notice and an opportunity for a hearing within 30 days after the termination.

Section 685.240 How does the Department use funds appropriated under the Workforce Innovation and Opportunity Act for the National Farmworker Jobs Program?

Proposed § 685.240 established that in accordance with WIOA sec. 167(h), of the funds appropriated each year for MSFW programs, at least 99 percent must be allocated to service areas, based on the distribution of the eligible MSFW population determined under a formula established by the Secretary. This provision further provided that a percentage of funds allocated for State service areas would be set aside for housing grants and that up to 1 percent of the appropriated funds would be used for discretionary purposes, such as technical assistance to eligible entities and other activities prescribed by the Secretary.

Comments: One commenter asked if there would be a minimum amount or a designated percent of funds allocated for housing grants.

Department Response: The annual percentage of housing grant funds is determined through the Federal budgeting process and final funding for housing grants is determined by the Fiscal Year Appropriations Act, and may vary from year to year. In the two program years prior to the release of this Final Rule the total percent of funds allocated to housing grants was approximately 6.74 percent of the total annual NFJP funding. This percentage may change from year to year based on the needs of the program and the annual budget enacted by Congress; therefore, the Department has not established a minimum amount or designated percentage of funds allocated for housing grants in the regulatory text.

Comments: One commenter also stated the Department should recognize that grantees were not specifically authorized to serve eligible farmworker youth, and no resources were provided to do so.

Department Response: Grantees are authorized to serve eligible farmworker youth. WIOA sec. 167(d) specifically states that funds made available through WIOA secs. 167 and 127(a)(1) must be used for workforce investment activities (including youth workforce investment activities) and related assistance for eligible MSFWs and eligible farmworker youth are therefore included.

5. Subpart C—The National Farmworker Jobs Program Services to Eligible Migrant and Seasonal Farmworkers

This subpart describes the responsibilities of grantees, and workforce investment activities available to eligible MSFWs, including career services and training, housing assistance, youth services, and related assistance.

Section 685.340 What career services may grantees provide to eligible migrant and seasonal farmworkers?

Proposed § 685.340 established in paragraph (a) that eligible MSFWs must be provided the career services described in WIOA secs. 167(d) and 134(c)(2), and 20 CFR part 680. Proposed paragraph (b) stated that the grantees must provide other career services identified in the grantee's approved program plan. The Department also included language in paragraph (c) to clarify that while career services must be made available through the one-stop delivery system, grantees also may provide these types of services through other sources outside the one-stop delivery system. Examples include non-profit organizations or educational institutions. Finally, paragraph (d) required that the delivery of career services to eligible MSFWs by the grantee and through the one-stop delivery system must be discussed in the required MOU between the Local Workforce Development Board and the grantee.

Comments: A number of commenters recommended that the Department delete *proposed* paragraph (c). Commenters noted that NFJP grantees, as required one-stop partners, are required to provide services through the one-stop delivery system as described in statute, regulation, and required MOUs and therefore, this particular provision is not necessary.

Department Response: The Department is revising § 685.340 in response to these comments. The Department agrees that proposed paragraph (c) of this section is not required in the *context* of describing what career services grantees may provide to eligible MSFWs. Accordingly, the paragraph has been struck from § 685.340 and the remaining paragraph has been re-lettered from (d) to (c). A full description of the roles and responsibilities of NFJP grantees, as required one-stop partners, is found at 20 CFR 678.420 (*see* Joint WIOA Final Rule).

In addition, the Department has revised the title of this section and paragraphs (a) and (b) of § 685.340 in the Final Rule by replacing the term ''must'' with ''may'' to make the titles in §§ 685.340 through 685.380 consistent, and to clarify that the Department does not require NFJP grantees to make all the services described in this section available to participants. Rather, the 4-year program plan described in § 685.420 must indicate the specific career services that will be made available to all participants and provided based on the individual needs of each participant.

Section 685.350 What training services may grantees provide to eligible migrant and seasonal farmworkers?

Proposed § 685.350 identified the training services that grantees provide to eligible MSFWs. Paragraph (a) established that the training activities provided by grantees are those in WIOA secs. 167(d) and 134(c)(3)(D), and 20 CFR part 680 (Adult and Dislocated Worker Activities Under Title I of WIOA). These activities include, but are not limited to, occupational-skills training and OJT. The Department also emphasized that eligible MSFWs are not required to receive career services prior to receiving training services, as described in WIOA sec. 134(c)(3)(iii). This section also reinforced the intent of WIOA and stated in paragraph (b) that training services be directly linked to an in-demand industry sector or occupation in the service area, or in another area to which an eligible MSFW receiving such services is willing to relocate, consistent with WIOA sec. 134(c)(3)(G)(iii). The Department also established in paragraph (c) that training activities must encourage the attainment of recognized postsecondary credentials as defined in § 685.110 (which refers to WIOA sec. 3(52)), when appropriate for an eligible MSFW. This requirement is in alignment with WIOA secs. 116(b)(2)(A)(i)(IV) and 116(b)(2)(A)(ii)(III), which include ''the

percentage of program participants who obtain a recognized postsecondary credential, or a secondary school diploma," as a primary indicator of performance for both the adult and youth programs.

Comments: Numerous commenters remarked that training services should be linked with careers that are "in-demand," but suggested that the regulation provide for the flexibility to consider customer needs, choices, and circumstances, so that individuals may be placed in careers that will help them gain economic stability, even if the career is not defined as "in-demand." Several commenters also noted that the requirement in proposed § 685.350(b) that training services "must be directly linked to an in-demand industry sector or occupation in the service area" may be unintentionally limiting.

Department Response: This section reinforces the intent of WIOA that training services be directly linked to an in-demand industry sector or occupation in the service area, or in another area to which an eligible MSFW receiving such services is willing to relocate, consistent with WIOA sec. 134(c)(3)(G)(iii). WIOA sec. 3(23) broadly defines "in-demand industry sector" and maintains flexibility.

NFJP grantees may determine that a sector or occupation is in-demand in the context of where the grantee operates its NFJP program, and this may be at the State, regional or local service area level. Additionally, activities designed to assist eligible MSFWs establish a work history, demonstrate success in the workplace, and develop the skills that lead to entry into and retention in unsubsidized employment do not need to be in an in-demand industry sector or occupation in the service area where the NFJP operates. Examples of these types of activities may include, but are not limited to, career services such as internships and work experiences and transitional jobs as defined in WIOA sec. 134(d)(5) which provide time-limited work experiences that are subsidized and are in the public, private, or nonprofit sectors.

Comments: One commenter also suggested that emerging careers should be considered when determining training options for NFJP participants.

Department Response: The Department agrees that emerging careers should be taken into consideration when establishing participant training options consistent with the § 685.350. The Department encourages training in emerging sectors when the sector or occupation is in-demand in the service area, or in another area to which an eligible MSFW receiving such services is willing to relocate.

Comments: A number of commenters asserted that NFJP grantees should have the flexibility to provide up to a 75 percent reimbursement rate to employers for on-the-job training (OJT) as Governors and Local Workforce Development Boards do under WIOA sec. 134(c)(3)(H)) . A few commenters stated that many programs work with competitive employers who will favor the workforce programs that provide them the greatest benefit. As explained by one commenter, because NFJP is not always operated by a State or Local WDB, NFJP grantees who are not a State agency or Local WDB need this flexibility to use the same reimbursement rate that Governors and Local Workforce Development Boards use in the Local Area(s) in which they operate, otherwise they will be unable to compete for OJT placements in high-demand fields within the same communities.

Department Response: The Department is revising § 685.350 in response to these comments. The Department continues to encourage grantees to use work-based learning as an effective *service* strategy to assist job seekers in entering and advancing along a career pathway, including OJT and registered apprenticeship, among others. Under WIOA, grantees may always reimburse employers for the extraordinary costs of training by up to 50 percent of the wage rate of the participant for OJT (WIOA sec. 3(44)). The Department maintains that grantees must be working in collaboration, rather than competition, with the State and Local Workforce Development Boards when meeting the needs of participants, but acknowledges that the flexibility offered Governors and Local Workforce Boards (WIOA sec. 134(c)(3)(H)) to account for factors such as the characteristics of the participants; the size of the employer; the quality of employer-provided training and advancement opportunities; and other factors, may encourage the participation of employers who may otherwise be deterred from working with MSFW populations. To address commenters' concerns regarding the OJT employer reimbursement rate the Department adds paragraphs § 685.350(a)(1) and (2), which provide NFJP grantees the flexibility to increase the OJT reimbursement rate up to 75 percent of the wage rate of a participant under certain conditions, provided that such reimbursement is being provided consistent with the reimbursement rates used under WIOA sec. 134(c)(3)(H)(i) (use of funds for employment and training activities) for the Local Area(s) in which the grantee operates its program.

In addition, the Department has revised the title of this section and § 685.350(a) in the Final Rule by replacing the term "must" with "may" to make the titles in §§ 685.340 through 685.380 consistent, and to clarify that the Department does not require NFJP grantees to make all the services described in this section available to participants. Rather, the 4-year program plan described in § 685.420 must indicate the specific training services that will be made available to all participants and provided based on the individual needs of each participant.

Section 685.360 What housing services may grantees provide to eligible migrant and seasonal farmworkers?

Proposed § 685.360 required in paragraph (a) that housing grantees must provide housing services to eligible MSFWs and in paragraph (b) that career services and training grantees may provide housing services to eligible MSFWs as described in their program plan. The proposed section established in paragraph (c) the definitions of permanent housing and temporary housing services that are available to eligible MSFWs and provided examples of each type of housing services in paragraphs (d) for permanent housing and (e) for temporary housing. In paragraph (f), the proposed section stated that housing services may be provided only when the services are required to meet the needs of eligible MSFWs to occupy a unit of housing for reasons related to seeking employment, retaining employment, or engaging in training.

Comments: Several commenters remarked that permanent housing requirements should differ from temporary housing requirements because of the timing of the services delivered. These commenters stated that many of the eligible housing services for permanent housing take place before an MSFW is identified for occupancy and therefore if Department funds are not used to support the on-going management of the project, there is no way for the NFJP grantee to ensure that only NFJP-eligible MSFWs would benefit from the eventual housing services. In addition, commenters noted that other funding sources complement NFJP resources, including United States Department of Agriculture (USDA) 514/516 Farm Labor Housing funds. Because providers of these funds have slightly different eligibility criteria for farmworker tenants, the commenters warned that it would be difficult to

ensure that all MSFWs on a property are NFJP-eligible. Accordingly, these commenters recommended revising the language in proposed § 685.360 to accommodate these realities and allow for more flexibility with regard to eligibility for permanent housing services, by stating, for instance, that permanent housing units developed with NFJP funds be available to low-income MSFWs per the eligibility criteria of the primary provider(s) of capital funding, rather than limiting primary housing services to eligible MSFWs exclusively. These commenters also suggested adding language to limit emergency housing assistance payments or vouchers (both temporary housing services) to eligible MSFWs only, and to make permanent housing units developed with NFJP funds available to low-income MSFWs per the eligibility criteria of the primary provider(s) of capital funding.

Department Response: The Department is revising § 685.360 in response to these comments. The Department acknowledges the difficulty of supporting permanent farmworker housing development and renovation projects and ensuring that eligible MSFWs receive the benefits of these projects after they are completed. These projects may occur over multiple years and include funding from a variety of Federal and non-Federal sources such as USDA and United States Department of Housing and Urban Development (HUD). To address commenters concerns and recognize the distinction between permanent and temporary housing services the Department has revised the text set forth in proposed § 685.360(d) to read: "Permanent housing developed with NFJP funds must be promoted and made widely available to eligible MSFWs, but occupancy is not restricted to eligible MSFWs. Temporary housing services must be provided only to eligible MSFWs." As a result of this revision, the following sentence has been added to § 685.400(c): "Additionally, grantees providing permanent housing development activities will use the total number of individuals served and the total number of families served as indicators of performance" to capture permanent housing development outcomes. The Department also provided operating guidance for NFJP Grantees, including a clarification on housing assistance services, through TEGL No. 35–14 ("*Operating Guidance for National Farmworker Jobs Program (NFJP) Employment and Training and Housing Grantees*"), dated June 13, 2016, and will provide additional technical assistance and guidance as needed.

Comments: Additionally, some commenters suggested that the definition of housing assistance should account for the different types of assistance available and the times at which the services are provided. These commenters said that either the word eligible should be removed from the definition or the differences between the two primary types of housing assistance under § 685.360 should be clarified. The commenters offered two definitions of housing assistance: "Housing assistance means housing-related services provided to MSFWs" or "Housing assistance means emergency housing assistance payments or vouchers provided to meet the needs of eligible MSFWs and/or development of permanent housing units available to low-income MSFWs."

Department Response: The Department is revising § 685.110 in response to these comments. The Department has updated the definition of housing assistance found in § 685.110 as follows: "Housing assistance means housing services which contribute to safe and sanitary temporary and permanent housing constructed, supplied, or maintained with NFJP funding."

Comments: Two commenters expressed concern that some areas may not have local non-profit organizations willing to operate on-farm housing, which may prevent the development or improvement of critically needed on-farm housing in areas where there are no local non-profit organizations willing to serve in this capacity. The specific paragraph referred to by two commenters is § 685.360(e) of the NPRM, which describes allowable temporary housing services. The commenters suggest that grantees should be permitted to use program funds to provide matching grants for on-farm housing improvement or development to be owned by the farm operator and suggest criteria for providing grants for on-farm housing improvement or development to be owned by the farm operator including a requirement that the farm operator provide at least 51 percent of project funds and that housing must pass inspections for 3 to 5 years and continue to be occupied by farmworkers.

Department Response: The Department is revising § 685.360 in response to these comments. The section provides examples rather than an exhaustive list of allowable housing activities. The example of temporary housing services provided at proposed § 685.360(e) ("off-farm housing operated independently of employer interest or on-farm housing operated by a nonprofit") does not preclude a grantee from providing funds to agricultural employers for on-farm housing improvement or developments owned by an agricultural employer. To clarify that grantees may provide funding for on-farm housing improvement or development owned by the agricultural employer, the language (now found at § 685.360(c)(2)(i)) has been revised to indicate that temporary housing may include on-farm housing located on property owned by an agricultural employer and operated by an entity such as an agricultural employer or a nonprofit organization. Furthermore, to clarify that the list of examples is not meant to be exhaustive, the following additional language has been added to the end of paragraph 685.360(c)(2)(i): "and other housing types that provide short-term, seasonal, or temporary housing opportunities in temporary structures." Paragraph (i) to § 685.360(c)(1) has been revised to indicate that permanent housing services may include dormitory, modular structures, manufactured housing, or mobile units placed on permanent foundations and supplied with appropriate utilities, and other infrastructures that provide short-term, seasonal housing opportunities in permanent structures. This list includes the types of housing that would likely be made available through on-farm housing improvements or development and that would benefit eligible MSFWs. The Department has determined that it is not necessary to formalize criteria in the Final Rule restricting when grantees may provide funds to agricultural employers for on-farm housing improvement or developments owned by the employer and will provide additional guidance and technical assistance. The Department has revised § 685.360 "What housing services may grantees provide to eligible migrant and seasonal farmworkers?" by removing "tents and yurts" to be consistent with the Federal housing standards established in 20 CFR part 654 and 29 CFR 1910.10.

Additionally, the Department has added paragraph (e) to clarify that except as provided in (f), NFJP funds used for housing assistance must ensure the provision of safe and sanitary, temporary and permanent housing that meets the Federal housing standards at 20 CFR part 654 (ETA housing for farmworkers) or 29 CFR 1910.10 (OSHA housing standards); and paragraph (f) which clarifies that when NFJP grantees provide temporary housing assistance

that allows the participant to select the housing, including vouchers and cash payments for rent, lease, and utilities, NFJP grantees are not required to ensure that such housing meets the Federal housing standards at 20 CFR part 654 or 29 CFR 1910.10.

Section 685.370 What services may grantees provide to eligible migrant and seasonal farmworkers youth participants aged 14–24?

Proposed § 685.370 outlined the services grantees may provide to eligible MSFW youth. In paragraph (a), the proposed regulation described the services that grantees may provide to eligible MSFW youth participants aged 14–24 based on an evaluation and assessment of their needs. These services include the career and training services described in §§ 685.340 through 685.350; youth workforce investment activities specified in WIOA sec. 129; life skills activities that encourage development of self and interpersonal skills; and community service projects. Paragraph (b) provided that other activities that conform to the use of funds for youth activities described in 20 CFR part 681 (youth activities under title I of WIOA) may also be provided to eligible MSFW youth. Finally, in paragraph (c) the proposed regulation stated that grantees may provide these services to any eligible MSFW youth, regardless of the participant's eligibility for WIOA title I youth activities as described in WIOA sec. 129(a).

Comments: Some commenters expressed overall support for serving farmworker youth, and remarked that a lesson learned from the previously funded NFJP youth program was to focus on early intervention. One commenter requested clarification on which service components may be provided to adults versus youth participants in light of the provisions in proposed § 681.430 (concurrent youth participation in the WIOA youth and adult programs and how local program operators will track concurrent enrollment) and § 681.590 (how local WIOA youth programs will track the work experience priority), and on how financial and performance reporting should be tracked, in particular when a participant is enrolled in both youth and adult services. This commenter noted that youth services are not currently considered in NFJP reporting. Additionally, the commenter urged the Department to allow service areas to tailor their short-term service options to meet the needs of local migrant youth.

Department Response: A description of services that can be provided to adult NFJP participants is found in §§ 685.340 through 685.360 of the Final Rule. Youth services that can be provided through the NFJP are described in this section, and all services provided to adult NFJP participants, may also be provided to eligible MSFW youth. Sections 681.430 and 681.590 regarding certain WIOA youth formula requirements are not applicable to NFJP grantees. The NFJP is a National Program authorized under sec. 167 of WIOA and grantees may enroll participants as either a MSFW adult or a MSFW youth participant as described in § 685.320, but not in both categories. Regarding financial reporting, NFJP grantees that provide employment and training services (career services, training, youth services, and related assistance) administer a single grant award for each State they serve, and all expenses associated with the grant are tracked and reported together. As noted by a commenter, current NFJP reporting systems do not consider youth elements; the Department will be updating reporting systems to track youth measures as required in statutory language.

Comments: One commenter suggested that funds be specifically allocated to farmworker youth services, instead of requiring providers to compete for funds that are already limited.

Department Response: The Department does not have the statutory authority to allocate specific NFJP youth funds except as described in § 685.500 of the Final Rule.

Section 685.390 When may eligible migrant and seasonal farmworkers receive related assistance?

Proposed § 685.390 established that eligible MSFWs may receive related assistance services when the need for the related assistance is identified and documented by the grantee. A statement by the eligible MSFW may be included as documentation.

Comments: One commenter asked the Department to clarify whether States would have the authority to determine the process for identifying an MSFWs need for related assistance. This commenter also asked the Department to clarify whether MSFWs must be co-enrolled to receive related assistance.

Department Response: Under WIOA sec. 167(a), every 4 years NFJP grantees are procured through a competitive process to carry out NFJP activities and are responsible for determining when eligible MSFWs may receive related assistance services. If a State agency responds to an NFJP FOA and is selected as a grantee, they would be able to determine the process to identify related assistance needs. With regard to the comment addressing co-enrollment, farmworkers do not need to be co-enrolled with other programs to receive related assistance services, but must be eligible to receive NFJP services as described in § 685.320.

6. Subpart D—Performance Accountability, Planning, and Waiver Provisions

This subpart describes indicators of performance for grantees, required planning documents, and the information required in program plans required under WIOA sec. 167. The subpart also explains waiver provisions and clarifies how grant costs are classified under WIOA sec. 167.

Section 685.400 What are the indicators of performance that apply to the National Farmworker Jobs Program?

Proposed § 685.400 described the indicators of performance that apply to grantees. Paragraph (a) stated that grantees providing career services and training are to use the indicators of performance common to the adult and youth programs, described in WIOA sec. 116(b)(2)(A), as required by WIOA sec. 167(c)(2)(C). In paragraph (b), the proposed regulation explained that for grantees providing career services and training, the Department will reach agreement on the levels of performance for each of the primary indicators of performance described in WIOA sec. 116(b)(2)(A), taking into account economic conditions, characteristics of the individuals served, and other appropriate factors, and using, to the extent practicable, the statistical adjustment model under WIOA sec. 116(b)(3)(A)(viii). The levels agreed to will be the levels of performance incorporated in the program plan, as required in WIOA sec. 167(c)(3). As for grantees providing housing services only, proposed paragraph (c) required that such grantees are to use the total number of eligible MSFWs served and the total number of eligible MSFW families served as indicators of performance. In proposed paragraph (d) the regulation advised that the Department may develop additional performance indicators with appropriate levels of performance for evaluating programs that serve eligible MSFWs and which reflect the State service area economy, local demographics of eligible MSFWs, and other appropriate factors. Finally, proposed paragraph (e) permitted grantees to develop additional performance indicators and include them in the program plan or in periodic performance reports.

Comments: Some commenters raised concerns that enrollment and co-

enrollment of disadvantaged farmworkers could be jeopardized by performance standards, performance contracts, recognized credentials, and Ability-to-Benefit regulations because of partners' concerns that their performance indicators would decrease when farmworkers participate. These commenters stated that the models used to determine expected performance for WIOA title I programs (adult, youth, and dislocated workers) should be adjusted to consider the barriers MSFWs face, and that the NFJP in each service area should be subject to these adjusted performance standards.

Department Response: Establishing viable performance standards are crucial to program and fiscal accountability, evaluation of program effectiveness, and continuous quality improvement. The Department will negotiate performance goals for NFJP grantees providing career services and training based on several factors, including previous performance, economic conditions, characteristics of the individuals served, and other appropriate factors that are supported with data, as described in § 685.400(b).

Comments: A few commenters suggested that NFJP negotiated performance standards should not be more stringent than those established for the Local Areas in which the NFJP is operated.

Department Response: State title I formula programs differ from those of the NFJP program in the diversity of job seekers served, the types of services offered, and the number of individuals served annually; therefore, the Department does not support the suggestion that NFJP grantees should have the same performance levels as those of the local areas in which they operate. The Department will provide additional information on the WIOA performance accountability system and primary indicators of performance for NFJP grantees.

Comments: Some commenters expressed concern about the inclusion of credential attainment in the new performance indicators for NFJP, as rural areas often lack credentialing programs. These commenters warned that, as written, the credential attainment indicator may deter service providers from targeting the rural MSFW population. Another commenter urged the Department to encourage but not require the attainment of credentials.

Department Response: WIOA sec. 167(c)(2)(C) requires that the NFJP utilize the primary indicators of performance described in WIOA sec. 116(b)(2)(A), including postsecondary credential attainment and high school completion, therefore the Department cannot waive this measure for NFJP grantees. Some commenters warned that, as written, the postsecondary credential attainment indicator may deter service providers from targeting rural MSFW populations. However, as specified in § 685.350(c), NFJP training activities must encourage the attainment of recognized postsecondary credentials as defined in § 685.110 when appropriate for an eligible MSFW, but it is not required that all training provided to NFJP participants lead to a postsecondary credential. Therefore lack of credentialing programs in a given service area should not be a deterrent to providing needed training to eligible MSFWs.

Comments: Many commenters noted that WIOA authorizes related assistance services for eligible MSFWs. One commenter added that related assistance provides support for farmworkers allowing them to stabilize and find agricultural work as they move within the harvest season, but rarely results in more than short term seasonal placements. Many commenters expressed concerns that including individuals who only receive related assistance services in performance indicator calculations would undermine the ability of grantees to provide these needed authorized services, and would contribute to negative results from the performance indicator evaluation system.

Department Response: The Department is revising paragraph (b) of § 685.400 in response to these comments. The Department acknowledges that related assistance is an important component of workforce services that assist eligible MSFWs retain or stabilize their agricultural employment. The term "related assistance" encompasses a range of services and activities, which require varying levels of involvement by NFJP grantees and their staff. In particular, § 685.110 defines "emergency assistance" as a form of related assistance that addresses the immediate needs of eligible MSFWs and their dependents, provided by grantees. Emergency assistance may include the provision of necessary items, like garments of clothing. While providing clothing to a farmworker in need provides a significant benefit to the farmworker, it does not require a significant investment of grantees' resources. Therefore, the Department has determined that including individuals who receive emergency assistance or other short-term related assistance that does not involve a more extended intervention, in the performance calculations would not necessarily measure the success of a grantee in providing WIOA services to eligible MSFWs. For example, the Department does not consider pesticide and worker safety training to be the kind of related assistance that requires the individual to be included in the performance metrics. The Department may request information regarding the number of individuals who received types of related assistance that are not included in the performance indicators.

In order to clarify how individuals who only receive short term related assistance, such as emergency assistance, will be tracked and included in performance under WIOA, the Department has added the following language to § 685.400(b) clarifying that eligible MSFWs who receive any career services, youth services, training, or certain related assistance are considered participants as defined in 20 CFR 677.150 of this chapter and must be included in performance calculations for the indicators of performance described in WIOA sec. 116(b)(2)(A); and additionally, that eligible MSFWs who receive only those services identified in 20 CFR 677.150(a)(3)(ii) or (iii) of this chapter are not included in performance calculations for the indicators of performance. The Department uses the term "certain related assistance" to indicate that individuals that received forms of related assistance that require a more significant involvement by the grantees' staff, may be included in the performance metrics. In particular, as set forth in § 685.380, the related assistance includes those activities identified in WIOA sec. 167(d), which include school dropout prevention and recovery activities, self-employment and related business or micro-enterprise development or education, and customized occupational career and technical education. To the extent such forms of related assistance require a more significant involvement by the grantees' staff, and are forms of related assistance related to education, training, career, or employment outcomes, these forms of related assistance will be included in performance calculations for the indicators of performance. The Department provides specific directions regarding the forms of related assistance to be included in performance indicators through guidance. Including all NFJP participants who receive career services, youth services, training, or certain related assistance that involves a significant investment of a grantee's staff time in performance calculations also allows the Department to evaluate

fully the effectiveness of the services provided to farmworkers through the NFJP. Finally, in order to align this provision with 20 CFR 677.150(a)'s definition of participant, the Department notes that § 685.400(b) excludes individuals who only receive the services identified in 20 CFR 677.150(a)(3)(ii) (accessing the self-service system) or (iii) (information services or activities) (*see* Joint WIOA Final Rule). The Department does not agree with the assertion that the inclusion of eligible MSFWs who receive related assistance that involves more than a minimal amount of staff assistance in performance calculations for the indicators of performance would undermine the ability of grantees to provide these services, but rather, that NFJP grantees will now be evaluated for the related assistance they provide that is appropriately measured by the performance indicators.

Section 685.460 Are there regulatory and/or statutory waiver provisions that apply to the Workforce Innovation and Opportunity Act?

Proposed § 685.460 described the regulatory and/or statutory waiver provisions that apply to NFJP Programs, WIOA sec. 167. Paragraph (a) stated that the statutory waiver provision at WIOA sec. 189(i) and discussed in § 679.600 (the general statutory and regulatory waiver authority in WIOA) does not apply to WIOA sec. 167. Paragraph (b) established that grantees may request a waiver of any regulatory provisions only when such regulatory provisions are (1) not required by WIOA; (2) not related to wage and labor standards, non-displacement protection, worker rights, participation and protection of workers and participants, and eligibility of participants, grievance procedures, judicial review, nondiscrimination, allocation of funds, procedures for review and approval of plans; and (3) not related to the basic purposes of WIOA, described in 20 CFR 675.100.

Comments: Several commenters expressed support for the continuation of a supposed selective service waiver process for male farmworkers who were unaware of the Selective Service registration requirement. One of these commenters reasoned that it can take up to 30 days to receive a response from Selective Service, which is a challenge for farmworkers who must regularly travel during short intervals to support themselves and their family. Another commenter stated that as a consequence of MSFW males not registering for Selective Service, many are denied services that are needed to assist them on their way to other employment. A different commenter suggested that the Department automatically waive male farmworkers who are past the age of military participation, especially if they were not born or educated in the United States.

Department Response: The Department cannot waive this WIOA statutory requirement. WIOA sec. 189(h) requires that each individual participating in any program or activity established under title I of WIOA, or receiving any assistance or benefit under title I of WIOA, has not violated sec. 3 of the Military Selective Service Act (50 U.S.C. App. 453) by not presenting and submitting to registration. Allowing a selective service waiver would be inconsistent with WIOA sec. 189(h).

7. Subpart E—Supplemental Youth Workforce Investment Activity Funding Under Workforce Innovation and Opportunity Act Sec. 127(a)(1)

This subpart describes the purpose of supplemental youth workforce investment activity funding that may become available under WIOA sec. 127(a)(1). Included is a description of how the funds may become available, and what requirements apply to grants funded by WIOA sec. 127(a)(1).

Section 685.500 What is supplemental youth workforce investment activity funding?

Proposed § 685.500 described that if Congress appropriates more than $925 million for WIOA youth workforce investment activities in a fiscal year, 4 percent of the excess amount must be used to provide workforce investment activities for eligible MSFW youth under NFJP Programs, WIOA sec. 167.

Comments: One commenter asked the Department to clarify whether or not there are requirements or restrictions if the State is providing over 4 percent.

Department Response: The Department is revising § 685.500 in response to this comment. There are no requirements or restrictions to States if Congress appropriates more than $925 million for WIOA youth workforce investment activities in a fiscal year. This section of the Final Rule describes that if this funding threshold is met in any fiscal year under WIOA, the Department must make 4 percent of the excess amount available exclusively for workforce investment activities for eligible MSFW youth under WIOA sec. 167. To accomplish this, as described in § 685.520 (the application process for obtaining a grant funded by the WIOA), the Department will issue separate FOAs for grants funded by WIOA sec. 127(a)(1). The selection of grantees will be made in accordance with the procedures described in § 685.210, except that the Department reserves the right to provide priority to applicants that are WIOA sec. 167 grantees. The term "by the Department" has been added to § 685.500 to clarify that if Congress appropriates more than $925 million for WIOA youth workforce investment activities in a fiscal year, 4 percent of the excess amount must be used by the Department to provide workforce investment activities for eligible MSFW youth under WIOA sec. 167.

J. Part 686—The Job Corps Under Title I of the Workforce Innovation and Opportunity Act

1. Introduction

This part establishes regulations for the Job Corps program, authorized in title I, subtitle C of WIOA. The regulations address the scope and purpose of the Job Corps program and provide requirements relating to site selection, protection, and maintenance of Job Corps facilities; funding and selection of center operators and service providers; recruitment, eligibility, screening, selection and assignment, and enrollment of Job Corps students; Job Corps program activities and center operations; student support; career transition services and graduate services; community connections; and administrative and management requirements. The regulations incorporate the requirements of title I, subtitle C of WIOA and describe how the Job Corps program is operated in order to deliver relevant academic and career technical training (CTT) that leads to meaningful employment or postsecondary education. The regulations also serve to explain clearly the requirements necessitated by the unique residential environment of a Job Corps center. The major changes from the existing regulations reflect WIOA's effort to enhance the Job Corps program, provide access to high quality training and education, create incentives for strong contractor performance, and promote accountability and transparency.

The analysis that follows provides the Department's response to public comments received on the proposed Job Corps regulations. If a section is not addressed in the discussion below, it is because the public comments submitted in response to the NPRM did not address that specific section and the Department made no changes to the regulatory text. Further, the Department received a number of comments on this part which were outside the scope of the

regulation and therefore the Department offers no response. Lastly, the Department has made a number of non-substantive changes to correct grammatical and typographical errors to improve the readability and conform the document stylistically that are not all discussed in the analysis below.

2. Subpart A—Scope and Purpose

This subpart contains regulatory provisions that describe the Job Corps program, its purpose, the role of its Director, and applicable definitions. All references in this part to the Secretary issuing guidelines, procedures or standards means that they will be issued by the National Job Corps Director. This subpart also describes the Policy and Requirements Handbook (PRH), which provides the operating policies and procedures governing day-to-day activities of the Job Corps program. The subpart describes the scope and purpose of the program, along with the responsibilities of its National Director. It promotes accountability and transparency by making readers aware of exactly what the Job Corps program plans to achieve and the procedures for doing so, as well as the role its leadership plays in its operation.

The analysis that follows provides the Department's response to public comments received on the proposed Job Corps regulations. If a section is not addressed in the discussion below, it is because the public comments submitted in response to the NPRM did not address that specific section and no changes were made to the regulatory text.

Section 686.110 What is the Job Corps program?

This section generally describes the Job Corps program as administered by the Department.

Comments: One commenter noted that formally teaching healthy relationship skills would satisfy the intensive social education described in the NPRM preamble discussion of proposed § 686.110.

Department Response: The Department acknowledges the importance of teaching healthy relationship skills to Job Corps' students and notes that such skills are currently provided in the Job Corps program. Section 686.110, as drafted, reflects the increased focus in sec. 141 of WIOA on connecting young people to the labor force by providing them with intensive social, academic, career and technical education, and service-learning opportunities. No changes to regulatory text were made in response to this comment.

Section 686.120 What definitions apply to this part?

This section explains the definitions applicable to this Final Rule. The Department received comments on several of the definitions.

Comments: One commenter expressed support that the definition of an "individual with a disability" aligns with the definition in sec. 3 of the Americans with Disabilities Act (ADA) because it provides ease of use for the WIOA programs and recommended that it be maintained and applied throughout WIOA.

Several commenters remarked that "participant" is appropriately defined as graduates, enrollees, and former enrollees who have completed the Career Preparation Period (CPP) or who have been on center for 60 days. These commenters also stated that Job Corps is likely to modify the requirements of the CPP to be more flexible as part of its modernization of the PRH and expressed concerns about creating incentives to extend CPP in order to prevent certain students from being included in the performance pools.

Department Response: The definition of participant not only includes graduates and those enrollees and former enrollees who have completed the CPP, but also those who have remained in the program for 60 days or more, regardless of whether they have completed their CPP. Thus there is little incentive to extend the CPP simply for the purposes of trying to manipulate participant counts. No change to regulatory text was made in response to these comments.

The same commenters noted that there is no mention of Zero Tolerance (ZT) Level 1 separations and whether these students will continue to be defined as participants or former enrollees following their mandatory dismissal from the program. These commenters stated that all ZT Level 1 separations, regardless of length of stay, should be excluded from the definition of participant because it is critical for Job Corps to maintain a safe environment for its students and staff. The commenters explained that counting Level 1 ZT separators as participants for performance measurement counterintuitively penalizes centers and the program for taking actions that are necessary and mandated by WIOA to ensure the safety of students and holds Job Corps to a different standard than other training programs, making it difficult to compare Job Corps' performance fairly to that of other programs.

Department Response: WIOA's performance accountability system was designed so that WIOA programs would be held accountable to the same primary indicators of performance. In order to implement Congress' intent, the term "participant," as it applies to the Job Corps program, is designed to align with the definition of participant in 20 CFR 677.150 (*see* Joint WIOA Final Rule), ensuring that the performance of the Job Corps program could be accurately compared with the performance of the other title I programs. The Department acknowledges the commenters' concern regarding not penalizing Job Corps centers for maintaining safe environments and enforcing the program's zero tolerance policy. However, compliance with and enforcement of the zero tolerance policy is required as part of the operation of a Job Corps center by every Job Corps' operator. Any positive or negative effect the zero tolerance policy may have on the performance of a center under the primary indicators of performance does not change the requirement. In 20 CFR part 677 (*see* Joint WIOA Final Rule) and this part, the intent of the definition of participant is to capture all individuals that are engaged in, and receiving services from, the relevant program, regardless of when, and under what circumstances, they exit from the program. Adopting the commenters' proposal would eliminate the conformance in the definitions of participant in both parts. Any exclusion from the definition of participant in regard to Job Corps for the purpose of calculating performance under the metrics described in § 686.1010 is provided in the annual performance guidance described in § 686.1000, and will be consistent with any applicable policies and guidance issued by the Employment and Training Administration. Accordingly, no change was made to the regulatory text in response to these comments.

Comments: One commenter noted that knives of any length should be prohibited, not just those with blades longer than 2 inches as defined in "unauthorized goods," noting that knives of any blade length are dangerous.

Department Response: The Department concurs with this commenter and has revised the definition of "unauthorized goods" in the regulatory text at § 686.120 to include all knives.

Section 686.130 What is the role of the Job Corps Director?

Comments: Several commenters noted that Job Corps' authorities are currently

split among three offices (the Office of Job Corps, the Office of Contracts Management, and the Office of Financial Administration), which has effectively separated procurement, contracting, and budget authority from the Job Corps Director, despite the fact that guidelines and standards related to these authorities provide that they are the responsibility of the Job Corps Director. The commenters proposed that the Department clarify the regulation to state that the Job Corps Director retains the authority to set guidelines and standards related to secs. 147 and 159(a) of WIOA. One additional commenter echoed this proposal, noting that it would help Job Corps realize program management efficiencies.

Department Response: The Department has concluded that the delegation of functions in regard to the Job Corps is more appropriately addressed in administrative orders as is done with other Department of Labor functions and therefore § 686.130 is being deleted from the regulation.

3. Subpart B—Site Selection and Protection and Maintenance of Facilities

This subpart *describes* how sites for Job Corps centers are selected, the handling of capital improvements and new construction on Job Corps centers, and responsibilities for facility protection and maintenance. The Secretary must approve the location and size of all Job Corps centers, and establish procedures for requesting, approving, and initiating capital improvement and new construction on Job Corps centers, which serves to strengthen and enhance the program as a whole. The requirements in this subpart are not significantly different from the corresponding requirements in the WIA Job Corps regulations at 20 CFR part 686, subpart B, and no comments were received on this subpart

4. Subpart C—Funding and Selection of Center Operators and Service Providers

This subpart implements new requirements of WIOA with regard to the operators of high-performing centers, the length of contractual agreements to operate Job Corps centers, and how entities are selected to receive funding to operate Job Corps centers and to provide outreach, admissions, and career transition support services. In addition to adding to the list of considerations currently used in selecting Job Corps center operators and service providers, WIOA emphasizes competition to increase the performance and quality of the Job Corps program. WIOA also provides that an entity, in its role as incumbent operator of a center deemed to be high performing, may compete in any competitive selection process carried out for an award to operate that center, even in cases where the selection of the operator is set aside for small businesses as required by the Federal Acquisition Regulation. This serves to ensure continued access to high quality training and education for Job Corps students. WIOA also provides that a center operations contract cannot exceed 2 years, with three 1-year options to renew. This codifies current Job Corps practice. Furthermore, WIOA precludes the Secretary from exercising an option to renew a center operations contract for an additional 1-year period if certain criteria are not met, with limited exceptions. All of these new and expanded provisions follow WIOA's theme of enhancing the Job Corps program and providing access to high quality training and education by ensuring Job Corps centers are staffed with high quality service providers.

Section 686.300 What entities are eligible to receive funds to operate centers and provide training and operational support services?

Comments: A commenter recommended that the regulations clarify that an "entity" eligible to become a contractor must be a corporation, LLC, or other similar corporate structure, not just an individual. The commenter also suggested that the business as a whole, not just the individuals or principals of the entity, should have the requested experience.

Department Response: WIOA clearly identifies the entities eligible to operate or provide services to a Job Corps center. To further limit those entities would be inconsistent with WIOA sec. 147(a)(1)(A). Accordingly, no change was made to the regulatory text in response to these comments.

Section 686.310 How are entities selected to receive funding to operate centers?

This section describes how entities are selected to receive funding to operate Job Corps centers. WIOA contains new provisions intended to strengthen the Job Corps contracting process by requiring specific criteria that emphasize quality, performance, and accountability to be addressed as part of the selection process for center operators. The Department invited comment on how to best embed this focus.

Comments: One commenter was concerned that the proposed framework for developing RFPs will result in conflicts of interest, stating that a workforce council that was established by the incumbent contractor should not have a say in the development of an RFP. The commenter stated that the regulations should clarify the topics on which the Local WDB and Governor may be consulted since either or both may have a relationship with the incumbent operator or other bidding contractors that could influence their responses.

Department Response: The selection process for operators and service providers, and the roles of the Local WDB and the Governor in that process, are clearly laid out in WIOA sec. 147(a)(2)(A). Limiting the topics on which the Local WDB or Governor may be consulted is inconsistent with this section of WIOA. Note that while WIOA does require consultations with various parties, the final content of the solicitation is at the discretion of the Department. No changes were made to the regulatory text in response to this comment.

Comments: One commenter stated that robust application of the selection criteria is particularly important in the context of small-business set-asides under the Federal Acquisition Regulation (FAR). The comment stated that the Department frequently applies the FAR's small business set-aside provision in a way that circumvents statutory selection criteria by setting aside a Job Corps contract whenever there are two or more small businesses expected to apply, without regard to the qualifications of those businesses. The commenter stated this has led to a significant decline in the quality of some centers, particularly where highly qualified and successful operators have been displaced by substantially less-qualified small businesses. The commenter recommended that the Department clearly specify in the regulations that contracting officers must apply the statutory selection criteria at each step of the contracting process, including when determining whether to engage in small business set-asides, to ensure that only fully qualified entities are selected to operate Job Corps Centers. Further, the commenter suggested that the regulations emphasize that contracting officers must exercise their discretion under the FAR to cancel set-asides wherever doing so would be in the best interest of the program and its users and provide protection to incumbent operators at centers that routinely place in the top 10–15 centers.

However, another commenter said that, as required by the FAR, the Department should operate within the law to promote participation by small

businesses in the Job Corps contracting arena. The commenter stated that it is incumbent upon the Department to apply the requirements of the FAR as they relate to sources sought and small business set asides in order to avoid creating monopolies that limit competition and result in cost inefficiencies and lower quality and performance.

Department Response: The selection factors it considers in the sources sought process are a matter of program administration and are not statutorily required. The Department will include the statutory selection criteria in the sources sought process as it deems them to be applicable. In conducting its procurement actions, the Department complies with all applicable statutes and regulations, including the Competition in Contracting Act, the Small Business Act, and the FAR. This legal framework limits the Department's ability to provide any exception to these processes beyond what is provided in WIOA. The Department cannot do what is proposed and no changes were made to the regulatory text.

Comments: Several commenters noted that the RFP process must be timely; transparent, with the evaluation process clearly articulated; objective; and focused on proven past performance in delivering student outcomes to measurably differentiate between entities. Another stated that the best way to embed a focus on quality, performance, and accountability in the selection process is to ensure that the procurement process is under the full control of the National Office of Job Corps, and that past performance be based upon Job Corps-specific student outcomes. The commenter also suggested that procurement proposals be evaluated by Job Corps' staff with technical knowledge of the Job Corps program.

Multiple commenters suggested making all stakeholders involved in the procurement process, including procurement staff and decision-makers, accountable for student outcomes. These commenters noted that for the procurement process to be mission-focused, all procurement personnel must know and understand the Job Corps mission and its indicators of success.

Department Response: The majority of the comments that were submitted relate to the agency's internal organizational structure and personnel policies and actions, which the Department declines to address in this regulation. Further, the Department will consider past performance during the procurement process consistent with WIOA sec. 147(a).

Comments: Some commenters specifically expressed concerns that the proposed regulations will allow bidders with inadequate experience in achieving high student outcomes to apply to operate Job Corps facilities. Other commenters recommended that the entire procurement, evaluation, and award process be overhauled so the primary criterion for evaluation in a procurement process focus on the past effectiveness of the offeror. These commenters recommended the use of adjectival ratings (*e.g.*, excellent, very good, good) in each section of the proposal, with a rubric to define the adjectives.

Department Response: In order to ensure flexibility in the operation of the Job Corps program, no changes will be made to the language in this part. Furthermore, the Department makes Job Corps award decisions based on the established criteria stated in the solicitation, many of which are statutory or decided on a best value basis. The best value approach allows the Department to consider the stated evaluation factors, which include various elements, such as technical approach, past performance and proposed price.

Comments: Multiple commenters stated that the questions asked in the RFPs often have no direct relevance to the Job Corps center for which the solicitation is being conducted. They also recommended that the Department include language in the RFPs specifying how the combined records of a prime contractor and their subcontractors will be weighed and considered. One commenter noted that the Department should not only better define the applicable selection criteria, but it also should provide clear guidance concerning the points during the selection process that the criteria should be applied. This would create a more transparent framework and allow would-be center operators to understand the process better. In addition, the commenter believed the public could hold contracting officers accountable for their operator choices.

Department Response: In order to ensure flexibility in the operation of the Job Corps program, no changes will be made to the language in this part. The Department issues guidance regarding the procurement process through the Job Corps' PRH and other guidance issued by the Secretary.

Comments: One commenter noted that offerors should have demonstrated experience and partnerships with State and local workforce boards, one-stop centers, employer organizations and labor organizations.

Department Response: The Department notes that § 686.310(c)(3) requires proposals to address the degree to which the offeror demonstrates these relationships.

Comments: Commenters also addressed the criteria in proposed § 686.310(c)(4) requiring that an offeror's past performance relating to operating or providing activities to a Job Corps center, including information included in any reports developed by the Department of Labor's Office of the Inspector General (OIG), be considered during the evaluation process. Two commenters recommended that if a center is randomly selected as part of an audit and the audit reveals a systemic issue that impacts all centers regardless of operator, the offeror should not be viewed unfavorably during the procurement process. Another commenter suggested that the Department use multiple past performance indicators based on student outcomes beyond information about an offeror in Department of Labor Office of Inspector General (OIG) reports. The commenter recommended that past performance incorporate a contractor's past Job Corps performance as measured by the Outcome Measurement System; the Department's automated Contractor Past Effectiveness Report; the proposed annual Operator Performance Assessment; and the Contractor Performance Assessment Reports (developed for each Job Corps contract).

Department Response: The requirement at § 686.310(c)(4) is a statutory requirement at sec. 147(a)(2)(B)(i)(IV) of WIOA that describes the use of OIG reports on the offeror's demonstrated effectiveness and cannot be changed. Further, the Department's use of non-statutory criteria in the selection process is policy related and no changes were made to this regulatory text.

Comments: In response to proposed § 686.310(c)(5) and the Department's request for comments on how to assess potential offerors' past records in assisting at-risk youth to connect to the workforce, multiple commenters proposed that Job Corps use the Automated Past Effectiveness score issued to each contractor based on the Outcome Measurement System (OMS) report card. The commenters suggested that this assessment method ensured a consistent and understandable approach for evaluating an offeror's record in assisting at-risk youth, and recommended that this system, or a similar system, be implemented to

ensure consistency and fairness. They also suggested that the Department include language specifying how the combined records of a prime contractor and its subcontractor(s) will be weighed and considered with respect to this provision.

Several commenters recommended that to assess and differentiate past performance in assisting at-risk youth to connect to the workforce, the Department should conduct a review of both the interim and final contract performance assessment reports (CPARs) of an entity, if available, or other comparable information. One commenter also recommended that technical assistance in the area of connecting at-risk youth to the workforce be required.

One commenter noted that the nature of the Job Corps program necessitates specialized experience that only can be obtained through experience in operating Job Corps or similar centers.

Another commenter stated that the Department should require and evaluate at least 3 years of third-party validated outcomes related to Job Corps' primary indicators of performance. The commenter noted that 3 years is suggested because 3 years of performance is used in this section of WIOA to evaluate and define high-performance among operators.

A commenter recommended that the regulations call for entities to provide reports from objective sources to demonstrate performance results. The commenter stated that data collected solely by the offeror that cannot be independently verified should never be accepted as evidence of performance ability. For offerors with previous Job Corps experience, the commenter recommended that sources including the OMS, OBS, Student Satisfaction Survey, and Management Performance Outcome (MPO) be used to demonstrate performance results; for those offerors with no direct Job Corps experience, documentation from the funder, Common Measures outcomes, or third-party reports of the entity's previous success in meeting its contractual obligations and achieving results should be submitted to support the entity's ability to operate the center.

Department Response: The Department continues to explore the most effective and reliable sources of information in assessing effectiveness and past performance in the operator selection process This requires flexibility to meet the changing needs of the Job Corps program and no changes have been made to the regulatory text. The criteria for effectiveness and past performance will be included in each solicitation.

Comments: In response to the Department's request for additional selection factors, multiple commenters noted that to ensure that potential Job Corps center operators are high-quality providers with documented outcomes and proven performance, the qualification requirements should be further refined and offered various additional selection factors to include in the solicitation.

Department Response: Consistent with applicable procurement statutes and regulations the Department does not want to unduly restrict competition, and needs to maintain the flexibility to adjust its requirements for the changing needs of the Job Corps program and for each center when necessary to do so. No changes have been made to regulatory text in response to these comments.

Comments: Several commenters noted that the delivery of quality services to students is dependent on hiring and maintaining qualified staff, and recommended that the procurement process include an evaluation that compares the costs proposed by an offeror to those identified in a market analysis.

Department Response: The procurement process already includes an evaluation of these factors. In order to ensure flexibility in the operation of the Job Corps program, no changes will be made to the language in this part.

Section 686.320 What if a current center operator is deemed to be an operator of a high-performing center?

This section describes the criteria that an incumbent operator must meet in order to be considered the operator of a high performing center. If an entity is deemed to be the operator of a high-performing center, the entity is permitted to compete in any competitive selection process carried out for an award to operate that center, including those set aside for small businesses as required by the FAR.

Comments: One commenter recommended that the language of § 686.320(a) be amended so that it cannot be interpreted as allowing a high-performing incumbent operator to bid on an 8(a) set-aside procurement even if it is not in the Small Business Administration's (SBA's) 8(a) business development program. The commenter specifically recommended that the Department change the wording in § 686.320(a) from ". . . that operator will be allowed to compete in *any competitive selection process carried out for an award to operate that center*" to ". . . that operator will be allowed to compete in *full and open competitions, as well as procurements that are set aside for small business.*" The commenter also recommended that the Department clarify that when a large business is awarded a contract set aside for small businesses, it cannot count toward the procuring agency's small business contracting goals.

Department Response: Section 147(b)(1) permits a high-performing incumbent operator to compete in any competitive procurement process for the operation of that center. This includes competitive procurements set aside for participants in the SBA's 8(a) business development program. Making the change suggested by the commenter would be inconsistent with the statutory requirement. As written, WIOA allows a high performing incumbent operator to bid on a competitive 8(a) set-aside procurement regardless of whether it is part of the SBA's 8(a) business development program. The Department has also determined it is not necessary to clarify the language regarding large businesses receiving a contract set aside for small business.

Comments: One commenter stated that the standard for high performing centers in proposed § 686.320(b) is currently unattainable, while several other commenters asserted that no center currently meets the standard. One commenter stated that the language is confusing and recommended that it be simplified, adding that high performing centers be those in the top 30 percent "overall" on the OMS report at the time of procurement solicitation. Another commenter stated that the criteria for determining a high-performing contractor must be clear and use objective performance criteria.

Department Response: The high performing criteria are established by statute; therefore, to be considered a high performing center under this section, an incumbent operator must meet the standards identified. No changes have been made to the regulatory text in response to these comments.

Comments: Several commenters stated that not all centers have a career transition services (CTS) contract attached to the center; as such, these centers do not have complete control over their short- and long-term placement outcomes. These commenters recommended that the Department ascertain whether it is possible through statistical methods to isolate the impact of operators on the primary indicators of performance from those of their CTS contractor.

Department Response: The Department acknowledges that not

every center has a CTS contract attached to it, nor does WIOA require that the CTS contracts be included as part of the center operations contract. Sec. 159(c)(1) of WIOA and § 686.1050 of these regulations require the Department to establish expected levels of performance for each center and the method for calculating those levels via annual guidance issued by the Department. The Department has concluded that to maintain the necessary flexibility in the annual performance guidance for the Job Corps program the commenters' suggestion is best considered as part of the yearly process of establishing the expected levels of performance and no changes to the regulatory text have been made in response to these comments.

Section 686.330 What is the length of an agreement entered into by the Secretary for operation of a Job Corps center and what are the conditions for renewal of such an agreement?

Comments: Commenters requested the Department to clarify the conditions that trigger the denial of an option year, specifically how the average of 50 percent or higher of the expected level of performance for each of the six primary indicators will be calculated.

Department Response: The Department provided a detailed description of the circumstances under which it will exercise an option in § 686.330(c). The Department also identified a circumstance under which an option year will not be exercised in § 686.330(d); however, there may be other circumstances under which an option year may not be exercised. Regarding the question of how the average of the expected levels of performance will be calculated, the Department has determined that, pursuant to sec. 147(g)(1) of WIOA, it will average the most recent 2 years of data, consistent with § 686.330(e), for each of the six primary indicators of performance. The Department will consider the standard outlined in § 686.330(d)(2) met if the average on each of the six primary indicators for performance is below 50 percent. No changes have been made to the regulatory text in response to these comments.

Comments: Several commenters noted that because it takes an average of 2 full years to improve the performance of a center, the first option year should always be granted to an operator taking over a low performing center so that any decision regarding renewal is based solely on the performance of the new operator and not the previous operator.

Relatedly, regarding the availability of information when there has been a change of center operators (§ 686.330(e)), several commenters expressed concern that 6 months is an inadequate amount of time to assume full responsibility for the performance of the previous operator if the center is a low performing center (bottom 20 percent). These commenters noted that in order to improve performance, new operators are required to install new leaders, set up a new management team and strategic plan, hire and train new employees, set up a new behavior management system, develop strong student leaders, establish a positive student culture, and undertake other time consuming tasks in order to successfully improve center performance. The commenters stated that the point at which the performance of the center reflects the performance of the current operator is contingent on vastly different conditions and deficiencies, and noted that if a calendar date must be used to reflect this, it should be no less than 2 years for the new operator of a low performing center and at least 1 year for other operators. One commenter noted that the point at which the performance of a center reflects the performance of the current operator will vary based on numerous conditions, including the shortcomings of the previous operator. As such, the commenter recommended that the length of time should be determined on a case-by-case basis.

Department Response: The Department has considered these comments and agrees that, given that it takes at least a year for a new operator to improve the performance of a center, the possibility exists that a center with a new operator may continue to meet the definition of a low-performing center despite the change in operator. Accordingly, the Department added a clause to § 686.330(e)(1) to provide that when an operator takes over a center that was previously low performing, the first contractual option year will not be denied based on the performance criteria described in paragraph (d). This will provide the operator time to improve the performance of the center and ensure that the available data accurately reflects the performance of the current operator.

Comments: Several commenters stated that "or" should be changed to "and" in § 686.330(f)(1)(vii) in order to align with WIOA sec. 147(g), noting that the law and the regulations apply different criteria for performance that triggers an option year denial.

Department Response: The Department agrees with the commenters and has made two changes to § 686.330(f). First, paragraph (f)(2) has been reordered and moved to paragraph (f)(1) in order to maintain the same order of criteria as the previous section for ease of reading. In addition, the "or" between paragraphs (f)(1) and (2) has been changed to an "and" to indicate that in order for an option year to be denied under this provision both criteria must be met.

Comments: Several commenters recommended that the Department define the term "significant improvements" in § 686.330(g)(1) to improve transparency, make expectations clear, and avoid charges of favoritism.

Department Response: The Department has determined that because each performance improvement plan (PIP) is unique and tied to a specific set of factors that pertain to a specific contractual situation, it will not further define the term "significant improvements" here as those improvements will necessarily vary by PIP.

Section 686.340 How are entities selected to receive funding to provide outreach and admission, career transition and other operations support services?

Comments: One commenter stated that the proposed regulation does not adequately implement the rigorous service provider selection criteria prescribed by Congress in WIOA and takes insufficient steps to ensure that Job Corps users will receive the highest quality services and training possible. Another commenter suggested that the Department utilize OMS outcome information when evaluating career transition service (CTS) contract proposals and set up a report to assess students' connection to the workforce after leaving the Job Corps center.

Department Response: The selection criteria described in § 686.340(c) are taken directly from sec. 147(a)(2)(B)(i), which are the criteria required to be used in selecting an outreach and admissions (OA) or career transition services provider (CTS). The Department has included § 686.340(c)(6) to provide flexibility to include additional selection criteria if the Department determines such criteria are necessary to ensure the highest quality service providers. No changes have been made to the regulatory text in response to these comments.

Comments: Another commenter recommended that all CTS contracts be attached to prime Job Corps center contracts because it would provide a

cost-effective method to afford accountability to Job Corps results.

Department Response: The Job Corps contracting processes and structure regarding center operations contracts and CTS contracts require flexibility as they are driven by the program's evolving needs. The Department declines to make changes to the regulatory text in response to this comment, and will issue guidance as necessary.

Section 686.350 What conditions apply to the operation of a Civilian Conservation Center?

Comments: Commenters expressed concern regarding proposed § 686.350(e), which allows the Secretary of Labor, in consultation with the Secretary of Agriculture, to select an entity to operate a CCC in accordance with the requirements of § 686.310 if the Secretary of Labor determines it is appropriate. The commenters recommended that CCCs continue to be managed by the USDA Forest Service. Commenters stated that USDA-operated CCCs should not be able to be replaced by a private for-profit entity; one commenter specifically stated that there is potential for contract centers to misuse resources and that contract centers do not have the additional layer of oversight that CCCs have.

Several commenters opposed § 686.350(f), which provides that the Secretary of Labor has the discretion to close CCCs if the Secretary determines it to be appropriate. Commenters stated that the CCC National Director, the Forest Service Chief, and Secretary of the United States Department of Agriculture (USDA) need to have control and the final say as to the performance and closure of any CCC, as opposed to closure being at the sole discretion of the Secretary of Labor. Some commenters stated that proposed § 686.350(f) gives authority to one person—the Secretary of Labor—to make a unilateral decision that would affect thousands of people. Commenters suggested that there should be a wider range of people involved and time to present a case against closure of any particular center, as the closure of centers have a devastating effect on surrounding communities. Other commenters expressed concern that this proposed regulation would give one agency the ability to make employment decisions about another agency's personnel and would take away the personnel's ability to appeal employment decisions within their own agency. One commenter stated that this proposed provision would damage morale and create uncertainty among the CCC workforce. Another commenter remarked that taxpaying residents of the community where the CCC is located should be involved and/or their opinions be taken into consideration when making decisions regarding CCCs. Still another commenter stated that the proposed language focuses solely on closure. The commenter noted that with no clearly defined, objective assessment system in place that includes obtainable benchmarks, the language in proposed § 686.350(f) would create an unaccountable system without hope for improvement. The commenter further noted that the valuations made on the data collected by the Department's systems use flawed assumptions within a system biased toward contractors. Some commenters suggested that instead of allowing the Department to close a CCC if it deems appropriate, the regulations should implement the text in WIOA regarding low performing CCCs exactly as written.

Department Response: The Department is committed to improving the performance of CCCs by using the numerous tools provided by WIOA, including the procedures outlined in WIOA sec. 159(f)(2) and (f)(4), which are incorporated into the regulations at § 686.1070. However, the Department is constantly working to ensure that its limited resources are used to deliver the best possible results for students. As part of ongoing efforts to ensure its resources are best utilized, the Department may conclude that closing a CCC or selecting an entity to operate it on a competitive basis will allow it to provide the highest quality program to its students more effectively. In order to better serve the nation's youth in acquiring career skills through quality job training and education, the Department must retain all of its options with regard to improving its centers and the program as a whole, including, but not limited to, considering for closure or private operation through a competitive procurement process those Job Corps centers marked with consistent and entrenched poor performance. While § 686.350(f) does provide that the Secretary of Labor has the discretion to close CCCs if determined appropriate, any decision to close a CCC will be made in full accordance with the Department's published closure criteria and the procedural requirements outlined in WIOA. No changes have been made to the regulatory text in response to these comments.

5. Subpart D—Recruitment, Eligibility, Screening, Selection and Assignment, and Enrollment

This subpart describes who is eligible for Job Corps under WIOA and provides additional factors that are considered in selecting eligible applicants for enrollment. It describes how applicants who meet eligibility and selection requirements are assigned to centers, reflecting WIOA's new requirements that the assignment plan consider the size and enrollment level of a center, including the education, training, and supportive services provided, and the performance of the Job Corps center related to the newly established expected levels of performance. WIOA also amended the assignment plan to provide for assignments at the center closest to home that offers the type of career and technical training selected by the individual rather than just the center closest to home, which improves access to high quality training for Job Corps students. These regulations serve to enhance the Job Corps program overall by ensuring that the individual training and education needs of applicants and enrollees are met in accordance with the requirements of WIOA. They also ensure that applicants and enrollees are provided accurate information about the standards and expectations of the Job Corps program and are fully prepared to be successful.

In addition to changes described below, in § 686.470 the Department has updated the citation to the regulations implementing sec. 188 of WIOA from 29 CFR part 37 to 29 CFR part 38.

Section 686.410 Are there additional factors which are considered in selecting an eligible applicant for enrollment?

Comments: To accomplish its mission to provide disadvantaged youth a path to self-sufficiency, two commenters recommended that admissions counselors have the discretion to determine whether an applicant's Career and Technical Education needs can best be met through the Job Corps program. The commenters stated that Job Corps centers must provide a safe and supportive environment for young people who have the desire and ability to take advantage of its services, and to do this Job Corps cannot be considered a treatment program or a vocational rehabilitation program. These commenters noted that they favor the direction described by a Department official at the National Job Corps meeting in April 2015, that math, reading, interest, and aptitude assessments were in the offing for

admissions counselors to use when making their determinations.

They also suggested that in order to determine whether an applicant is likely to be successful in group situations, admissions counselors must have access to information about the applicant's past performance in schools or other group settings because, if the applicant has a history of fighting or disruptive behavior, it is likely that this behavior will be brought to Job Corps and be even more disruptive in a residential setting, impeding the safety of others. The commenters noted that admissions counselors need access to mental health reports in cases where significant behavior problems could preclude successful interactions in group settings, and need to be on the medical/mental "need to know" list so they can complete a thorough review of the additional factors in determining that Job Corps is the best fit for an applicant.

Department Response: The Department has determined that § 686.410(a) and (b) provide the authority for admissions counselors to consider all available, relevant information in determining whether an applicant is eligible and well suited for Job Corps. More specifically, these two paragraphs provide admissions counselors with the discretion to make the determination, consistent with the process outlined in Job Corps' PRH, that an applicant has the desire and ability to take advantage of the services offered by the Job Corps program and that the applicant will not create an unsafe learning environment if admitted into the program. Ultimately, retaining the language proposed in the NPRM while providing additional guidance and detail in the PRH provides both the Department and admissions counselors the necessary flexibility and appropriate framework to administer the admissions process. No changes were made to regulatory text in response to these comments.

Comments: Commenters suggested that applicants should be required to participate in a pre-orientation program as part of their eligibility assessment and should, where feasible, visit a Job Corps center in their local area. The commenters noted that a process to document the outcomes of all assessments should be developed, with the explanation of outcomes fully documented. In addition, when a determination is made that Job Corps is not the best program to meet an applicant's needs, a referral to a more suitable program should be made.

Department Response: As discussed above, the PRH provides the detailed procedures governing the admissions process, including procedures for documenting the process and actions that should be taken if an applicant is denied enrollment.

Comments: The Department received several comments about proposed § 686.410(d), which requires that all applicants submit to a background check and that those who have been convicted of a felony consisting of murder, child abuse, or a crime involving rape or sexual assault be found ineligible for participation in Job Corps. Commenters suggested that Job Corps consider what procedures to put in place during the admissions process to ensure that it is not reflexively enrolling students with felony convictions or other violent and serious crimes not explicitly mentioned in WIOA, including attempted murder, robbery, assault/battery, and drug trafficking. The commenters acknowledged that while Job Corps cannot legally exclude these applicants from the program based solely on these convictions, the admissions process should include clear and universal standards for assessing and determining whether Job Corps will best meet these students' career goals and stated that a residential environment like Job Corps may not be a productive environment for these youth to pursue their career development, particularly the development of 21st century skills, given their past history.

The commenters stated that clear standards and processes must be defined for assessments and determinations related to cases in which a background check reveals that an applicant is on probation, parole, under a suspended sentence, or under the supervision of any agency as a result of court action or institutionalization. The commenters also suggested that there should be a 6-month waiting period for an applicant after the individual is released from juvenile detention, drug rehab, or an adjudicated group home prior to being enrolled in the program in order to allow the individual to demonstrate successful engagement with the community at-large without court or other oversight and increase the likelihood that the individual can participate successfully in the program without jeopardizing the safety of other students.

One commenter was concerned that this provision would give Job Corps too much discretion with little or no guidance to aid in the decision to admit an individual with a criminal record, and suggested that the Department provide additional guidance to aid Job Corps in determining whether an individual with a criminal history that does not include one of the identified felonies is eligible for participation. Without such guidance, this commenter expressed concern that there would be considerable risk that some applicants would be the victims of unfairness, arbitrariness, and perhaps discrimination.

Department Response: As drafted, § 686.410(a) and (b) provide the authority for admissions counselors to consider all relevant, available information in determining whether an applicant may be selected for enrollment, including information obtained from background checks and from the applicant. In addition, Job Corps' PRH provides guidance and standards on how to assess the applicant's past behavior in the admissions screening process, including prior felony convictions and all other interaction with the criminal justice system. These factors are designed to identify applicants that can benefit from and succeed in the program and to screen out individuals who are not suited for the program. In making the relevant eligibility determinations, the admissions counselor must follow the guidance and standards in the PRH. No changes were made to the regulatory text in response to these comments.

Section 686.450 How are applicants who meet eligibility and selection criteria assigned to centers?

This section describes how applicants who meet eligibility requirements are assigned to centers. Paragraph (a)(4) of § 686.450 provides that the performance of a Job Corps center with respect to the expected levels of performance should be taken into account when assigning new students to centers.

Comments: Several commenters expressed concern that this would require admissions counselors to give preference to high-performing centers, which would be impossible to implement for Outreach and Admissions (OA) contracts that are attached to and responsible for recruitment for a single Job Corps center, and challenging for OA contracts that are responsible for assignment to multiple centers across a State or region. The commenters questioned how the assignment plan would account for changing performance levels and how this will be reflected in the performance goals specified in OA contracts. The commenters noted that the Department has indicated that one of its requirements to exit a Performance Improvement Plan (PIP) will be to achieve a minimum on-board strength (OBS) threshold, and denying or limiting enrollments to a center on a PIP

could result in that center never meeting these goals despite otherwise improving performance. One commenter questioned how the assignment of students under the requirements of this section would account for changing performance levels since assessments are done on such a long term cycle, stating that experience has shown that it takes on average 2 full years to improve the performance of a low-performing center. The commenter further stated that it often takes 18 to 24 months to recruit, hire, and develop staff, train and cultivate student leaders, change the student culture, and ultimately improve performance. The commenter expressed concern with the perceived conflict of interest that is generated when a single contractor handles OA and career transition services (CTS) functions and is the center operator.

Department Response: Paragraph (a)(4) of § 686.450 mirrors the requirements of WIOA at sec. 145(c)(2)(D). WIOA sec. 145(c) requires that the Secretary develop and implement a plan for assigning enrollees to Job Corps centers based on targets and analysis of specific criteria outlined under sec. 145(c)(1) and (2). The performance analysis requirement under WIOA sec. 145(c)(2)(D) relates to the expected levels of performance for indicators described in sec. 159(c)(1) and whether any actions have been taken with respect to the center under sec. 159(f)(2) and (f)(3). While the Final Rule mirrors the statutory requirements, Job Corps is required under this provision to consult with center operators in analyzing the factors described in WIOA sec. 145(c)(2)(D). The Department has modified § 686.450(a) to clarify that the list of factors identified is non-exclusive. This addition clarifies that all of the challenges can be raised and discussed as part of the required analysis. Finally, on-board strength is not a component of the Performance Improvement Plan and is therefore irrelevant to this provision. Accordingly, no changes were made to the regulatory text in response to these comments.

6. Subpart E—Program Activities and Center Operations

This subpart describes the services and training that a Job Corps center must provide. Job Corps provides residential services in combination with hands-on training and experience aligned with industry standards. While education, training, and job placement are core components of what the program offers, this section of the regulations describes how Job Corps provides a comprehensive service model that also includes life skills, emotional development, personal management, and responsibility. New regulations addressing advanced career training programs are included; such programs provide broader opportunities for higher wages and career advancement.

This subpart also establishes the requirements for a student accountability system and behavior management system. Job Corps' policy for violence, drugs, and unauthorized goods is described. Requirements to ensure students are provided due process in disciplinary actions, to include center fact-finding and review board and appeal procedures are outlined. These systems and requirements serve to enhance the Job Corps program by ensuring that Job Corps centers are safe and secure environments that promote the education and training of students. Approved experimental, research and demonstration projects related to the Job Corps program are authorized in this subpart, which also serves to enhance the program.

In addition to changes described below, in § 686.560 the Department has updated the citations to the regulations implementing sec. 188 of WIOA from 29 CFR part 37 to 29 CFR part 38.

Section 686.500 What services must Job Corps centers provide?

Comments: One commenter recommended that the regulatory text contain a statement that academic instruction includes entry-level workforce preparation and/or preparation for recognized postsecondary education and training.

Department Response: The added detail to academic instruction suggested by the commenter is currently included at § 686.505(b), which describes academic instruction in preparation for postsecondary education and training. Additionally, § 686.505(c) further describes programs that must be provided to students in order to learn workforce preparation skills such as independent learning and living skills, including: Job search and career development, interpersonal relations, driver's education, study and critical thinking skills, financial literacy, and other skills specified in program guidance. In addition, after further review of § 686.500, the Department decided to provide additional clarity in the language at § 686.500(a)(1) by changing "(iii) Employability and independent learning and living skills development" to "(iii) Employability and skills training; and (iv) Independent learning and living skills development."

Section 686.505 What types of training must Job Corps centers provide?

This section describes the training that Job Corps centers must provide to students. Commenters stated that Job Corps must continuously seek to improve student academic and technical credential attainment, workforce connectivity, and postsecondary attainment results to put graduates on the road to self-sufficiency.

Comments: The commenters had multiple recommendations that fell under four broad categories: (1) Improving academic outcomes; (2) improving technical training and placement outcomes; (3) improving critical thinking, problem-solving, decision-making, and other 21st century skills; and (4) cultivating a safe living and learning environment. Commenters recommended that Job Corps develop policies and requirements to, among other things, increase active and personalized learning through the use of digital tools and proper teacher training; expand partnerships with postsecondary institutions and apprenticeships; enhance employer relationship and in-demand credential attainment; and improve mental health and healthy relationship services and resources available to students.

Department Response: The Department has determined that the requirements in sec. 148 of WIOA and § 686.505 already capture and encompass many of the proposed and valuable suggestions. Additional training requirements and policies related to training will be implemented through updates to the Job Corps PRH. As such, no changes were made to the regulatory text in response to these comments.

Comments: One commenter noted that teaching healthy relationship skills will make students more economically self-sufficient and views them as an essential part of employability, living skills, and interpersonal relationship skills.

Department Response: Healthy relationship and living skills training are included in the list of training activities at § 686.505(c); all of the skills suggested by the commenter may be provided to students under this section.

Comments: One commenter recommended that high school diplomas be regionally accredited and that secondary education programs include entry-level workforce preparation activities that lead to recognized postsecondary credentials in in-demand occupations and should be

included in the regulatory text under § 686.505.

Department Response: In order to retain flexibility to adjust to evolutions in accreditation, the Department issues guidance through the Job Corps' PRH.

Section 686.510 Are entities other than Job Corps center operators permitted to provide academic and career technical training?

Comments: Expressing support for proposed § 686.510, a commenter remarked on the importance of allowing unions to provide academic, career, and technical training, pointing out that unions have successfully transitioned students into apprenticeship programs. The commenter further stated that they are pleased that the NPRM envisions continued Job Corps participation by other entities that are not center operators but that do have a proven record of facilitating the entry of young people into careers that are a pathway to the middle class. Another commenter suggested that the Department revise this section to require that academic education be provided by public or regionally accredited private educational organizations that have demonstrated effectiveness in providing programs that include entry-level workforce preparation and/or postsecondary education and training.

Department Response: The Department agrees that the career technical and academic education of Job Corps students should be provided by entities "with demonstrated effectiveness" and has changed this section to include this requirement. The Department will not limit the entities to the suggested "public or regionally accredited organizations" because all of the entities described in this section are statutorily required, per sec. 148(b) of WIOA, to provide academic instruction. The regulatory text was changed accordingly.

Section 686.515 What are advanced career training programs?

Comments: A few commenters suggested ACT programs should be restored at Job Corps centers that eliminated them or downsized them due to budget cuts, noting that in many cases the programs could be restored with minimal costs. These commenters requested that the Department provide guidance to centers on how to restore their ACT programs or to establish new programs.

Department Response: The Department acknowledges concerns about ACT programs; however, its decision to eliminate or downsize these programs was due to budget cuts and any decision to restore ACT programs will be based on available funds and will be handled on a case-by-case basis.

Comments: Regarding the § 686.515(c) provision that permits a center to exceed the approved capacity of the program under certain circumstances, two commenters requested that the Department provide clarification on what it means to achieve "satisfactory rate of training and placement in training-related jobs." These commenters recommended that programs that exceed the centers' overall completion and placement-related goals over the preceding program year qualify for expansion without approval from the Department. The commenters also requested clarification as to how or whether center operators qualify if they have been operating the center for less than 2 program years when their performance is likely more reflective of the previous operator.

Department Response: The Department is not making any substantive changes to the language in this part in response to these comments, but has made a minor change to align with the corresponding WIOA provision. The Department acknowledges the suggestion that Job Corps provide guidance regarding what it means to achieve a satisfactory rate of training and placement. The Department's change in the provision at § 686.515(c)(1) revised the text from "participants in such a program have achieved a satisfactory rate of *training* and placement in training-related jobs" to "participants in such a program have achieved a satisfactory rate of *completion* and placement in training-related jobs" to align this provision with WIOA sec. 148(c)(3)(A). After consideration, the Department has determined that defining a satisfactory rate of completion and placement, including the relevant data that will be reviewed in making this decision, falls under program administration. In order to ensure flexibility in the operation of the Job Corps program, because the Department continually reviews and revises the performance management system to effectively manage and best serve Job Corps' needs. Regarding the commenters' question about how or whether center operators qualify if they have been operating the center for less than 2 program years and the recommendation that if completion and placement goals are exceeded for a preceding program year the center should qualify for expansion, the Department acknowledges the commenters' concerns. However, the requirement for additional enrollments in the ACT program, which includes 2 program years of performance data, is statutorily required at WIOA sec. 148(c)(3)(b), regardless of how long an operator has been operating a center. The change to the provision at § 686.515(c)(1) is the only change made to the regulatory text in response to these comments.

Section 686.520 What responsibilities do the center operators have in managing work-based learning?

Comments: Requesting clarification that Job Corps centers should be allowed to act as employers for work-based learning, two commenters recommended that the wording in § 686.520(a) be changed to the following: "The center operator must emphasize and implement work-based learning programs for students through center program activities, career technical skills training, and through arrangements with employers . . . ."

Department Response: The Department is not making any changes to the regulatory text in response to these comments. Paragraph (a) of § 686.520 reads, "The center operator must emphasize and implement work-based learning programs for students through center program activities, including career and technical skills training, and through arrangements with employers. Work-based learning must be under actual working conditions and must be designed to enhance the employability, responsibility, and confidence of the students. Work-based learning usually occurs in tandem with students' career technical training." The Department has determined that the language at § 686.520(a) is identical in meaning to the language suggested by commenters. Under this provision centers may serve as employers for work-based learning. However, per the requirements of this provision, the work-based learning must be under actual working conditions, designed to enhance the employability of the student, and occur in tandem with the student's career technical skills training.

Section 686.530 What residential support services must Job Corps center operators provide?

Comments: A few commenters recommended that the Department add clarifying language on medical services stating that, with the exception of a direct reference to the requirement for Trainee Employee Assistance Program (TEAP) services that related to Job Corps' zero tolerance policy, required medical services, should be limited to comparable services that exist on most college campuses. These commenters

further stated that Job Corps, in conjunction with community partners, should be required to educate enrollees regarding insurance access and requirements with respect to the Affordable Care Act and to connect enrollees to the appropriate insurance.

Department Response: Section 686.530, with regard to medical services, states that medical services must be provided through provision or coordination of a wellness program that includes access to basic medical, dental, and mental health services, as described in the PRH, for all students from the date of enrollment until separation from the Job Corps program. Making the changes suggested by the commenters in the regulation would reduce the flexibility quickly to adjust the medical services and other residential support services required to be provided at a center. Accordingly, no changes were made to the regulatory text in response to these comments, but the PRH will continue to be modified as needed.

Comments: Additionally, two commenters urged clarification in § 686.530(g) to ensure that student welfare associations can use fundraisers to secure funds.

Department Response: The Department agrees with the request to include language to § 686.530(g) clarifying that student welfare associations can use fundraisers to secure funds as an activity to support the association in addition to the specific activities listed to raise funds, as described in this section. As such, the section has been edited to include a reference to "and other fundraising activities."

Section 686.545 What is Job Corps' zero tolerance policy?

Comments: A few commenters recommended changing the wording in § 686.545(c) to read as follows: "The zero tolerance policy specifies the offenses that result in the separation of students from the Job Corps. The center director is expressly responsible for determining when there is a violation of this policy."

Department Response: The Department agrees with the commenters and has included new language at § 686.545(c) for clarity, so that the revised paragraph now provides that the center director is responsible for determining when there is a violation of the policy, as opposed to a violation of a specified offense.

Section 686.565 Is Job Corps authorized to conduct pilot and demonstration projects?

Comments: Some commenters suggested that Outcome Measurement System (OMS) results should be put on hold for centers implementing pilot and demonstration projects until the project is completed, stating that this worked well with the "Centers for Excellence" pilot.

Department Response: The Department has determined that the decision of whether the OMS results will be placed on hold for centers implementing pilots is best addressed on a case-by-case basis, as there may be multiple, unique factors to consider in each project at different center locations, requiring flexibility in the operation of the pilot or demonstration project. No changes were made to the regulatory text in response to these comments.

7. Subpart F—Student Support

Subpart F discusses the support services provided to Job Corps enrollees, including transportation to and from Job Corps centers, authorized student leave, allowances and performance bonuses, and student clothing. In addition to being eligible to receive transportation to and from Job Corps centers, students are eligible for other benefits, including basic living allowances to cover personal expenses, in accordance with guidance issued by the Secretary. Students are also provided with a modest clothing allowance to enable them to purchase clothes that are appropriate for the classroom and the workplace. These proposed regulations will again work to strengthen the Job Corps program and provide access to high quality training by ensuring that Job Corps students are placed in the best possible position to prepare them for learning, and that they are rewarded for their success in the program.

No public comments were submitted in response to the NPRM for this subpart.

8. Subpart G—Career Transition and Graduate Services

This subpart discusses career transition and graduate services for Job Corps enrollees. Job Corps focuses on placing program graduates in full time jobs, postsecondary education, advanced training programs, including registered apprenticeship programs, or the Armed Forces. In an effort to further integrate the Job Corps program with the greater public workforce system and align it with the core programs, § 686.820 specifically focuses on how Job Corps will coordinate with other agencies, where emphasis is placed on utilizing the one-stop delivery system to the maximum extent practicable. This subpart also outlines a center's responsibilities in preparing students for career transition services; the career transition services that are provided for enrollees; who may provide career transition and graduate services, in addition to one-stop centers; and services provided for graduates and former enrollees.

Section 686.760 What services are provided to former enrollees?

Comments: Three commenters noted that Job Corps' reputation is damaged when employers are connected with students who left the program early (for mostly drug, behavioral, or voluntary reasons) without obtaining their academic and technical training credentials and stated that these students are unlikely to advance along a viable career pathway without further education. These commenters proposed that the regulations clarify that the CTS provided to former enrollees be focused primarily on enrolling former enrollees in other education or training programs, which will maximize the resources that can be used to support Job Corps' graduates. The commenters proposed that no additional services should be provided to former enrollees following their placement.

One commenter noted that all young people have access to the services available at one-stop centers and WIOA sponsored youth programs, and recommended that Job Corps' services to former enrollees be limited to documented referrals to one-stop centers or other WIOA programs. The commenter explained that this approach would allow Job Corps to focus resources on assisting committed graduates find employment or enroll in postsecondary or apprenticeship programs or the military. According to this commenter, such an approach also would increase the amount of time devoted to securing better housing, transportation, clothing, and other transition services that students need to attain self-sufficiency. The commenter proposed eliminating services for 90 days and only providing referrals to one-stop centers and other WIOA programs.

Department Response: No change to the regulatory text was made in response to these comments. The statutory language provides the Secretary with discretion to determine what services are appropriate for former enrollees and this provision reiterates that Job Corps has discretion in

providing these services. The Department is issuing guidance regarding the provision of services to former enrollees through the PRH.

9. Subpart H—Community Connections

This subpart highlights WIOA's focus on community relationships and further integration with the public workforce system. In both the new contracting provisions in subpart C and in this subpart, there is more emphasis on connections with one-stop centers, Local WDBs, and State and local plans. While WIA's requirement for a Business and Community Liaison has been eliminated, the responsibility for establishing beneficial business and community relationships and networks now lies with the director of each Job Corps center. Moreover, WIOA contains a new requirement that in a single-State local area, a representative of the State WDB must be included on the workforce council. Section 686.810 also states, consistent with sec. 154(b)(2) of WIOA, that the workforce council may include employers from outside the local area that are likely to hire center graduates. The new requirements for the workforce council seek to provide greater access to high quality training for Job Corps students, in part by ensuring that Job Corps is providing training for in-demand industry sectors and occupations.

Section 686.800 How do Job Corps centers and service providers become involved in their local communities?

This section describes the Job Corps center responsibilities regarding the establishment and development of mutually beneficial business and community relationships and networks.

Comments: Two commenters stated that center directors should be involved in the community and in establishing connections to entities described in this section, but noted that without these duties assigned to a specified staff person, it becomes difficult for a center director to maintain these relationships. The commenters recommended that the regulations clarify that the center director will designate a staff member to coordinate these activities, appreciating that the nature of the community (*i.e.,* the time and effort required to establish these relationships will be different in rural vs. urban areas) as well as the size and staffing of the center will influence whether the designee should be a full time Business and Community Liaison (BCL) or whether the duties can be assigned to another person on staff.

Another commenter made a similar statement, noting that while center directors are involved in the community and in establishing connections to the entities described § 686.800, without the assistance of a staff person such as a BCL, it will be difficult for a center director to personally maintain these beneficial community relationships and networks. The commenter proposed that the center director designate a staff member to coordinate these activities.

Department Response: The regulatory language states that each center director must ensure the establishment and development of business and community relationships, but does not specify who must perform the work. Ultimately, assignment of these responsibilities is left to the discretion of each center director. It is acceptable for a center director to delegate this responsibility to a member of their staff provided that they are properly overseeing that staff member's work to ensure that the requirements of this provision are being met. No change was made to the regulatory text in response to these comments.

Section 686.810 What is the makeup of a workforce council and what are its responsibilities?

Comments: One commenter noted that this section requires that the majority of workforce council members be business owners, chief executives (CEOs), or chief operating officers (COOs) of non-governmental employers or other private sector employers. The commenter stated that it is unrealistic to expect that owners, CEOs, and COOs will be the active workforce council participants and noted that they find human resources representatives from major employers often offer the best perspective on employment opportunities and qualifications. The commenter proposed that the regulation be modified to include representatives of employers that are in a position to hire Job Corps students and/or are responsible for training and development of the organization's employees.

Department Response: After considering these comments, the Department agrees with the logic presented by the commenters. The Department has changed paragraph § 686.810(b) to clarify that business owners, CEOs, COOs of non-governmental employers, and other private sector employers may designate the staff person they feel is best suited to represent their entity on the workforce council, provided that the designee meets the requirements in § 686.810(b).

Comments: Several commenters noted that Job Corps is required to draw upon many of the same agencies for individuals to sit on its workforce councils that provide members to the Local WDBs. These commenters recommended that § 679.360 allow, or even encourage, workforce councils to be a subcommittee of the most appropriate regional or Local WDBs, where applicable. The commenters noted that this would eliminate competition for membership and encourage greater collaboration between Job Corps, the Workforce Investment Board (now Workforce Development Board), and the one-stop delivery system. Other commenters further noted that § 686.810(d) requires a center's workforce council to work with all applicable Local WDBs to review labor market information and make recommendations to the Secretary for career technical training offerings. The commenters recommended that where a workforce council is not affiliated with a regional or Local WDB, it may make sense to designate a regional or Local WDB staff member to sit on the workforce council to facilitate these actions.

Department Response: No change to the regulatory text was made in response to these comments. Each Job Corps center director must establish and develop mutually beneficial business and community relationships and networks with entities, including Local WDBs. Under WIOA sec. 154(b)(2), members of the Local WDB are permitted, though not required, to sit on center workforce councils provided they meet the membership requirements outlined in § 686.810(a) and (b). Section 679.360 implements WIOA sec. 107(b)(4) and establishes the roles and responsibilities of standing committees within the Local WDB structure.

Comments: With respect to § 686.810(d)(2), commenters also recommended that a rapid-response system be developed to change career technical training offerings quickly to meet employer demands as identified and recommended by the workforce council.

Department Response: The Department is not changing § 686.810(d)(2) to include a requirement that a rapid-response system be developed to change career technical training offerings quickly to meet employer demands as identified by the workforce council. Paragraph (d)(2) of § 686.810 states that the workforce council must review all relevant labor market information, including related information in the State Plan or the local plan, to: Recommend in-demand industry sectors or occupations in the area in which the center operates; determine employment opportunities in

the areas in which enrollees intend to seek employment; determine the skills and education necessary to obtain the identified employment; and recommend to the Secretary the type of career technical training that should be implemented at the center to enable enrollees to obtain employment opportunities identified. The Department will provide additional guidance on how the workforce council will provide this information.

Comments: One commenter also recommended that Job Corps—whether through a designated center employee or through members of the workforce council—be mandated partners in State, regional, and local sector partnerships as required by 20 CFR 678.435(a) (*see* Joint WIOA Final Rule) because this could significantly enhance employer partnerships and provide employer-driven recruitment, training, and placement services.

Department Response: The Department strongly encourages sector partnerships that include a variety of industries and career pathways that may be included in a sector strategy. Given the variety of industries and career pathways that may be included in a sector strategy, which includes Job Corps, the Department at 20 CFR 678.435 (*see* Joint WIOA Final Rule) is not placing regulatory requirements around partnerships.

10. Subpart I—Administrative and Management Provisions

This subpart provides requirements relating to tort claims, Federal Employees Compensation Act (FECA) benefits for students, safety and health, and law enforcement jurisdiction on Job Corps center property. It also addresses whether Job Corp operators and service providers are authorized to pay State or local taxes on gross receipts, and details the financial management responsibilities of center operators and other service providers. The management of student records, as well as procedures applicable to the disclosure of information about Job Corps students and program activities are outlined. Finally, procedures available to resolve complaints and disputes and how Job Corps ensures that complaints or disputes are resolved in a timely fashion are addressed in this subpart. The entirety of this subpart addressing administrative and management principles that apply to the operation of the Job Corps program serves to promote its accountability and transparency.

No public comments were submitted in response to the NPRM for this subpart. However, in §§ 686.960 and 686.985 the Department has updated the citations to the regulations implementing sec. 188 of WIOA from 29 CFR part 37 to 29 CFR part 38.

11. Subpart J—Performance

This subpart incorporates WIOA-specific requirements related to performance assessment and accountability, as well as requirements for performance improvement plans for Job Corps center operators who fail to meet expected levels of performance. The Job Corps program is now required to report on the primary indicators of performance common to all WIOA programs that provide key outcome information on how many students attained employment or were placed in education or training, their median wages, whether they attained credentials, their measurable skill gains, and the effectiveness in serving employers. The entirety of this proposed subpart serves to promote the accountability, performance, and transparency of the Job Corps program.

Section 686.1000 How is the performance of the Job Corps program assessed?

Comments: Regarding which short-term measures should be retained in the new Outcome Measurement System (OMS), some commenters recommended that HSD/E, literacy and numeracy gains, CTT completion, credential attainment, and HSD/E and CTT combinations be retained. One commenter recommended that all current OMS categories be retained in order to measure student progress and noted that it is important to develop measures to evaluate how much a student has gained from entrance to exit from Job Corps (*i.e.*, growth measures). Commenters stated that maintaining the current 15 OMS measures while adding new measures would be too cumbersome to manage and would take away from the quality of the programs provided. These commenters noted that Job Corps has been criticized by the Office of Inspector General (OIG) for having too many required performance indicators, the corollary of which is burdensome data collection, verification, and reporting requirements. These commenters suggested that the current emphasis on obtaining an academic credential not be diminished and recommend that Job Corps utilize measures to track the number of credentials being earned, as well as the size of "measurable gains" to reflect students that earn multiple credentials or make significant learning gains.

Department Response: Job Corps' performance will be assessed in accordance with required procedures and standards issued by the Secretary through the national performance management system, which will take into account the performance metrics described in § 686.1000(b). The Department has determined that it will not add any additional performance indicators in this section. In order to effectively operate and evaluate the Job Corps program, performance indicators are regularly examined and necessary changes are made to the performance management system in annual performance guidance. It is important for the performance system to remain malleable and open to change on an annual basis to ensure that the Department is collecting the performance data that most accurately measures the performance of the program. Accordingly, rather than specify specific performance indicators in this section, the Department has decided to incorporate additional performance indicators in the yearly performance guidance described in § 686.1000(b), as necessary.

Comments: Regarding post-center performance indicators, one commenter stated that it will be important for Job Corps to determine how it will reliably obtain employment and wage information because the current survey system will not provide the National Office of Job Corps, the Department, or Congress with the reliable information they require to determine the efficacy of the program. This commenter also noted that Job Corps does not currently have access to unemployment insurance (UI) or social security information that will provide reliable information. Two other commenters stated that Job Corps should comment on how it intends to ensure that Job Corps has complete access to UI data so that Job Corps can report performance in accordance with the requirements for primary indicators of performance.

Department Response: The Department recognizes the need to transition to the use of administrative data in order to obtain accurate employment and wage data in the most efficient way possible. The Department is working to obtain access to individual UI wage records and other administrative data to meet the requirements under WIOA sec. 159(e). The specific means by which this access will be acquired is under development and is expected to change over time; however, over the next few years the Department will work with other Federal and State agencies, consistent with State UI laws, to gain access to this information. In addition to calculating the performance of participants, access

to administrative data will allow the Department to begin collecting valuable information on employment outcomes for enrollees who began receiving services under the Job Corps program but did not remain in the program long enough to meet the definition of participant. As such, flexibility in the process is important and the mechanism for retrieval will not be prescribed by regulation. The annual performance guidance described in § 686.1000 will describe how such records will be accessed and used. While State UI wage record data are one relevant data set, the Department anticipates using a variety of available, reliable data to assess a center's performance under all of the metrics comprising the performance management system.

Section 686.1010 What are the primary indicators of performance for Job Corps centers and the Job Corps program?

Comments: One commenter noted that this section requires the inclusion of recognized postsecondary credential attainment 1 year after separation as one of the primary indicators of performance for Job Corps centers. The commenter stated that this is confusing as written and difficult, if not impossible, to track and monitor because centers themselves do not track post-center indicators: This is the responsibility of CTS contractors. The commenter suggested that to resolve this issue, along with other issues with tracking performance of Job Corps centers and equating that performance with placement and wages, all CTS contracts be attached to center operating contracts.

Department Response: The regulation mirrors WIOA's primary indicators of performance in WIOA sec. 116(b)(2)(A)(ii), and sec. 159(c)(1) which require that each center's performance be measured under the WIOA primary indicators of performance for youth. As discussed in the preamble to § 686.340, the suggestion that CTS contracts should be attached to center operation contracts is better addressed as a matter of program administration because Job Corps contracting processes and structure regarding center operations contracts and CTS contracts require flexibility as they are driven by the program's needs.

Comments: A commenter suggested that Job Corps use both an employment rate and a retention rate in the new performance management system. The commenter also expressed concern with how Job Corps career transition service (CTS) providers will be able to verify high school diploma, high school equivalency, or postsecondary credential attainment if the student achieves these outcomes after exiting from the center.

Department Response: As noted above, in order to effectively operate and evaluate the Job Corps program, performance indicators are regularly examined and necessary changes are made to the performance management system in the annual performance guidance described in § 686.1000(b).

Regarding how verification of high school diploma, high school equivalency, or postsecondary credential attainment will occur if the student achieves these outcomes after exiting from the center, the specific means by which this information will be collected is under development and may change over time and will not be prescribed by this regulation.

Section 686.1020 What are the indicators of performance for Job Corps outreach and admissions providers?

Comments: Several commenters asked whether, like the performance indicators for centers, there will be other indicators for outreach and admissions. The commenters stated that if there are other indicators, they recommend that total arrivals be retained as a short-term indicator. Further, these commenters recommended that if female arrivals are measured, they should be weighted much lower. The commenters also stated that the placement measures in the current OMS be retained and weighted higher to fulfill the purpose of Job Corps to connect youth to the workforce.

Department Response: As discussed, performance indicators and weights of performance measurements for OMS are not statutorily mandated and require continued flexibility, including the measures to overcome historic trends in enrollment. The Department continually reviews and revises the performance management system to manage effectively and best serve Job Corps' needs. Accordingly, in response to these comments, the Department has added § 686.1020(e) providing that other indicators of performance will be adopted by the Secretary as necessary. These indicators are outlined in the annual performance guidance issued by the Secretary described in § 686.1000(b), and may change over time to meet program administration needs.

Comments: These commenters also stated that it is important to keep in mind the various constraints in the local market when setting the expected level of performance under § 686.1020(c) for the OA indicator that measures the maximum achievable percentage of students that reside in the state where the center is located and that reside in the surrounding regions, as compared to the targets set by the Secretary for each of those measures. They also stated that these constraints include, but are not limited to: Whether the center is in a rural or urban area; what other providers offer similar training; whether the population of 16–24 year olds is projected to grow or shrink over time; and the poverty rate and unemployment rates in the local area. In addition, the commenters noted that it is critical that the expected levels of performance take into account the size of the local area because a national goal superimposed on a sparsely populated local area may cause significant multiplier effects and result in goals that are unattainable under any circumstance.

Department Response: No change was made to this regulatory text in response to these comments; however, the Department has made a change to § 686.450 which addresses these concerns. As described in § 686.450, when developing an assignment plan related to the maximum percentage of students at a center from the State and region in which the center is located the Department is required, in consultation with center operators, to analyze a number of relevant factors. The Department has changed § 686.450(a) to indicate that the list of factors identified for consideration is non-exclusive; therefore, the constraints identified by these commenters could be discussed as part of the analysis.

Comments: Commenters also stated that regarding [the OA indicator] under § 686.1020(d) that measures the cost per enrollee calculated by comparing the number of enrollees at the center in a program year to the total budget for such center in the same program year, that they were unclear how this would be measured since outreach and admissions providers recruit for multiple centers, and questioned how they would be held accountable for cost per enrollee at a particular center and how a goal would be set for this measure. The commenters stated that much more needs to be provided on how this measure will be reported on the new OMS and recommended that instead of adding the cost per enrollee to OMS the cost for each center be included in the Secretary's report to Congress, similar to the cost per graduate that is required to be part of this report. The commenters noted that if the decision is made to add the cost per enrollee to OMS, outreach and admissions contracts should be attached to center contracts so that the center director is held accountable for

reasonable costs per enrollee at his/her center.

Department Response: WIOA sec. 159(c)(2) requires that the cost per enrollee as described in WIOA sec. 159(d)(1)(M) be included as a performance indicator for OA providers, and the Department does not have authority to change this statutory measure. Additional detail on reporting cost per enrollee is provided in guidance. Finally, regarding the suggestion that outreach and admissions contracts be attached to center operations contracts, the Department determined that this recommendation is better addressed through procurement and administrative processes.

Comments: Commenters noted that WIOA requires Job Corps to assess whether an applicant's needs and career goals can be best met by Job Corps or another local program, and if Job Corps is not deemed a best fit for the applicant, outreach and admissions counselors must refer and facilitate enrollment in alternative programs. There is currently no provision in the regulations for this to be measured. Commenters also recommended that OMS measure the efficacy of admissions counselors in conducting these assessments, including the rate of referrals and enrollment in other programs. Commenters further stated that the proposed indicators of performance for Job Corps outreach and admissions providers also should include the number of students retained for 30 and 60 days, since a center's performance is negatively impacted when students leave during their first 30 and 60 days, and center OBS is affected during this period due to zero tolerance violations for drugs and violence. The commenters also suggested OMS include goals and measures related to minimizing the number of Medical Separation with Reinstatement Rights (MSWR) terminations and fraudulent enrollments.

Department Response: As discussed above in the preamble to § 686.1000, the Department continually reviews and revises the performance management system to effectively manage and best serve the students' needs. In response to these comments, as noted above, the Department has added § 686.1020(e), providing that additional indicators of performance for outreach and admissions providers will be adopted by the Secretary as necessary. These indicators will be outlined in the annual performance guidance issued by the Secretary described in § 686.1000(b), and may change over time to meet program administration needs.

Section 686.1030 What are the indicators of performance for Job Corps career transition service providers?

Comments: Three commenters noted that because CTS providers are responsible for the same performance indicators as Job Corps centers and also other indicators that measure the type of placement received (the number of graduates who entered the Armed Forces, apprenticeship programs, job training matches, and average wages), they recommend that the Department attach CTS contracts to center contracts to hold the center director accountable to closely link education and training to connecting youth to the workforce and postsecondary education. Another commenter disagreed with this suggestion, stating that it is a blatant attempt on the part of center operators who are large businesses to exclude small businesses that fall under the OA/CTS size standard. Further, this commenter stated that bundling CTS to center contracts cannot be shown to improve placement and associated statistics.

Department Response: As discussed in the preamble to § 686.340, the suggestion that CTS contracts should be attached to center operation contracts is better addressed as a matter of program administration because Job Corps contracting processes and structure regarding center operations contracts and CTS contracts require flexibility as they are driven by the program's needs.

Comments: Commenters recommended that Job Corps include performance indicators for the number of education placements and the number of postsecondary placements in addition to the performance indicators for CTS required by WIOA.

Department Response: As discussed above in the preamble to § 686.1000, the Department continually reviews and revises the performance management system to effectively manage and best serve Job Corps' needs. Accordingly, in response to these comments, the Department has added § 686.1030(h) providing that additional indicators of performance will be adopted by the Secretary as necessary. These indicators will be outlined in the annual performance guidance issued by the Secretary described in § 686.1000(b), and may change over time to meet program administration needs.

Comments: One commenter stated that they would like clarification on how quarters and the strict 12-month service window, as required under statute, will be established specifically for the purposes of measuring Job Corps outcomes. The commenter stated that the Job Corps system under WIA conflicts with WIOA with respect to CTS timelines and performance measurements, noting that CTS contracts have a 9-month window to place students and that 6 and 12 month placement follow ups are conducted based on the date of placement, not separation. The commenter noted that this creates a Job Corps CTS service window that can extend 18 months after graduation from Job Corps and would like to know whether the service window is changed to 12 months only.

Department Response: As reflected in § 686.740, WIOA sec. 148(d) states that the Secretary shall arrange for the provision of job placement and support services to graduates for up to 12 months after the date of graduation and multiple resources, including one-stop partners, may support the provision of these services. In addition, as noted by the commenter, the indicators of performance indicator the percentage of program participants in education or training activities or unsubsidized employment during both the second and fourth quarters after exit from the program. Regardless of the length or extent of services provided to graduates under WIOA sec. 148(d), the Department is required to track a participant's participation in education/training activities or in unsubsidized employment 6 and 12 months after exit from the program.

Comments: A commenter also asked the Department to clarify whether WIOA and the proposed rules would treat former enrollees and graduates the same in terms of post-center services provided and the primary indicators of performance. Another commenter suggested that former enrollees and graduates should not be treated the same regarding post-center services provided and performance indicators under WIOA, as is done under WIA.

Department Response: Regarding the commenter's request for clarification on post-center services provided for graduates and former enrollees, WIOA sec. 148(d) states that the Secretary shall arrange for the provision of job placement and support services to graduates for up to 12 months after the date of graduation and multiple resources, including one-stop partners, may support the provision of these services. WIOA sec. 150(c) states that the Secretary may arrange for the provision of up to 3 months of employment services for former enrollees. These provisions are reflected in §§ 686.740 and 686.760, which mirror WIOA requirements for services provided. Further information regarding the services available to graduates and

former enrollees is included in the Job Corps PRH. Regarding the commenter's request for clarification on whether WIOA and the proposed rules would treat former enrollees and graduates the same in terms of the primary indicators of performance, former enrollees and graduates are treated the same if they meet the definition of participant, which includes both former enrollees and graduates who have completed their career preparation period and who have remained in the program for at least 60 days.

Section 686.1070 How and when will the Secretary use Performance Improvement Plans?

Comments: Commenters noted that while 90 percent of the expected level of performance is an admirable goal, the percentage "distance traveled" toward improvement (*e.g.*, from 50 to 75 percent versus from 84 to 90 percent) should be taken into consideration when evaluating a center's progress on their PIP. These commenters suggested that although a center might not have reached 90 percent of the national average, they might have achieved significant improvement under their PIP.

Department Response: As noted in § 686.1070(b), the criteria that must be met before a PIP is completed and the center removed will be included in the plan itself.

Comments: Commenters stated that specific criteria should be established when a PIP under WIOA sec. 159(f)(3) would be initiated so that if a Job Corps center is placed on a PIP, there is a transparent and logical reason for the PIP, expected outcomes, and the length of the PIP.

Department Response: To ensure that the PIP system is responsive to the changing needs of the program, the criteria for PIPs established under WIOA sec. 159(f)(3) for centers that fail to meet criteria established by the Secretary, other than the expected levels of performance required under WIOA sec. 159(f)(2), are included in the Department's PIP system guidance in the PRH. No changes were made to regulatory text in response to these comments.

Comments: One commenter suggested that 3 years of data be used to assess performance before placing a center on a PIP as is done to assess high-performing centers. Several commenters recommended that if a new operator takes over a low performing center, there be a 2-year grace period for that operator to make improvements before the Department considers the center in need of a PIP. Other commenters also recommend that the regulation include a reference to the process by which an operator may appeal its designation of requiring performance improvement based on extenuating circumstances. One commenter recommended that the regulations clearly state that the Regional Offices would be responsible for managing PIPs.

Department Response: WIOA sec. 159(f)(2) specifies that if a Job Corps center fails to meet the expected levels of performance relating to the primary indicators of performance, which are established and measured annually, the Secretary must develop and implement a PIP with action to be taken during a 1-year period. Because WIOA requires the Department to annually establish expected levels of performance and to take action to improve the performance of those centers that fail to meet the expected levels of performance, the Department does not have the authority to wait 3 years to place an underperforming center on a PIP or to provide a new operator a 2-year grace period to make improvements. The Department does not consider a PIP to be punitive in nature. It provides an opportunity for the Department, consistent with the requirements of WIOA, to provide assistance and guidance to centers that are underperforming. Any guidance regarding a center's designation of requiring performance improvement would be provided in the PRH.

Comments: Commenters urged the Department to use a progressive approach that seeks to improve performance at centers with as little disruption to staff, students, and the community as possible.

Department Response: The Department is committed to improving the performance of Job Corps centers and has the authority under WIOA to take the following statutory actions after centers fail to meet the expected levels of performance: Providing technical assistance to the center; changing the career and technical education and training offered at the center; changing the management staff of the center; replacing the operator of the center; reducing the capacity of the center; relocating the center; or closing the center. The Department further lays out its approach to taking these actions in the PIP guidance published in the PRH.

K. Part 687—National Dislocated Worker Grants

1. Introduction

National Dislocated Worker Grants are discretionary awards that temporarily expand service capacity at the State and local levels through time-limited funding assistance in response to significant dislocation events. These grants are governed by sec. 170 of WIOA. The Department received comments in support of part 687 of the NPRM, as well as comments requesting clarification or revisions. Additionally, the Department has made technical and clarifying changes to some of the sections. All changes to the regulatory text, and the Department's responses to the comments received, are explained below.

The Department has made several global changes to this part for clarity and technical accuracy. First, "National Dislocated Worker Grants" will be referred to by the acronym "DWGs" in this part for simplicity.

Second, the Department has determined it is necessary to alter the labels of what the NPRM called "Regular" and "Disaster" DWGs to more accurately describe their purpose and intended use. "Regular" DWGs have been renamed "Employment Recovery" DWGs, and "Disaster" DWGs have been renamed "Disaster Recovery" DWGs.

Third, the term "career services" in § 687.100(a) and (b) is changed to "employment and training activities" to clarify that the use of DWG funds is not limited to only career services. Training and supportive services also may be provided as appropriate and in accordance with the requirements of this part. For the same reason, this change has also been made in other applicable sections in this part (§§ 687.170(a)(1) and (b)(2) and 687.180(b)(2) and (3)) where the NPRM referred to "career services" or "employment-related assistance."

Fourth, the term "temporary employment" at § 687.100(b) has been replaced with the term "disaster relief employment" to better align the text of this part with that of sec. 170 of WIOA. This change also has been made to §§ 687.170(b)(2) and 687.180(b)(2).

Fifth, the Department removed the word "additional" from references to "additional guidance" in §§ 687.150, 687.160, and 687.200(b)(1). This word was unnecessary.

Finally, the Department has made a technical correction to §§ 687.180(b)(1) and 687.200(b)(2) by replacing the phrase "by the State" or "by the States" with a reference to § 687.120(b) to ensure consistency with that provision, which provides that Indian tribal governments and outlying areas are eligible entities for Disaster Recovery DWGs in addition to States.

The analyses that follows provides the Department's response to public comments received on the proposed

part 687 regulations. If a section is not addressed in the discussion below, it is because the public comments submitted in response to the NPRM did not substantively address that specific section and no changes have been made to the regulatory text. Further, the Department received a number of comments on this part that were outside the scope of the regulation and the Department offers no response. Lastly, the Department has made a number of non-substantive changes to correct grammatical and typographical errors to improve the readability and conform the document stylistically that are not all discussed in the analysis below.

2. Discussion of Public Comments and Changes to Individual Rules

Section 687.100 What are the types and purposes of National Dislocated Worker Grants (DWGs) under the Workforce Innovation and Opportunity Act?

Four technical corrections have been made to the text of this regulation. First, the section heading is corrected from "National *Disclosed* Worker Grants" to "National *Dislocated* Worker Grants." Second, the word "purposes" is added in the introductory paragraph of § 687.100 to align with the section heading. Third, the Department has removed the word "significant" in § 687.100(a) and replaced it with the phrase "major economic dislocations or other events" in order to be consistent with the header for this section. Finally, the Department has simplified the wording at § 687.100(b) by removing "in certain situations as provided" and replacing it with "in accordance with."

Section 687.110 What are major economic dislocations or other events which may qualify for a National Dislocated Worker Grant?

Comments: The Department received a comment on proposed § 687.110 asking that plant closures be added to the list of qualifying events.

Department Response: WIOA sec. 170(b) lists plant closures as an event for which the Department could authorize DWG funds. The regulation has been revised to include plant closures explicitly in § 687.110(a)(1) and (3). In § 687.110(a)(1), the Department has concluded that a plant closure that results in a mass layoff of 50 or more workers from one employer in the same area is a qualifying event. Under § 687.110(a)(3), the Department may determine that a plant closure affecting fewer than 50 workers is a qualifying event if it significantly affects the designated community, such as what may happen, for example, if a closure occurs in a rural or other area with a small population. Additional requirements are set out in guidance, which will be updated as necessary.

Additionally, the Department notes that the definition of "mass layoffs" in part 687 differs from the definition used in part 682, subpart C, where the Department provides a definition of "mass layoff" for the purposes of Rapid Response activities. For Rapid Response, the Department allows States more flexibility in defining mass layoffs. Rapid Response services encompass strategies and activities that States can provide to assist workers affected by layoffs and closures as described at § 682.300 (including information about available employment and training programs), and the Department encourages States to do so regardless of the number of workers affected by the layoff.

In contrast, the DWG program is aimed at significant events that cannot reasonably be expected to be accommodated within the ongoing operations of the formula-funded dislocated worker program. Accordingly, for the purposes of the DWG program, the Department separately defines "mass layoff" as those affecting 50 or more workers from one employer in the same area. However, the Secretary may determine other events eligible for an Employment Recovery DWG under § 687.110(a)(5) for layoffs affecting fewer than 50 employees, such as those related to a separate and larger layoff of 50 or more employees. Department guidance provides policy for these circumstances.

Comments: The Department received several comments on data applicants may use to demonstrate "higher-than-average demand" for employment and training activities for certain members of the Armed Forces and their spouses. Under WIOA sec. 170(b)(1)(D)—and § 687.110(a)(4) of the NPRM—this demand must exceed State and local resources to be a qualifying event for DWG funds. In proposing part 687, the Department included examples of what data sources could be used to determine whether a "higher-than-average demand" exists.

Some commenters requested the Department be specific regarding what data it will accept for showing higher-than-average demand. The Department also received several comments on its proposal that it may use Unemployment Compensation for Ex-servicemembers (UCX) data for defining higher-than-average demand. Commenters were concerned the Department using UCX data would give areas with military bases an unfair advantage in competing for limited resources.

Department Response: The Department has concluded that, given the importance of providing services to transitioning service members and their spouses, it must be flexible in what administrative data sources it allows applicants to use to demonstrate higher-than-average demand. The Department will not provide a specific, proscribed list of what data sources it will accept, but instead set out illustrative examples of allowable data sources in Department guidance.

The Department has concluded that allowing UCX data to demonstrate higher-than-average demand does not provide an unfair advantage to areas with military bases. As stated above, grantees may use other administrative data sources for demonstrating higher-than-average demand. UCX data thus is not the only acceptable source or among a small, closed group of acceptable data sources the Department will use to determine higher-than-average demand for services. Furthermore, potential grantees may apply for a DWG once an eligible event or situation occurs in accordance with § 687.130 without having to compete against other entities for these funds. Most DWGs will be awarded on this basis; thus, the Department has determined its allowance of UCX as one of many administrative data sources that applicants may use to show higher-than-average demand does not create unfair competition for DWG funds. The Department has concluded no changes to the text of § 687.110(a)(4) are necessary in response to these comments.

Comments: Another commenter on § 687.110(a)(4) requested that contractors be included in the higher-than-average threshold because contractor layoff rates are at times higher than those of the Armed Forces. Section 170(b)(1)(D)(i) of WIOA allows DWGs to be awarded to a State or Local WDB serving an area for which a higher-than-average demand for employment and training activities for certain members of the Armed Forces, or certain spouses of members of the Armed Forces, exists.

Department Response: WIOA sec. 170(b)(D)(i) specifically defines the members of the Armed Forces and spouses who are included in assessing the higher-than average demand; contractors are not included. As a result, contractor layoff rates cannot be considered when determining whether a DWG can be awarded under § 687.110(a)(4). No change is being made to the regulatory text in response

to this comment. However, military contractors who have suffered a layoff may be able to be served under other types of DWGs, such as those involving dislocations or events described in § 687.110(a)(1) (mass layoffs of 50 or more workers) or § 687.110(a)(3) (layoffs significantly increasing the total number of unemployed individuals in a community).

Regarding spouses, as it stated in proposing § 687.110(a)(4), the Department has determined it will not require applicants to determine the specific subset of military spouses included in the higher-than-average demand for services in an area. Sec. 170(b)(1)(D)(i) of WIOA specifically limits the military spouses included in this analysis to "spouses described in sec. 3(15)(E) [of WIOA]." Under sec. 3(15)(E) of WIOA, these are spouses of members of the Armed Forces on active duty who are dislocated specifically because they have experienced a loss of employment as a direct result of relocation to accommodate a permanent change in duty station of the member of the military, or are unemployed or underemployed and experiencing difficulty in obtaining or upgrading employment. To avoid unnecessary burden on applicants, the Final Rule at § 687.110(a)(4) only requires applicants for these DWGs to assess whether military spouses dislocated under any of the factors in sec. 3(15) of WIOA contribute to the higher-than-average demand for services, specifying that these spouses must be spouses of Armed Forces members on active duty. As stated previously, the Department has determined that this implements the intent of the WIOA provision while avoiding unnecessary administrative hardship.

Comments: Another commenter asked that "Other events, as determined by the Secretary" in § 687.110(a)(5) allow entities to apply for regional or statewide grants to address issues affecting a particular industry or target population.

Department Response: Under WIOA, the Secretary has broad authority to award DWGs for circumstances the Secretary deems appropriate. The Secretary will continue to use this authority to make determinations about the awarding of DWG funds for other events. No change was made to the regulatory text in response to this comment.

Comments: A commenter submitted several comments on what disasters qualify for Disaster Recovery DWGs. Proposed § 687.110(b)(2) stated that qualifying events for a Disaster Recovery DWG include "an emergency or disaster situation of national significance that could result in a potentially large loss of employment, as declared or otherwise recognized by the chief official of a Federal Agency with jurisdiction over the Federal response to the emergency or disaster situation." Previously, under the Workforce Investment Act, only Federal Emergency Management Agency (FEMA) declarations qualified an event for a disaster National Emergency Grant. The commenter requested the Department define what disasters are "of national significance."

Department Response: WIOA sec. 170(a)(1)(B) grants authority to Federal agencies with jurisdiction over the response to an emergency or disaster situation to determine and declare which disasters or emergencies meet the "national significance" threshold. As such, the Department has determined it will defer to those agencies' expertise, and a declaration of an emergency or disaster situation by such an agency is the threshold for whether a disaster or emergency is one "of national significance."

However, to clarify what disasters qualify for the purpose of applying for Disaster Recovery DWGs, the Department has altered § 687.110(b)(2) to require that any declarations or recognitions of disasters or emergencies be issued in writing. This change will allow the Department to verify independently the declaration relied upon by eligible entities to request Disaster Recovery DWG funds. The Department is not specifying the form of publication, which could include Web sites or other digital mediums. The regulatory text has been revised by adding "and issued in writing" to § 687.110(b)(2).

Comments: Another comment requested that States be informed of the mechanisms that will be in place to notify them when a Federal agency other than FEMA declares or recognizes a disaster or emergency. The commenter also requested the Department allow the emergency or disaster declarations or recognitions of Governors to qualify a disaster event for DWG funds.

Department Response: The Department encourages applicants to work with Federal and other State agencies so States are quickly notified once a published declaration or recognition is made by the responsible agency.

Additionally, WIOA sec. 170(a)(1)(A) and (B) authorizes DWG funds for disasters or emergencies declared by FEMA or other Federal agencies with jurisdiction over the response. There is no provision in the law for the funds to be provided for disasters or emergencies based on declarations by Governors. As a result, no change was made to the regulatory text in response to this comment.

Comments: Another commenter requested both natural and man-made disasters be major economic dislocations or other events that qualify for a Disaster Recovery DWG.

Department Response: In defining qualifying disasters or emergencies, WIOA sec. 170(a)(1)(A) incorporates by reference the definitions of "emergency" and "major disaster" as defined by the Stafford Act at 42 U.S.C. 5122. According to the Stafford Act, a "major disaster" is any natural catastrophe (including any hurricane, tornado, storm, high water, winddriven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or, regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under this chapter to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

Because WIOA incorporates the Stafford Act's above definition of "major disaster," the Department has determined that, for § 687.110(b)(1), DWG funds may be used for disasters declared by FEMA that are either natural or man-made. The Department has concluded that for consistency, an emergency or disaster situation in § 687.110(b)(2) declared or recognized by Federal agencies with jurisdiction over the Federal response also may be either natural or man-made and this change is reflected in the regulatory text at § 687.110(b)(2).

Other textual and technical corrections, as discussed in the Introduction above, were made to § 687.110.

Section 687.120 Who is eligible to apply for National Dislocated Worker Grants?

Comments: The Department received several comments indicating that National Farmworker Jobs Program (NFJP) grantees should be eligible entities for DWGs. One commenter stated that it would be appropriate to add a phrase in § 687.120 including entities that serve special populations. A few commenters noted that NFJPs have successfully responded to freeze, drought, and floods affecting farmworkers in the past.

Department Response: WIOA sec. 170(b)(1)(B) through (D) identifies eligible entities for qualifying events for disasters, emergencies, or certain higher-than-average demand. The list of entities for these qualifying events is very specific, and the NPRM aligns with this list. WIOA sec. 170(b)(1)(A) and sec. 170(c)(1)(B) identifies those applicants eligible for major economic dislocations. These eligible entities include States, Local WDBs, an entity described in WIOA sec. 166(c), and "any other entity that demonstrates to the Secretary the capability to effectively respond to circumstances relating to particular dislocations." Although NFJPs are not specifically mentioned in the law, they are not excluded, as the law states that other entities may be determined eligible by the Secretary. In order to maintain flexibility and responsiveness, it is not prudent to list all of the possible entities that may be considered eligible applicants. The Department has determined that no changes are necessary to the regulatory text at § 687.120(a). In those instances in which DWGs are awarded to States, Local WDBs or entities described in WIOA sec. 166(c), the Department encourages NFJPs and other entities to coordinate with these recipients as appropriate to help address the need.

A technical correction was made to § 687.120(a)(3) to use the phrase "*Indian and* Native American" to be consistent with part 684 of the Rule. Also, the Department has made a technical correction to § 687.120(b), restructuring the format of the list of eligible applicants for Disaster Recovery DWGs for clarity and alignment with the format used at § 687.120(a).

Section 687.140 What activities are applicants expected to conduct before a National Dislocated Worker Grant application is submitted?

The Department has adopted text that includes technical edits to § 687.140(a) in order to clarify what activities applicants are expected to conduct before submitting an Employment Recovery DWG application. As the Department stated in proposing the regulation, § 687.140(a) requires applicants to identify the needs of the affected workers and their interest in receiving services. Thus, the technical edits made to § 687.140(a)(2) clarify that agencies should use the information gathered through rapid response activities in § 687.140(a)(1) to provide available services as appropriate,—including other rapid response activities.

Comments: The Department received comments on data gathering on available workers required in the application for a Disaster Recovery DWG. Proposed § 687.140(b) requires applicants to conduct a preliminary assessment of the work needed and "put a mechanism in place to reasonably ascertain" whether sufficient eligible individuals are available to conduct the planned work. One commenter agreed that the collection of data, as well as other activities are important, but requested that the Department exercise the flexibility so the application and award process are not delayed. Another commenter stated that the requirement to put a mechanism in place to determine worker availability is unrealistic because it is difficult to identify eligible and willing dislocated workers due to the type of clean-up work and the challenging work environment. The commenter suggested that the problem of inadequate supply to meet a community's demand for recovery workers would be addressed by allowing States to define "long-term unemployed" and that the Department should award funds in increments to allow for a more streamlined process.

Department Response: WIOA sec. 170(d)(2) states that the individuals eligible to receive disaster relief employment include the long-term unemployed. Further, guidance issued for DWGs specifies that long-term unemployed individuals, as defined by the State, are eligible participants. Regarding the commenter's request that funds be issued in increments, the Department typically funds DWGs on an incremental basis and will continue to do so as appropriate.

The Department understands that in the aftermath of significant disasters, acquiring data may be extraordinarily difficult. Still, the Department has determined it is necessary to require a reasonable assessment to ascertain the number of eligible workers available to conduct the planned work. It is critical that grantees make good-faith efforts to gather this data to provide the Department information it needs to ensure the proper amount of funding is awarded to assist the eligible areas.

However, to address the commenter's concern and reflect the Department's flexibility, the Department has removed the "put a mechanism in place" information from the Final Rule at § 687.140(b)(2). The Final Rule instructs awardees to "reasonably ascertain" that there are a sufficient number of eligible individuals available to conduct the work. The Department will take the particular circumstances of a disaster into account during the application review process.

Section 687.150 What are the requirements for submitting applications for National Dislocated Worker Grants?

No substantive comments were received on this section; however, the Department made changes to the Final Rule that provide clarity to allow the Department to appraise the variety of needs and services under the new statute and tailor application requirements accordingly. The Department has added a sentence to this section reflecting that the application requirements may vary based on the category of DWG. The Department also has qualified the requirement that a project implementation plan be submitted after receiving a DWG award by adding the phrase "unless otherwise specified." The project implementation plan requirement may not apply to all DWGs at all times. Requirements will be noted in grant terms and conditions.

Section 687.160 What is the timeframe for the Department to issue decisions on National Dislocated Worker Grant applications?

Comments: The Department received several comments on this section, which discusses the 45-calendar-day timeframe for the Department to issue final decisions on DWG applications that meet the requirements of this part, and strongly encourages applicants consult with their Regional Offices on all requirements. One comment supported the provision, but the remaining commenters were concerned that the 45-day timeframe is too long for Disaster Recovery DWGs. Commenters also requested a 72-hour timeframe for decisions.

Department Response: The 45-day timeframe is the maximum amount of time the Department has to issue a final decision, not the minimum. The Department typically prioritizes Disaster Recovery DWGs applications for immediate review, and the Department will make every effort to ensure they are processed as quickly as possible. Again, applicants should work with their Regional Offices to ensure submissions are complete. No change was made to regulatory text in response to this comment.

Comments: One commenter asked for clarification on how and to whom the Notice of Obligation (NOO) (now called the Notice of Award (NOA)) will be disseminated.

Department Response: The NOA typically will be disseminated electronically to the entity identified as

the applicant on the SF–424. The Department will provide specific technical assistance and guidance as necessary. No change was made to the regulatory text in response to this comment.

Section 687.170 Who is eligible to be served under National Dislocated Worker Grants?

Comments: The Department received a few comments on this section, which addresses participant eligibility. Two commenters discussed the eligibility of underemployed individuals to be served under Disaster Recovery DWGs. One commenter asked whether the definition of underemployed in § 684.130 applies to DWGs with respect to underemployed self-employed individuals as discussed at WIOA sec. 170(d)(2)(D) and § 687.170(b)(1)(iv) and (b)(2)(iv) of this regulation. This commenter also asked how adding the term "significantly" to "underemployed" impacts the definition of underemployed as it relates to the self-employed at sec. 170(d)(2)(D) of WIOA and other sections of part 687. Another commenter relayed concern that employed individuals whose hours have been significantly reduced could not receive a temporary job under a Disaster Recovery DWG and requested that these individuals be added to the eligibility category. This commenter stated that doing so would align with text of WIOA sec. 170(d)(2)(D) by allowing self-employed individuals who become unemployed or significantly underemployed to be eligible for disaster relief employment.

Department Response: The Department has determined that the definition for self-employed individuals who become unemployed or significantly underemployed as a result of an emergency or disaster does not automatically extend to those who are not self-employed. Regarding the question about § 684.130, the needs to be addressed by Disaster DWG funds also are different than those discussed in part 684, which deals with Indian and Native American program grants. Therefore, the definition of "underemployed" at § 684.130 does not apply to this section. Neither "underemployed" nor "significantly underemployed" are defined in sec. 3 (Definitions) of WIOA or in part 687. The Department has concluded it will remain flexible in determining the needs of underemployed individuals in the wake of a disaster and provide guidance as necessary.

Regarding § 687.170(b)(2), the Department has made a technical correction to remove the words "humanitarian-related" to ensure that the Department does not restrict the disaster relief employment to only humanitarian-related employment and not allow for the possibility of clean-up and repair-related employment. Since it is likely that most individuals who relocate from a disaster area will move to an area that is *not* affected by a disaster, the Department expects disaster relief employment activities to be rare in DWGs awarded for this qualifying event, and relocated individuals likely will participate in only employment and training activities.

Comments: One commenter requested clarification regarding the individuals who relocate to another area from a disaster area as discussed in § 687.170(b)(2). The comment suggested the regulatory text state that these individuals may receive services in both the disaster area and in the area to which they relocate.

Department Response: The Department has added § 687.170(c) to clarify that eligible individuals may receive services from DWG funds in either the State, tribal area, or outlying area affected by a disaster or the State, tribal area, or outlying area to which they relocate as a result of that disaster. Under this provision, a single individual may not be served in both the area affected by a disaster and the area to which they relocated because of the disaster. However, the Department also has included language in § 687.170(c) to account for such a situation, where individuals eligible for services are capable of seeking services in both the State, tribal area, or outlying area in which a disaster occurred and the State, tribal area, or outlying area to which that individual has relocated as a result of that disaster. In these circumstances, the Secretary will make a determination as to whether individuals may be served with DWG funds in the disaster-affected area as well as the area to which those individuals relocated as a result of that disaster. Departmental guidance will set out requirements under these provisions. As discussed in the Introduction, the Department has made textual changes to this section to make this section and its requirements clearer and in better alignment with WIOA's text. Also, paragraphs (a)(1)(iii)(C) and (D) have been edited to reflect the correct cross-reference, to paragraph (a)(1)(iii)(B).

Section 687.180 What are the allowable activities under National Dislocated Worker Grants?

The Department has made several technical corrections to this section. First, in § 687.180(a)(1), the term, "employment and training activities" was changed to "employment and training assistance" for consistency with the wording at WIOA sec. 170(b)(1)(A). Second, § 687.180(a)(2) was revised to add "and the terms and conditions of the grant" to make it clear that supportive services, including needs-related payments, also are subject to any restrictions reflected in the terms and conditions of the grant. Third, § 687.180(a)(2)(ii) was revised by inserting the word "guidance" to clarify that the other circumstances would be specified in *guidance* governing DWG application requirements. Fourth, in § 687.180(b) the Department removed the second DWG acronym to eliminate redundancy. Fifth, the word "emergency" was added to § 687.180(b)(1) and (2) to make it clear that these sections cover not only declared disaster areas, but declared emergency areas as well.

Finally, the Department placed the proposed § 687.180(b)(4) into § 687.180(c) in the Final Rule. Unlike the other provisions of § 687.180(b), this provision does not describe Disaster Recovery DWG activities but instead the entities through which DWG funds may be expended to carry out these activities. The Department also simplified this provision by replacing the phrase "disaster relief, humanitarian assistance, and clean-up projects" with "activities" discussed in § 687.180(b).

Comments: The Department received several comments on this section, which discusses the activities that may be conducted with DWGs. One commenter requested that the Department issue guidance on the required coordination with FEMA. WIOA sec. 170(d)(1)(A) requires funds awarded for disasters be used in coordination with FEMA. The commenter stated that it is more likely that a State would have more immediate access to and communication with their State emergency management agencies than FEMA.

Department Response: Coordination of funding with FEMA is critical in helping ensure funding is used to provide a broad range of assistance while preventing duplication of services. The Department has determined that because each disaster is unique, and responses must be tailored to the disaster; decisions regarding how States, tribal, or outlying areas coordinate with FEMA should be made

by entities within affected communities. The Department declines to be prescriptive or proscriptive about grantees' coordination with FEMA, but expects that grantees will establish appropriate policies and procedures to meet this requirement. The Department supports and strongly encourages grantees' coordination with State emergency management agencies and other entities participating in the recovery process.

Comments: A commenter requested that the Department solicit input on disaster relief and/or career services authorized under DWGs when a Federal agency other than FEMA declares a disaster or emergency situation.

Department Response: This input was solicited during the comment period on the NPRM, which has since closed. The NPRM provided a list of allowable disaster relief employment activities and also stated that career services could be provided to eligible individuals. Examples of career services were provided in the Joint WIOA NPRM and are in 20 CFR 678.430.

Comments: Another commenter asked whether subgrantees would be required to report expenditures for career services as a whole.

Department Response: In order to maintain flexibility, the Department will not provide information on such reporting in these regulations, but reserves the right to issue details in guidance. However, guidance on reporting for subgrantees is typically issued by the direct recipient of the funds; the level of detail for subgrantees the commenter requested might not be included in guidance issued by the Department.

Comments: One commenter asked whether the NOA will indicate whether a grant has been authorized for a needs-related payment.

Department Response: In most instances, authorization of needs-related payments likely will be relayed through the grant's Terms and Conditions document. Other forms of communication may be used as necessary.

Section 687.190 How do statutory and regulatory waivers apply to National Dislocated Worker Grants?

Comments: One commenter requested that the waiver process be short and efficient to expedite decision-making.

Department Response: WIOA only allows the Department to waive certain statutory and regulatory requirements of WIOA title I, subtitles A, B, and E; the Department cannot waive any requirements of DWGs set out in sec. 170 of WIOA (which is in subtitle D) or the regulatory requirements of this part. For DWG funds, proposed § 687.190 allowed the use of waivers under subtitles A, B, and E that the Department already has approved. It delineated two processes for requesting that the Department apply these waivers to a DWG.

For those applying for DWG funds, proposed § 687.190 stated that the application must describe the already-approved waivers the applicant wishes to apply to the project and that the Department will consider the request as part of the application review and decision process. Proposed § 687.190 required grantees seeking utilization of existing waivers to request a grant modification and include the provision to be waived, the operational barrier to be removed, and the effect on the outcome of the project.

In response to the comment, the Department has restructured and revised § 687.190 to clarify and better describe the waiver limitations, and to simplify the basic requirements for requesting to use waivers in DWG projects. The Final Rule at § 687.190(a) articulates that the requirements of WIOA title I, subtitle D cannot be waived, but that already-approved waivers of the requirements under subtitles A, B, and E may be utilized in DWG projects. The Final Rule revises § 687.190(b) to more clearly state that applicants with already-approved waivers under WIOA must describe the waiver in the application and request at the time of application that the specific waiver be applied to the DWG. The Department has simplified the requirements for requesting waiver utilization during the operation of the DWG in § 687.190(c). The grantee must describe the existing waiver in a grant modification and request that the waiver be applied to the project. This removes the proposed § 687.190(b)'s requirement that a grantee describe the provision to be waived, the operational barrier to be removed, and the effect on the outcome of the project. For added clarity, both § 687.190(b) and (c) state that applicants may not use this process to request new waivers. The Department will not consider requests for new waivers as part of the application or modification for a DWG.

Section 687.200 What are the program and administrative requirements that apply to National Dislocated Worker Grants?

Comments: The Department received comments on proposed § 687.200(b)(2), which stated that in extremely limited circumstances, funds available for expenditure from Disaster Recovery DWGs may be used for additional disasters or situations of national significance within the same program year the funds were awarded.

One commenter expressed that the Rule was overly restrictive. The commenter remarked that there was no indication in WIOA's text that the subsequent disaster must occur during the same year of the award, and that the regulation should allow for more flexibility and permit these funds to be used beyond the program year. WIOA sec. 170(d)(4) allows the Secretary to set conditions under which these funds may be used, and the Department has concluded the program year restriction in the NPRM is the best method to help ensure the proper management and distribution of Disaster Recovery DWG funds. The Department made no changes to § 687.200(b)(2) in response to these comments.

Comments: The Department received a few comments concerning the DWG administrative costs addressed in § 687.200(b)(3). One commenter asked whether the administrative cost limit is calculated against the full award amount, the summation of the incremental amounts received, or the amount expended. Another commenter, discussing part 683, advocated for consistency in how the administrative funds are applied in the formula program and the DWG; essentially, the commenter requested that the administrative costs be calculated against the award and not the expenditure amount.

Department Response: The Department has concluded that it will follow this approach, and the administrative cost limit will be calculated against the award and not the expenditure amount. The Department has included this provision in the Final Rule at § 687.200(b)(3). The Department expects that in most cases, these cost limits will likely be proportionate to those established for the formula funds.

The Department also encourages potential DWG recipients to review their cost per participant to ensure that it is reasonable or falls within normal limits based on the circumstances of the qualifying event and comparable grants that were previously awarded. If the cost per participant falls outside of normal limits, the grantee should submit a justification to explain the costs to reduce delays in the review process. The Department concluded there was no need to alter the text of § 687.200 for this policy.

L. Part 688—Provisions Governing the YouthBuild Program

1. Introduction

The Department wants to emphasize the connections across all of our youth-serving programs under WIOA, including the WIOA youth formula program and associated boards and youth committees, connections to pre-apprenticeship and registered apprenticeship programs, and Job Corps centers across the country. WIOA is an opportunity to align and coordinate service strategies for these ETA youth training programs, as well as to align with our Federal partners that serve these same customers. WIOA also ensures that these programs are using common performance indicators and standard definitions, which includes aligning the definitions for homeless youth, basic skills deficient, occupational skills training, and supportive services. Additionally, the YouthBuild regulation adopts the six new performance indicators that apply to all youth-serving WIOA programs and aligns YouthBuild with the WIOA youth formula program.

WIOA affirms the Department's commitment to providing high-quality education, training, and employment services for youth and young adults through YouthBuild grants by expanding the occupational skills training offered at local YouthBuild programs. YouthBuild programs can offer occupational skills training in in-demand occupations, such as health care, advanced manufacturing, and IT, as approved by the Secretary and based on the maturity of the program and local labor market information.

In addition to the changes to the program required by WIOA, the Department makes several additional changes to the program, including revisions to the duration of the restrictive covenant clause (as detailed in the preamble at § 688.730), clarifying eligibility criteria for participation, and describing qualifying work sites and minimum criteria for successful exit from the YouthBuild program. Beyond these regulations, the Department will continue to develop guidance and technical assistance to help grantees and the workforce development community operate highly-effective YouthBuild programs. The Department received several comments that expressed general support for the proposed YouthBuild regulations. Comments on specific sections of the NPRM are described in each relevant section below.

The analyses that follows provides the Department's response to public comments received on the part 688 regulations. If a section is not addressed in the discussion below, it is because the public comments submitted in response to the NPRM did not substantively address that specific section and no changes have been made to the regulatory text. Further, the Department received a number of comments on this part that were outside the scope of the regulation and the Department offers no response. Lastly, the Department has made a number of non-substantive changes to correct grammatical and typographical errors to improve the readability and conform the document stylistically that are not discussed in the analysis below analysis below.

2. Subpart A—Purpose and Definitions

Section 688.100 What is YouthBuild?

This section describes the YouthBuild program. YouthBuild is a workforce development program that provides employment, education, leadership development, and training opportunities to disadvantaged youth. The program also benefits the larger community by providing new and rehabilitated affordable housing, thereby decreasing the incidence of homelessness in those communities. The program recruits youth between the ages of 16 and 24 who are school dropouts and are either: A member of a low-income family, a youth in foster care, a youth who is homeless, a youth offender, a youth who is an individual with a disability, a child of an incarcerated parent, or a migrant youth.

Comments: Several commenters advocated that the YouthBuild program be emphasized as one of the Department's strategies to engage disconnected youth, due to the YouthBuild program's high number of court-involved youth. These same commenters emphasized the focus within YouthBuild on a counseling and case management approach in order to support participant success in employment and education and recommended modifying the Department's definition of YouthBuild to read:

> YouthBuild is a workforce development program that provides employment, education, leadership development, service to the community, and training opportunities for disadvantaged youth. The program benefits the larger community by decreasing the incidence of homelessness and addressing issues of disconnection, violence, and lack of opportunities in those communities. YouthBuild also increases the affordable housing stock in these communities.

Department Response: The Department has concluded that the definition of YouthBuild, as provided under § 688.100, is accurate. The description of the YouthBuild program accurately defines the intent, target population, and anticipated outcomes of the program model. However, given the program's focus on increasing access to affordable housing through building or rehabilitating of low-income properties, the Department has revised the definition of "YouthBuild Program" in § 688.120 to specifically emphasize the inclusion of service to the community, as described in the commenter's proposed definition.

Additionally, the YouthBuild program serves a wide variety of eligible youth, of which court-involved youth are just one population, and programs funded by the Department vary widely in the ratio of court-involved youth they serve. The Department supports the YouthBuild program model as one of several approaches that can provide positive change and expanded opportunity to disadvantaged youth; however, court-involved youth are not the sole population targeted by this program. Therefore, it is not accurate to focus on court-involved youth as a predominant population served. Aside from the addition of service to community as described above, no changes were made to the regulatory text in response to these comments.

Section 688.120 What definitions apply to this part?

Comments: Several commenters recommended revisions to the proposed definitions in the YouthBuild NPRM, while others recommended the inclusion of additional definitions not included in the NPRM. Several commenters also expressed general approval of the definitions, specifically the definition of "Adjusted income" and "Homeless individual" and "Homeless child and youth."

One commenter recommended revising the numbering within the existing definition of "Adjusted income" as the commenter believed it could lead to confusion as numbered. The commenter further recommended the inclusion of the rationale for the exclusion of earned income, at the discretion of a Housing Development Agency, from adjusted income, as defined.

Department Response: After reviewing the definition of "Adjusted income" as written in the NPRM, the Department realized that the section numbering of the definition was inadvertently mislabeled, which made the numbering appear inconsistent, and

created confusion. The definition numbering has been revised in the final text of § 688.120. The exclusion of earned income from the definition of adjusted income is part of the definition of "Adjusted income" in sec. 3(b) of the United States Housing Act of 1937 (42 U.S.C. 1437a(b)). As sec. 171(b)(1) of WIOA incorporates that definition of "Adjusted income," it cannot be changed by the Department in these regulations.

Comments: One commenter requested that the definition of "Eligible Entity" clarify what counts as an eligible State under WIOA. In particular, the commenter was seeking clarity on how territories and outlying areas qualify as eligible entities under WIOA and asked that the Department clarify the language to permit territories and outlying areas to apply for YouthBuild grants.

Department Response: The definition of "Eligible Entity" as provided in § 688.120 includes "any. . .entity eligible to provide education or employment training under a Federal program" to be eligible to apply for YouthBuild awards. Territories and outlying areas that meet this part of the definition will be considered eligible entities in this part. The Department has concluded that no further clarity to the definition is necessary.

Comments: One commenter requested the addition of a definition for "Energy-Efficient Improvements" as "all measures recognized by the Weatherization Assistance Program including general heat waste reduction weatherization materials."

Department Response: The Department has concluded that the definition of energy-efficient improvements should be provided through guidance rather than the regulatory process in order to ensure greater flexibility, as this is an emerging industry and standards are still being developed.

Comments: One commenter indicated a misprint in the definition of "Exit" in which the incorrect section of the regulation was cited.

Department Response: The Department has corrected the definition with the correct section reference.

No comments were received regarding the definitions of "Homeless individual" and "Homeless child or youth;" however, these definitions were revised for added clarity to fit the Final Rule text as the definitions for these two terms come from existing legislation. Specifically, the definition of "Homeless individual" comes from sec. 41403(6) of the Violence Against Women Act of 1994 (42 U.S.C. 14043e–2(6)) and the definition of "Homeless child or youth" comes from sec. 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)).

Comments: One commenter requested that the definition of "Needs-based payments" be modified to state: "beyond wage[s] or stipends which may be provided by the program," as such payments are not required but only allowed. The commenter expressed concern that needs-based payments should be allowable no matter how funds paid to participants are characterized.

Department Response: Although the preamble section of the NPRM does refer to wages or stipends, the actual definition of "Needs-based payments" under § 688.120 does not refer to wages or stipends. The Department cannot modify the language related to wages and stipends because neither were actually mentioned in the regulatory text of the NPRM and so there is not anything to modify regarding wages and stipends in § 688.120. However, the Department agrees that both wages and stipends are allowable but not required and this will be addressed through guidance.

Comments: One commenter suggested that the definition of "Pre-apprenticeship" should be clarified to ensure that YouthBuild programs continue to be considered pre-apprenticeship programs, even where they do not meet all of the requirements of a qualifying pre-apprenticeship program and are not funded by the Department. The commenter suggested keeping the definition provided in Training and Employment Notice (TEN) 13–12, but allowing for additional flexibility in the TEN 13–12 definition to develop alternative strategies for career pathways for youth where the requirement for registered apprenticeship partnerships or pathways cannot be met.

Department Response: In response to this comment, the Department has revised the definition of pre-apprenticeship in § 688.120 to clarify, consistent with TEN 13–12, *"Defining a Quality Pre-Apprenticeship Program and Related Tools and Resources"* which can be found at *http://wdr.doleta.gov/directives*, the YouthBuild programs receiving funding from the Department under this part meet the definition of pre-apprenticeship as described in that section. The Department further edited this definition to provide a more detailed and consistent explanation of the components of a pre-apprenticeship program as described throughout this Final Rule.

However, the Department cannot broadly categorize YouthBuild programs as pre-apprenticeship programs beyond those funded under this part as the Department is not in a position to determine that programs not funded by the Department meet the requirements to be considered a pre-apprenticeship program. However, this does not preclude the Department from subsequently making such a determination on a case-by-case basis.

Comments: One commenter requested the addition of a definition of "Substantive Construction" as construction of affordable housing, major renovations, and/or deconstruction.

Department Response: Substantive construction is defined in TEGL No. 06–15, *"Qualifying Work Sites and Construction Projects for YouthBuild Grantees and Their Role in Training,"* which can be found at *http://wdr.doleta.gov/directives/All_WIOA_Related_Advisories.cfm*. The Department has decided not to include this definition in the regulation to ensure the flexibility necessary to adapt the definition as the industry develops and new certifications emerge.

The *Department* received no comments on the definition of "Supportive services," but has revised the language in the regulatory text to be consistent with the definition in § 681.570.

Comments: One commenter questioned whether the definition of "Underemployed" in § 684.130 applied to YouthBuild.

Department Response: The definition of "Underemployed" in § 684.130 does not apply to this part.

The Department received no comments on the definition of "youth in foster care," but has revised the language in the regulatory text to be consistent with the definition in § 681.210.

3. Subpart B—Funding and Grant Applications

Section 688.220 How are eligible entities selected to receive grant funds?

Comments: Several commenters expressed concern that YouthBuild programs that outsource core program elements may compromise the youth's experience by having to go to several providers for different components of the program model. Further, there was concern that this can have a detrimental effect on the overall performance outcomes for the program compared to those that offer all core components of the program in-house. One commenter further expressed a fear that an

applicant that provides all core components in-house could be penalized in the grant selection process due to the added emphasis on partnerships in this section.

Department Response: The Department recognizes that there are many different permutations of the YouthBuild model, all of which provide the required program components, but which provide such components in many different ways. Emphasizing the importance of partnerships does not diminish the focus on quality service delivery to participants, nor does it require that components be outsourced. This instead represents recognition of the many strong public workforce system partners that contribute to a safety net of services for at-risk youth. Encouraging active partnerships to provide a full array of services necessary to help youth succeed ensures that YouthBuild programs are actively accessing all available community resources so that such resources can stretch further. However, there is no requirement that a program must partner across each of the highlighted areas (education and training providers, employers, the workforce development system, the juvenile and adult justice systems, and faith-based and community organizations) but rather, where it fills a gap in services or opportunities, such partnerships must be pursued. As such, applicants must be able to demonstrate the ability to develop a comprehensive network of partners to provide services, both in-house and out, to support successful outcomes. This is a core value of the Workforce Innovation and Opportunity Act.

4. Subpart C—Program Requirements

Section 688.300 Who is an eligible participant?

Comments: One commenter expressed concern related to TEGL No. 11–09 (*"Expanded Participant Eligibility for the YouthBuild Program"*), which allowed YouthBuild programs to expand the definition of a dropout to include youth who had dropped out of school but had subsequently enrolled in a YouthBuild Charter School prior to enrollment in the YouthBuild program, so long as this was part of a sequential service strategy. The commenter stated that they believed this set a precedent for allowing WIOA to enroll participants who meet this criterion as out-of-school youth. Further, the commenter recommended that the definition of out-of-school youth should be applied to those youth attending alternative school.

Department Response: TEGL No. 11–09 was guidance under the Workforce Investment Act (WIA), which included a provision for the sequential service strategy. WIOA expanded the YouthBuild participant eligibility to allow youth who were high school dropouts but had subsequently reenrolled to be eligible for the YouthBuild program. This eligibility expansion rendered the guidance in TEGL No. 11–09, and its related Changes 1 and 2, void. Further, § 681.230 clarifies that youth attending alternative education programs provided under title II of WIOA, YouthBuild, or Job Corps are considered out-of-school youth. No changes were made to the regulatory text in response to this comment.

Section 688.320 What eligible activities may be funded under the YouthBuild program?

Comments: One commenter recommended adding two additional eligible activities that may be funded under YouthBuild:

- Energy-efficient improvements;
- The rehabilitation of housing that is in need of renovation for health and safety reasons.

Department Response: The Department has concluded that there is no prohibition on the above named activities as eligible activities of the YouthBuild program. These two activities fall under the broad categories of work experience and skills training as described in § 688.320. The NPRM does not go into specific detail regarding the types of construction training that are eligible; such detail can be addressed through separate guidance as necessary.

Comments: One commenter expressed concern regarding the "provision of wages, stipends or benefits to participants. . ." as allowed under § 688.320. The commenter was specifically concerned about the use of wages for YouthBuild participants and the Internal Revenue Service (IRS) provisions that may be triggered. The commenter stated that several recent IRS rulings for local YouthBuild programs had determined that YouthBuild participants are not employees and therefore do not earn wages but stipends. However, as wages are an allowable payment to YouthBuild participants, the commenter requested that the Final Rule further explain the difference between participants who are paid wages and participants who are paid stipends and the additional costs that programs may incur by using a wage payment structure (such as required payment into Medicare or FICA or liability for unemployment expenses, for example), and that the Department urge grantees to avoid using grant funds for the provision of wages.

Department Response: The Department has concluded the provision of wages and stipends are subject to the authority of the Department's Wage and Hour Division and the IRS. YouthBuild programs will continue to be required to reach out to the appropriate Federal office to determine the allowable provision of payments to participants as well as any financial responsibilities that entails. Additionally, the Department will not discourage programs from choosing one method of payment over another as there is a diverse body of YouthBuild program models operating across the country, and while some may find that payment of wages is too onerous, in other organizations there may be benefits to such a payment structure. Additional information to grantees will be provided through guidance.

Comments: One commenter recommended that the Final Rule encourage disconnected youth to be taught healthy relationship skills as part of workforce development training. The commenter expressed the importance of youth developing healthy relationship skills as these can benefit them across a broad spectrum of life areas, including soft skill areas such as communication, conflict resolution, and problem solving. The commenter also referenced the response provided on the WIA YouthBuild Final Rule (77 FR 9112, Feb. 15, 2012), in which the Department concurred with a similar request and indicated that such activities were included under the broad category of "activities designed to develop employment and leadership skills."

Department Response: WIOA has not modified this section of the allowable activities. The Department reiterates the 2012 YouthBuild Final Rule response. The Department agrees that healthy *relationships* and development of interpersonal skills are important for the disconnected youth served under WIOA. These activities are supported under § 688.320 as part of the employment and leadership skills development, which has been revised to read: "which may include. . .peer-centered activities encouraging responsibility, interpersonal skills, and other positive social behaviors."

Section 688.330 What level of training qualifies a construction project as a qualifying work site under the YouthBuild program?

Comments: Several commenters recommended using the term "skill area(s)" in lieu of "module" in reference

to the description of the construction skills training curriculum in which youth are trained on the work site. The commenters stated that the term "skill area" is broader than a module as a module is a component of a skill area and the term module is likely to be confused with sections of a particular curriculum. These same commenters also requested clarification of whether it is assumed that all projects must include energy-efficient enhancements as it is one of the five goals of the YouthBuild program as described in § 688.110. They further requested that if this cannot be assumed, it be included in the criteria for a qualifying work site. One commenter also recommended including additional fields within the construction industry as additional aspects of qualifying work sites, including those of deconstruction and environmental protection, such as radon testing.

Department Response: The Department has revised § 688.330 to clarify that qualifying work sites must include both multiple modules and skills areas. The Department requires that YouthBuild participants receive quality and comprehensive construction training in a real-life setting on a work site, such that the participant will attain sufficient construction experience to enter into a career pathway after program exit. Therefore, work sites must provide the opportunity for youth to have hands-on training and experience of both breadth and depth in order to qualify. In TEGL No. 06–15 ("*Qualifying Work Sites and Construction Projects for YouthBuild Grantees and Their Role in Training*"), found at *www.doleta.gov/WIOA/*, the Department defines modules as specific training sections within the curriculum of each of the industry-recognized credentials that relate to specific skill areas of construction. These skill areas could include brick masonry, carpentry, painting, or plumbing, as examples.

While it may be allowable for programs to also provide more general rehabilitation work, such as deconstruction, landscaping, screen repair, fence building, etc., if a program offers training in these activities at a work site, the work site will not qualify under this section unless the program also includes experience in two or more modules within two or more skill areas. Any work site that does not include exposure to multiple modules and skill areas will not be considered a qualifying work site. Additional explanation and guidance regarding qualifying work sites is provided in TEGL No. 06–15.

Energy-efficient enhancements are described as part of the fifth YouthBuild goal as it relates to improving the energy efficiency specifically of community and non-profit and public facilities. The Department has concluded that this cannot be interpreted broadly to mean that all work sites must include energy-efficiency enhancements in order to qualify, nor can it interpret this to mean that all community and non-profit and public facilities must include energy-efficiency enhancements. Such enhancements are included as part of the allowable activities, as explained in § 688.320 above, but they are not required for all qualifying work sites, including community and non-profit and public facilities.

The Department defines the fields of deconstruction and environmental protection, such as radon testing and mitigation, as fields outside the immediate construction focus of YouthBuild. None of these fields directly supports the goal of increasing affordable housing so they are not stand-alone skill areas; however, as with landscaping or painting, these are areas in which youth can receive hands-on work experience as long as it is in conjunction with the broader requirement of qualifying work sites in which hands-on training and experience in two or more modules, each within a different skill area, in a construction skills training program that offers an industry-recognized credential is provided.

Comments: Finally, several commenters sought clarity related to the preamble language of § 688.330 that described the expectation that participants must pass a certain number of modules in order to attain industry-recognized construction certification. The commenters noted that the regulation language for § 688.330 does not require the attainment of a credential or certification.

Department Response: A goal of training should be the attainment of an industry-recognized credential; however, the factors affecting whether a work site qualifies for the purposes of the YouthBuild program, as described in § 688.330, do not include a requirement that participants attain an industry-recognized credential. Qualifying work sites should provide training that supports the hands-on experience participants will need to attain industry-recognized construction credentials, but the attainment of a credential is not a requirement in order for a work site to qualify. No changes were made to the regulatory text in response to these comments.

Section 688.380 What is the role of the YouthBuild grantee in the one-stop delivery system?

Comments: Several commenters expressed concern with the requirement that YouthBuild grantees take all actions required of required partners as described in sec. 121 of WIOA. Specifically, the commenters were concerned with 20 CFR 678.420(b) (*see* Joint WIOA Final Rule), which provides that required partners use a portion of funds made available to the partner's program to provide applicable career services and work collaboratively with the State and Local WDBs to establish and maintain the one-stop delivery system, including by jointly funding one-stop infrastructure.

The commenters indicated that if this language is interpreted to mean that YouthBuild programs must pay into the one-stop delivery system, it would put an undue burden on small discretionary programs. At the same time, the commenters expressed support for the opportunity to partner with local one-stop programs, particularly around mutual referrals to services, but do not expect this to require a funding relationship.

One commenter expressed support for actively developing partnerships with the one-stop delivery system, which they consider critical for success and beneficial to streamlining services to youth. However, they recommended that the language related to this requirement be strengthened to ensure that both the one-stop operators and YouthBuild program administrators recognize it as a required partnership and meet to develop mutual parameters for the partnerships. Past experience of the commenter demonstrated that YouthBuild programs are sometimes rebuffed when seeking partnership with one-stop operators. The commenter stated that ensuring the requirement is mutual will lead to greater success.

Department Response: As YouthBuild grantees are required partners in the one-stop delivery system, they are responsible for complying with the requirements in sec. 121 of WIOA and 20 CFR part 678 of these regulations (*see* Joint WIOA Final Rule). While compliance with these requirements may require a financial commitment from the grantee, any costs incurred would be an allowable cost under the grant. Ensuring that YouthBuild programs are required partners with the one-stop delivery system serves to strengthen the safety net for disconnected youth through stronger connection points to recruitment, referral, and provision of services to

such youth. The Department will be issuing further guidance regarding the requirements of partnership within the one-stop delivery system separate from the Final Rule. No changes were made to the regulatory text in response to these comments.

5. Subpart D—Performance Indicators

Section 688.400 What are the performance indicators for YouthBuild grants?

Comments: One commenter expressed support for the inclusion of two separate placement measures under WIOA as they felt this would allow them to report on all enrollees, rather than a subset that was initially placed, as with WIA. This commenter further provided a recommendation that the proposed earnings measure should take into account the local minimum wage standards since these can vary greatly by location and, without context, may skew the reporting outcomes. This commenter also expressed concern that the counting of a secondary diploma only when youth are subsequently in employment or in an education or training program leading to a recognized postsecondary credential within 1 year after exit from the program will inadvertently devalue the importance of a high school diploma or equivalency degree and discourage programs from the necessary investment that must be made to get good secondary diploma outcomes.

One commenter expressed general concern over the requirement of social security numbers, which will negatively impact the serving of English language learners who will be able to access programs that could lead to citizenship and which further places nearly unattainable accountability and performance standards on adult education programs.

Department Response: Section 171(f) of WIOA applied the common performance indicators applicable to all youth programs authorized under title I of WIOA described in sec. 116(b)(2)(A)(ii) of WIOA to the YouthBuild program. The regulations implementing and describing the youth performance indicators are at 20 CFR 677.155(c) of these regulations (*see* Joint WIOA Final Rule). Because the comments suggesting changes to the primary indicators of performance are general comments on the primary indicators for youth programs, they have been addressed in the preamble to that 20 CFR 677.155. Further, there is no reference to required collection of social security numbers in part 688. The Department has concluded that this comment is outside the scope of this part.

No changes were made to the regulatory text in response to these comments.

6. Subpart E—Administrative Rules, Costs, and Limitations

Section 688.520 What cost limits apply to the use of YouthBuild program funds?

Comments: One commenter requested clarification regarding the percentage of the grant award that could be used to rehabilitate community facilities, as separate sections of the NPRM showed a discrepancy.

Department Response: The *Department* has revised the NPRM under § 688.520 to correctly state that the percentage of the grant award that can be expended toward rehabilitation of community facilities is 15 percent, as stated in § 688.550.

Section 688.540 What are considered to be leveraged funds?

Comments: One commenter requested clarification on leveraged funds and whether they can be used to pay for meals for youth. The commenter interpreted leveraged funds to allow the purchase of food because they are separate from the grant funds and required 25 percent match requirement of YouthBuild.

Department Response: Per the NPRM, leveraged funds are funds used for allowable costs under the cost principles. *Additional* guidance on the definition of and allowable use of leveraged funds is provided through the "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" regulation. The Department does not have the ability to predetermine the allowability of specific costs through these regulations. No changes were made to the regulatory text in response to this comment.

Section 688.550 How are the costs associated with real property treated in the YouthBuild program?

Comments: One commenter asked the Department to clarify the definition of costs associated with real property and what such costs constitute.

Department Response: The Department describes the application of real property as it relates to allowable *costs* in this section. Further, TEGL No. 05–10, "*Match and Allowable Construction and Other Capital Asset Costs for the YouthBuild Program,*" provides additional guidance on the costs associated with real property within the YouthBuild program. No changes were made to the regulatory text in response to this comment.

Section 688.560 What participant costs are allowable under the YouthBuild program?

While the *Department* did not receive any comments on this section, the final clause of the section has been revised to clarify that the meaning of "sponsored health programs" as those sponsored by employers or the government.

Section 688.600 Are YouthBuild programs subject to the Davis-Bacon Act labor standards?

Comments: The Department received many comments related to the Davis-Bacon Act labor standard provisions. Several commenters requested that the Department affirm the "12 unit rule" under the HOME Investment Partnerships (HOME) program and the "8 unit rule" under the Community Development Block Grant (CDBG) program as they relate to the Davis-Bacon Act labor standards. These rules provide exceptions to the requirement that construction workers be paid prevailing wages when working on construction sites funded in whole or in part with Federal funds when the number of units within the project that are funded with Federal funds fall below the unit threshold of the rule. The commenters expressed that, in the past, YouthBuild participants have been able to train on such projects without triggering the prevailing wage requirement and are seeking the Department's affirmation of the allowance of these rules.

One commenter requested that the Department reconsider the YouthBuild Trainee Apprenticeship Program (YB–TAP), which was a formal certification of the YouthBuild program to allow participants to be designated as trainees, rather than employees, on any Davis-Bacon-related project. This designation as a Certified Training Program of the Department of Labor allowed YouthBuild participants to be paid the standard wages or stipends as established by their program during their time on Davis-Bacon work sites, rather than the required prevailing wage. This commenter suggested that, while the YB–TAP was not well-received by many areas of the construction industry, this sentiment may have changed since YB–TAP was dismantled as there is a greater need across the construction industry for qualified employees than previously existed.

One commenter expressed support for the continued recognition in the NPRM that YouthBuild programs are subject to

the Davis-Bacon Act standards, including prevailing wage rates, when participants work on projects subject to such standards. Specifically, this commenter stated that the Department has recognized that YouthBuild program participants are not considered trainees and therefore must be paid the prevailing wage rate when on Federally-funded projects. The commenter supports this NPRM as they believe that allowing YouthBuild participants to be paid a lower wage on a Davis-Bacon work site than the prevailing wage would undercut registered apprentices and incumbent workers.

Department Response: Davis-Bacon prevailing wage rate rules are quite complex and cover a number of different statutes within the U.S. Department of Housing and Urban Development (HUD). Within some of these statutes, there are exemptions under which prevailing wage rates do not apply. HOME and CDBG are two HUD program examples cited by commenters for which, if the number of units within the building that have HUD funding assistance are small enough, the prevailing wage rules do not apply and YouthBuild participants may be considered active training participants.

Determining exactly which units of a construction project may be funded with HUD assistance is quite complicated. It does not necessarily mean the construction itself is funded by a HUD project, but instead could mean rental assistance to residents is supplemented by HUD. Due to the complexity of determining the number of units on a construction site that are or are not funded with HUD assistance, the Department is unable to provide further guidance which could be misconstrued to provide approval for exempting YouthBuild participants from Davis-Bacon wage rules.

While the Department supports training YouthBuild participants on HUD-funded projects where viable, a determination of whether YouthBuild participants on such projects must be paid the relevant prevailing wage for that project cannot be made by the Employment and Training Administration (ETA). Rather, HUD consulted extensively with the Department's Wage and Hour Division on this topic so that HUD can address such inquiries. YouthBuild programs that are seeking assistance to determine whether there may be a viable Federally-funded work site on which participants may train without paying participants the prevailing wage under the Davis-Bacon Act should consult with HUD's Labor Standards and Enforcement Regional/Field staff. Contact information for this staff can be found here: *http://portal.hud.gov/hudportal/HUD?src=/program_offices/labor_standards_enforcement/laborrelstf.*

The YB–TAP was intended to support the training of YouthBuild participants on Federally-funded work sites, in order to provide greater opportunities for youth to work on low-income housing stock that was managed or owned by HUD. However, as discussed in the preamble to the 2012 YouthBuild Final Rule (77 FR 9112, 9126, Feb. 15, 2012), as a result of implementing YB–TAP, the Department found unintended consequences arose that were a concern for YouthBuild programs. Many of the organizations that YouthBuild seeks to partner with saw YB–TAP as being in direct competition because programs were allowed to pay their participants, as trainees, less than the prevailing wage rate. The lower ratio of journeyworkers to trainees approved in the YB–TAP program made it less expensive for a contractor to hire a YouthBuild-sponsored construction crew versus a journeyworker-staffed crew, and the YB–TAP standards, in effect, created a competing program approved by the Department. Accordingly, the Department dismantled YB–TAP. Therefore, while the provisions for trainees who may be paid less than Davis-Bacon journeyman wage rates remain in effect as part of the Davis-Bacon Act labor standards, they do not apply to a YouthBuild program because there is no YouthBuild program that is a training program approved by ETA for purposes of § 688.600(c) and 29 CFR 5.5(a)(4)(ii). No changes were made to the regulatory text in response to these comments.

7. Subpart F—Additional Requirements

Section 688.730 What requirements apply to YouthBuild housing?

Comments: One commenter stated that the statement ". . . to increase the stock of affordable homes. . ." should include "safe, healthy, durable, resource efficient affordable homes." This same commenter expressed support for the proposed reduction in the duration of the restrictive covenant from a minimum of 10 years to a minimum of 5 years.

Department Response: This statement does not appear in the NPRM but only in the preamble. The NPRM recognizes the importance of safe and healthy housing as it requires that "[a]ll transitional or permanent housing for homeless individuals or families or low-income families must be safe and sanitary. The housing must meet all applicable State and local housing codes and licensing requirements in the jurisdiction in which the housing is located." No changes were made to the regulatory text in response to this comment.

M. Part 651—General Provisions Governing the Wagner-Peyser Act Employment Service

1. Background on the Wagner-Peyser Act Employment Service

The Wagner-Peyser Act of 1933 established the Employment Service (ES), which is a nationwide public labor exchange that provides employment services. The ES seeks to improve the functioning of the nation's labor markets by bringing together individuals seeking employment with employers seeking workers. The Wagner-Peyser Act was amended in 1998 to make ES part of the one-stop delivery system under WIA and has undergone further changes to integrate services under WIOA.

Parts 651, 652, 653, 654, and 658 update the language and content of the regulations to implement amendments made by title III of WIOA to the Wagner-Peyser Act. In some areas, these regulations establish entirely new responsibilities and procedures, in other areas, the regulations clarify and update requirements already established. The regulations make important changes to definitions, data submission, and increased collaboration, among other requirements of WIOA.

These regulations also address the court order from *National Association for the Advancement of Colored People (NAACP), Western Region, et al.* v. *Brennan et al,* No. 2010–72, 1974 WL 229 (D.D.C. Aug. 13, 1974) which resulted in a detailed mandate for various Federal and State actions [referred to as the Judge Richey Court Order (Richey Order) in the remainder of this preamble]. The Richey Order required the Department to implement and maintain a Federal and State monitoring and advocacy system and set forth requirements to ensure the delivery of employment services, benefits, and protections to Migrant and Seasonal Farm Workers (MSFW) on a non-discriminatory basis, and to provide such services in a manner that is qualitatively equivalent and quantitatively proportionate to those provided to non-farmworkers.

2. Introduction to Part 651

Title 20 CFR part 651 sets forth definitions for 20 CFR parts 652, 653, 654, and 658.

The Department received several comments regarding these definitions

and has eliminated, revised, and added definitions, as needed. All changes to the definitions and the Department's responses to the comments received (whether changes were made in response to the comments or not) are explained below. Additionally, the Department has made technical and clarifying changes. For the remaining definitions that are not discussed below, the Department received no comments and made no changes to the regulatory text.

3. Explanation of Changes and Responses to Public Comments

At the beginning of part 651, the Department added clarifying text which states, "In addition to the definitions set forth in sec. 3 of WIOA, the following definitions apply to the regulations in 20 CFR parts 652, 653, 654, and 658." This text is consistent with the discussion of proposed part 651 contained in the NPRM preamble. The Department added it to the regulatory text to ensure there is no confusion as to the application of these definitions and to make clear that the WIOA sec. 3 definitions also apply to these parts.

Agricultural Employer

The Department added this term and its definition in response to commenters' concerns with the proposed definition of "employer." The Department's rationale is described below, in the paragraph that responds to the comments on the term "employer." This added definition of "agricultural employer" parallels that of the definition in the Agricultural Worker Protection Act.

Applicant Holding Office

The Department received no comments on this definition; however, it changed "U.S.-based workers" to "U.S. workers" for clarification and uniformity across the definitions in this part. See further clarification of the Department's interpretation of "U.S. workers" below, in the Department's response to comments regarding the Clearance System definition

Applicant Holding State

The Department received no comments on this definition; however, it changed "U.S.-based workers" to "U.S. workers" for clarification and uniformity across the definitions in this part. See further clarification of the Department's interpretation of "U.S. workers" below, in the Department's response to comments regarding the Clearance System definition.

Career Services

The Department received no comments on this definition, but the Final Rule includes a technical correction to ensure the definition refers to the correct section of WIOA.

Clearance System

Comments: A commenter urged the Department to revise this definition to make clear that it refers to the "orderly movement of *U.S.*-based job seekers" because the Agricultural Recruitment System (ARS) is specific to U.S.-based workers only.

Department Response: The Department agrees that the reference to job seekers in the definition of clearance system could be clearer. The Department is partially adopting the commenter's suggestion by revising the regulatory text to refer to job seekers in this definition as, "U.S. job seekers." The Department notes that § 653.500 outlines the requirements for the acceptance of intrastate and interstate job clearance orders seeking *U.S. workers* to perform farmwork on a temporary, less than year-round basis. The term, "U.S. workers" means those workers defined at 20 CFR 655.5.

The term, "U.S. job seekers" means a U.S. worker who is interested in obtaining a job. Therefore, a "U.S. worker" would not be a "job seeker" if that individual is not interested in obtaining a job. The change from "job seekers" to "U.S. job seekers" in this definition clarifies the intent of the clearance system, which is to recruit U.S. job seekers at the intrastate and interstate level when no U.S. job seekers were identified for an agricultural job order placed at the local level through the ARS.

Employer

Comments: A commenter recommended that the definition of employer include all employers or joint-employers of H–2A workers under 20 CFR part 655, subpart B, as well as the relevant Federal laws protecting farmworkers, including the Migrant and Seasonal Agricultural Workers Protection Act (AWPA), 29 U.S.C. 1801. In particular, this commenter suggested that, to allow meaningful and accurate employment determinations for MSFWs, the definition of employer should be further expanded to parallel AWPA's definition of "agricultural employer" as "any person who owns or operates a farm, ranch, processing establishment, cannery, gin, packing shed or nursery, or who produces or conditions seed, and who either recruits, solicits, hires, employs, furnishes, or transports any migrant or seasonal agricultural worker." Stating that incorporating this definition of agricultural employer into the employer definition would help ensure that MSFWs are given the tools to hold those who use their services and labor accountable when a violation occurs, this commenter concluded that a broad definition of employer that reflects the unique economic realities of agricultural employment is crucial for workers to assert their rights and force growers and contractors to honor their obligations.

Department Response: Although the commenters requested a revised and broadened definition of "employer," the Department has decided to retain the current definition of "employer" and add a separate definition of "agricultural employer" which parallels that of the Agricultural Worker Protection Act. The Department anticipates this approach will effectively allow for meaningful and accurate employment determinations for MSFWs.

Employment-Related Laws

Comments: Two commenters said that the proposed definition was circular in that it used the term "employment-related laws" in the definition of employment-related laws; they requested clarification and stated it is necessary to know the definition of employment-related laws to identify the agencies that enforce them.

Department Response: The Department agrees with the commenters' suggestion and has revised the definition by deleting the reference to "employment-related laws" within the definition and replacing it with, "laws that relate to the employment relationship." The Department clarifies that "laws that relate to the employment relationship" means laws such as, but not limited to, the Fair Labor Standards Act, the Migrant and Seasonal Agricultural Worker Protection Act, the Civil Rights Act, and other similar Federal, State, and local laws. The regulatory text provides examples of some of the agencies that enforce these laws to give guidance to help identify the enforcing agencies. However, the Department cannot identify all the agencies that enforce employment-related laws because such agencies may extend to each State's respective enforcement agencies, which vary and may change over time as well as Federal enforcement agencies. Maintaining the reference generally to agencies that enforce these laws will ensure the definition of "employment-related laws" maintains flexibility over time.

Comments: Another commenter expressed concern about the proposed definition of employment-related laws, asserting it would force untrained SWA staff to issue actions regarding perceived issues rather than act on provisions that are within their statutory authority and stating that State agency staff's activities should relate solely to the statutory provisions of the authorizing Act.

Department Response: The Department notes that the proposed definition does not require any action for SWA staff. For further discussion of SWA staff responsibilities to refer perceived violations of employment-related laws to the appropriate enforcement agencies, please see the regulations and accompanying preamble at § 653.500 and subpart E of part 658.

Employment Service (ES)

In the NPRM, the Department added the definition of "Employment Service (ES) System." The Department received no comments on this definition, but the DOL WIOA Final Rule makes a non-substantive change to include the complete term "Wagner-Peyser Employment Service (ES) also known as Employment Service (ES)," and other non-substantive editorial changes.

Employment Service Office

In the NPRM, the Department defined "Employment Service Office" as "a local office of a State Workforce Agency." The Department received no comments on this definition, but the rule makes a clarifying change to enhance consistency with the regulations at §§ 652.215 and 678.305 through 315.

Farmwork

Comments: Two commenters expressed support for the elimination of references to North American Industry Classification System (NAICS) codes to reduce complexity and support for the addition of "fish farming" to allow for alignment with WIOA sec. 167. Further, these commenters supported the inclusion of "food processing," which they asserted would allow for the elimination of "migrant food processing workers," allow the SWA to more easily train staff to identify MSFWs, and create stronger alignment with Wage and Hour Division (WHD) and Office of Foreign Labor Certification (OFLC) regulations. One commenter urged the Department to define who is included under "fish farming."

One commenter opposed the elimination of the NAICS codes from the proposed definition of farmwork, stating that the NAICS code is updated on a regular basis to address changes in work activities. This commenter further asserted that including the phrase "and any service or activity so identified through official Department guidance such as a Training and Employment Guidance Letter" in the farmwork definition would make the current definitional structure even more difficult to understand and follow.

Department Response: The Department is not making substantive changes to the regulatory text in response to these comments, but has made a technical edit that makes clear that the definition of "agricultural commodity" applies to this definition throughout parts 651, 652, 653, 654, and 658. The Department notes that what activities are covered under "fish farming" is addressed through guidance.

The Department has determined that while the NAICS codes may be updated, the Department seeks to maintain consistency across its agencies. Aligning the definition at part 651 with the definition used at 29 CFR 500.20 and 655.103(c) is intended to help clarify and streamline the definition for practitioners who are otherwise forced to rely upon a variety of definitions depending on the program. The Department has determined it will be more beneficial for practitioners to draw upon a homogenous definition rather than to refer to a different and changing set of codes. Additionally, the Department acknowledges that issuing guidance to clarify or update aspects of the definition of farmwork is essential to maintain consistency with current practices and terminology that may change over time.

Comments: One commenter expressed support for broadening the definition of farmwork to correspond with the AWPA. This commenter also supported broadening of the definition of "agricultural commodities," by removing the phrase "produced on a farm" be removed from the agricultural commodities definition. In addition, this commenter stated the proposed agricultural commodities definition is different from the original source of the language at 12 U.S.C. 1141j(f) and that this difference could potentially exclude the type of workers that should be included in the movement toward inclusiveness: The commenter suggested the definition include downstream activities such as the handling, packing, and cultivating of commodities that may not traditionally be grown on land or on farms. This commenter suggested that such a change is necessary to achieve several of the proposed goals of the WIOA regulations.

Department Response: The Department has determined that, in order to maintain consistency with the definitions used by other DOL agencies, "on a farm" should be retained. Workers who perform "downstream activities" should be covered by the protections offered to all other non-farmworkers.

Farmworker

The definition of "farmworker" was proposed in the NPRM to replace the definition of "agricultural worker."

Comments: One commenter objected to removing "who is legally allowed to work in the United States," from the definition and urged the Department to retain and strengthen this language.

Department Response: The removal of the phrase "who is legally allowed to work in the United States" from the definition aligns this definition with definitions for the other programs. The Department has determined that it is unnecessary to mention immigration status in the definitions for only a subset of programs. No changes have been made to regulatory text in response to this comment.

The term "farmworker" is used throughout this regulation, except that the Department uses the term "agricultural worker" where discussing OSHA standards or provisions limited to H–2A workers or regulations in order to maintain consistency with OSHA and H–2A terminology.

Field Checks

Comments: Expressing concern with the proposed definition's reliance on the term "placements," a few commenters recommended that, if the Department intends to use placements as a means to grant SWA staff jurisdiction to conduct field checks, the Department should require participating employers in the agricultural clearance system to report placements after work has begun to the SWA as a condition of participation. These commenters asserted that requiring State workforce agencies to seek out placements could impose a burden that is not expected from other job orders because many agricultural employers do not immediately report placements during busy harvest periods.

Department Response: The previous definition of "placements" included the requirement that the "employment office verif[y] from a reliable source, preferably the employer, that the individual had entered on a job." The definition of "field checks" in the Final Rule continues this requirement and does not place any additional burden on the SWA. The Department further notes that the ES office has the responsibility to report placements after work has begun, because it is facilitating the service to the employer, and follow-up

on such a service is a normal course of action. No change has been made to the regulatory text in response to these comments.

Field Visits

Comments: Two commenters expressed support for the proposed definition of field visits, stating it would allow SWA staff and employers to understand better the difference between a field check and a field visit.

One commenter asked for clarification of the following language in the proposed definition: "The monitor advocate or outreach personnel *must keep records to discuss* ES services . . . ."

Department Response: The Department acknowledges that the sentence "The monitor advocate or outreach personnel must keep records to discuss ES services . . ." is not clear enough. To clarify, the Department has rearranged the text to refer to record keeping requirements at the end of the definition.

Full Application

Comments: One commenter expressed concern with the removal of a definition of "full application" because of its use of "full registration," which the commenter stated helps to ensure State agency staff understand the importance of getting all demographic information from participants.

Department Response: The Department has determined that State agencies will continue to collect all pertinent demographic information through online systems (versus the more antiquated paper-based systems) because State agencies will eventually need to submit such information to the Department.

Individual With a Barrier to Employment

Comments: Another commenter recommended the Department clearly identify receipt of Social Security disability benefits as a barrier to employment.

Department Response: The Department's response to this recommendation that an individual in receipt of a Social Security Disability Insurance (SSDI) payment be considered an "individual with a barrier to employment" is discussed in the preamble text corresponding to § 680.640.

Individual With a Disability

Comments: The Department received comments which recommended the addition of a definition for "individual with a disability" in alignment with the definition from sec. 3 of the Americans with Disabilities Act of 1990 to ensure uniform protection of the class.

Department Response: To emphasize that employment services are universal and available to everyone, the Department added the definition of an "individual with a disability" which is the same as the definition in WIOA sec. 3(25). All the definitions in sec. 3 of WIOA apply to parts 652, 653, 654, and 658; however, because of the importance of stressing the universal nature of employment services, the Department has chosen to repeat the definition in part 651, as noted above.

Job Development

The Department has changed the word "applicant" to "participant" in this definition in order to conform to the new definition of "participant" in this part, which replaced the term "applicant." No other changes were made to this definition.

Comments: One commenter recommended revising this definition to include job development with an employer that does not have a job opening on file with the ES office.

Department Response: Revising the definition of "job development" to include "an employer that does not have a job opening on file with the ES service office" would be overly restrictive, because a job development could occur with an employer who has an opening on file with the ES office, but the ES office may be working with the employer to develop a different job. Scenarios like this would create unwanted limitations on the prospects for assisting job seekers.

Comments: Another commenter recommended the Department revise the "job development" definition as a labor exchange service.

Department Response: The Department acknowledges that the service is indeed a labor exchange service, and labor exchange services are considered career services. However, the Department has determined that this revision would not substantively improve the definition of "job development."

Job referral

The Department received no comments on this definition, but the regulation changes the word "applicant" to "participant," conforming to the new definition of "participant."

Migrant Farmworker

Comments: A few commenters recommended revising the proposed definition to clarify what is meant by "unable to return to his/her permanent residence within the same day." Two commenters stated the term "unable" is overly restrictive and the intent of the regulation is to consider farmworkers who are "not reasonably able" to return to their permanent residence within the same day as migrant farmworkers.

Department Response: The Department agrees with the commenters that "not reasonably able," as recommended by the commenter, is more suitable and has changed the regulatory text accordingly. The Department will provide guidance on how it interprets "not reasonably able" to return to his/her residence within the same day.

One-Stop Center

The Department received no comments on this definition, however the regulation clarifies that the term one-stop center refers to the physical center described in sec. 121(e)(2)(A) of WIOA, in contrast with the broader definition of one-stop delivery system.

Order Holding Office

The Department received no comments on this definition; however, it changed "U.S.-based workers" to "U.S. workers" for clarification and uniformity across the definitions in this part. See further clarification of the Department's interpretation of "U.S. workers" under the Department's response to comments regarding the Clearance System definition above.

Outreach Contact

Comments: Expressing support for the proposed definition, two commenters stated this term would provide clarity, particularly when considering the inclusion of the word "each," and would raise the importance of the work done by MSFW outreach staff when considering outreach contacts do not always result in the registration of a participant.

Other commenters recommended revising the definition to clarify what type of contacts would qualify as an outreach contact. One commenter stated the lack of reference to the quality or depth of follow-up and lack of specification regarding whether the contact needs to be made outside of the one-stop center makes the proposed definition overly broad. Another commenter asked the Department to allow for in-office activity to be included as an outreach contact when the follow-up activity is being conducted on an MSFW who was initially contacted while on outreach.

Department Response: The Department notes the definition of

"outreach contact" identifies three qualifying activities: the presentation of information, the offering of assistance, and follow-up activities; however, the definition does not specify where these activities need to occur. Outreach duties can take place both inside and outside the office space. The Department will provide further guidance on this subject.

Outreach Worker

Comments: A commenter suggested the Department add a definition of "outreach worker" to clarify that an outreach worker includes only employees of a State agency, which this commenter stated is inferred from proposed § 653.107(b)(10). To accommodate the reality that many nonprofit organizations provide services to migrant and seasonal farmworkers (MSFWs), this commenter also suggested the Department add the term "nonprofit organization outreach worker" to mean "an employee of, volunteer for, agent of, or contractor for a nonprofit organization that provides health, educational, social, legal, or financial services to MSFWs."

Department Response: The Department declines to add a definition of outreach worker to indicate they are State agency employees. Paragraph (a)(1) of § 653.107 clearly states that outreach workers are employed by State agencies: "each State agency must employ an adequate number of outreach workers to conduct MSFW outreach in their service areas." Paragraph (a)(3) of § 653.107 further supports that outreach workers are only State agency employees by stating, "for purposes of hiring and assigning staff to conduct outreach duties, and to maintain compliance with State agencies' Affirmative Action programs, State agencies must seek, through merit system procedures, qualified candidates. . . ." Finally, § 653.107(b)(10) indicates that "outreach workers must be provided with, carry and display, upon request, identification cards or other material identifying them as employees of the State agency." These references throughout § 653.107 explicitly indicate that outreach workers referenced at 20 CFR parts 653 and 658 are employees of a State agency.

The Department also declines to add a definition of "nonprofit organization outreach worker." As explained in the preceding paragraph, the regulation sets out requirements of outreach workers who are State agency employees. The Department does not have authority over the outreach workers employed by nonprofit organizations that do not receive funding from the Department, and including a definition of them would cause unnecessary confusion.

Participant

Comments: A few commenters disagreed with the NPRM's replacement of the term "applicant" with "participant" throughout the ES program regulations, stating that both employers and individual job applicants would find the term change odd. Two commenters asserted the NPRM contained insufficient justification to change terms in this way. One commenter suggested the alignment of definitions would help one-stop partners.

Department Response: The Department disagrees that replacing the term "applicant" with "participant" will be odd for employers and job applicants because the term primarily is for internal data collection purposes. However, the Department has aligned these definitions with those used more broadly under WIOA at 20 CFR 677.150(b) (*see* Joint WIOA Final Rule). The term "reportable individual" is used to cover those individuals who receive employment services but do not meet the definition of participant in 20 CFR 677.150(a). This term will accurately capture those individuals formerly referred to in this part as "applicants." With the addition of the term "reportable individual," and by modifying the definition of "participant," the Department has aligned these terms with the definitions of 'reportable individual' and 'participant' under the rest of WIOA.

Reportable Individual

Comments: Multiple commenters raised concerns regarding the proposed replacement of the term "applicant" with "participant," as is addressed above. This is linked to the definition of Reportable Individual as well.

Department Response: As outlined in the "participant" definition in this section, the Department also has added the definition of "reportable individual" in order to capture the individuals who apply for and/or receive Wagner-Peyser Act funded employment services and to ensure alignment across the programs.

Respondent

The Department received no comments on this definition, but the Final Rule adds the word "individual" to the definition of respondent. A respondent is not limited to an employer or a State agency; rather the respondent can be any individual (such as a field manager, a co-worker, or a labor contractor) who responds to a complaint filed pursuant to 20 CFR part 658, subpart E. The Department determined it prudent to add "individual" to the definition for clarification.

Seasonal Farmworker

Comments: Some commenters expressed concern that the proposed definition would eliminate thresholds tied to number of days (25) and proportion of total wages (majority in farmwork) that an individual must have to qualify as a farmworker. These commenters expressed concerns that, under the proposed definition, a person employed in farmwork for 1 day during the past 12 months would qualify as a farmworker and that this proposed definition might make it difficult to implement integrity processes that validate the SWA's classification of individuals as MSFWs.

Department Response: The Department acknowledges commenters' concerns regarding the removal of the days and total wages originally included in the seasonal farmworker definition. However, for the purposes of the ES and the Department's Monitor Advocate System, if a farmworker qualifies as a seasonal farmworker because he or she worked 1 day in farmwork during the previous 12 months, that is acceptable. The Department understands that a myriad of circumstances could have led to the reason why that farmworker was able to work for only 1 day. For example, the worker could have been unable to find other employment and only was able to work 1 day, or, as another example, the worker could have been injured on the job and needed not to return to work in order to heal. As such, the Department will maintain its proposed definition.

Supply State(s)

The Department received no comments on this definition; however, it changed "U.S.-based workers" to "U.S. workers" for clarification and uniformity across the definitions in this part.

Supportive Services

Comments: One commenter suggested the definition of "supportive services" should specify whether Wagner-Peyser Act funds can be spent on supportive services, noting that such clarification is critical to avoiding disallowed costs.

Department Response: The Department received several comments about alignment across programs, especially aligning supportive services across title I and Wagner-Peyser Act (as amended by WIOA title III) services. The Department has modified the definition of "supportive services" at

§ 680.900 to include an inclusive, though not exhaustive, list of types of supportive services. To ensure consistency, the Department is modifying the definition of supportive services to be the same as the definition used in § 680.900 relating to the WIOA title I formula programs. The list is not intended to be exhaustive, but rather illustrative of the types of supportive services that may be available. The Department notes, however, grantees must not use Wagner-Peyser Act sec. 7(a) funds, but may use Wagner-Peyser Act sec. 7(b) funds, to provide supportive services.

Tests

Comments: Some commenters objected to the proposed elimination of the definition of "tests," arguing that assessments and tests continue to be integrated into career assessments and planning, and citing proposed § 678.430(b), which defines one-stop career services and addresses skills assessments and diagnostic testing (*see* Joint WIOA Final Rule).

Department Response: The Department agrees with the commenters' concerns that tests are integrated into career assessments and planning. As a result, the Department changed the proposed definition to add the previous definition of "tests" back into this section.

United States Employment Service (USES)

While no comments were received regarding this definition, the Department has deleted this definition because it is redundant with the definition of Wagner-Peyser Act Employment Service (ES), above. Because ES is used throughout the chapter and USES is not, the Department has determined that the definition for USES is not necessary.

Veteran

Comments: The Department received a few comments requesting clarification of the term "veteran."

Department Response: In response to these comments, the Department has added the definition of "veteran" to the Final Rule. The definition is the same as the definition in WIOA sec. 3(63)(A), which in turn is the same as the definition in 38 U.S.C. 101.

Workforce and Labor Market Information (WLMI)

Comments: A couple commenters suggested the Department identify the types of labor market "participants" that make the "employment, training, and business decisions" referenced in the proposed definition of WLMI, including employers, educators and trainers, workers, students, and public and private organizations that invest in workforce development. These commenters also recommended additional WLMI examples to add to the 20 examples provided in the proposed definition.

Another commenter recommended the Department consult the Workforce Information Advisory Council and develop guidelines by area of LMI regarding this balance of demand for detailed localized data and data quality.

Department Response: "Workforce and Labor Market Information" is a term used to describe what types of data, information, and analysis may be used at the national, State, and local level to make policy decisions, develop strategic plans, and implement decisions. While the broad parameters of the system content are laid out in Wagner-Peyser Act sec. 15, as amended by sec. 308 of WIOA, the term WLMI is not itself defined in either statute. The Department based the proposed WLMI definition on several factors including: (1) Data that are commonly considered to be part of the WIA LMI system; (2) additional items of information that should be considered to meet the new vision of WIOA; (3) potential types of information that could be included based on the consultations with the Workforce Information Advisory Council; and (4) data on outcomes of local employment and training activities. The Department is intentionally broadening the system's understanding of what information can and should be considered in strategic planning. However, the Department is not implying that State labor market information agencies are required to produce all of the information included in the definition: such information may be derived from other sources, such as educational agencies and institutions, or economic development agencies. LMI agencies and WIOA partners should share and compare data with these other entities to obtain a fuller picture of the labor market, particularly the supply side.

Comments: One commenter described the proposed definition of WLMI as a list of products resulting from an extant system usually referred to by itself as Labor Market Information (LMI) and recommended removing the word "workforce," stating that it adds confusion. Stating LMI should be defined as a scientific process focusing on the domain of the labor market rather than an open ended list of products, this commenter recommended that § 651.10 instead define LMI as follows: "Labor Market Information (LMI) is an applied science; it is the systematic collection and analysis of data which describes and predicts the relationship between labor demand and supply."

Department Response: The Department examined the recommendation to shorten and simplify this simplified definition. The commenter's recommended definition is more restrictive than the statutory language describing WLMI in sec. 15(a) of the Wagner-Peyser Act. No change was made to the regulatory text in response to this comment.

Comments: Commenters also suggested that additional items be added to the proposed WLMI definition to expand what can be considered within the scope of WLMI for purposes of strategic planning and public workforce system operations.

Department Response: The Department agrees that clarifications were needed to the proposed WLMI definition, and as a result, the Final Rule reflects several changes. The wording of the first and second sentence of the introductory paragraph was modified to define WLMI and eliminate reference to the WLMI programs and system. This is not a policy change; rather, it reinforces the fact that WLMI programs do not produce all of the information items in the list, and DOL-funded agencies should not be held accountable for doing so. The proposed WLMI definition also was changed to add some of the items suggested by commenters and some wording was revised to clarify the purpose of each listed item.

Workforce and Labor Market Information System (WLMIS)

Comments: Two commenters suggested that the Department identify the Federal and State agencies that actively participate in the WLMIS as part of the definition. One of these commenters stated that doing so would be consistent with the text of proposed § 652.300(b)(2) and (5), as well as the NPRM preamble discussion of part 652, subpart D (Workforce and Labor Market Information), under the heading "Continuous improvement, in part through consultation." Both commenters also suggested that the WLMIS definition should include the words "Federal-State cooperative" before "system."

Department Response: "Federal-State cooperative" is often used before "system," to specifically refer to the nature of certain existing agreements with the Bureau of Labor Statistics and may not apply more broadly. Additionally, because the list may

change over time based on changes in agency data collection and data sharing policies and procedures, the Department declines to include a list of the Federal and State agencies that participate in WLMIS.

N. Part 652—Establishment and Functioning of State Employment Service

1. Introduction

The regulations at 20 CFR part 652 set forth standards and procedures regarding the establishment and functioning of State ES operations. These regulations align part 652 with the WIOA amendments to the ES program, and with the WIOA reforms to the public workforce system that affect the ES program. The WIOA-amended Wagner-Peyser Act furthers longstanding goals of closer collaboration with other employment and training programs by mandating colocation of ES offices within one-stop centers or affiliated sites; aligning service delivery in the one-stop delivery system; and ensuring alignment of State planning and performance indicators in the one-stop delivery system. Other new provisions are consistent with long-term Departmental policies, including increased emphasis on reemployment services for UI claimants (sec. 7(a)); promotion of robust Workforce and Labor Market Information (WLMI); the development of national electronic tools for job seekers and businesses (sec. 3(e)); dissemination of information on best practices (sec. 3(c)(2)); and professional development for ES staff (secs. 3(c)(4) and 7(b)(3)).

Inadvertently, the preamble explanation for § 652.215 was duplicated in the regulatory text. That has been removed and the intended regulatory language, which is the original language from the WIA regulations at § 652.215, has been added except for a nonsubstantive change to the last sentence. The WIOA regulatory text at § 652.215 is not substantively different from the language inadvertently used in the NPRM.

The analysis that follows provides the Department's response to public comments received on the proposed part 652. If a section is not addressed in the discussion below, it is because the public comments submitted in response to the NPRM did not substantively address that specific section and no changes have been made to the regulatory text. Further, the Department received a number of comments on this part that were outside the scope of the regulation and the Department offers no response. Lastly, the Department has made a number of non-substantive changes to correct grammatical and typographical errors to improve the readability and conform the document stylistically that are not discussed in the analysis below.

Comments: Several comments prompted the Department to make minor changes to parts of the regulations in this section, as discussed below. One of the major areas in which the Department received comments was regarding colocation.

The Department received several varying comments regarding colocation. This part clarifies the intent of colocation and how ES-only affiliate sites do not meet the intent of WIOA.

Department Response: The Department broadened language in § 678.315(b) (*see* Joint WIOA Final Rule) to allow multiple programs to meet the more than 50 percent threshold by combining the time their staff members are physically present and to emphasize the expectation that colocation should be completed as expeditiously as possible. The Department will issue additional guidance on this topic.

Comments: Many commenters also raised questions and provided comments regarding Wagner-Peyser Act funds usage.

Department Response: The Department clarified that there are no changes in the activities that may be funded by Wagner-Peyser Act funds. Specifically, training services may not be provided with sec. 7(a) of the Wagner-Peyser Act funding; however, appropriate career services and labor exchange services may be provided to individuals in training and to clarify there is no restriction on funding training services with sec. 7(b) funds under the Wagner-Peyser Act.

Comments: In terms of reemployment, a few commenters suggested including developing and documenting reemployment plans and adding Worker Profiling and Reemployment Services (WPRS) to the list of required Wagner-Peyser Act activities for UI claimants.

Department Response: The Department noted that providing assistance to UI claimants in the development of a reemployment plan is not just for claimants served by the RESEA or the WPRS program. Such assistance can be provided to any unemployed worker; providing such assistance is an allowable Wagner-Peyser Act cost.

Comments: Some commenters expressed concern with the regulation at § 652.209 requiring that reemployment services provided by State agencies must include conducting eligibility assessments and referring UI claimants to and providing application assistance for training and education resources and programs.

Department Response: The Department reiterates that this approach is consistent with the approach that existed under WIA, and will be continued under WIOA; States will be provided flexibility to leverage UI funds, W–P funds, and RESEA funds in States with RESEA programs for these purposes.

With regard to workforce labor market information, some of the clarifications identified in this part include: there is a need to provide extensive education and technical assistance with regard to accessing wage record data; the Workforce Information Advisory Council (WIAC) will advise on WLMI and may consider what kind of information is needed for planning, but it is not involved in developing State Plans; and the Departments of Labor and Education will issue joint guidance about use of wage data for performance in the context of the confidentiality requirements for the use UI wage record data and education data under the Family Educational Rights and Privacy Act (FERPA). In order to address concerns regarding "continuous improvement" as it pertains to the WLMI systems (WLMIS), § 652.300 was edited to reflect that the parameters for continuous improvement will be identified in consultation with the WIAC. Additionally, the edits to this section align with WIOA and reference the Secretary's responsibility to prepare a 2-year plan for WLMIS.

2. Overarching Comments on Part 652

Comments: A few commenters recommended that the Department require that the UI and ES programs be given priority for any remaining Federal equity to help address chronic underfunding, especially the need to modernize State computer systems.

Department Response: The Department's response to this recommendation to require that UI and ES programs be given priority for any remaining Federal equity is addressed in the preamble text corresponding to § 683.240.

Comments: One commenter recommended additional funding to improve systems for reporting purposes to facilitate system alignment between core programs. The Department also received several comments on funding.

Department Response: The Department notes that funding levels are determined by Congress and cannot be resolved through this regulatory process.

The Department also made one clarifying change throughout this part. Previously, the regulatory text in part 652 has used the words "the Act" to refer to the Wagner-Peyser Act. Because of the ES system's integration in the public workforce system, which is governed by a number of different Acts such as WIOA, this reference has caused some confusion. To make references to the Wagner-Peyser Act clear, the Department has replaced "the Act" with "the Wagner-Peyser Act" throughout the text of the regulations in this part. The definition of "the Act" in part 651 has also been amended to reflect this change. In the titles of the regulatory sections, "the Act" has been replaced with "the Wagner-Peyser Act."

3. Subpart A—Employment Service Operations

Comments: One commenter expressed support for §§ 652.1 through 652.8 as proposed. Another commenter urged States, localities, and one-stop centers to make staff-assisted services (ideally provided by coaches or older worker specialists) available to older workers and other individuals with barriers to employment. Citing data, the commenter explained that older workers use self-service and "automated" services the least, and that access to staff makes all the difference. This commenter suggested that, at minimum, all front-line staffers should be required to have adequate training in generational competencies in order to provide quality staff-assisted services to older workers with varied backgrounds and needs at every stage of the process. Furthermore, this commenter explained that older workers who may be more likely to qualify for and exhaust their UI benefits, also benefit from staff-assisted services such as assessment and reemployment services early in an episode of unemployment.

Department Response: The Department agrees that States, localities, and one-stop centers must make staff-assisted services available to older workers and other individuals with barriers to employment and that these individuals can benefit from these services.

Front-line staff training is addressed in the Wagner-Peyser Act sec. 3(b)(4) (as amended by sec. 303(b)(4) of WIOA), which requires State agencies and their staff to assist in the planning and implementation of activities to enhance the professional development and career advancement opportunities of staff. The Department strongly encourages such training to include competencies related to serving populations with barriers to employment and to accessing services, including older workers. Additionally, the Department added direct language from the Wagner-Peyser Act sec. 3(b)(4) to § 652.204 to indicate that professional development and career advancement may be supported by the Governor's Reserve.

Section 652.3 Public Labor Exchange Services System

Comments: A commenter urged the Department to work with States to make the Wagner-Peyser Act program as flexible as possible to integrate it into the service delivery design of that State. While expressing support for the alignment of labor exchange services under WIOA with those provided by the ES program, some commenters urged that the alignment should reflect and seek to preserve the unique structures and functions of the various providers, including ES. Some of these commenters provided examples, including encouraging partners to work out arrangements to accommodate legal requirements that State public employees assist with the filing of UI claimant applications, and having ES staff conduct one-stop orientations as a first entry point for job seekers.

Department Response: While § 652.3 focuses on the statutory intent and minimum required functions of the ES program, the regulation provides flexibility in how services are provided and what other services are provided. The Department acknowledges the commenter's examples of ES and UI functions. The regulation provides flexibility for States and locals to consider effective strategies for providing meaningful assistance to individuals in filing their UI claims, and other intake functions.

Comments: A commenter suggested that the alignment of definitions would help for one-stop partners.

Department Response: The Department agrees with the commenter about the benefit of aligning definitions across the core programs, and as a result the terms "reportable individual" and "participant" have been aligned with the performance accountability of the other core programs.

Comments: A commenter noted that ES is focused on providing "UI relief," job placement, and reemployment services, whereas WIOA focuses on training workers and providing wrap-around services. Multiple commenters further discussed how the Wagner-Peyser Act and WIOA are two different laws with different public policy objectives. Related to this point, two commenters urged the Department to use the word "Act" when referring to the Wagner-Peyser Act throughout the regulation (*e.g.*, "Wagner-Peyser Act services" rather than "Wagner-Peyser services"), reasoning that it is a separate and distinct enacted law.

Department Response: The Department recognizes the vital role the ES has in the public workforce system, often serving as the "front door" to the one-stop centers, ensuring universal access to all job seekers, and in providing labor exchange services that help job seekers and unemployed workers gain or return to employment. The Department notes, as the commenters mentioned, that the Wagner-Peyser Act is a separate law from WIOA, but is a critical component of the reforms that WIOA envisions. Recognizing this, the Department has added the word "Act" behind the references to "Wagner-Peyser" to accurately reflect the distinction between the Wagner-Peyser Act and WIOA.

Comments: In response to the Department's request for comments on challenges in aligning labor exchange services described under WIOA with those provided by the ES, one commenter asserted that additional funds would be needed to create a cohesive, collective reporting system for WIOA implementation.

Department Response: The Department received several comments on funding; however, funding levels are determined by Congress and beyond the scope of the NPRM; therefore they cannot be resolved through this regulatory process.

Comments: Some commenters suggested that the Department revise § 652.3(f) to refer to sec. 7(a) of the Wagner-Peyser Act, and thus ES labor exchange services. Although acknowledging that the referenced career services under WIOA are similar, these commenters asserted that they are not a substitute for Wagner-Peyser Act sec. 7(a) services.

Department Response: The Department agrees with the commenters that career services under WIOA are not a substitute for Wagner-Peyser Act sec. 7(a) services; § 652.3(f) has been amended to add reference to sec. 7(a) of the Wagner-Peyser Act.

Comments: A commenter asked whether business service representatives are required to "facilitate the match between job seekers and employers" (§ 652.3(c)) or whether this provision referred to the overall ES program responsibility.

Department Response: The Department considers the facilitation of the match between job seekers and employers to be a part of the overall responsibility of the ES program.

Business services are an important component of the one-stop delivery system. While the Wagner-Peyser Act is responsible for facilitating the match between job seekers and employers, local areas may implement business services teams that include staff funded by the Wagner-Peyser Act and other partner programs to ensure quality services to area businesses and to avoid duplication of services.

Section 652.8 Administrative Provisions

The Department simplified the language in § 652.8(j)(1) by removing "including laws prohibiting discrimination on the basis of age, race, sex, color, religion, national origin, disability, political affiliation or belief" because this is redundant with the phrase immediately preceding it, "any applicable nondiscrimination law." Conforming edits were also made at §§ 653.501(c)(ii), 658.411(c)(1) and (2), and 658.420(b)(1).

The Department made a clarifying change to § 652.8(i) by removing the sentence "Similarly, all complaints involving such matters should also be reported to the Secretary directly and immediately" and changing the first sentence to read "Any persons having knowledge of fraud, criminal activity or other abuse must report such information directly and immediately to the Secretary, including all complaints involving such matters." This clarifies that complaints related to fraud and abuse must be reported to the Secretary directly and immediately. The change reduces confusion about whether the requirement to report complaints is different from the requirement to report information to the Secretary; the requirement is the same for both.

Section 652.9 Labor Disputes

Comments: Stating that proposed § 652.9(a) could be misinterpreted by States and Workforce Development Boards, two commenters recommended that the provision be revised to say, "State agencies must not make" instead of "State agencies may not make."

Department Response: The Department considers job referrals on job orders which aid directly or indirectly in the filling of a job opening which is vacant because of a strike, labor dispute, or work stoppage to be inconsistent with the Department's policy of neutrality in activities that may impact union organizing. The Department proposed no changes to this section, as WIOA did not make any amendments to the Wagner-Peyser Act relevant to this section. This language—"State agencies may not make" was used under previous practice and there were no apparent misinterpretations or issues. No change was made to the regulatory text in response to this comment.

4. Subpart B—Services for Veterans

Comments: Some commenters expressed support for proposed § 652.100, particularly the inclusion of the statement regarding veterans' priority of service.

However, several commenters recommended that the Department define the term "veteran" by specifying that, as provided in 38 U.S.C. 101, "the term veteran means a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable." In addition to urging a definition of "veteran," a commenter also recommended that the Department establish definitions for "eligible spouse," "significant barriers to employment," and "priority of service." Additionally, this commenter recommended that the regulation state veteran referral qualifications to the Disabled Veterans Outreach Program (DVOP) because these referrals are Wagner-Peyser Act funded services and not charged to the Jobs for Veterans State Grants (JVSG).

A commenter recommended that the Department include an option for LWDBs to require that one-stop operators adhere to labor standards for staff that work in the one-stop delivery system.

Department Response: The Department agrees with the commenters that adding a definition of "veteran" to the ES regulations would be beneficial, showing the consistent definition across multiple programs. The definition under 38 U.S.C. 101 applies to the Wagner-Peyser Act, WIOA, and veterans' Priority of Service under 38 U.S.C. 4215. (The definition of "eligible veteran" used in the JVSG program authorized under chapter 41 of title 38 of the U.S.C., is a different definition.) The Department added the definition of "veteran" consistent with 38 U.S.C. 101 and sec. 3(63)(A) of WIOA to the regulation at § 651.10.

In response to the commenters' suggestions to state veteran referral qualifications to DVOP, as well as define "eligible spouse," "significant barriers to employment," and "priority of service," these concerns are already covered by joint guidance from the Veterans' Employment and Training Service and the Employment and Training Administration. *See* TEGL No. 19–13 ("*Expansion and Clarification of Homeless Definition as a Significant Barrier to Employment (SBE)*"), Change 2 and TEGL No. 10–09 ("*Implementing Priority of Service for Veterans and Eligible Spouses in all Qualified Job Training Programs Funded in whole or in part by the U.S. Department of Labor (DOL)*"), which can be found at *http://wdr.doleta.gov/directives).* Also, "eligible spouse" and "priority of service" are fully described in the regulations governing the JVSG program at 20 CFR parts 1001 and 1010. No change was made to the regulatory text.

The Department's response to the recommendation for LWDBs to require that one-stop operators adhere to labor standards is addressed in the Joint WIOA Final Rule preamble discussion for 20 CFR part 678, subpart C.

5. Subpart C—Wagner-Peyser Act Services in a One-Stop Delivery System Environment

Section 652.201 What is the role of the State Workforce Agency in the one-stop delivery system?

Comments: The Department received a few comments stating that this section should clarify that Wagner-Peyser Act services must be colocated in at least one one-stop center in each local area and requested that the Department provide additional direction on what should be included in the MOU to make sure that local Wagner-Peyser Act operations are closely connected with Local WDB priorities.

Department Response: The requirements for Wagner-Peyser Act services to be colocated are outlined in §§ 652.202, 678.310, and 678.315 (*see* Joint WIOA Final Rule). The Department expects that the entity that administers the ES system, in consultation with LWDBs and one-stop partners, may need to make the necessary changes to comply with this requirement. Additionally, the specific requirements for MOUs are contained in 20 CFR 678.500, which outlines what must be included in the MOU executed between the LWDBs, with the agreement of the CEO, and the one-stop partners relating to the operation of the one-stop delivery system in the local area. No change was made to the regulatory text.

Section 652.202 May local employment service offices exist outside of the one-stop delivery system?

Comments: Some commenters stated that either the existing § 652.202(b) should be retained or that § 652.202 should specify that "one-stop centers in this rule refer to both comprehensive and affiliate one-stop centers." These commenters reasoned that the Wagner-Peyser Act requires State workforce

agencies to provide ES "statewide in underserved areas." They cited two Department-sponsored studies that they stated demonstrate that the ES program in affiliated sites was the backbone and core component of these technologically linked one-stop center sites in many rural communities where LWDBs could not establish full-service one-stop centers. Further, these commenters asserted that maintaining current § 652.202(b) would be consistent with proposed § 680.100(b)(1), which permits services at "affiliated sites or at specialized centers." Expressing similar concerns about ES access in rural areas, a commenter asked whether proposed § 652.202 means that affiliate ES offices may no longer physically exist.

One commenter explained that the WIOA NPRM's proposed requirements relating to colocation would do little to improve efficiencies and stabilization of facilities costs. For example, this commenter stated that adding one partner program staff to the ES office simply for complying with the NPRM against stand-alone ES offices (proposed at 20 CFR 678.315(b)) would be fairly simple to accomplish, but meaningless as far as the stated goals for improved service and coordination, less duplication, and greater access. This commenter stated that a requirement to colocate adult and dislocated worker with ES into full centers would likely be sufficient impetus over time to have the major core program partners concentrate on finding suitable facilities, although it would pose a difficult problem in many localities. This commenter and another stated that although proposed § 652.202 and related discussion in §§ 678.310 and 678.315 (*see* Joint WIOA Final Rule) is intended to address greater partner integration where ES are delivered, the discussion is confusing with overlapping references to one-stop centers, affiliated sites, and even affiliated sites. These commenters suggested that perhaps WIOA and the ES program should be required to colocate in proportion to participants served, forming over time the basis of a more financially sound, center-based system with fewer affiliates and locally unique inviting core and non-core program partners as space is available.

Department Response: Colocation is intended to achieve several purposes: improved service delivery and coordination, less duplication of services, and greater access to services in underserved areas. While the Department understands that it may be difficult to establish full-service one-stop centers in some rural communities, it has concluded that retaining the previous § 652.202(b) and allowing local ES offices to operate solely as affiliated sites or through electronically or technologically linked access points contradicts the intent of WIOA. No change was made to the regulatory text in response to these comments.

Additionally, § 678.315(b) (*see* Joint WIOA Final Rule) allows multiple programs to meet the more than 50 percent threshold by combining the time their staff members are physically present. This is further discussed in the preamble accompanying 20 CFR 678.315.

Additionally, the Department has determined that requiring colocation of WIOA and ES program services in proportion to participants served would be too burdensome a requirement to impose on States.

Comments: Two commenters asked if there was a timeline for the requirement that ES offices must be colocated in one-stop centers.

Department Response: The Department expects colocation to be completed as expeditiously as possible. However, it acknowledged that there are legitimate concerns about the timeline for the requirement that ES offices must be colocated in one-stop centers, due to factors such as real property issues, decisions on site locations, discussions with municipal or county governments, and development of memoranda of understanding. Therefore, as indicated in 20 CFR 678.310 (*see* Joint WIOA Final Rule), a State in such circumstance must be prepared to provide the Department with a plan that details the steps the State will take to achieve colocation of ES and a timetable showing how the State will achieve this within a reasonable amount of time. The Department is issuing guidance on the approach it will use to obtain required plans and timelines for completion.

Section 652.203 Who is responsible for funds authorized under the Wagner-Peyser Act in the workforce development system?

The Department did not receive any comments on this section. No changes were made to this section of the regulatory text.

Section 652.204 Must funds authorized under section 7(b) of the Wagner-Peyser Act (the Governor's Reserve) flow through the one-stop delivery system?

Comments: Some commenters recommended that this section should include activities that enhance the professional development and career advancement for ES staff as an activity that can be supported by the Governor's Reserve following the amendment of sec. 3(b)(4) of the Wagner-Peyser Act (amended by sec. 303(b)(4) of WIOA) to make such activities required. One commenter emphasized the importance of training activities to enhance the professional development of ES staff, given WIOA's expansion of services and the central role of ES staff in providing referrals and application and assistance for training and education programs and resources.

Expressing support for proposed § 652.204, one commenter urged the Department to promote the training of staff on how to assist older workers.

Department Response: The Department acknowledges and supports professional development for ES staff, and considers it to be essential in building staff capacity and ensuring staff are fully equipped to provide seamless and high-quality service to all customers who need ES services. The commenters' recommendations and support for front-line staff training are addressed in the Wagner-Peyser Act at sec. 3(b)(4) (as amended by sec. 303(b)(4) of WIOA), which requires State agencies and their staff to plan and implement opportunities to enhance the professional development of staff to ensure quality service delivery. This is consistent with the uses of funds under sec. 7(b)(3) of the Wagner-Peyser Act, which allow the funds to be used for "models for enhancing professional development and career advancement opportunities of State agency staff." The Department has added language to § 652.204 to clarify that professional development and career advancement of SWA staff can be supported by funds under sec. 7(b) of the Wagner-Peyser Act (the Governor's Reserve). The Department also has added language to the title of § 652.204 to clarify that § 652.204 refers to the sec. 7(b) funds. Additionally, the Department added language to § 652.204 to clearly state that under sec. 7(b) of the Wagner-Peyser Act, 10 percent of the State's Wagner-Peyser Act allotment is reserved for these activities.

With regard to the suggestion to train front-line staff on assisting older workers, the Department expects that staff are trained and equipped with the knowledge, skills, and motivation to provide superior service to all job seekers, including older workers.

Section 652.205 May funds authorized under the Wagner-Peyser Act be used to supplement funding for labor exchange programs authorized under separate legislation?

Comments: A commenter asked which other programs would be funded by the Wagner-Peyser Act, specifically

whether training would be funded and asked how this is consistent with § 652.206.

Department Response: Section 652.205 made no changes in the activities that may be funded by Wagner-Peyser Act funds. Although § 652.205(a) states that States may use such funds to supplement any work activity carried out under WIOA, the paragraph clearly applies to "funds authorized under 7(a) or 7(b) of the Wagner-Peyser Act." Section 7(b) of the Wagner-Peyser Act allows for the provision of training services, however that is not the primary purpose of 7(b), and any training services provided with these funds must be consistent with the allowable activities in 7(b). These allowable 7(b) activities include services for groups with special needs as well as the extra costs of exemplary models for delivering labor exchange services, as well as the other services under sec. 7(a) of the Wagner-Peyser Act.

Section 652.206 May a State use funds authorized under the Wagner-Peyser Act to provide applicable "career services," as defined in the Workforce Innovation and Opportunity Act?

Comments: Some commenters recommended that the Department revise § 652.206 to make clear that the labor exchange services under WIOA and under the Wagner-Peyser Act are distinct. They proposed removing the phrase "funds under sec. 7(a) of the Act must be used," so that this section would be amended as follows:

"Yes, *90 percent of the funds allotted to States under the Wagner-Peyser Act must be used for services identified under sec. 7(a) of the Act to assist job seekers and employers and* to provide career services as identified in § 678.430(a) of this chapter and secs. 134(c)(2)(A)(i)–(xi) of WIOA . . . ."

Department Response: The Department has determined that it is not necessary to amend the regulation as the commenters have requested, because § 652.206 states that career services must be provided consistent with the requirements of the Wagner-Peyser Act, which specifies that 90 percent of the funds allotted to States may be used for services identified under sec. 7(a) of the Wagner-Peyser Act to assist job seekers and employers. In addition, sec. 7(b) states that 10 percent of the State's allotment under the Wagner-Peyser Act is reserved for 7(b) activities. As discussed above, the Department has added language to § 652.204 to clarify the amount of funds reserved for 7(b) activities.

Comments: In response to the Department's request for comments on how services provided by the ES can be more aligned with other services in the one-stop delivery system, two commenters suggested that the Department: (1) Require, over time, maximum colocation of ES and title I adult and dislocated worker staff forming full one-stop centers with foundations of at least these two core programs in each labor market area (which may be sub-areas of local areas); (2) implement standardized triage processes/forms used by staff that are voluntary for customers; (3) require mandatory coordination of business services; and (4) encourage more purposeful and deliberate ongoing joint staff development training.

Department Response: The Department notes the comments about the alignment of ES services and those of the one-stop delivery system. The Department intends to ensure colocation of ES and title I adult and dislocated worker staff over time. The Department has determined that requiring these specific activities in the regulation as suggested by the commenters would limit flexibility. The Department will provide guidance on allowable activities and may address this topic in future technical assistance. No changes were made to regulatory text in response to these comments.

Comments: One commenter asked for clarification regarding the statement that "career services must be provided consistent with requirements of the Wagner-Peyser Act," particularly whether this means that career services are charged to the Wagner-Peyser Act only and how supportive services should be charged. Some commenters requested that the Department clarify that career services can be delivered remotely using technology due to the limited number of Wagner-Peyser Act staff that are available for traditional services.

Department Response: Funds under sec. 7(a) of the Wagner-Peyser Act may be used to provide career services, whereas funds under sec. 7(b) may be used to provide career services, supportive services, and training, as discussed above. The Department encourages Local WDBs to coordinate ES with title I and other partner programs to have a full range of training and supportive services available to participants. The Department understands the importance of providing staff-assisted services virtual and clarifies that facilitated self-help can be provided in-person or virtually. The Department emphasizes, however, that, as stated in 20 CFR 678.305(d)(3) (*see* Joint WIOA Final Rule), to meet the definition of providing sufficient "access" through the one-stop center, services provided through a technological "direct linkage" must be meaningful, available in a timely manner, and not simply a referral to additional services at a later date or time. While virtual services that do not meet this definition may be provided, they must supplement the "access" to services provided by other means, and cannot stand-alone as the only access provided through the one-stop center.

Comments: Requesting clarification regarding what services would qualify as "individualized career services," a commenter agency urged the Department to provide joint training with the one-stop partners to carry out the intent of § 652.206.

Department Response: "Individualized career services" are defined in 20 CFR 678.430(b) (*see* Joint WIOA Final Rule) and include: (1) Comprehensive and specialized assessments of the skill levels and service needs of adults and dislocated workers; (2) development of an individual employment plan; (3) group counseling; (4) individual counseling; (5) career planning; (6) short-term pre-vocational services; (7) internships and work experiences that are linked to careers (as described in 20 CFR 680.180); (8) workforce preparation activities; (9) financial literacy services (as described in sec. 129(b)(2)(D) of WIOA and 20 CFR 681.500); (10) out-of-area job search assistance and relocation assistance; and (11) English language acquisition and integrated education and training programs.

The Department has issued guidance with regard to the provision of career services under the ES program in TEGL No. 03–15 ("*Guidance on Services Provided through the Adult and Dislocated Worker Program under the Workforce Innovation and Opportunity Act (WIOA or Opportunity Act) and Wagner Peyser, as Amended by WIOA, and Guidance for the Transition to WIOA Services*") (*see http://wdr.doleta.gov/directives/All_WIOA_Related_Advisories.cfm*); the Departments may provide additional training, guidance, and technical assistance on this subject.

Comments: One commenter asked under what conditions the Wagner-Peyser Act program is no longer authorized for funding and/or transferred to another funding source and if the "line of demarcation" is when the participant initiates training.

Department Response: WIOA provides flexibility in what Wagner-Peyser Act funds may be used and when referrals to other programs take place; however, training is not an allowable

activity under sec. 7(a) funds. Coordination among programs including the transfer or referral of participants, is a local decision. Therefore, the referral process to other programs must generally be determined at the local level consistent with State one-stop policies.

Section 652.207 How does a State meet the requirement for universal access to services provided under the Wagner-Peyser Act?

Comments: A couple commenters recommended expanding the characterization of virtual services to include facilitated self-help services in which ES staff are proactive; for example, ES staff initiating email invitations to consider applying for matched job openings. One commenter disagreed with proposed §§ 652.207 and 652.208's reference to services provided remotely or via online self-service as "virtual services." Stating that these are "real services" and that staff-assisted services can also be provided via online mechanisms, this commenter recommended that these provisions instead reference provision of services in person, remotely, or via other online mechanisms, whether staff-assisted or self-service.

Department Response: Facilitated self-help can be provided in person or virtually. However, the Department emphasizes that as stated in 20 CFR 678.305(d)(3) (*see* Joint WIOA Final Rule), services provided through technology must be meaningful, available in a timely manner and not simply a referral to additional services at a later date or time. Additionally, while the Department agrees that "virtual services" are actual services and that staff-assisted services may also be provided via online mechanisms, to prevent potential confusion with a change in this terminology, no change was made in the regulatory text.

Comments: A commenter recommended that § 652.207(b)(1) provide further detail regarding how States are required to serve individuals with disabilities, such as a specific reference to WIOA sec. 188, ensuring programmatic and physical accessibility of all services, and other applicable sections of the Americans with Disabilities Act. This commenter expressed concern that the delay in the issuance of sec. 188 nondiscrimination regulations could create possible misunderstandings concerning States' legal obligations to serve individuals with disabilities.

Department Response: The Department acknowledges the commenter's concern about ensuring States are required to serve individuals with disabilities and ensuring programmatic and physical accessibility of all services. The ES program, like all services funded by the Department, must be physically and programmatically accessible to individuals with disabilities, as further described in 20 CFR 678.800 and 678.305(e) (*see* Joint WIOA Final Rule), WIOA sec. 188 at 29 CFR part 38, and any subsequent Civil Rights Center regulations which govern one-stop center accessibility.

Section 652.208 How are applicable career services related to the methods of service delivery described in this part?

Comments: A commenter recommended that access points should be defined in § 652.208 as a means to link job participants back to the one-stop center to ensure area-wide service.

Department Response: The Department has determined that the commenter's suggested definition for "access points" would not provide enough clarity and consistency in the intent of this term. Instead, an applicable example of "access points" is contained in 20 CFR 678.310 (*see* Joint WIOA Final Rule), which states that, in addition to the requirement for a physical center in each local area where required one-stop partners must provide access to their programs, services, and activities, the one-stop delivery system may also provide access to programs, services, and activities through a network of eligible one-stop partners that provide at least one or more of the programs, services, and activities at a physical location or through an electronically or technologically linked access point, such as a library.

Comments: One commenter asked at which point registration must occur for purposes of Wagner-Peyser Act accountability.

Department Response: The Department understands the commenter is referring to the point performance accountability begins when they asked about registration. For the core WIOA programs, of which the ES system is one, performance accountability begins after a determination of eligibility and an individual receives a service beyond a self-service or information-only service consistent with 20 CFR 677.150(a) (*see* Joint WIOA Final Rule) and § 680.110. For the Wagner-Peyser Act, which is a program that provides 'universal access,' there are no eligibility criteria. All job seekers meet the eligibility criteria of the Wagner-Peyser Act, so for performance accountability purposes, it is when an individual becomes a "participant" as discussed in part 651 and 20 CFR 677.150(a). An individual needs to receive a service beyond self-service or information-only services either in person or remotely through virtual services in order to be considered a participant in 20 CFR 677.150(a).

Comments: Noting that proposed § 652.208 appears to contradict regulations in other sections by use of the word "may," some commenters urged the Department to ensure that regulations governing how career services are delivered are consistent for all sections.

Department Response: The word "may" is used in § 652.208 to communicate that the States have different methods by which they may choose to deliver services under the Wagner-Peyser Act. This is consistent with the different options in delivering services under other WIOA title I programs. Regarding the consistency between Wagner-Peyser Act services and career services in other programs, the Department notes that the primary function of the Wagner-Peyser Act under sec. 7(a) is to provide labor exchange services to job seekers. Labor exchange services are considered a type of career services under WIOA, and other WIOA career services may be provided consistent with the Wagner-Peyser Act regulations at § 652.206, or through other programs.

Section 652.209 What are the requirements under the Wagner-Peyser Act for providing reemployment services and other activities to referred unemployment insurance claimants?

Comments: Several commenters recommended that § 652.209(b)(2) should include developing and documenting reemployment plans as another reemployment services activity provided by ES staff.

Some of these commenters stated that the reemployment plan is a component of the Worker Profiling and Reemployment Services (WPRS) and Reemployment and Eligibility Assessment (REA) programs, and consists of an agreement between the claimant and the SWA that requires participation by claimants in selected reemployment services. Commenters observed that in those programs the failure of the claimant to agree to, attend, or satisfactorily complete a plan may result in the denial of benefits. A State agency asked for clarification regarding how the use of Wagner-Peyser Act funds to support reemployment and related services to UI claimants fits with the State's REA and Reemployment Services and Eligibility Assessments (RESEA) programs. In particular, this

commenter asked if a claimant starts with UI versus ES, whether the State can assist them in a comprehensive center.

Department Response: Providing assistance to UI claimants in the development of a reemployment plan is not just for claimants served by the RESEA or the WPRS program, but can be for any unemployed worker, and providing such assistance is an allowable Wagner-Peyser Act cost. The Department plans to address these issues in guidance.

Wagner-Peyser Act funds may be used to support reemployment services to UI claimants fits with the State's RESEA program, States have considerable flexibility to effectively leverage these two funding sources. The Department notes that not all States have RESEA programs and RESEA only serves a small percentage of UI claimants. Therefore, the Department expects that Wagner-Peyser Act funds will be used to serve all UI claimants more broadly.

States have flexibility under UI and ES to provide services through a comprehensive center. Two activities that can be funded with either funding source are conducting eligibility assessments and reviewing compliance with the State's work search requirements as a condition of UI eligibility.

Comments: Two commenters disagreed with the proposed requirement that reemployment services provided by State agencies must include conducting eligibility assessments and referring UI claimants to and providing application assistance for training and education resources and programs. Stating that WIOA does not require including these services as required reemployment services provided to UI claimants but merely requires that when these services are provided, States must use Wagner-Peyser Act sec. 7(a) funds to pay for them, these commenters stated that proposed §§ 652.209 and 652.210 go beyond what is in the Wagner-Peyser Act and reduce States' flexibility in designing reemployment services. Expressing concern that activities for UI claimants should not pull ES staff from providing career services and other MOU responsibilities, one commenter recommended that the 20 CFR part 652, subpart C regulations emphasize that both basic career services and reemployment services must be provided under ES.

Department Response: The approach the Department is taking is to serve UI claimants and other unemployed workers consistent with the approach that existed under WIA, and will be continued under WIOA. States must have the capacity to deliver these services as part of the Wagner-Peyser Act services. However, it is also the Department's intent to provide States with flexibility to leverage UI funds, ES funds, and RESEA funds, in States with RESEA programs, for these purposes and will clarify that flexibility in future guidance.

Comments: One commenter requested clarification regarding "referrals and application assistance" for training and education resources in proposed § 652.209(b)(3), asking whether ES staff will be required to provide application assistance for Pell grants and other student assistance grants.

Department Response: The Department has determined that the language in the Wagner-Peyser Act sec. 7(a)(3), as amended by sec. 305(b) of WIOA, regarding providing UI claimants with referrals to and application assistance for training and education programs is clear; no change was made in the regulatory text. Because training and education program application processes vary in complexity, the Department chooses not to be overly prescriptive, giving States flexibility with regard to implementing this requirement.

Comments: Another commenter asked whether the Profiling Reemployment Program (PREP) and the RESEA programs would satisfy the requirement to provide "reemployment services and other activities" to UI claimants.

Department Response: The Department assumes the Profiling Reemployment Program referenced in the comment is a State name for the Federally required WPRS program. Neither the RESEA program nor the WPRS program fully satisfies the requirement to provide reemployment services and other activities to UC claimants. The RESEA program is a relatively small temporary program that currently serves only a small percentage of UI claimants and is not operational in all States. The WPRS program is similarly small in scope. The Department will clarify this issue in future guidance. No changes were made to the regulatory text in response to these comments.

Comments: Stating that UI claimants are core customers of the ES, one commenter expressed support for the proposed expanded definition of "enhanced career services" in the one-stop centers to include assistance with UI claim filing and eligibility assessments. This commenter discussed recent occurrences of UI claimants flooding one-stop centers seeking help with claim filing because they are unable to file claims remotely during periods of service disruption or seasonally high unemployment.

Department Response: The Department notes the commenter's support and no change was made to the regulatory text.

Section 652.210 What are the Wagner-Peyser Act's requirements for administration of the work test, including eligibility assessments, as appropriate, and assistance to unemployment insurance claimants?

Comments: Expressing concern that "necessary guidance and counseling" is a very intensive service, a few commenters requested clarification about what is required under this term, and recommended that the Department make clear that using technology to provide services remotely is allowable.

Department Response: The Department acknowledges the commenters' concerns that "necessary guidance and counseling" can be an intensive service. This particular section of the regulation only applies to UI claimants "requiring assistance," and, therefore, it is not the entire universe of claimants. If the claimant "requires assistance," he/she is likely to need staff-assisted services. The Department intends to address this in future guidance.

Comments: One commenter asked who would administer the work test and eligibility assessments and to what degree are States required to assist UI claimants if they are a call center State. Another commenter asked whether the services provided in the WPRS and the RESEA programs would satisfy the requirements of § 652.210.

Department Response: With regard to using Wagner-Peyser Act resources to support the work test and eligibility assessments, the Department is consistent with the approach that existed under WIA, and will be continued under WIOA; this approach requires that States have the capacity to deliver these services as part of the Wagner-Peyser Act endorsement services program. It is also the Department's intent, however, to provide States with flexibility to leverage UI funds, Wagner-Peyser Act funds, and RESEA funds in States that operated RESEA programs for these purposes, and will clarify that flexibility in future guidance.

Neither the RESEA program nor the WPRS program fully satisfies the requirement to provide reemployment services and other activities to UC claimants. The RESEA program is a relatively small temporary program that serves currently only a small percentage of UI claimants and is not operational in

all States. The WPRS program is similarly small in scope. This will be clarified in future guidance from the Department.

Section 652.211 What are State planning requirements under the Wagner-Peyser Act?

The Department received only supportive comments on this section, so no changes were made to the regulatory text.

Section 652.215 Do any provisions in the Workforce Innovation and Opportunity Act change the requirement that State merit staff employees must deliver services provided under the Wagner-Peyser Act?

Comments: Several commenters requested that the Department continue to allow the exemptions for Massachusetts, Colorado, and Michigan from the merit-based staffing requirements under sec. 3(a) of the Wagner-Peyser Act that the Secretary of Labor granted prior to WIA. According to some of these commenters, because the exemptions pre-date WIA, WIOA does not specifically address or rescind the merit staff exemptions granted under the Wagner-Peyser Act, and the Department's WIOA NPRM was silent on the status of the exemptions, the existing State merit staff exemptions for the demonstration sites remain in full effect. Some commenters discussed how their one-stop operators chartered under the existing exemption are performing well and have met or exceeded performance standards.

One commenter said that in some of the Massachusetts local areas, Wagner-Peyser Act services are provided by State employees (employed by the State university) and that the State university meets all the requirements of merit staff, although it is not part of the SWA. This commenter recommended that the Department allow any State employees currently providing Wagner-Peyser Act services whose employing agency meets the definition of merit staff (5 CFR part 900) to be able to continue providing those services. According to this commenter, allowing these employees to continue providing Wagner-Peyser Act services would meet all of the objectives associated with the Department's State merit staffing requirement.

Two commenters cited a Department comparative evaluation of the three merit staff exemption States that they asserted did not conclude that alternative delivery was improved, and suggested that, if one of the three demonstration States ceases using non-State government staff, the temporary demonstration authority should lapse and not be further authorized by the Department.

Several other commenters indicated that § 652.215 should re-affirm that no additional demonstrations of alternative delivery of Wagner-Peyser Act services by non-State government employees should be authorized. Another commenter requested that § 652.215 specify whether additional demonstrations would be authorized.

Some commenters urged the Department to remove the State merit staffing requirement from the Final Rule or, at a minimum, allow for a waiver whereby States can apply to "opt out" of the requirement. These commenters stated that given that the "core services" under WIA, the "career services" under WIOA and the "employment services" under the Wagner-Peyser Act are essentially the same services, there no policy or economic rationale for maintaining a State merit staff requirement in the ES program while city, county, and non-governmental employees simultaneously provide the same services in the WIOA programs. According to these commenters, the *Michigan* v. *Herman* court ruling (81 F. Supp. 2nd 840 (W.D. Mich. 1998)) established that continuing or eliminating the merit staffing policy was at the discretion of the Department, meaning that the Department could modify or eliminate the merit staffing policy simply by changing its regulations.

Department Response: The Department acknowledges the varying concerns and points of view regarding the State merit staffing requirement. The benefits of merit staffing in promoting greater consistency, efficiency, accountability, and transparency have been well established, and the Department intends to continue Wagner-Peyser Act merit staffing requirements under WIOA. To further clarify the merit staffing requirement, the Department, as noted above, has replaced the preamble language that was duplicated inadvertently in the NPRM with the WIA regulatory text of § 652.215, which is not different substantively from the preamble description in the NPRM. The only change in the regulatory text from that used in that section of WIA is that in place of the original last sentence from WIA regulations at § 652.215, the Department has revised the last sentence to read: "No additional exemptions, other than the ones previously authorized under the Wagner-Peyser Act as amended by WIA, will be authorized." The Department does not consider this a substantive change from the language in the WIA version of § 652.215 since the last sentence in the WIA regulations at § 652.215 was that "No additional demonstrations will be authorized."

Section 652.216 May the one-stop operator provide guidance to State merit staff employees in accordance with the Wagner-Peyser Act?

Comments: In response to the Department's request for comments about whether any other changes are needed to allow one-stop operators to ensure the efficient and effective operations of the one-stop center, some commenters urged that the purview of one-stop operators over ES staff should not be expanded because it would undermine the impartial and unbiased delivery of public labor exchange services to job seekers and employers throughout the State. Some of these commenters stated that just as UI staff members located in one-stop centers are not under the authority of non-State government management, so too should ES staff not be under the authority of private entity one-stop operators. These commenters reasoned that undue influence or pressure by non-State government operators could adversely affect the integrity of the labor exchange process and undermine the integrity of work test activities that are mandated under the Wagner-Peyser Act.

Some commenters expressed concerns that a mandatory competitive process for choosing operators would increase the chance for private entities as operators overstepping their span of control over State agency staff from guidance to operational direction for ES programs. These commenters urged the Department to make clear in the regulations that the role of operators should not be management of other entity program staff and especially of processes operated by State merit staff.

Some commenters expressed support for this proposed section.

Department Response: The Department clarifies that the regulations for this section did not expand the purview of one-stop operators over State merit staff. These regulations are unchanged from before WIOA, with the exception of an added reference to § 678.500 (*see* Joint WIOA Final Rule), which provides the requirements for the local MOU.

Regarding concern about the competitive process for choosing operators and its impact on guidance to and oversight of State merit staff, the Department reiterates that one-stop operators only may provide State merit staff employees guidance that is programmatic in nature regarding the provision of labor exchange services,

and such guidance must be consistent with the Wagner-Peyser Act, local MOU, and collective bargaining agreements. All personnel matters remain under the authority of the State agency. No changes were made to the regulatory text in this section.

6. Subpart D—Workforce and Labor Market Information

Overarching Comments on Part 652, Subpart D

Comments: In the event wage record reporting requirements are changed, one commenter emphasized the importance of a strong educational effort tailored towards State agencies and employers on new data elements and adapting data systems.

Department Response: The Department agrees with the need to provide extensive education with regard to accessing wage record data and is issuing guidance on this issue, and will provide necessary technical assistance.

Comments: One commenter asked for clarification regarding the Workforce Information Advisory Council's (WIAC) role under WIOA, including whether the Council is involved in developing State Plans or whether it is an independent activity.

Department Response: The WIAC will provide input and recommendations regarding Unified and Combined State Plans, but it will not be involved in developing them.

Comments: One commenter asked about the references to work with other "Federal agencies" in §§ 652.300 and 652.302; in particular, to which agencies does this term refer and how will this partnership be tied to the Federal WIOA process (if at all)?

Department Response: The Department has determined it is not necessary to list the Federal and State agencies that participate in the WLMIS, because it is inadvisable to create a list that may change over time based on changes in agency data collection and data sharing policies and procedures.

Comments: One commenter suggested that one area needing additional work is comparing real-time LMI data with State and local area job vacancy surveys to better understand labor market operations. This commenter urged that Federal support must be continued at adequate levels for key infrastructure groups, such as Analyst Resource Center (ARC), Local Employment and Wage Information Systems (LEWIS), and Projections Managing Partnership (PMP). Another commenter urged the Department to require that improvements to the WLMIS include a more effective and more widely used national job advertising system that allows employers to quickly and easily post job openings to any and all one-stop centers located in regions from which they would hire.

Department Response: The Department also acknowledges the commenter's concern regarding adequate Federal funding; however, funding levels are determined by Congress and cannot be resolved through this regulatory process.

The WLMIS already includes or directs employers and job seekers to some job-posting tools, such as the National Labor Exchange (NLX), which allows employers to request that their job openings be posted nationwide.

Comments: One commenter recommended that UI records be available to NFJP grantees.

Department Response: The Department is reviewing the needs for wage record access by a wide array of public workforce system grantees and is working with States on mechanisms to provide aggregate performance data, including through systems designed to facilitate data sharing of wage record information.

Section 652.300 What role does the Secretary of Labor have concerning the Workforce and Labor Market Information System?

Comments: Expressing concerns about the inability to confirm job matches in neighboring States, one commenter stated that accuracy on WIOA performance indicators would be greatly improved if the Department encouraged and supported sharing of UI data across State lines. This commenter encouraged a Department-led initiative for data exchange in multi-State economic and workforce regions. Similarly, a commenter encouraged the Department to facilitate a timely process for Wage Record Interchange System (WRIS) renegotiation to allow States to more easily exchange wage records across State lines and improve overall performance. The letter also urged the Departments of Labor and Education to issue joint guidance on how to match administrative data from education, training, and wage systems while maintaining important privacy protections, such as those provided under the Family Educational Rights and Privacy Act (FERPA) and UI confidentiality regulations.

Department Response: The Department is working with States on improved mechanisms to provide wage data through systems designed to facilitate data sharing of wage record information. The Department also is exploring the feasibility of providing cross-State data to enable States to produce better labor market information, such as labor shed analysis in regions that cross State borders.

The Departments of Labor and Education are issuing joint guidance with regard to use of wage data for performance in the context of the confidentiality requirements for the use UI wage record data and education data under FERPA.

Comments: One commenter expressed support for the proposed language at § 652.300 that codified the WLMI requirements in WIOA and created a platform for their implementation. Regarding the codification of the Secretary's duties related to "continuous improvement" of the WLMIS, a commenter stated that there is no clear definition of "continuous improvement" and asked how the Secretary will determine what is considered an improvement and how much funding will be made available to provide measurable improvement of local area LMI. Another commenter similarly stated the importance that adequate funding be maintained for LMI programs to produce the information required to support WIOA under part 652, subpart D.

Department Response: The Department understands the importance of identifying what is considered "continuous improvement" as it pertains to the WLMIS. As a result, § 652.300(a) has been updated to reflect that, "The Secretary will consult with the Workforce Information Advisory Council on these matters and consider the council's recommendations." This regulatory text contemplates using the WIAC consultation process to inform the continuous improvement of the WLMIS. The Department also acknowledges the comments regarding funding; however, funding levels are determined by Congress and cannot be resolved through this regulatory process.

Comments: A commenter suggested that, in § 652.300(b), the Department add a reference to or text from 29 U.S.C. 49*l*-2(c) concerning the Secretary's responsibility to prepare a 2-year plan for the WLMIS.

Department Response: The Final Rule has been updated to reflect this responsibility, adding the following language: "Prepare a 2-year plan for the workforce and labor market information system, as described in the Wagner-Peyser Act sec. 15(c), as amended by WIOA sec. 308(d)."

Section 652.301 What are wage records for purposes of the Wagner-Peyser Act?

Comments: In objecting to the proposed changes in the wage record confidentiality provisions at 20 CFR part 603, a couple of commenters explained that providing wage records to educational entities creates too many opportunities for mistaken use or misuse of UI confidential information to be of benefit to the State's need for efficiency and integrity in performance reporting. These commenters asserted that the inclusion of the Federal Employer Identification Number (FEIN) and availability of employer name and address only creates the opportunity for training providers to misuse that information as part of direct marketing campaigns. These commenters asserted that FEIN data elements are not essential to the calculation of common measures, because a unique identifier for each employer could be a State UI account number instead. Moreover, these commenters suggested that the only reason to include a FEIN as part of a State wage record definition is the capacity to integrate wage records into a national database.

Department Response: The Department is committed to ensuring the confidentiality of UI wage data. The regulations in 20 CFR part 603 establish the permissible disclosures and allowable uses of the data and include non-disclosure requirements. These requirements must be embedded in the MOU between the State agency that collects wage record data and the entity that receives the data in accordance with the regulation. The Department notes that many public educational institutions were already able to access wage record data and, therefore, does not consider the more explicit identification of public institutions of higher education as a "public official" to be a significant expansion of entities that are permitted to receive the data.

With regard to the concern for the use of the FEIN, the commenter is correct that the FEIN is not necessary for performance purposes; it has the potential to be valuable in the context of creating labor market information. No changes were made to the regulatory text in response to these comments.

Section 652.302 How do the Secretary of Labor's responsibilities described in this part apply to State wage records?

Standardizing Definitions of Wage Information Elements

Comments: Commenting that standard definitions would help wage records be more consistent across States, a few commenters expressed support for the proposed language at § 652.302 that directs the Department, in consultation with other Federal agencies, States, and the Workforce Information Advisory Council, to develop standard definitions for wage records and help improve their collection and reporting. A commenter stated that standard definitions are the most critical potential contribution of any Federal regulations, both from the perspective of employers (for whom diverse definitions create complexity in recordkeeping systems) and for the national LMI system, which also faces complexity and uncertainty if core elements are defined differently by States. Some commenters noted the difficulty of standardizing definitions, emphasizing the need for substantial and ongoing outreach, guidance, training, and audit support for employers to implement them correctly.

This commenter also discussed how enhancement of wage records could involve considerable costs to update the systems, while one other commenter indicated that there could be efficiencies, costs savings, and reduction in reporting burden if systems used by States were standardized, rather than needing to contain customized elements for each State. Another commenter added that standard definitions would require changes to Federal law and/or regulations, which would likely necessitate changes to State laws and/or regulations.

Several commenters expressed contrasting views on the workload burden of wage record changes on both State workforce agencies and employers, some saying it would reduce the burden and others saying it would increase it and also inquiring on the source of funds for the costs incurred to make such changes.

Department Response: The Department acknowledges the positive comments concerning standardization of data definitions for wage record data and improved process for collection of the data. The Department notes that moving to standardized definitions and new reporting requirements for wage record data will involve some burden on employers, payroll associations and other third-party administrators, and States, and it will also require resources to support it. Therefore, the Department is committed to approaching this effort in a highly inclusive and consultative manner that recognizes the realities of the changes that will need to be made by all the impacted stakeholders and the resources required to accomplish the change. The Workforce Information Advisory Council's work may also help inform this effort. Noting that there are significant benefits to achieving standardization of data definitions and reporting processes, the Department made no changes to regulatory text in response to these comments.

New Wage Information Data Elements

Comments: While acknowledging the potential benefits of receiving additional information through the wage record reporting process, some commenters urged the Department to consider the costs and potential burden of any change to wage record reporting for both employers and State agencies. These commenters and others suggested that increased data elements could result in missing or inaccurate data resulting in costs for State agencies to follow-up on rejected wage reports.

When considering additional data elements, one commenter cautioned that the Department should examine whether certain data are already being provided in some other format (*e.g.*, new hire reporting) such that requiring as part of quarterly wage records could create duplicative reporting requirements.

Two commenters expressed concerns that more onerous reporting requirements would decrease timely filing compliance that could make it more difficult to set up timely and accurate initial monetary determinations, which could lead to an increase in improper payments.

One commenter asked for clarification regarding whether new data that might be added to wage record reports would be governed by different confidentiality standards (other than 20 CFR part 603).

Another commenter urged the Department to include all impacted stakeholders in the review of the costs and benefits of enhancing wage records. Similarly, one commenter encouraged the Department to seek employer input on any changes to the wage records process and to add employers to the list of stakeholders with which the Secretary is required to consult included in § 652.302(b).

Department Response: The language in the preamble of the NPRM with regard to the potential for adding data elements to wage records simply signaled the Department's intent to continue exploration of adding new data elements to wage records to support improved labor market information. It acknowledged the need for continued work with the Workforce Information Advisory Council and consultation with the full range of stakeholders. There also was an acknowledgement that to implement a requirement for new data elements would require legislation.

There is no regulatory text on this issue; therefore, a change is not necessary.

Section 652.303 How do the requirements of part 603 of this chapter apply to wage records?

The Department received only supportive comments on this section. No changes were made to the regulatory text in this section.

O. Part 653—Services of the Wagner-Peyser Act Employment Service

In subparts B and F, the Department is implementing the WIOA title III amendments to the Wagner-Peyser Act, as well as streamlining and updating certain sections to eliminate duplicative and obsolete provisions. The Department is also updating the regulations to maintain consistency with the Judge Richey Court Order ("Richey Order"), *NAACP* v. *Brennan,* 1974 WL 229, at *7, as it pertains to services to migrant and seasonal farmworkers.

1. Subpart B—Services for Migrant and Seasonal Farmworkers

Section 653.102 Job Information

The Department made several changes to § 653.102, including a requirement that State Workforce Agencies (SWAs) make job order information conspicuous and available to migrant and seasonal farmworkers (MSFWs) ". . . by all reasonable means" rather than "in all local offices" to reflect the obligation of State agencies to contact MSFWs who are not being reached by the normal intake activities including at their working, living, or gathering areas to explain the services available at the local one-stop center.

Comments: One commenter suggested the Department add a bulleted list to provide clarification on what is meant by "all reasonable means."

Department Response: In order to maintain flexibility for the Department and SWAs to continue to serve MSFWs, the Department will provide guidance on what is meant by making job order information conspicuous and available by "all reasonable means." No changes were made to the regulatory text in response to this comment.

Section 653.103 Process for Migrant and Seasonal Farmworkers To Participate in Workforce Development Activities

Comments: One commenter asked for clarification regarding the § 653.103(b) requirement for SWAs to ensure MSFWs who are English Language Learners (ELLs) receive, free of charge, language assistance necessary to afford them meaningful access to the programs, services, and information offered by one-stop centers. Specifically, this commenter asked whether this would require access to interpreters or that an interpretive language phone line should be made available.

Department Response: SWAs must satisfy this requirement by making interpretive language phone lines available and free of charge to the individual who needs or requests such services. See Executive Order 13166 ("*Improving Access to Services for Persons with Limited English Proficiency*") and TEGL No. 26–02 ("*Publication of Revised Guidance Regarding the Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient (LEP) Persons*") for further guidance.

Section 653.107 Outreach and Agricultural Outreach Plan

Comments: One commenter urged the Department to ensure all State Monitor Advocate (SMA) and outreach staff full-time equivalent (FTE) efforts are exclusively dedicated to MSFW services as detailed in the Agricultural Outreach Plan (AOP). To ensure MSFWs receive dedicated staff effort and the corresponding benefits, this commenter suggested requiring States to track personnel time via payroll timesheets and report that time to the Department to compare actual MSFW time with the FTE specified in the AOP.

Department Response: The regulations at § 653.108(d) provide that the SMA must work full-time on monitor advocate functions. It further requires that any State that proposes less than full-time staff dedication, demonstrate to its Regional Administrator that the SMA function can be effectively fulfilled with part-time staffing. As such, § 653.108(a) explains "The State Administrator has overall responsibility for State Workforce Agency self-monitoring." Such regulations are meant to ensure the SMA is devoted to all appropriate activities on a full-time basis. Furthermore, the regulations at § 653.107(a)(4) require that the 20 States with the highest estimated year-round MSFW activity to assign full-time, year-round staff to conduct outreach duties. The assignment of staff must be made in accordance with State merit staff requirements. The Secretary will identify the 20 States with the highest estimated year-round MSFW activity in guidance. These same regulations require the remainder of the States to hire year-round part-time outreach staff and, during periods of the highest MSFW activity, to hire full-time outreach staff. The Department does not deem it necessary for a SWA to track dedicated MSFW personnel time via payroll timesheets and report that time to the Department. In light of the State Administrator's requirement for self-monitoring, however, if an individual knows the State Administrator is not requiring these provisions, and a formal variance has not been granted for SMA part-time status, the individual must inform the Regional Administrator and the Regional Monitor Advocate (RMA) for appropriate action.

Furthermore, the provision of employment and training services to MSFWs is the responsibility of the SWA through its local one-stop centers, and is not exclusively the responsibility of the SMA or the outreach workers. This is made explicit through the mandates of the Richey Order, where it states, "The Federal and State monitoring system reviews on a continuous basis the services provided to MSFWs, as well as the benefits and protections to MSFWs, the functioning of the Complaint System, and the compliance of State ES offices with all applicable laws, regulations, and directives."

Section 653.107(a) State Workforce Agency Outreach Responsibilities

Comments: Several commenters supported the incorporation of the Richey Order language to "employ an adequate number of outreach workers" into § 653.107(a)(1). Although the language in proposed § 653.107(a)(1) and (4) articulates an expectation for the SWA to assign outreach staff, other commenters expressed concern that the language does not provide a threshold, which these commenters explain could allow SWAs the ability to reduce staffing levels below one MSFW outreach FTE per significant MSFW office due to reduced availability of resources. For this reason, the commenters requested the Department provide clarification on what is meant by the term "adequate."

Department Response: The Department interprets the term, "adequate" to mean a sufficient number of staff who must locate and contact MSFWs who are not being reached by the normal intake activities conducted by the ES offices. The Department does not intend the term "adequate" to mean that a SWA should reduce the number of outreach workers hired—if anything, a SWA may need to bring more outreach workers on board to meet the needs of MSFWs in the State or work collaboratively with partners (pursuant to collaborative agreements) to ensure satisfactory outreach activities are satisfied. The Department acknowledges that each State allocates Wagner-Peyser

Act funds in accordance with its respective needs in serving MSFWs. No change was made to regulatory text in response to these comments.

Comments: One commenter asked whether the provision to hire an adequate number of outreach workers means that all States, no matter what their MSFW population, must have outreach workers. This commenter asserted that this would be difficult in a State where MSFW activity is low and concentrated for a short duration of time in one area of the State, but then is spread out in isolated remote areas far from each other. Stating that interns make good outreach workers, this commenter asked if interns could meet the criteria for hiring adequate outreach workers.

Another commenter requested clarification regarding appropriate funding for year-round part-time staff and specifically whether Wagner-Peyser Act funds would pay for it under career services. This commenter also asked that the Department allow non-top 20 States to use discretion as to what times of year in their regions would be appropriate to hire outreach workers, if at all.

Department Response: All States (significant and non-significant) are required to hire outreach workers to locate and contact MSFWs who are not being reached by the normal intake activities conducted by the ES offices. Each non-significant State must determine, through fact-based research, which time of year hosts the peak number of MSFWs, and the State must hire full-time outreach staff during such periods. Wagner-Peyser Act funds must be used to hire such outreach workers. Correspondingly, the Department notes § 653.107(a)(3), outlines the provisions for hiring outreach workers. Under these provisions, the SWAs must seek to hire qualified outreach workers through merit system procedures. Because interns are almost never hired according to merit system procedures, hiring interns would generally not meet the criteria of hiring adequate outreach workers.

Comments: One commenter recommended revising the first sentence of § 653.107(a)(1) to read, "Each State agency must employ an adequate number of outreach workers to conduct MSFW outreach in their service area local ES offices that serve a significant number of MSFWs." This commenter reasoned the Richey Order mandated State agencies employ an adequate number of staff and assign them to ES offices that serve a significant number of MSFW workers.

Department Response: The Department has determined the language at § 653.107(a)(1) requiring each SWA to employ an adequate number of outreach workers to conduct outreach in its service areas is sufficient and does not need further clarification. As required in the Richey Order, it is the Department's responsibility to deliver to MSFWs on a non-discriminatory basis all services, benefits, and protections authorized by law and required by Department regulations, to extend coverage of local job order information to rural areas, and to provide MSFWs with assistance to enable them to use such information on a non-discriminatory basis.

Comments: Numerous commenters expressed support for the § 653.107(a)(1) language that SWA Administrators must ensure SMAs and outreach workers coordinate their outreach efforts with WIOA sec. 167 (NFJP) grantees, public and private community service agencies, and MSFW groups. One of these commenters asserted that currently coordination is inconsistent and varies widely.

Department Response: The Department agrees that outreach workers' coordination with NFJP grantees is essential and that requirement is maintained in § 653.107(a)(1). The Department has also changed the word "should" to "must" in § 653.107(a)(2)(i) and (ii), to clarify that these aspects of SWAs' outreach efforts are required.

Comments: One commenter noted the text at proposed § 653.107(a)(3) appeared to be missing part of the last sentence (paragraph (a)(3)(iii)) because it dropped off with the word "and" following paragraphs (a)(3)(i) and (ii). This commenter asked if the intent was to remove the optional qualification of being racially or ethnically representative of the MSFWs in the service area and recommended that the Department maintain the "and/or" in the current regulatory language so that an outreach worker does not have to be both from an MSFW background and bilingual.

Department Response: Text in § 653.107(a)(3)(iii) was accidentally omitted from the NPRM. The text should read, "Who are racially or ethnically representative of the MSFWs in the service area." The Department has included this language (which is taken verbatim from the existing regulation and has not been altered) in the Final Rule. Additionally, the Department concurs with the commenters' recommendation to maintain "and/or" to allow for hiring outreach workers who may have one or more of the required characteristics but are not required to have all three. The regulatory text reflects these changes.

Comments: One commenter stated proposed § 653.107(a)(4) would strengthen the obligation of SWAs to hire dedicated MSFW outreach staff in part by eliminating the ability of a Regional Administrator to permit a SWA to deviate from this outreach-staffing obligation. In contrast, a different commenter objected to the proposed changes in this provision, stating States have limited resources and hiring outreach workers is no guarantee the State will achieve the goal discussed in the preamble to "ensure that States have a means to contact MSFWs who are not being reached by the normal intake activities conducted by the local ES offices." Because States are required to submit outreach plans annually, this commenter suggested that it should be sufficient to meet the intent of WIOA if the State submits an acceptable plan for providing the needed services given its particular circumstances and conditions, without the need to hire additional workers for this purpose.

Department Response: Section 653.107(a)(4) states that a SWA may not need to hire additional outreach workers if it is already meeting the needs of MSFWs in the State. Additionally, the Department does not consider the AOP to "be sufficient to meet the intent of WIOA." As is described at § 653.107(d)(2)(iii), the AOP requires a SWA to, "Describe the State Workforce Agency's proposed outreach activities including strategies on how to contact MSFWs who are not being reached by the normal intake activities conducted by the ES offices" and—as stated at § 653.107(d)(2)(iv)—to, "[d]escribe the activities planned for providing the full range of employment and training services to the agricultural community, both MSFWs and agricultural employers, through the one-stop centers." Such activities are anticipated activities/plans. The mechanism in place to ensure a State is meeting its outreach goals is self-monitoring and periodic reviews conducted by State, Regional, and the National Monitor Advocate, as discussed in § 653.108.

Section 653.107(a)(5) provides a requirement that a SWA must publicize the availability of ES "through such means as newspaper and electronic media publicity," and one commenter recommended the Department add "social media" as another way to publicize because it is the widest possible method to distribute information. Another commenter asked

whether it could use Wagner-Peyser Act funds to publicize the availability of ES.

Department Response: The Department considers social media to be included in electronic media. The Department plans to issue guidance on publicizing employment services and appropriate funding sources.

Comments: Regarding proposed § 653.107(a)(3), one commenter recommended that outreach staff qualifications include bilingual staff to serve monolingual farmworkers, staff to concentrate in rural agricultural areas, and to carry additional marketing/promotional materials to attract farmworkers to the job centers.

Department Response: The Department notes that § 653.107(a)(3) requires SWAs to hire and assign staff through merit system procedures, who are either: from MSFW backgrounds and/or speak a language common among MSFWs in the State and/or are racially or ethnically representative of the MSFWs in the service area. Additionally, § 653.107(a)(4) states, "All outreach staff must be multilingual if warranted by the characteristics of the MSFW population in the State, and must spend a majority of their time in the field." The Department also notes it will offer suggestions for outreach worker materials to provide MSFWs via technical assistance. No changes have been made in regulatory text in response to this comment.

Comments: In § 653.107(a)(4), commenters recommended the Department implement a minimum threshold of at least 50 percent MSFW outreach staff total hours that they must spend at places where MSFWs live, work, and congregate (outside of the outreach staff's local office). Stating that this is particularly important in the top 20 States with the highest estimated year-round MSFW activity, these commenters reasoned that due to strained resources, local managers increasingly rely on MSFW outreach staff to backfill for other positions that may reduce MSFW outreach staff's ability to reach MSFWs effectively.

Department Response: The Department notes the requirement at § 653.107(a)(4) whereby, "The 20 States with the highest estimated year-round MSFW activity, as identified in guidance issued by the Secretary, must assign, in accordance with State merit staff requirements, full-time, year-round staff to conduct outreach duties." Outreach duties mean those duties identified at § 653.107(b) and include traveling to locations where MSFWs congregate, as well as conducting follow-up activities. This means outreach workers will need to conduct outreach activities at the areas where MSFWs live, work, and congregate, as well as from the local ES office. When outreach workers are hired as full-time, year-round staff, they must dedicate all such time to outreach activities described at § 653.107(b). Outreach workers in States which are not classified as the top 20 significant States, who are hired as year round part-time outreach workers, may dedicate part of their time to other activities as required by the ES office so long as they are satisfying their outreach activities pursuant to § 653.107(b) on a part-time basis. No changes were made to regulatory text in response to these comments.

Section 653.107(b) Outreach Worker's Responsibilities

Comments: Many commenters expressed support for the inclusion of training on sexual harassment in § 653.107(b)(7). These commenters also suggested the Department consider expanding this provision to include similar language about human sexual coercion, assault, and human trafficking. One commenter recommended the Department include a provision requiring outreach workers provide MSFWs affected by sexual harassment with information about the full range of services available to them in the community, including sexual assault services, the U.S. Equal Employment Opportunity Commission (EEOC), law enforcement, and legal services. This commenter also suggested the regulatory text require outreach workers who become aware of possible sexual harassment to refer the information to the EEOC or other appropriate enforcement agency.

Department Response: The Department agrees that in addition to training outreach workers on how to identify and refer possible incidents of sexual harassment, training on similar issues such as sexual coercion, assault, and human trafficking is also key in helping to connect victims with appropriate resources and support networks. The Department has added such language to the regulatory text at § 653.107(b)(7). Regarding the suggestion for the Department to require outreach workers who become aware of possible violations to refer the information to the appropriate enforcement agencies, the Department notes that outreach workers' referral responsibilities are discussed at § 653.107(b)(6).

Comments: Two commenters objected to the NPRM's deletion of the requirement that "significant MSFW local offices should conduct especially vigorous outreach in their service areas," expressing concern that without the word "vigorous" some State agency employees might interpret this as not being a priority or a requirement.

Department Response: The Department's intention is not to signal a reduction in the required intensity of outreach activities because all outreach efforts must be vigorous. However, because commenters suggest the omission could be interpreted to make such a statement, the Department has decided to include the paragraph in the Final Rule text at § 653.107(b)(11).

Comments: One commenter suggested the requirement that outreach workers must explain to MSFWs information on other organizations serving MSFWs in their area (§ 653.107(b)(1)(iii)), and the regulatory text should include "information on other organizations serving MSFWs in their intended area of employment or permanent home."

Department Response: The Department agrees that such information should be provided when requested. Such information may be provided as a follow-up activity with an MSFW who has requested it. No change was made to the regulatory text in response to this comment.

Comments: One commenter stated the proposed § 653.107(b)(2) prohibition on outreach workers entering an employer's property or work area without permission of the employer, owner, or farm labor contractor should be reviewed. The commenter explained that outreach workers can enter workers' living quarters if they are doing an inspection for H–2A employers as part of the field inspection prior to 50 percent of the contract with the employer.

Department Response: The Department notes that SWA staff may enter MSFW working and housing areas during a field check pursuant to § 653.503. Furthermore, § 653.503(a) requires the SWA to notify an employer in writing of such field checks.

Comments: Also related to outreach worker access to employer sites, one commenter recommended the Department revise § 653.107(b)(2) to secure access rights of SWA outreach workers and to provide for a reasonable right of access for nonprofit organization outreach workers at employer-owned or employer-controlled housing. This commenter explained that the limitations on workers' right of access to conduct outreach proposed in the NPRM are more onerous than the 1980 regulations because the proposed language would expand the limitation from entering "work areas" to "an employer's property," which this

commenter stated would commonly include employer-controlled MSFW housing. The commenter concluded the Department offered no rationale for this substantial revision of the outreach worker access regulation in the NPRM, explaining that entry by outreach personnel onto employer property that is not a work area, such as MSFW housing and gathering areas, does not implicate the considerations that justify obtaining permission to enter work areas. The commenter proposed several reasons to support the need for expanded outreach worker right of access, including the following:

- Farmworkers in employer-controlled housing are uniquely vulnerable to exploitation and abuse.
- The law is unclear on the right of access by service providers
- Employers impede outreach workers' access to MSFWs, including via threats of violence, threats of arrest and prosecution and arrest.
- Ensuring nonprofit health, education, social, and legal service providers the right of access to MSFWs would directly further the central purposes of the Wagner-Peyser Act and WIOA.

In addition, based on the Department's justification of requiring "permission of the employer, owner, or farm labor contractor," the commenter suggested that the Department should add the phrase "as applicable" after the first use of the word "without" in § 653.107(b)(2). Incorporating all of its comments discussed immediately above, the commenter recommended specific language for § 653.107(b)(2), which it asserted appropriately balances the rights and responsibilities of employers, property owners, farm labor contractors, and SWAs.

Department Response: The Department notes that SWA staff may access MSFWs at their working and living areas through field checks and site visits. However, the Department has determined it is beyond the scope of this regulation to secure "reasonable" access rights for nonprofit organization outreach workers to enter employer-owned or employer-controlled housing. The Department additionally notes its intention was not to further limit outreach worker access to MSFWs; this was unintended. The Department has changed § 653.107(b)(2) to use the original language as included in the existing regulation at 20 CFR 653.107(j)(1)(v), except that the word "shall" is replaced with "must" throughout.

Comments: A commenter also urged the Department to clarify that, if a parcel of land or property serves as both a worksite/work area and housing for MSFWs, outreach personnel do not need to obtain permission from workers to enter the housing portion of such a parcel or property.

Department Response: Section 653.107(b)(2) requires outreach workers to obtain permission from workers before entering their living area and that they must comply with appropriate State laws regarding access.

Comments: In response to proposed § 653.107(b)(8), one commenter recommended the Department allow for MSFW outreach records to be maintained or reproduced by the State's official data collection system to avoid duplication of data entry.

Department Response: The Department has determined that State agencies may maintain and reproduce outreach records as they deem appropriate and in accordance with relevant records retention laws, since such laws vary by State.

Section 653.107(c) ES Office Outreach Responsibilities

Comments: One commenter recommended the Department exempt non-significant ES offices from the requirement to file with the SMA a monthly summary report of outreach efforts because they do not normally conduct outreach and the requirement would impose an unnecessary burden on those offices. Another commenter requested clarification on § 653.107(c) regarding whether all States must establish outreach programs, or that only those top 20 States with significant MSFW populations establish an outreach program and their local ES office managers must report on outreach activities to the SMA.

Department Response: The Department will not provide an exemption for non-significant ES offices from submitting the monthly summary report because it is important for the SMA to know what efforts all ES offices are making to locate and contact MSFWs. However, the Department notes that summary reports must be submitted for months when outreach is conducted. The Department concluded that maintaining this requirement as proposed will not impose an unnecessary burden on offices any more than what was already required at 20 CFR 653.107(n).

Section 653.107(d) State Agricultural Outreach Plan (AOP)

Comments: Several commenters urged the Department to incorporate language requiring SWAs consult with National Farmworker Jobs Program (NFJP) grantees or give NFJP grantees the opportunity to contribute to the AOP. One of these commenters stated that because these plans are far more important now, they should be treated with that significance. A commenter stated that the NFJP grantee community was required to review and comment on these plans under prior legislation.

Department Response: The Department concurs with commenters that SWAs must consult NFJP grantees and that the grantees have the opportunity to contribute to AOPs. The Department has changed paragraph (d)(3) to incorporate the language in the existing regulation at 20 CFR 653.107(d) back into the Final Rule. The Department made nonsubstantive updating changes to that language to make it consistent with the Final Rule. The Department also replaced the words "Regional Administrator" with "the Department" to be consistent with the new State Plan submission process described in 20 CFR part 676 (*see* Joint WIOA Final Rule). AOPs will now be submitted to the Department through a portal, along with the State Plans.

Section 653.108 State Workforce Agency and State Monitor Advocate Responsibilities

Comments: Two commenters expressed support for the removal of the requirement for SMAs to work in the State central office.

One commenter sought clarification on the § 653.108(g)(1) requirement whereby the SMA must conduct an "ongoing review" of the delivery of services and protections afforded by ES regulations to MSFWs by the SWA and local ES offices. Further, this commenter asked whether this requirement would apply to every State or to the top 20 designated States and whether the SMA must review each local ES office. Asking what "ongoing review" would specifically require, this commenter urged the Department to clarify which local offices must be reviewed annually, biannually, or less frequently.

Department Response: All SMAs are required to conduct the duties set forth in § 653.108—which apply to SMAs in both significant and non-significant States. This includes reviewing the data and reports submitted by local ES offices as they are submitted to the SWA. The Department further notes § 653.108(g)(3), which requires that all SWAs, "Ensure all significant MSFW one-stop centers not reviewed onsite by Federal staff, are reviewed at least once per year by State staff." Therefore, all significant offices must be reviewed at least one time per year if they are not reviewed by Federal staff.

Comments: One commenter suggested the Department revise § 653.108(i) to require local ES office managers transmit copies of the entire Complaint System log, rather than transmitting only copies of logs of MSFW complaints to be consistent with § 658.410 and because this information is required for reporting.

Department Response: The Department supports the suggestion and has revised the regulatory text at § 653.108(i) to require local ES office managers to transmit copies of the entire Complaint System log as required in § 658.140. Such a change will maintain consistency, as proposed by the commenter.

Comments: Regarding proposed § 653.108(k) and (l), several commenters expressed support for strengthening of the relationship between SMAs and NJFP grantees and coordinating their service delivery. Some commenters suggested the Department provide guidelines for the Memorandum of Understanding (MOU), as well as additional guidance and training for SMAs and NFJP grantees on their respective relationships, roles, and responsibilities. One commenter recommended the creation of an evaluation tool or feedback mechanism for NFJP grantees and the SMA.

Department Response: The Department will issue guidance for the Memorandum of Understanding (MOU) between the SMA and NFJP grantees and additional guidance and training for the SMA and NFJP grantees on their respective relationships, roles, and responsibilities.

Additionally, paragraph (1) has been changed to clarify the requirement to establish an MOU. It now makes clear that an MOU must be established between the SMA and the NFJP grantees, and the SMA may establish an MOU with the other organizations serving farmworkers.

Comments: Proposed § 653.108(s) required that the SMA prepare an Annual Summary, and some commenters suggested the Department require the summary be provided to NFJP grantees along with any service-related findings because the guidelines for the Annual Summary includes instances where the SMA would be summarizing and commenting on NFJP service delivery both explicitly (§ 653.108(s)(7)) and implicitly where NFJP is part of the one-stop center and the broader ES system. Another commenter similarly recommended the Department require the SMA to make the Annual Summary available to grantees. The commenter also suggested the Department require the SMA to provide grantees a template of the report in advance to ensure grantees collect pertinent information throughout the program year. Another commenter asked if the Annual Summary for the MSFW program could be included in the annual performance report required under WIOA sec. 116(d).

Department Response: While the Department fully supports increasing collaboration between the SMA and the NFJP grantees, it has determined that sharing the Annual Summary with the NFJP grantee is not required. Because some information contained in the Annual Summary may be for internal (State/Federal) government use only, the Department does not deem it in the best interest of the SWA to share such information. Regarding the suggestion for the Department to require the SMA to provide grantees a template of the Annual Summary in advance to ensure grantees collect pertinent information throughout the program year, the Department notes that such data collection may vary from State to State and may depend upon each State's MOU with the NFJP grantee. Therefore, the Department recommends each SMA come to an agreement with the NFJP grantee (through the MOU) about what data must be shared or collected. Additionally, the Department has determined the Annual Summary should not be submitted through the annual performance report process pursuant to WIOA sec. 116(d) because § 653.108(s) procedures will expedite the review process for those who need to analyze the reports.

Section 653.109 Data Collection and Performance Accountability Measures

Comments: A couple commenters recommended the Department revise the references to the pre-WIOA performance indicators. Another commenter noted that some of the proposed performance indicators in § 653.109 are not in line with the WIOA measures to track participants in unsubsidized employment in the second quarter after exit, participants in unsubsidized employment in the fourth quarter after exit, and median earnings. Therefore, this commenter recommended the Department bring those measures in line with WIOA to ensure consistency across all programs.

Department Response: The Department agrees and has changed § 653.109(b)(5), (6) & (7) to be consistent with the WIOA performance indicators listed in sec. 116 of the law.

The Department has also made a minor edit to § 653.109(b)(9), to add data on "apparent violations" to the list of data the SWA must collect. This is consistent with the data collection that the SWAs already perform. Additionally, the Department has added reference to the data required to be collected by the Combined Plans to § 653.109(d). The regulatory text already referenced the Unified Plans, and this change aligns the paragraph with the requirements of sec. 103 of WIOA.

Section 653.110 Disclosure of Data

Comments: One commenter recommended the Department revise § 653.110 to clarify that data and records relating to employer participation in the job service are only confidential in limited circumstances and that these regulatory disclosure requirements preempt State laws that render the records and data privileged or confidential. This commenter raised a 2015 court decision, *Texas RioGrande Legal Aid, Inc., et al.* v. *Range* (TRLA case), in which the Fifth Circuit found that current § 653.110 did not confer a specific right to obtain records, which was a rejection of the Departments of Labor and Justice position in the amicus brief the Departments filed in the case. Stating that the TRLA case gives the Department a clear road map of how it can remove all ambiguity from § 653.110, the commenter made specific suggestions for revisions of the regulatory text.

Department Response: Section 653.110 (a) states, "SWAs must disclose to the public, on written request, in conformance with applicable State and Federal law, the data collected by SWAs and ES offices pursuant to § 653.109" and § 653.109(f) requires SWAs to "(s)ubmit additional reports to the Department as directed." These reports are considered records, and they, as well as additional reports submitted by the SWAs to the Department as directed by the Department, must be disclosed to the public pursuant to § 653.109. In order to maintain flexibility as data collection evolves, the Department declines to specify specific required disclosures in this regulation. Additionally, the regulations at § 653.110(d) allow the SWAs to withhold from public disclosure intra-agency memoranda and reports (or parts thereof) and memoranda and reports (or parts thereof) between the SWA and the ETA, to the extent that they contain statements of opinion rather than facts, provided the reason for withholding is given to the requestor in writing. The regulations also allow the State to withhold documents or parts thereof, which, if disclosed, would constitute an unwarranted invasion of personal or employer privacy, if the reason for withholding is given to the requestor in

writing. The Department concludes that records are implicitly included in §§ 653.109 and 653.110.

The Department will address each of the commenter's requests for revisions as bulleted below.

• Include explicit language conferring a public right to obtain the records included in § 653.109. *Department Response:* The Department interprets the requirements for disclosure at § 653.110(a) to include those reports required at § 653.109(f) and memoranda and reports referenced at § 653.110(d).

• Revise § 653.110(a) to include all "records" as well as all "data," possibly including reference to a well-established definition of records such as the Freedom of Information Act's definition at 5 U.S.C. 552a(a)(4). *Department Response:* The Department does not deem it necessary to revise § 653.110(a).

• Include a right to all records related to employer participation in the job service, rather than only the data specifically enumerated in § 653.109. Alternatively, the Department could revise § 653.109 to include a requirement that State agencies retain the records underlying the data that section already requires those agencies to keep. *Department Response:* The Department will not make these changes because it would not place such requirements in the regulations without first requesting public input.

• Add a provision in § 653.110 that explicitly preempts States from enacting laws that would categorically render employer records identified in § 653.109 undisclosable as privileged and confidential. *Department Response:* The Department cannot make this change because it is outside the scope of what was originally proposed in the NPRM.

• Remove the language "or are otherwise privileged against disclosure" in § 653.110(d) that the Department proposed be added in the NPRM. The commenter stated that a court could construe this language to include State public records acts that render employer records privileged, confidential, or both. *Department Response:* The Department finds upon further reflection that the additional language has caused confusion and is unnecessary. The Department strikes the phrase from the Final Rule.

Section 653.111 State Workforce Agency Staffing Requirements

Comments: One commenter suggested the requirement in proposed § 653.111(b) for the State agency to hire sufficient numbers of qualified, permanent, minority staff in significant MSFW ES offices should apply only to significant MSFW States or significant MSFW areas. Another commenter asked whether this provision would require State job postings to include specifically hiring of "minorities" from MSFW backgrounds.

Department Response: The Department declines to change the regulatory text in response to this comment. Paragraph (b) of § 653.111 is not limited to significant MSFW States or areas; it applies to significant MSFW ES offices. Even in cases where a State or area is not deemed significant, there may yet be a significant number of MSFWs using or located near a significant ES office. The Department seeks to ensure such MSFWs have the resources they need to access ES services and significant offices which hire qualified, permanent minority staff may help facilitate such provision of services

Additionally, a SWA may utilize appropriate language from the Final Rule for the job postings.

2. Subpart F—Agricultural Recruitment System for U.S. Workers

Section 653.500 Purpose and Scope of Subpart

Comments: One commenter urged the Department to clarify what it considered imprecise language in § 653.500, stating the proposed language left unclear which sections of subpart F apply to U.S. farmworkers who apply for employment under clearance orders that are attached to applications for foreign temporary agricultural orders. This commenter suggested the Department confirm if the third sentence should read "This subpart affects all job orders for workers . . ." rather than, "This section affects all job orders for workers," which would ensure that the provisions of the Agricultural Recruitment System (ARS) apply to all clearance orders.

Department Response: The Department changed the regulatory text at § 653.500 to clarify that the purpose described in § 653.500 applies to this entire subpart F versus a single section. To the extent that the commenter was expressing confusion as to how this subpart applies to agricultural clearance orders seeking temporary foreign workers, the Department notes that this subpart is about the ARS, which is a system used to recruit U.S. workers for temporary, less than year-round farmwork. Part 655 of this chapter explains the process for hiring non-U.S. workers for this type of work.

Section 653.501 Requirements for Processing Clearance Orders

Comments: One commenter objected to the continuation of the requirement to recruit workers in three sequential steps: Locally, followed by intrastate recruitment, then interstate recruitment, if needed. This commenter stated the sequential process is inconsistent with proposed § 653.102, which directs State agencies make job order information available by all reasonable means, including the internet, labor exchange systems, and one-stop centers. This commenter suggested it might be discriminatory and inconsistent with the Richey Order to carry out a successive local, intrastate, and interstate recruitment for temporary agricultural jobs while all other jobs are broadcast at once through every available means.

Similarly, another commenter recommended the Department eliminate the ARS process because most States use Web-based, online job listing sites, which after 24 hours automatically upload job orders to the national level on two sites (US.jobs of the National Labor Exchange and JOBcentral). This commenter stated the ARS process is obsolete, outdated, burdensome, and time consuming. Further, the commenter suggested the ARS regulations need clarification if the ARS is to remain and recommended that, if retained, the ARS should be required only for significant MSFW States.

Another commenter suggested the Department update the part 653 ARS language to account for technological advancements in labor exchange systems.

Department Response: The Richey Order requires the Department to: (1) Extend coverage of local Job Bank order information to rural areas and provide MSFWs with assistance to enable them to use such information on a non-discriminatory basis; (2) Review all interstate job orders prior to approval for transmission and require all State and Federal offices processing such interstate job orders to comply with specific requirements; and (3) Require each State ES agency to review and process all intrastate job orders in accordance with the procedures and requirements set forth in sec. I–D of the Order.

Connecting employers with job seekers at the local level helps both parties, as there are fewer transportation and housing costs. This sequential process is particular for agricultural job orders and may not be appropriate for other employment sectors. Furthermore, agricultural work is typically rural and housing and transportation accommodations may be necessary to ensure the workers are able to access the appropriate worksite. For these reasons, the Department has determined job

orders should begin at the local level. Furthermore, the Department has determined it is required to facilitate a system by which job orders are cleared through intrastate, then interstate processes as required under the Richey Order.

In addition, the Department also deems it necessary for non-significant MSFW States to participate in ARS for three primary reasons: (1) Equality of opportunity: employers in non-significant States (just as significant States) must have the opportunity to hire U.S. workers through the ES system; (2) Uniformity of ES services: ARS is one of the many services offered through the ES system and should be offered to agricultural employers and individuals who seek agricultural employment in any State, regardless of its designation as a significant State; and (3) Requirement to maintain a system of clearing labor between the States: sec. 3(a) of the Wagner-Peyser Act mandates the Department assist SWAs in maintaining a system of clearing labor between the States which provides workers maximum opportunity to have access to agricultural jobs.

To reconcile the need to test the local labor market and subsequently test the intrastate and interstate clearance systems when using the internet, the Department recommends ES offices suppress employer information. Suppressing employer information means that a job seeker will need to contact the ES office in order to receive all pertinent information regarding the job and the ES office then has the opportunity to gauge the level of interest in the job from U.S. job seekers. It also allows the ES office to provide the job seeker with not only the employment opportunity specifically sought, but also information on all other services and opportunities offered through the center.

The Richey Order mandates the Department "require each State ES agency to review and process all intrastate job orders in accordance with the procedures and requirements set forth in section I–D of [the] Order" and to review "all interstate job orders prior to approval for transmission and shall require all State and Federal offices processing such interstate job orders to comply with the following requirements." The Department's step-by-step process in the regulations implements the mandates of the Order by ensuring job seekers and employers have access to ARS in a logical and organized manner.

Lastly, the Department agrees that the references to "State agencies" would be better clarified by the term, "State Workforce Agencies" or "SWAs." As such, the Department will replace the terms throughout the Final Rule. The Department has also edited § 653.501(c)(1)(ii) to make the regulatory text consistent with 29 CFR part 38.

Section 653.501(b) ES Office Responsibilities

Comments: One commenter submitted two recommended revisions for the agricultural clearance form prescribed by the Department (ETA Form 790) to require an employer to identify and provide contact information of the grower business for each worksite identified in the job order and, for those employers who will use the job order in connection with a future application for temporary employment certification for H–2A, to provide contact information for the person(s) who will perform recruiting activities for the job.

Department Response: The Department notes the Paperwork Reduction Act (PRA) provides the public an opportunity to submit comments and requests for revisions for the Department's forms, including ETA Form 790. The PRA process should be used to suggest changes to a specific form.

Further, the Department notes the ETA Form 790 is intended for the recruitment of domestic, U.S. workers and not for the recruitment of foreign workers. Instead, Form 9142A, H–2A Application for Temporary Employment Certification, addresses the requirement for employers seeking to hire foreign workers. The Department has determined the suggestion to include recruiter information for foreign workers would more appropriately be addressed through the PRA process for the Form 9142A. The Department welcomes such comments at that time.

Section 653.501(c) SWA Responsibilities

Comments: A few commenters objected to the language requirement at proposed § 653.501(c)(1)(i) stating it may limit the SWA's ability to effectively communicate job requirements (particularly with Management Information Systems [MIS] or job match systems that contain character limits) or may impact the look and format to make an announcement less visibly pleasing. Further, these commenters suggested the language in this section could be required on all job orders and that it should not be required on agricultural clearance orders alone.

Department Response: The language in § 653.501(c)(1)(i) is substantively the same language required at existing § 653.501(a) and (b). The only difference is "JS" is replaced with "ES." Therefore, there should be no additional burden placed on State agencies from what was originally required. The Department notes the language is already included in the ETA Form 790; as such, a SWA will not need to alter its internal systems to accommodate new/different language.

While no comments were received regarding § 653.501(c)(3)(i), the Department revised the regulatory text to clarify that order-holding office notification must be in writing and that email notification may be acceptable. This revision does not substantively change the notification requirement but it clarifies the intent of the requirement to make notification verifiable. This is consistent with the Department's response to the comment received on § 653.501(c)(3)(iv), described in the following paragraph.

Comments: One commenter recommended that § 653.501(c)(3)(iv) be changed to require an employer to provide notification in writing (which may include email) rather than the proposed language that requires employers to provide an assurance that they will notify the order-holding office or State agency by email and telephone immediately upon learning that a crop is maturing earlier or later or other factors have changed the terms of employment. This commenter reasoned that allowing notification by telephone could result in miscommunication as well as difficulties for a State agency to confirm that an employer provided appropriate notice if the employer states it made a call to the State agency. Additionally, this commenter suggested that any changes prompted by this comment may result in needed changes to § 653.501(d)(8).

Department Response: The Department notes § 653.501(c)(3)(iv) requires the employer to notify the order-holding office or SWA by "emailing *and* telephoning immediately upon learning that a crop is maturing earlier or later . . . ." This telephonic requirement ensures information is relayed most expeditiously in case the recipient is not checking his/her email. It also ensures there is written correspondence to confirm such notification.

As discussed earlier in § 651.10, the Department has decided to revise the definition of migrant farmworkers. While the Department did not receive any comments specifically relating to § 653.501(c)(3)(vi), the Department received comments referring to the definition of migrant farmworkers who are "unable" versus "not reasonably able" to return to their permanent

residence within the same day (regarding the definitions in § 651.10). The Department agrees with the commenters that "unable" appears more restrictive than intended. The Department has decided to use the words "not reasonably able" to return to a permanent residence, rather than "unable." To align changes in § 651.10 with § 653.501(c)(3)(vi), the Department revised the paragraph to use the term "not reasonably able."

Comments: One commenter urged the Department to elaborate on what "reasonable access" for outreach workers means in § 653.501(c)(3)(vii). In addition, this commenter recommended the Department modify § 653.501(c)(3)(vii) allowing nonprofit organization outreach workers to have reasonable access to MSFWs to perform general outreach activities, to meet with a worker who has requested such meeting, and to meet with the nonprofit organization's clients or customers. Two other commenters requested clarification on this provision, asking if the intent is for outreach staff to provide only outreach services to U.S. workers for clearance orders where a placement has been confirmed. These commenters stated such clarification would eliminate the SWA's ability to conduct outreach to H–2A clearance orders where a placement has not been made.

Department Response: The Department declines to define "reasonable access" in the regulatory text, however reasonable access means that outreach workers must be able to locate, contact, and interact with MSFWs at their worksites, living quarters, and gathering areas in order to be able to provide MSFWs with services and information pursuant to the outreach workers' duties outlined at § 653.107. Regarding the commenter's request for the Department to modify § 653.501(c)(3)(vii) to allow nonprofit organization outreach workers reasonable access to MSFWs to perform general outreach activities, to meet with a worker who has requested such meeting, and to meet with the nonprofit organization's clients or customers, the Department has determined it is beyond the scope of this regulation to secure "reasonable" access rights for nonprofit organization outreach workers and so is not amending the regulation to include such provisions. Regarding the request for clarification on whether the intent of § 653.501(c)(3)(vii) is for outreach staff to provide only outreach services to U.S. workers for clearance orders where a placement has been confirmed, the Department seeks to clarify the intent is not for outreach workers to only provide outreach services to U.S. workers. All outreach workers must follow the requirements set forth at § 653.107(b).

Comments: A few commenters requested clarification regarding "eligible workers," in § 653.501(c)(5), asking if the Department intends for the first week wage guarantee to be applicable to all workers referred (including local workers) or only those workers who live beyond the local area of intended employment (migrant workers).

Department Response: The eligible workers referred to in § 653.501(c)(5) are those identified at paragraph (d)(4): all referred farmworkers, farm labor contractors on behalf of farmworkers, or family heads on behalf of farmworker family members.

Comments: A few commenters also recommended the Department modify the last sentence of paragraph (c)(5) to align with ES complaint procedures, which could require an immediate referral to the Department's Wage and Hour Division (WHD). This sentence as proposed stated, "If an employer fails to comply under this section the order holding office may notify DOL's Wage and Hour Division for possible enforcement."

Department Response: The proposed language stating the order holding office "may" notify WHD was intended to allow the issue to be resolved at the local level without immediate referral to WHD. If the issue is not resolved at the local level within 5 business days, it must be referred to WHD for possible enforcement. The Department made no change to § 653.501(c)(5).

Comments: One commenter urged the Department to clarify the employer liability outlined in § 653.501(c)(5) applies to U.S. workers who are referred pursuant to H–2A clearance orders. Also relating to this provision, one commenter recommended the Department revise the first sentence to remove the "at least 10 working days prior" phrase to read, "If there is a change to the anticipated date of need and the employer fails to confirm with the applicant-holding office or the order-holding office, prior to referred workers departure, the employer must pay eligible workers referred through the clearance system."

Department Response: Section 653.501(c)(5) applies to any worker referred through the Agricultural Recruitment System. In response to the suggestion for the Department to revise § 653.501(c)(5), the Department has determined that maintaining the language as proposed is the best way to ensure that migrant workers have ample notice before departing their residence to begin work pursuant to the clearance order.

Section 653.501(d) Processing Clearance Orders

Comments: One commenter stated it has always been instructed that the H–2A precertification process mirrors the ARS process and that § 653.501 should be followed when recruiting and referring U.S. domestic workers to H–2A jobs. Two other commenters similarly expressed concerns with this language, asserting that because all clearance orders processed by their State are H–2A, the statement that this section does not apply to foreign temporary workers would eliminate the first week wage guarantee, which applied to all ARS orders under WIA, including those tied to H–2A. These commenters also expressed concern that the workers' rights brochure they use to comply with WIA rules would no longer be applicable to H–2A clearance orders and, thus, would be eliminated.

One commenter suggested the Department revise the first sentence of § 653.501(d) to read, "This *subsection* does not apply to clearance orders . . ." (rather than "section"), to clarify the exclusion applies only to paragraph (d). Asserting that additional confusion is created by the § 653.501(c)(5) pay guarantee reference to § 653.501(d)(4), this commenter stated that the inconsistent use of section and subsection make it difficult to read the intent of subpart F's various provisions. This commenter asserted there is no rationale for excluding clearance orders attached to H–2A orders from § 653.501(d) provisions other than clearance order transmitting-related provisions at § 653.501(d)(1) and (3), including the nondiscrimination criteria (§ 653.501(d)(2)), the date-of-need protections (§ 653.501(d)(4), (7), and (9)), and the mandate to local ES offices to provide workers with a list of workers' rights (§ 653.501(d)(11)). Stating the Department has a mandate to ensure that the employment of H–2A workers "will not adversely affect the wages and working conditions of workers in the U.S. similarly employed" (8 U.S.C. 1188(a)(1)(B)), this commenter expressed concern that these U.S. worker protections in the event of an unexpected or unannounced change in the date of need are vital to ensuring that H–2A employers follow through with their statutory obligation to hire qualified U.S. workers.

Department Response: Only § 653.501(d)(3) does not apply to clearance orders that are attached to applications for foreign temporary agricultural workers, pursuant to part

655, subpart B, as such clearance orders must be sent to the Chicago National Processing Center. The Department has clarified the regulatory text at § 653.501(d) by removing the statement "This section does not apply to clearance orders that are attached to applications for foreign temporary agricultural workers pursuant to 20 CFR 655 subpart B." from the opening paragraph of § 653.501(d), and inserting it at paragraph (d)(3), which clarifies that the approval process described in paragraph (d)(3) does not apply to clearance orders that are attached to applications for foreign temporary agricultural workers pursuant to 20 CFR part 655, subpart B, and that such clearance orders must be sent to the Chicago National Processing Center.

The Department notes that all steps and requirements for processing clearance orders at §§ 653.500 through 653.503 are intended for the recruitment of U.S. workers. However, U.S. workers may continue to be recruited once a job order becomes part of the H–2A process pursuant to § 655.135(d). The Department will issue guidance on the Agricultural Recruitment Process.

Comments: In response to the § 653.501(d)(1) requirement that the order-holding office must transmit a copy of the approved clearance order to the State agency, one commenter suggested the order-holding office should be required to transmit the completed clearance order to the SMA for approval and distribution to streamline the process and minimize the chance for errors. For similar reasons, this commenter also suggested the Department replace the § 653.501(d)(3) requirement for the ETA regional office to review and approve the order with a requirement for the supply State's SMA to review and approve the order within 10 working days. The commenter reasoned that regional offices often approve only to have supply States return the order with a denial, further delaying the order.

Department Response: The requirement to transmit the completed clearance order applies to the SWA and it is the SWA's decision whether the primary individual charged with processing clearance orders is the SMA or a different SWA employee. The Department has determined the Regional office is in an appropriate position to assess labor supply States based on the ES reports it receives from each State in its region. No change was made to regulatory text in response to this comment.

Comments: A few commenters recommended the Department remove proposed § 653.501(d)(4) because it places burdens on the job seeker to contact the applicant-holding office 9 to 5 days before the date of need to secure the first weeks wage guarantee and on the SWA to document such communication. One commenter recommended the Department revise this paragraph to read, "The applicant-holding office should notify referred workers to contact the applicant-holding office or the order-holding office to verify the date of need cited prior to their departure." This commenter stated this would allow for more flexibility due to the nature of the industry and would give the worker the most up-to-date information on the contract prior to departing.

Department Response: The Department has determined it cannot remove § 653.501(d)(4), as wage guarantees are a requirement under the Judge Richey Court Order. Further, the Department does not agree with the commenter that the paragraph should be revised such that the referred workers should contact the applicant-holding office or the order-holding office, because the applicant's primary contact is with the applicant-holding office, not the order-holding office. The Department has determined it would be an undue burden on the job seeker to contact the order-holding office. The Department will provide additional guidance on this process.

Comments: One commenter asked if the checklists that local ES office staff are required to provide farmworkers and applicants in their native language (§ 653.501(d)(6) and (d)(10)) could be replaced with the requirement to provide a copy of the clearance order itself. This commenter noted that it has encountered issues where workers hired on the interstate clearance orders have indicated they did not receive accurate information prior to arriving on the job site. The commenter asserted that requiring staff to provide a copy of the approved clearance order would help eliminate any confusion and misinterpretations.

Department Response: The Department notes that some clearance orders may be more than 20 pages and if a SWA was required to supply the clearance order to each job seeker, it could overly burden the SWA. Consistent with the Judge Richey Court Order, the Department has concluded that notifying the job seeker that the clearance order is available upon request is sufficient, as long as referred job seekers obtain a full explanation of the terms and conditions of employment.

Section 653.502 Conditional Access to the Agricultural Recruitment System

Comments: One commenter expressed concerns that the steps and requirements outlined in § 653.502 assume that employers have full knowledge of the ARS in order to submit a written request for conditional access to the intrastate or interstate clearance system. In particular, this commenter asserted that for employers to be sufficiently familiar with the intricacies of the ARS to submit advanced requests for conditional access would require SWAs to mount a massive marketing and educational program, which this commenter asserted would be a large burden.

Department Response: SWA staff should be trained in the ARS process. When an employer seeks workers for agricultural work, it is incumbent upon the SWA to explain all available options to the employer, including the ARS process and the option for conditional access if applicable. The Department has determined this will not overly burden SWAs as it was originally required at 20 CFR 654.403.

Section 653.503 Field Checks

Comments: Commenters expressed support for the proposed changes to this section. However, many commenters expressed concerns or requested clarification regarding proposed § 653.503.

One commenter stated the requirements of § 653.503(a) are contradictory to the WIOA structures for statewide activities and that completing mandatory field checks would cause a significant reduction in the time spent by the SWA in meeting WIOA's requirements.

Department Response: The Department notes the Judge Richey Court Order mandated that the Department ensure each SWA hires staff to conduct field checks and determine whether wages, working, and housing conditions are as specified in job orders and that actual conditions and terms of employment do not violate State and Federal law.

Comments: A few commenters recommended the Department remove the language in proposed § 653.503(a), stating that notifying an employer after a placement is made would not be transparent and would add unnecessary burden on State agency staff. Instead, these commenters recommended the Department add language on the ETA Form 790 or its supporting documents that employers interested in participating in the ARS should be informed a field check may be conducted if a worker is placed.

Department Response: The Department agrees with the commenter stating employers should be notified that a field check may be conducted for all job orders placed through ARS and that such notification must be transparent. The Department notes § 653.503(a) requires the SWA to notify the employer in writing, that if a worker is placed on a clearance order, the SWA, through its ES offices, and/or Federal staff, will conduct random, unannounced field checks to determine and document whether wages, hours, and working and housing conditions are being provided as specified in the clearance order.

To guarantee employers have been notified and have signed a document accepting field checks, the Department concurs that such notification may be provided through the attachment to the ETA Form 790. Including the notification in the ETA Form 790 would help ensure the employer has been notified and concurs with the requirement. The Department will propose the language be added to the attachment to the ETA Form 790 in the next Paperwork Reduction Act public notice for the Form.

Comments: A commenter asked the Department to clarify whether the "worker placed on a clearance order" in § 653.503(a) should be one that would have been referred through the ES system or not. In addition, the commenter asked if the referenced clearance orders also include criteria clearance orders, and requested the Department clarify whether notification in writing can include email.

Department Response: Field checks only pertain to placements made through the ARS process (pursuant to part 653, subpart F) and can include criteria and non-criteria job orders—but § 653.503 specifically refers to the placement of U.S. workers. Regarding whether notification in writing can include email, the Department notes the attachment to the ETA Form 790 includes such notification and when a SWA provides the form to the employer and the employer signs it, § 653.503(a) has been satisfied. Additionally, if the SWA so chooses, the SWA may send an email to the employer when a worker has been placed which re-emphasizes the possibility for a field check pursuant to § 653.503.

Comments: Several commenters asked for clarification on § 653.503(b). One commenter sought clarification on the meaning of, "or at 100 percent of the worksites where less than 10 employment service placements have been made." Another commenter asked the Department to clarify if field checks at 100 percent of jobsites are required for clearance orders that have fewer than 10 placements for each order or if the entire State agency has made fewer than 10 placements on clearance orders during the quarter. If the field checks at 100 percent of jobsites is still required for clearance orders with fewer than 10 placements, this commenter asked if the 25 percent minimum still would apply overall. Another commenter recommended the Department revise § 653.503(b) to require field checks on "25 percent of all agricultural worksites where U.S. placements have been made," stating the language as proposed would burden States that have a low or no placement rate with conducting field checks of all employers participating in the H–2A program if the expectation is to include visits to employers where no placement of U.S. workers has taken place. One commenter expressed similar concerns, suggesting that because the majority of employers in that State do not request more than one or two workers, proposed § 653.503(b) would require the State to visit each of the 400 plus employers participating in the State's H–2A program, which would be burdensome. Another commenter requested the Department clarify whether the § 653.503(b) requirement applies to criteria clearance orders as well. Reasoning that "less than 10" would include worksites with zero placements, this commenter further suggested the Department revise this language to States, "worksites where less than 10 or more than 1 placement was made."

Department Response: Based on the number of requests the Department received to clarify the regulatory text at § 653.503(b), the Department has revised the regulatory text to clarify the requirements. Section 653.503(b) requires that where the SWA has made placements on 10 or more agricultural clearance orders during the quarter, the SWA must conduct field checks on at least 25 percent of the total of such orders. Where the SWA has made placements on at least one but not more than 9 job orders during the quarter, the SWA must conduct field checks on all such orders. For example, if a SWA has made placements of U.S. workers on 100 separate job orders through ARS, the SWA is required to conduct field checks on at least 25 of those job orders (25 percent of 100). In another example, if a SWA has made placements of U.S. workers on 6 job orders through ARS, the SWA is required to conduct field checks on all 6 job orders (100 percent of the orders because there was more than 1 but fewer than 9 job orders). These field checks only pertain to placements made through the ARS process (which can include criteria and non-criteria job orders—but § 653.503 specifically refers to the placement of U.S. workers). "Placements," which is defined at § 651.10, means the hiring by a public or private employer of an individual referred by the ES office for a job or an interview, provided that the employment office completed all of the following steps:

- Prepared a job order form prior to referral, except in the case of a job development contact on behalf of a specific applicant;
- Made prior arrangements with the employer for the referral of an individual or individuals;
- Referred an individual who had not been specifically designated by the employer, except for referrals on agricultural job orders for a specific crew leader or worker;
- Verified from a reliable source, preferably the employer, that the individual had entered on a job; and
- Appropriately recorded the placement.

Comments: One commenter asserted that § 653.503(c) expands the field check requirements from "wages, hours, working, and housing conditions" to the "full terms and conditions of employment," which would lead to unfair and unequal enforcement activities because "full terms and conditions" is not defined. Further, this commenter stated the § 653.503(c) requirement that field checks must occur "at a time when workers are present" would lead to a reduction in the time allowed for training and job placement activities.

Department Response: The Department does not interpret the change in language to be a substantive expansion from what is now required. The Department notes that requesting employers sign the ETA Form 790, thereby agreeing to abide by the "full terms and conditions" of employment, for which field checks appropriately ensure such compliance. Additionally, the Judge Richey Court Order requires those conducting field checks, "to determine whether wages, working and housing conditions are as specified in job orders and that actual conditions and terms of employment do not violate State and Federal law." The Department further notes that SWA staff is charged with providing and explaining to MSFWs information and resources regarding ES services, other organizations serving MSFWs in the area, and a basic summary of farmworker rights, including their rights with respect to the terms and conditions

of employment. Therefore, conducting such outreach activities (as required at § 653.107) does not constitute time away from training and job placement. In fact, such outreach is intended to extend training and job placement opportunities to MSFWs.

Comments: A commenter stated that the proposed field check requirements in § 653.503(b) and (d) would have a chilling effect on employers' decisions to use the ARS. This commenter also suggested the required field checks are not authorized by the controlling statutes and may not be constitutional.

Department Response: The Department notes that field checks and referrals of apparent violations are now required under 20 CFR 653.503, and employers continue to use the ARS. The existing regulations at 20 CFR 653.503 further require the State agency to document the finding and attempt informal resolution if through a field check, State agency personnel observe or receive information, or otherwise have reason to believe that conditions are not as stated on the job order, or that an employer is violating an employment related law. The existing regulations further require the SWA to follow the procedures of subpart F of this chapter if the matter has not been resolved within 5 working days.

Attempting informal resolution at the local level is also intended to assist employers in remedying certain apparent violations that may resolve the issue and not necessitate the need for a referral to an enforcement agency.

Further, the Department disagrees with the commenter's suggestion that the required field checks are not authorized by the controlling statutes and that they do not provide sufficient certainty and regularity required to make "warrantless inspections constitutional." Employers know of field checks, which are conducted with sufficient regularity due to the requirement at § 653.503(b) mandating field checks on certain percentages of placements depending on how many placements a State has made.

Comments: A commenter raised concerns regarding the § 653.503(d) requirement to report violations of employment-related law suggesting it would (among other things) negatively impact the ARS process; be challenging to implement; and would lead to an increase in referrals to enforcement agencies.

Department Response: The Department does not agree that § 653.503(d) will foster hostile attitudes between employers and employees, towards SWA staff, and to the ARS in general. The Department has received information on numerous occasions from employers and SWA staff that the ability to resolve issues informally at the local level has been beneficial because it gives the employer a chance to rectify the situation before it is referred to an enforcement agency. Not all issues may be informally resolved and many may be referred to an enforcement agency, but the regulations generally allow for such informal resolution where appropriate. The Department has changed the regulatory text to clarify this.

Comments: Regarding the § 653.503(e) provision that would allow State agencies to enter into agreements with State and Federal enforcement agencies to conduct field checks on behalf of SWA personnel, a commenter stated the information sharing permitted under this provision would lead to an unwillingness of both workers and employers to use the system, with an unintended consequence of an increase in use of Farm Labor Contractors and the H–2A program. Further, the commenter asserted § 653.503(e) is contradictory in that the non-SWA "may conduct field checks instead of and on behalf of State agency personnel" but then provides: "The SWA must supplement enforcement agency efforts with field checks focusing on areas not addressed by enforcement agencies."

Department Response: The Department notes that such arrangements between State and Federal enforcement agencies are now permitted in the regulations at 20 CFR 653.503(b) and this has not, to its knowledge, caused an unwillingness of both workers and employers to use the system. The Department disagrees with the commenter and has determined that such arrangements are useful for SWAs in meeting their field check requirements.

P. Part 654—Special Responsibilities of the Employment Service System

1. Introduction

In the NPRM, the Department proposed to revise the ETA regulations governing housing for farmworkers at 20 CFR part 654, subpart E, issued under the authority of the 1933 Wagner-Peyser Act by updating outdated terminology and by establishing an expiration date for the ETA standards. This proposed expiration date was intended to transition housing currently governed by the ETA standards to the Occupational Safety and Health Administration (OSHA) regulations governing temporary labor camps for agricultural workers as set forth at 29 CFR 1910.142. After considering the public comments received on this aspect of the proposal, the Department withdraws its proposal to establish an expiration date for the ETA standards in order to transition housing currently governed by the ETA standards to the OSHA standards, as explained in further detail below.

The analysis that follows provides the Department's response to public comments received on the proposed part 684 regulations. If a section is not addressed in the discussion below, it is because the public comments submitted in response to the NPRM did not substantively address that specific section and no changes have been made to the regulatory text. Further, the Department received a number of comments on this part that were outside the scope of the regulation and the Department offers no response. Lastly, the Department has made a number of non-substantive changes to correct grammatical and typographical errors to improve the readability and conform the document stylistically that are not discussed in the analysis below.

Several commenters expressed support for the proposed changes to subpart E of part 654 stating the housing standards would be strengthened, would increase safety and sanitation requirements, and would positively impact the overall health and quality of life for MSFWs. However, most commenters expressed concerns about the proposal and in many cases asked that the proposal be withdrawn.

Comments: One commenter noted in the absence of updated OSHA temporary labor camp regulations, it opposed the phase-out and repeal of the ETA housing standards because, according to this commenter, there are several instances where the ETA regulations provide clear, unambiguous numerical standards, while the OSHA regulations offer vague guidance. This commenter further asserted that clearly delineated obligations, with specific numerical benchmarks, eliminate disputes as to the housing provider's obligations.

Additionally, commenters raised the following reasons for not supporting the proposal: (1) The high cost of making the necessary changes; (2) insufficient economic analysis conducted by the Department; (3) lack of availability of funding assistance; (4) difficulty (or potential impossibility) in obtaining permits (including zoning permits); (5) lack of sufficient time to transition; (6) the difficulty or impossibility of complying with OSHA's requirement at 29 CFR 1910.142(a)(2), which states: "The principal camp area in which food

is prepared and served and where sleeping quarters are located shall be at least 500 feet from any area in which livestock is kept."; (7) DOL hearings conducted in the 1970s pursuant to the same proposal concluded there was not an adequate basis for the publication of a new final standard or for the issuance of a new proposal; and (8) there is no indication that housing under the ETA standards is any less adequate, safe, or sanitary than that under the OSHA standards.

Many commenters also suggested that the impossibility of complying with the new standards would lead to a loss of available farmworker housing because existing housing would still be out of compliance. A few commenters stated the proposal would put some agricultural employers out of business. One commenter posited the NPRM did not provide evidence that employers, SWAs, Department personnel, employees, or anyone else is experiencing any "confusion" about how farmworker housing is inspected. This commenter also questioned whether the Department may legally expand the application of the OSHA housing standards it adopted under special procedures available for consensus standards to housing to which the OSHA standards never previously applied.

One commenter suggested the Department allow agricultural employers a variance for the OSHA requirement at 29 CFR 1910.142(a)(2), asserting it is not always possible or desirable to have at least 500 feet between the livestock and food processing/sleeping areas. In order to better understand the impact of the proposed regulations, the Department solicited the following information from the public through the NPRM: (1) The approximate number of agricultural housing units in the United States provided by agricultural employers for farmworkers; (2) the approximate percentage of the total farmworker housing units that currently fall under the ETA standards set forth in 20 CFR part 654; and (3) the estimated cost of bringing those housing units from the ETA standards into compliance with the OSHA standards. The Department received few responses. The limited feedback suggested it would cost individual employers between $15,000 and $300,000 to transition into the OSHA standards, with one commenter suggesting it would cost over $1 million for employers in one State. One commenter indicated that most of its housing inspections fell under the ETA standards. Several commenters also had specific questions for the Department.

Department Response: The Department has taken the aforementioned comments into consideration and withdraws its proposal to establish an expiration date for the ETA standards in order to transition housing currently governed by the ETA standards to the OSHA standards governing temporary labor camps for agricultural workers as set forth at 29 CFR 1910.142. The Department based its decision on the following reasons: (1) It did not receive sufficient information in response to its solicitation for information in order to conduct a thorough impact analysis; (2) it seeks to further investigate information received suggesting the specificity and clarity provided by the ETA standards may be helpful when disputes arise; (3) it acknowledges the possible financial and logistical burdens that the OSHA standards could impose on some agricultural employers; and (4) it seeks to further study farmworker housing, how it could be improved, and the impact such improvement would have on stakeholders.

While the Department withdraws its proposal at this time, it continues to interpret the regulations at part 654, subpart E, to be transitional until such time when one set of improved agricultural housing standards may be used for all farmworkers.

The Department will continue to require compliance with the regulations at 20 CFR part 654, subpart E, for farmworker housing built prior to April 3, 1980, or where prior to March 4, 1980, a contract for the construction of the specific housing was signed. However, subsequent housing must comply with OSHA temporary labor camp standards at 29 CFR 1910.142.

The provisions of § 654.403 have been relocated to 20 CFR 653.502 because they more directly relate to the governance and operation of the Agricultural Recruitment System (ARS) rather than the condition of worker housing.

Section 654.408 Screening

Comments: One commenter suggested the Department revise proposed screen requirements at § 654.408 to allow for an exception for housing with central air conditioning.

Department Response: The Department does not support creating an exception for housing with central air conditioning because, in cases where such central air conditioning fails, it would be necessary for the windows to have proper screens in place. No change to the regulatory text was made in response to this comment.

Section 654.414 Garbage and Other Refuse

Comments: Asserting that most local municipalities do not provide for twice weekly garbage disposal services, one commenter recommended the Department revise the § 654.414(b) language requiring the "collection of refuse at least twice a week" to include "or as often as possible according to local collection schedules."

Department Response: The "at least twice a week" requirement helps ensure refuse is properly disposed of and maintains the health and safety of the workers and the environment. No change to the regulatory text was made in response to this comment.

Q. Part 658—Administrative Provisions Governing the Wagner-Peyser Act Employment Service

1. Introduction

Part 658 sets forth systems and procedures for complaints, monitoring for compliance assessment, enforcement, and sanctions for violations of the ES regulations and employment-related laws, including discontinuation of services to employers and decertification of State Workforce Agencies (SWAs).

The analyses that follows provides the Department's response to public comments received on the proposed part 658 regulations relating to administrative provisions governing the ES program. If a section is not addressed in the discussion below, it is because the public comments submitted in response to the NPRM did not substantively address that specific section and no changes have been made to the regulatory text. The Department has made a number of non-substantive changes to correct grammatical and typographical errors to improve the readability and conform the document stylistically that are not discussed in the analysis below. Lastly, the Department will issue guidance on the Complaint System, informal resolution, referring complaints and apparent violations, and on subpart F—Discontinuation of Services to Employers by the Employment Service.

2. Subpart E—Employment Service and Employment-Related Law Complaint System

This subpart covers the purpose and scope of the Complaint System, the requirements pertaining to complaints filed at the local and State level, and the requirements for when a complaint rises to the Federal level.

Comments: One commenter urged the Department to reinstate the original Job

Service Complaint System as established in 1980 as a cost-effective and efficient alternative to litigation for disputes between farmworkers and the employers to whom they have been referred through the job service network. Stating that the Job Service Complaint System, established in response to the Richey Order, allowed farmworkers to obtain quick resolution of complaints regarding jobs to which they had been referred by the ES system, this commenter stated that the changes to the Complaint System following the passage of the Immigration Reform and Control Act of 1986 resulted in the current Complaint System being of little use to aggrieved workers because they no longer have the opportunity to participate in the processing of their complaint. According to this commenter, because the deadlines set out in the 1980 regulations that had made the Complaint System so attractive to farmworkers have been removed, the Complaint System is no longer an attractive alternative to litigation. Further, this commenter stated that because the current Complaint System does not ordinarily result in a formal finding regarding the worker's complaint, it rarely generates a result that provides the basis for discontinuation of services to an employer who has violated the rights of a farmworker referred through the ES system. For this reason, the commenter stated, employers are free to violate the rights of domestic farmworkers with impunity, knowing there is virtually no chance they will face the potentially severe sanction of discontinuation of employment services (with the corresponding lack of access to the H–2A program) if they ignore the guarantees and assurances in their clearance orders.

Department Response: The Department clarifies that complainants continue to have the opportunity to participate in the processing of their complaint pursuant to § 658.411(e)(1) and (2), at which time the complainant must determine if the complaint has been resolved to his/her satisfaction or if the complaint should be elevated to the next level of review. Regarding deadlines for resolution of complaints, the Department notes for complaints submitted to the ES office, the Complaint System representative is required to send the complaint to the SWA for resolution or further action if resolution has not been achieved to the satisfaction of the complainant within 15 working days after receipt of the complaint, or 5 working days for complaints filed by or on behalf of MSFWs. For complaints submitted or referred to the SWA, the SWA is required to make a written determination regarding the complaint if resolution at the SWA level has not been accomplished within 30 working days after the complaint was received by the SWA; this requirement applies whether the complaint was received directly or from an ES office under paragraph (d)(2)(ii) of this section. The Department has determined that such time periods are relatively short and do not place an undue burden on the complainants seeking to resolve complaints. For employment-related law complaints referred to enforcement agencies outside of the Department, the Department notes it is beyond its jurisdiction to impose resolution deadlines for such agencies. For employment-related law complaints referred to agencies within the Department, the Department notes that each agency must abide by its respective regulations and any change to such regulations would require a Notice of Proposed Rulemaking. Should an organization seek changes to any such regulations, the Department recommends submitting comments when such an opportunity presents itself.

Regarding the commenter's assertion that because the current Complaint System does not ordinarily result in a formal finding regarding the worker's complaint, it rarely generates a result that provides the basis for discontinuation of services to an employer who has violated the rights of a farmworker referred through the ES, the Department clarifies that a formal finding (*i.e.*, a final determination by an enforcement agency) is only one of the many bases for discontinuation of services specified at § 658.501. For example, § 658.501(a)(1) through (3) do not necessitate such a determination (as do many of the other provisions under § 658.501).

No change to the regulatory text was made in response to these comments.

Section 658.400 Purpose and Scope of Subpart

Comments: One commenter stated the proposed change to § 658.400(a) to require the acceptance of ES-related complaints made within 2 years of the occurrence (increased from 1 year) would have an adverse effect on SWA performance. Specifically, this commenter predicted that States would accrue unresolved complaints resulting from complainants leaving the area before completion of the investigation, in particular MSFWs. However, a different commenter expressed support for the expansion from 1 to 2 years, stating that expanding the period of time to allow an aggrieved worker to file a complaint would alleviate some of the burdens workers face when asserting their rights, including fear of retaliation from employers or discomfort in filing complaints against an employer while still employed when workers discovered violations before their work ends. Other obstacles addressed by this commenter were associated with the transient and mobile nature of the work, such as moving several times, lack of information or resources to file a complaint, and temporary inability to maintain the complaint proceedings.

Department Response: While the Department acknowledges the potential for more complaints to remain unresolved for a longer period of time the Department has determined that the positive effects outweigh the fact that some complaints may take longer to resolve. It is exactly because of the transient nature of MSFWs that it is important to allow more time for complainants to come forward and for complaints to be resolved.

The Department made no changes to the regulatory text, except for the clarifying change to add "parts 651, 652, 653, 654, and" to the end of § 658.400(a). This change clarifies that the ES complaint system accepts complaints involving the failure to comply with the ES regulations under parts 651, 652, 653, 654, and part 658, not just part 658, as was proposed. This is consistent with the jurisdiction of the complaint system under the existing regulations.

Comments: One commenter stated that the Department's proposed changes to § 658.400(c) significantly expand the required enforcement activities from "wages, hours, working, and housing conditions" to all employment-related laws, and this commenter suggested that establishing SWA staff as the ultimate enforcement agent for dozens of diverse regulatory regimes is counter to WIOA's goals for preparing an educated and skilled workforce and for meeting the skilled workforce needs of employers.

Department Response: The Department clarifies that SWA staff (unless otherwise authorized) are not enforcement agents for employment-related laws. Rather, SWA staff that become aware of possible violations of employment-related laws through field checks or apparent violations is charged with attempting to resolve the issue at the local level (when appropriate) and, if not resolved, referring the case to the appropriate enforcement agency.

Section 658.410 Establishment of Local and State Complaint Systems.

Comments: Stating the NPRM is unclear as to how staffing should be assigned to address complaints at the various levels (managers and line staff), some commenters recommended the Department allow local areas to determine how management and line staff are engaged in handling complaints, whether in person, on the phone, or other types of correspondence. One commenter expressed support for having local areas decide how management and line staff are engaged in handling complaints and recommended that this process be included in the local plan.

Department Response: The Department clarifies that as long as the requirements at § 658.410 are met, the ES office manager may determine specific processes that are conducive for his/her respective office. The Department has determined the SWA must make decisions regarding the inclusion of this process in the local plan,

Comments: One commenter asked whether the Department would make the Complaint System posters available to the SWAs for the § 658.410(d) requirement that SWAs ensure information pertaining to the use of the Complaint System is publicized with an ETA-approved poster in each one-stop center.

Department Response: The Complaint System poster is accessible on the internet at *http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=2820.*

Comments: Two commenters recommended the Department either remove the § 658.410(m) requirement that the Complaint System representative must regularly follow up on complaints after they are referred to an enforcement agency, or only require SWA staff to request that an enforcement agency follow up once a resolution to the complaint has been achieved. These commenters reasoned that, although an existing requirement under WIA, it is ineffective despite technological advances because most enforcement agencies do not share outcomes of investigations with SWA staff due to confidentiality requirements.A19AU0.

Department Response: The Department notes that the requirement for the Complaint System representative to follow-up on complaints submitted by MSFWs pursuant to § 658.410(m) is intended to ensure complaint resolution. Such follow-up helps ensure that complaints are progressing within the enforcement agency, and that MSFWs are updated on the status of their complaints. The Department understands that many enforcement agencies may be restricted from sharing specific information. However, the Department has determined that follow-up activities will deter the possibility for complaints to remain stagnant and instead will push them closer to resolution. The Department has determined that eliminating the requirement for follow-up with MSFW complainants would adversely affect complainants. The Department further notes that § 658.140(m) has been changed to remove the requirement for quarterly follow-up on non-MSFW complaints. This is consistent with § 658.411(b)(1)(i). This inconsistency in the NPRM was an error.

The Department added two paragraphs to § 658.410, paragraphs (n) and (o), in response to comments received on proposed § 658.411. Those comments and additions are discussed below.

Section 658.411 Action on Complaints.

Comments: While stating their understanding that the intent is for Boards to coordinate with all relevant enforcement agencies concerning MSFW complaints, two commenters recommended the Department retain the reference to 29 CFR part 42 (which the NPRM removed) because that regulation coordinates Wage and Hour Division (WHD), Occupational Safety and Health Administration (OSHA), and Department activities relating to MSFWs.

Department Response: The Department clarifies that it does not intend for Workforce Development Boards (WDBs) to coordinate with all relevant enforcement agencies concerning MSFW complaints; rather, SWAs must follow the procedures required at § 658.411.

The Department concurs with the commenters that coordination of the activities of the Wage and Hour Division (WHD), within the former Employment Standards Administration, OSHA, and the Employment and Training Administration (ETA) relating to MSFWs is essential. The intention behind the proposed regulations at § 658.411 was to not limit coordination to only those agencies, but to expand it to all employment-related law enforcement agencies. No changes were made to the regulatory text. Still, the Department acknowledges the vital importance of Coordinated Enforcement at 29 CFR part 42 and will work to carry out such activities described at 29 CFR part 42 and also work to expand coordination with other enforcement agencies such as the Equal Employment Opportunity Commission (EEOC).

Comments: One commenter recommended the Department add a requirement that any notices sent to the worker regarding their complaint must be sent in the worker's native language. Further, this commenter urged the Department to require all correspondence with a MSFW regarding his/her complaint be required both by phone and by certified mail. In addition, this commenter urged the Department to revise the regulatory text to clarify that any time the regulations specify that ES staff, the SMA, or other person must communicate with a MSFW, that communication must be directed to the MSFW's representative, if he or she has one. This commenter reasoned that because MSFWs frequently move and change telephone numbers, ES communication directed to the MSFW's local address or last known telephone number may go unanswered.

Department Response: The Department agrees with recommendation that all SWA correspondence regarding a complaint be sent to the worker in his/her native language would benefit English Language Learner (ELL) MSFWs and would be consistent with some requirements at part 653 of this chapter (*i.e.*, assistance in understanding the terms and conditions of employment must be provided in the worker's native language if requested, and the provision of a checklist must be provided in the workers native language where necessary). The Department has added paragraph (n) to the regulatory text at § 658.410 requiring complaint related correspondence between the complainant and the SWA to be translated into the complainant's native language. The Department has determined translating such correspondence will ensure the complainant understands the status of the complaint and whether he/she is required to take any action.

The Department also agrees it would be beneficial for the ES office or the SWA to attempt to communicate with the MSFW in the manner most likely to reach him/her, particularly via telephone. The Department recommends that SWAs attempt communication via telephone with MSFWs; however, the requirement for written notification stands as the official means for notification because such correspondence helps both parties maintain records of the complaint status.

The Department further agrees with the commenter that, in cases where the

complainant has a designated representative and has requested that the ES office or the SWA communicate through the representative, such communication will facilitate complaint resolution and in cases where the complainant is a MSFW who moves frequently, a representative may be the most convenient individual to contact. The Department has added a provision allowing a complainant to designate an individual to act as his/her representative throughout the filing and processing of a complaint to the regulatory text at § 658.410(o). References to the complainant's representative also were added to paragraphs (a)(3) and (4) of § 658.411. These changes are consistent with the references to a complainant's representative that were included throughout proposed § 658.411. The Department received no comments on these references and made no changes to the regulatory text. It is logical that ES staff and SWAs following-up on such complaints must be able to communicate with the complainant's representative if he/she has so designated.

Comments: One commenter expressed concern that the ES office may not necessarily be in the best position to determine on its own which is the most appropriate referral for a worker with a wage claim, possible Migrant and Seasonal Agricultural Worker Protection Act (AWPA) violation, or sexual harassment complaint. The commenter suggested the goal of the complaint process should be to facilitate MSFW's access to enforcement agencies and other resources and not to become a source of delay or obstacle. This commenter concluded that the Complaint System regulations should provide MSFWs with the resources to make their own informed choices about whether to attempt informal resolution or file a complaint with an enforcement agency, rather than have the ES office decide for them.

Department Response: The Department seeks to clarify that one of the intentions of the Complaint System is to facilitate the resolution of complaints for MSFWs and non-MSFWs. If an ES staff member or outreach worker receives information about a possible violation of the ES regulations or employment-related laws, it is incumbent upon that individual to assist. Such assistance may mean taking a formal complaint from the individual or, if that individual does not choose to submit a complaint, the staff member must attempt resolution through the apparent violation process outlined at § 658.419. For concerns that staff may not know the most appropriate avenue to refer the worker, the Department notes the requirement for outreach workers to be trained pursuant to § 653.107(b)(7). For MSFWs with the resources to make their own choice about whether to attempt informal resolution or file a complaint, the Department clarifies that the complainant has a choice to submit a formal complaint or allow the ES representative to file an apparent violation. Either way, the ES staff must assist the MSFW and attempt to resolve the situation; the tactics for resolving the situation will vary depending on the issue. For example, EO and CRC related complaints must be immediately logged and referred to the appropriate enforcement agency.

Section 658.411(a) Filing Complaints

Comments: Two commenters recommended that § 658.411(a)(3) provide flexibility for staff to use other complaint forms, rather than the Complaint/Referral Form prescribed or approved by the Department, when it is immediately determined that the complaint falls under the jurisdiction of another agency and such a complaint form is available. These commenters asserted that such flexibility would be helpful because most of the employment -related law complaints received by the SWA involve allegations of lack of payment of wages, which mainly fall under the jurisdiction of a different State agency.

Department Response: In response to these comments, the Department has changed § 658.411(a)(3) to provide the flexibility for SWA staff to use other complaint forms rather than the Complaint/Referral Form prescribed by the Department so long as the alternate form has been approved by the Department. The Department included the requirement that the alternate form be one approved by the Department, to ensure the ability of the Department to track ES action on complaints or apparent violations accurately. If SWAs use forms from different agencies that the Department has not approved, it may make tracking complaint resolution more challenging.

Comments: Regarding the requirement that ES office and SWA staff consider complaints submitted via letter or email, two commenters asserted that the regulatory text proposed does not provide sufficient understanding of the difference between a customer concern that does not require formal processing versus a formal complaint. While agreeing with allowing such flexibility for customers to exercise their right to file a complaint, these commenters requested guidance on what can be considered as a signature in an email and what minimum information is needed to establish that the SWA has sufficient information to initiate an investigation. Expressing confusion regarding how complaints are received and processed, some commenters requested the Department provide clear and consistent guidance. Another commenter recommended the Department eliminate the requirement for complaints to be signed to permit MSFW representatives to file complaints on behalf of MSFWs.

Department Response: The Department will issue guidance explaining the difference between a customer concern and a formal complaint, including what can be considered a signature in an email, what minimum information is needed to establish an investigation, and how to receive and process complaints.

The Department does not agree that the requirement for complaints to be signed by the complainant be eliminated as a signature is helpful in processing complaints and referring complaints to the appropriate enforcement agencies. However, the Department agrees it would be helpful for MSFW complainants if a representative could file the complaint on behalf the MSFW. The Department added language to § 658.411(a)(3) allowing a MSFW or his/her representative to sign the complaint if the MSFW has designated a representative pursuant to § 658.410(o).

Comments: One commenter recommended the Department clarify the language with respect to taking complaints to specify whether an ES office must communicate the referral to the MSFW representative.

Department Response: The Department clarifies that when an MSFW (or his/her representative) files a complaint at an ES office, the Complaint System representative must follow-up with the complainant or his/her representative if the complaint has been referred to an enforcement agency.

Section 658.411(b) Complaints Regarding an Employment-Related Law

Comments: A few commenters objected to the proposed requirement that local ES offices and SWAs attempt informal resolution of the complaint. These commenters asserted that incorporating the additional step of attempted informal resolution by the SWA staff would delay the referral and investigation, and would become burdensome on the SMA. One commenter stated that staff are not trained in how to conduct investigations

and this process could directly interfere with a possible investigation by an enforcement agency because it might cause the employer to be alert of an onsite investigation. Another commenter expressed concern that if informal resolution was achieved, the complaint would no longer be referred to a relevant enforcement agency, which would result in the agency not being able to document the allegation and the resolution within their management information system.

Department Response: The Department clarifies that "informal resolution" means an attempt to resolve an issue at the local level. Such resolution may be conducted by the ES office Complaint System representative and is intended to expedite resolution of certain complaints. For example, the Complaint System representative can work with the complainant and the employer to resolve miscommunications or issues relating to wages or working hours, or in some cases, assist the employer in coming into compliance with certain working or housing conditions. Such mediation can be faster than referring the case to an enforcement agency. However, the Department notes that not all issues are appropriate for attempted informal resolution, such as most equal opportunity (EO) or forced labor-related complaints (*e.g.,* human trafficking, sexual harassment, sexual coercion). In these cases, the Department has added clarifying language to § 658.411(b)(1)(ii)(B) requiring the complaints be immediately logged and referred to the appropriate enforcement agency for prompt action. Certain complaints also are required to be immediately logged and referred, as discussed in § 658.411(c). The Department will issue guidance on informal resolution and referring complaints/apparent violations. Regarding the concern that informal resolution means that cases are not referred to enforcement agencies, the Department notes that not all cases need to be referred to an enforcement agency and in some cases, resolving the issues at the local level achieves the best outcome for all parties. Moreover, the Department requires SWAs track all complaints and apparent violations which are then reported to the Department. Therefore, the Department still receives such information for tracking and analysis.

Comments: One commenter urged the Department to revise § 658.411(b)(1)(ii) to specify that any MSFWs affected by an apparent employment -related law violation should be given outreach materials identifying the full range of agencies that may be able to assist them, including health services and legal aid offices, regardless of whether the ES office determines that a referral is necessary. If the issue is not resolved within 5 business days, this commenter recommended the workers be given the option of a referral to appropriate enforcement agencies, legal aid organizations, or consumer advocate organizations, regardless of whether the ES office determines that such referral is appropriate. Expressing concerns about the level of discretion with respect to the ES office decision to refer a MSFW's complaint regarding an employment-related law, this commenter urged the Department to revise § 658.411(b)(1)(ii)(C) and (D) to make clear that referral of a complaint is mandatory.

Department Response: The Department notes the regulatory text requires outreach workers to explain to MSFWs at their working, living or gathering areas the services available at the local one-stop center, information on the Complaint System and on the other organizations serving MSFWs in the area, and a basic summary of farmworker rights, including their rights with respect to the terms and conditions of employment. This explanation must be provided in a language readily understood by the MSFWs. The Department interprets the provision of such information to include health and legal aid services. Further, the Department recommends through training and guidance that outreach workers bring outreach material on the various services provided in the area for the MSFWs. If an ES staff member observes or is in receipt of information regarding an apparent violation, it may not be feasible to provide affected MSFWs with the pertinent information at that time; however, such information may be provided as a follow-up activity.

The Department clarifies that referring employment-related law complaints to the appropriate enforcement agency after 5 days if the complaint has not been resolved is required if the issue is not resolved within 5 business days. The Department further seeks to clarify that the statement, "the representative must determine *if* the complaint should be referred to . . ." does not mean that the representative must determine whether the complaint will be referred; rather it means the representative must determine if the complaint should be referred to "the appropriate enforcement agency" or "another public agency" or a "legal aid organization," etc. Given that the use of the word "if" in this sentence has caused confusion and may be misinterpreted, the Department has changed the regulatory text by rewording § 658.411(b)(1)(ii)(C) as follows: If the issue is not resolved within 5 business days, the representative must refer the complaint to the appropriate enforcement agency (or another public agency, a legal aid organization, or a consumer advocate organization, as appropriate) for further assistance.

Comments: Regarding the § 658.411(b)(2) requirement that the SWA must initiate procedures for discontinuation of services if an enforcement agency makes a final determination that the employer violated an employment-related law, one commenter recommended the Department require agencies to notify the SWA when such agency has made a final determination. For non-Department agencies, this commenter said it would support the development of a form to be used by all agency-referred cases under the Complaint System that would request notification of the outcome of the referral and explain the need for the agency to inform the SWA of the results of the referred complaint.

Department Response: The Department agrees it would be helpful if enforcement agencies notified the SWA when a final determination has been made. In order to facilitate the communication, the Department encourages SWAs to enter into agreements with enforcement agencies regarding notification of final determination of complaints.

Section 658.411(c) Complaints Alleging a Violation of Rights Under the Equal Employment Opportunity Commission (EEOC) Regulations or Enforced by the Department of Labor's Civil Rights Center (CRC)

Comments: Two commenters requested clarification for handling complaints alleging a violation of rights by employers, asking whether all complaints must be forwarded to the EEOC if received at the local or State level. One commenter recommended the Department revise § 658.411(c) to require all complaints involving discrimination be forwarded directly to the EEOC, rather than requiring the extra steps of referring a local Equal Opportunity (EO) representative, who would refer it to the State EO representative, who would then refer the case to the EEOC. This commenter suggested that the extra steps would add a layer of complexity and inevitable delay, which could be detrimental to discrimination complaints given the short limitations period for filing a charge of discrimination with the EEOC.

Another commenter asked whether the § 658.411(c)(1) requirement that the local Complaint System representative must refer the complaint to a local EO representative would go to the local area EO officer or the State EO officer.

Department Response: The Department clarifies the EO referral process. When an ES office or a SWA receives an EO-related complaint, the complaint must immediately be logged and referred to either the EO representative at the local or State level, or the EEOC. Once the EO representative has received the referral, he/she will make a determination as to whether it is appropriate to resolve the complaint at that level, or if it should be referred to a different level (*e.g.*, a State EO representative may determine that the case would most appropriately be resolved by the EEOC, or the EEOC may determine that the case would most appropriately be resolved by the State EO representative). In order to clarify this in the regulatory text, the Department removed § 658.411(c)(3) through (4) and clarifies in (c)(1) that EO-related complaints immediately must be logged and referred to an EO representative for appropriate handling. The Department further seeks to clarify that SWAs should not attempt informal resolution on EO-related complaints or apparent violations as these matters are highly sensitive and require trained EO investigators.

The Department has also edited § 658.411(c)(1) and (2) to make the regulatory text consistent with the anti-discrimination protections in 29 CFR part 38 and the role of the Department's Civil Rights Center.

Section 658.411(d) Complaints Regarding the ES Regulations

Comments: Noting that many MSFWs do not have a reliable, permanent mailing address, one commenter urged the Department to revise § 658.411(d) to provide that, when the local ES office needs additional information from the complainant, the office should communicate with the complainant in the way most likely to reach him or her, such as by cell phone or social media. If the complainant fails to respond, and the ES office determines that it is unable to resolve the complaint or complete the investigation without the requested information, this commenter suggested that the complaint be referred to the SMA to determine whether further action is possible. In addition, this commenter recommended the Department revise § 658.411(d)(2) to include allowing for filing of a complaint by email.

Department Response: Regarding the commenter's suggestion at § 658.411(d) for the Department to provide that, when the ES office needs additional information from the complainant, the office should communicate with the complainant in the way most likely to reach him or her, such as by cell phone or social media, the Department agrees that it would be beneficial for the ES office to attempt to communicate with the MSFW in the manner most likely to reach him/her, particularly via telephone. However, the Department has concerns about attempting to contact the MSFW via social media, as social media may not be a private communication forum. The Department recommends that SWAs attempt communication via telephone with MSFWs pursuant to § 658.411(d); however, the requirement for written notification stands as the official means for notification because such correspondence helps both parties maintain records of the complaint status.

Regarding the suggestion for the ES office to refer a complaint to the SMA if the complainant has not responded, the Department does not deem this necessary due to its change to the regulations at § 658.400(a) whereby the Complaint System now covers ES-related complaints made within 2 years of the alleged violation. Increasing the limitations period to 2 years will provide greater protections to those participating in the ES by accommodating those individuals who may not be able to file complaints within a year from the alleged occurrence. No change was made to the regulatory text in response to these comments.

In response to the suggestion to allow filing a complaint by email, the Department notes it proposed in the NPRM that a complaint could be filed by email and has made no change to the regulatory text at § 658.411(a)(4).

The Department made technical corrections to clarify in (d)(2)(i) that the complaint would be in regard to an "alleged" violation of the ES regulations and also that the appropriate ES office Complaint System representative must investigate and attempt to resolve the complaint immediately upon receipt if all necessary information has been submitted to the ES office pursuant to paragraph (a)(4)). The Department corrected the cross-references and corresponding language in the regulatory text at paragraphs (d)(2)(ii), (d)(3)(ii), and (d)(4)(ii).

Section 658.411(e) Resolution of Complaints

Comments: Suggesting the NPRM would disproportionately dismiss MSFW complaints, one commenter recommended the Department eliminate complaint resolution based on the complainant's failure to respond within 20 working days or 40 working days if the worker is a MSFW. Discussing the barriers MSFWs might face in promptly responding to requests for information, the commenter asserted that MSFWs generally have limited access to mail services, as mail delivered to labor camps may be distributed sporadically and is often screened by employers prior to delivery. Moreover, according to this commenter, a MSFW may move several times over the course of the season and often does not know what his or her physical address will be in the future. While stating that allowing for email correspondence is helpful, this commenter cautioned that few labor camps have internet access and workers often do not own cell phones or have an alternative means to access email. This commenter further suggested the Department either expand the deadline for complaint resolution to 1 year or, or in the alternative, allow a provision for MSFWs to reopen complaints within 1 year of being closed for failure to respond to a request for information. Reasoning that many MSFWs return to the same area each year for a particular crop, this commenter asserted that establishing a 1-year deadline would allow for the possibility that a worker would return to the same area and be able to respond to requests for information related to the complaint.

Department Response: The Department agrees that because MSFWs move so frequently, it can be difficult for them to receive mail. The Department seeks to ensure that complaints may be followed through to resolution without placing a burden on the complainant or the SWA. The Department has determined that allowing a MSFW to reopen a case after 1 year, as the commenter suggested, is appropriate. It is consistent with the provision in § 658.400(a) that allows a complainant to file a complaint with a 2-year limitations period. Such flexibility also ensures the Department is taking into account the unique needs of MSFWs and helping such individuals resolve complaints. The Department does not anticipate an increased burden on the SWA because the complaint would already be filed with the SWA. Even if the complaint was closed, the complainant could issue another complaint (regarding the same issue but

opening it as a new complaint) because of the 2-year limitations period. It would not place an additional burden on the SWA because the SWA would not need to open a new complaint. Instead, it would reopen the original complaint and have access to much of the information needed to process the complaint. The Department added § 658.411(f) to give a complainant the opportunity to reopen a complaint up to 1 year after the SWA has closed the case.

Comments: One commenter urged the Department to require the reviewer to verify whether any lack of response from a MSFW is intentional (*i.e.,* the MSFW actually received the request) before dismissing a complaint, such as by phone call, email, return mail receipt, or personal delivery by outreach workers.

Department Response: The Department has determined that requiring the reviewer to verify whether any lack of response from a MSFW is intentional would be too great a burden on the SWA and would be too subjective in nature to establish any continuity across the States. No change was made to the regulatory text in response to this comment.

Section 658.419 Apparent Violations

Comments: Regarding the proposed requirement to refer apparent violations of employment-related laws to ES office managers, one commenter recommended that if the apparent violation involves MSFWs, the SMA also should receive a copy of the documentation.

Department Response: The Department notes that data pertaining to apparent violations will be sent to SMAs as such information is required in the Labor Exchange Agricultural Reporting System (LEARS). No change was made to the regulatory text in response to this comment.

Comments: One commenter requested clarification as to whether the move of the Apparent Violations section from the MSFW section to the Complaint System section is an indication that it applies to all employment industries.

Department Response: The Department notes the Richey Order requires it to ensure that each State or ES office "refer every violation of State or Federal law of which it has knowledge to appropriate State or Federal enforcement officials, including officials or other agencies of DOL and of Federal agencies and departments other than DOL, and utilize to the maximum possible extent the full resources of the DOL monitor/advocate system in expediting such referrals." In this light, the Department takes it upon itself to ensure that any violation is appropriately referred while taking into account the procedures outlined at part 658, subpart E. Furthermore, the Department seeks to clarify that the Complaint System as stated at § 658.400(a) handles complaints against an employer about the specific job to which the applicant was referred through the ES, and complaints involving the failure to comply with the ES regulations under this part; the Complaint System also accepts, refers, and, under certain circumstances, tracks complaints involving employment-related laws. The Department interprets the mandates of the Richey Order to apply to industries outside of farm work, however the Complaint System explicitly contemplates only what is described at part 658, subpart E.

Section 658.420 Responsibilities of the Employment and Training Administration Regional Office

While the Department did not receive comments regarding § 658.420, it changed the language in paragraphs (b)(1) and (2) to make it consistent with current civil rights provisions in WIOA sec. 188 and the implementing regulations at 29 CFR part 38. It also added an exception in paragraph (c) to complaints filed pursuant to paragraphs (b)(1) and (2), and added the following sentence, "The RMA must follow-up monthly on all complaints filed by MSFWs including complaints under (b)(1) and (b)(2)." These changes are consistent with current practice and were added for clarity.

Section 658.421 Handling of Employment Service Regulation-Related Complaints

Comments: Suggesting the Department clarify the role of the Regional Administrator in the ES complaint process, one commenter recommended the Department revise § 658.421 such that complainants who allege a violation of the ES regulations may bring a complaint directly to the Regional Administrator, especially in situations where the administrative exhaustion procedures in § 658.421(a)(1) are likely to adversely affect workers.

Department Response: The Department has changed the language of § 658.421(a)(2) to clarify that this section allows for a complaint to be filed with the Regional Administrator and if the Regional Administrator determines that the nature and scope of a complaint described in paragraph (a) of this section is such that the time required to exhaust the administrative procedures at the SWA level would adversely affect a significant number of individuals, the RA must accept the complaint and take certain actions.

Section 658.422 Handling of Employment-Related Law Complaints by the Regional Administrator

Comments: One commenter recommended the Department clarify in § 658.422 that complainants may submit employment-related law complaints directly to the Regional Administrator, commenting that the proposed text of this section did not clarify what office should take the complaints.

Department Response: The Department agrees the language in § 658.422 was not explicit in stating that employment-related law complaints could be filed directly with the Regional Administrator and that only the title alluded to such a process. The Department added paragraph (a) that makes this explicit in the regulatory text of this section. The remaining paragraphs have been renumbered accordingly. Paragraph (c) has also been changed to clarify that complaints received from non-MSFWs must be logged, just as complaints from MSFWs under paragraph (b).

3. Subpart F—Discontinuation of Services to Employers by the Employment Service

Comments: A few commenters requested general clarification regarding proposed part 658, subpart F. These commenters stated they were unclear as to the process and impact of these regulations.

Department Response: The Department will issue guidance on part 658, subpart F.

Section 658.501 Basis for Discontinuation of Services

Comments: Relating to outreach workers' access to employer sites, one commenter noted proposed § 658.501(a)(7) continues the requirement for the SWA to initiate discontinuation of services to a grower who refuses to cooperate in the conduct of field checks pursuant to § 653.503. The commenter states this means an employer would not face a penalty for failing to permit outreach workers access to MSFWs to perform outreach duties. As such, this commenter recommended the Department revise § 658.501(a)(7) to require State agencies initiate discontinuation of services to employers who interfere with the access rights of State agency or nonprofit organization outreach workers or fail to provide those workers with reasonable access to MSFWs.

Department Response: The Department notes § 658.501(a)(2) provides the basis for discontinuation of services if an employer submits a job order and refuses to provide assurances, in accordance with 20 CFR part 653, subpart F. The attachment to the ETA Form 790 includes a requirement whereby "the employer also assures that outreach workers shall have reasonable access to the workers in the conduct of outreach activities pursuant to 20 CFR 653.107." The Department further notes that § 658.501(a)(3) states discontinuation of services will apply if the employer is found to have failed to comply fully with assurances made on job orders. The Department has determined that an employer who does not grant outreach workers reasonable access to MSFWs as required in the assurances attachment to the ETA Form 790 may be subject to discontinuation of services pursuant to part 658, subpart F. No changes have been made to the regulatory text in response to this comment. However, the Department seeks to clarify that the subject of granting outreach workers employed by nonprofit organizations access to MSFWs hired through the ES is beyond the scope of the Department.

Section 658.504 Reinstatement of Services

Comments: Noting that proposed subpart F did not include a minimum time during which services are to be discontinued, one commenter recommended the period of discontinuation of services should be no less than 2 years if an employer is found to have engaged in the misconduct set forth in § 658.501. Regarding the restitution provision at § 658.504(a)(2)(ii), this commenter urged the Department to require services to be discontinued until the employer provides restitution to all workers who are harmed by the employer's conduct, rather than requiring restitution only to the complainant. The commenter asserted that requiring restitution to only the complainant would give an employer incentive to violate the terms of the job order.

Department Response: The Department disagrees with the commenter about the suggestion to impose a minimum time during which services must be discontinued. The Department disagrees because the time will vary for an employer to remedy the situation. Once an employer remedies the issue, employment services may resume (except where the employer has undergone the discontinuation of services pursuant to § 658.501(a)(8)). Regarding the suggestion for the Department to require the discontinuation of services continue until an employer provides restitution to all workers who were harmed by the employer's conduct, the Department proposes that such a determination must be made on a case-by-case basis by the appropriate enforcement agency. No changes have been made to the regulatory text in response to this comment.

4. Subpart G—Review and Assessment of State Workforce Agency Compliance With Employment Service Regulations

Comments: Expressing support for the flexibility and understanding of things outside of a State agency's control relative to performance outcomes, a few commenters recommended the Department extend this flexibility and understanding to local areas.

Department Response: The Department acknowledges these comments. As SWAs are the Department's grantees, the Department recommends commenters request any additional local flexibility (outside what is required in these regulations) through the SWA.

Section 658.601 State Workforce Agency Responsibility

Comments: Regarding the self-appraisal system for ES operations to determine success in reaching goals and correct deficiencies in performance, one commenter requested the Department take into account statistical adjustments regarding economic conditions and participant characteristics which may be a factor when identifying plan goals.

Department Response: The Department notes WIOA sec. 102 requires the State Plan include an analysis of the economic conditions in the State and WIOA sec. 116 requires the Department to take into account participant characteristics. Because such information is required under WIOA, the Department agrees with the commenter and will take statistical adjustments regarding economic conditions and participant characteristics into account. The Department received no other comments on subpart G, and made no changes to the regulatory text except for occasional non-substantive editorial changes, and changes from USES to "Employment Service System or ES System," to be consistent with the changes made in part 651.

VI. Rulemaking Analyses and Notices

A. Executive Orders 12866 and 13563: Regulatory Planning and Review

Executive Order (E.O.) 12866 directs agencies, in deciding whether and how to regulate, to assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. E.O. 13563 is supplemental to and reaffirms E.O. 12866. It emphasizes the importance of quantifying current and future costs and benefits; directs that regulations be developed with public participation; and where relevant and feasible, directs that regulatory approaches be considered that reduce burdens, harmonize rules across agencies, and maintain flexibility and freedom of choice for the public. Costs and benefits should include both quantifiable measures and qualitative assessments of possible impacts that are difficult to quantify. If regulation is necessary, agencies should select regulatory approaches that maximize net benefits. The Office of Management and Budget (OMB) determines whether a regulatory action is significant and, therefore, is subject to review.

Section 3(f) of E.O. 12866 defines a "significant regulatory action" as any action that is likely to result in a rule that could:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising from legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

The Final Rule is not a significant regulatory action under sec. 3(f) of E.O. 12866. The economic effects of the costs and transfers (*i.e.,* monetary payments from one group to another that do not affect total resources available to society) that will result from the changes in this Final Rule are not economically significant because they are less than $100 million for the first year and all subsequent years after implementation of the rule.

Outline of the Analysis

Section V.A.1 describes the need for the DOL WIOA Final Rule, and section V.A.2 describes the alternatives that were considered in the DOL WIOA NPRM. Section V.A.3 summarizes the public comments received related to the NPRM, and provides the Department's

responses to the comments. Section V.A.4 describes the process used to estimate the costs of this rule and the general inputs used such as wages and number of affected entities. Section V.A.5 explains updates made to the assumptions and inputs used in the analysis of this Final Rule relative to the assumptions and inputs used in the analysis of the NPRM. Section V.A.5 also describes how these changes affected the costs and transfers of this Final Rule. Section V.A.6 describes how the provisions of this Final Rule will result in quantifiable costs and transfers and presents the calculations the Department used to estimate them. Finally, section V.A.7 summarizes the estimated first-year and 10-year total costs and transfers and describes the qualitative benefits of this Final Rule.

Summary of the Analysis

The Department provides the following summary of the Regulatory Impact Analysis:

(1) This Final Rule is not an "economically significant rule" under sec. 3(f)(4) of E.O. 12866.

(2) This Final Rule is not expected to have a significant cost impact on a substantial number of small entities.

(3) This Final Rule will not impose an unfunded mandate on Federal, State, local, or tribal governments as defined by the Unfunded Mandates Reform Act of 1995.

In total, the Department estimates that this Final Rule will generate costs and transfer payments. As shown in Exhibit 1, this Final Rule is estimated to have an average annual cost of $35.0 million and a total 10-year cost of $278.8 million (with 7-percent discounting). In addition, the Final Rule is estimated to result in annual transfer payments of $12.9 million and total 10-year transfer payments of $96.9 million (with 7-percent discounting).

EXHIBIT 1—ESTIMATED MONETIZED COSTS AND TRANSFER PAYMENTS OF THE FINAL RULE

[2015 dollars]

	Total costs ($ mil)	Transfers ($ mil)
Undiscounted 10-Year Total	$350.4	$128.9
10-Year Total with 3% Discounting	314.9	113.2
10-Year Total with 7% Discounting	278.8	96.9
10-Year Average	35.0	12.9
Annualized with 3% Discounting	36.9	13.3
Annualized with 7% Discounting	39.7	13.8

The largest contributor to the total cost of this Final Rule is the requirement related to the development and continuous improvement of the workforce development system, followed by the Local WDBs career pathways development and the colocation of ES services. See the cost subsection of section V.A.6 (Subject-by-Subject Analysis) below for a detailed explanation.

The Department was unable to quantify several important benefits to society due to data limitations and a lack of existing data or evaluation findings. We describe qualitatively the benefits related to required competition for all one-stop operators. In addition, based on a review of empirical studies (primarily studies published in peer-reviewed academic publications and studies sponsored by the Department), the Department identified the following societal benefits: (1) Training services increase job placement rates; (2) participants in occupational training experience higher reemployment rates; (3) training is associated with higher earnings; and (4) State performance accountability measures, in combination with the Board membership provision requiring employer representation, is expected to improve the quality of the training and, ultimately, the number and caliber of job placements. The Department identified several channels through which these benefits might be achieved: (1) Better information about training providers enables workers to make more informed choices about programs to pursue; (2) sanctions on under-performing States serve as an incentive for both States and local entities to monitor performance more effectively and to intervene early; and (3) enhanced services for dislocated workers, self-employed individuals, and workers with disabilities lead to the benefits discussed above.

In addition, the Final Rule will result in transfer payments. The Department estimates that this Final Rule will result in annual average transfer payments of $12.9 million and a total 10-year transfer payment of $96.9 million (with 7-percent discounting). These transfers result from increased funding for targeting out-of-school youth (OSY). See the transfer subsection of the section V.A.6 (Subject-by-Subject Analysis) below for a detailed explanation.

1. Need for Regulation

Public Law 113–128, the Workforce Innovation and Opportunity Act (WIOA), enacted on July 22, 2014, statutorily requires publication of implementing regulations, if required, no later than 180 days after the date of enactment. The Department has determined that implementing regulations are necessary for the WIOA program to be operated efficiently and effectively and that such regulations shall provide Congress and others with uniform information necessary to evaluate the outcomes of the new workforce law.

2. Alternatives in Light of the Required Publication of Regulations

OMB Circular A–4, which outlines best practices in regulatory analysis, directs agencies to analyze alternatives outside the scope of their current legal authority if such alternatives best satisfy the philosophy and principles of E.O. 12866. Although WIOA provides little regulatory discretion, the Department assessed, to the extent feasible, alternatives to the regulations.

In the NPRM, the Department considered significant alternatives to accomplish the stated objectives of WIOA, while also seeking to minimize any significant economic impact of the Final Rule on small entities. This analysis considered the extent to which WIOA's prescriptive language presented regulatory options that also will allow for achieving the Act's articulated program goals. The Department, in many instances, has reiterated the Act's language in the regulatory text, and has expanded some language to provide clarification and guidance to the regulated community. The additional regulatory guidance should result in more efficient administration of the program by reducing ambiguities and

subsequent State and local revisions because of unclear statutory language.

In addition, the Departments considered the issuance of sub-regulatory guidance in lieu of additional regulations. This policy option has two primary benefits to the regulated community. First, sub-regulatory guidance will be issued following publication of the Final Rule, thereby allowing States and local areas additional time to adhere to additional guidance. Second, sub-regulatory guidance is more flexible, allowing for faster modifications and any subsequent issuances, as necessary.

The Department considered two possible alternatives in the NPRM:

(1) Implement the changes prescribed in WIOA, as noted in this Final Rule, thereby satisfying the statutory mandate; or

(2) Publish no regulations and rescind existing WIA final regulations, thereby ignoring the WIOA statutory requirement to publish implementing regulations, thus forcing the regulated community to follow statutory language for implementation and compliance purposes.

The Department considered these two options in accordance with the provisions of E.O. 12866 and chose to publish the WIOA Final Rule—that is, the first alternative. The Department considered the second alternative—retaining existing WIA regulations as the guide for WIOA implementation—but concluded that the requirements have changed substantially enough that new implementing regulations are necessary for the public workforce system to achieve program compliance. The Department considered, but rejected, the third alternative—not to publish an implementing regulation and rescind existing WIA final regulations—because the WIOA legislative language, inherently, does not provide sufficient detailed guidance to implement WIOA effectively; regulations are necessary to achieve program compliance.

In addition to the regulatory alternatives noted above, the Department also considered phasing in certain elements of WIOA over time (different compliance dates), thereby allowing States and localities more time for planning and successful implementation. As a policy option, this alternative appears appealing in a broad theoretical sense and, where feasible (*e.g.*, Wagner-Peyser Act colocation of services), the Department has recognized and made allowances for different implementation schedules. Upon further consideration and to begin to achieve the intended legislative benefits of WIOA, however, additional implementation delays beyond those noted in this Final Rule could outweigh the benefits of alternative starting dates. Specifically, because many critical WIOA elements depend on the implementation of other provisions (*e.g.*, technology and performance reporting are intrinsically related), discussions indicated that the alternative of delaying additional aspects was operationally infeasible.

Furthermore, in assessing alternatives (*e.g.*, different requirements for different-sized firms) the data necessary to review this option fully will not exist until Local WDBs conduct procurements and announce awards. Similarly, performance standards will be negotiated at a future time and will be based on a variety of factors, including State and local economic conditions, resources, and priorities. Establishing standards in advance of this statutorily defined process might not be efficient or effective. The enforcement methods described in the Final Rule reflect prescribed WIOA requirements, and entity size, in and of itself, should not create alternative methods for compliance or different periods for achieving compliance. The Department has not determined sufficiently valid reasons for altering compliance timeframes beyond those described in the Final Rule for small entities.

The Department's impact analysis has concluded that, by virtue of WIOA's prescriptive language, particularly the requirement to publish implementing regulations within 180 days, no available regulatory alternatives other than those discussed above are viable.

3. General Comments Received on the Economic Analysis in the Notice of Proposed Rulemaking

The Department received several public comment submissions that addressed the economic analysis in the NPRM. The Department considered the comments received. The significant comments and summaries of the Department's analyses and determinations are discussed below.

a. A Status Quo Alternative in the Cost-Benefit Analysis

In the NPRM, after considering two possible alternatives: (1) Implement the changes prescribed in WIOA, or (2) not publish regulation and rescind existing WIA final regulations, the Department chose the first alternative.

Comments: Several commenters stated that the Department is required to present alternatives to the rule and explain why those alternatives were not selected instead of the approach chosen for the rule. The commenters suggested that the Department should choose the long-standing status quo as an alternative, which would maintain the current system. The commenters stated that the current system has worked for more than 40 years and would avoid problems that the rule would create.

Department Response: The economic analysis involves assessing one or more regulatory alternatives against the status quo. OMB's Circular A–4 provides guidance to agencies for conducting a cost-benefit analysis and explains that each agency should consider alternative regulatory approaches and properly evaluate the costs and benefits of regulations and their alternatives.[1] An agency, however, is not required to consider the status quo as a regulatory alternative. As is frequently the case, for this rule, the status quo is the same as the baseline, which is the situation likely to occur in the absence of regulation.

b. Contextualizing Workforce Innovation and Opportunity Act Costs

In the NPRM, to contextualize the cost of the proposed rule, the Department expressed the annual cost of the NPRM as being between 1.1 and 1.2 percent of the average annual cost of WIA over fiscal year (FY) 2012 through FY 2014 (using 3-percent and 7-percent discounting, respectively). The average annual budget for WIA implementation from FY 2012 through FY 2014 for the Department was $2.8 billion.

Comments: One commenter objected to the NPRM's discussion of the incremental burden of WIOA as a proportion of the Department's annual $2.8 billion WIA budget. Another commenter stated that contextualizing WIOA costs in terms of the WIA budget does not reflect the complexities of implementing WIOA. These commenters suggested that comparing the incremental WIOA burden against the administrative funds available to States would be more accurate because these would be the funding source for most of the new requirements.

In addition, one commenter stated that the Department did not provide its source of the average annual WIA budget estimate. The commenter cited DOL's Training and Employment Services budget as a proxy, which showed that the Department's funding decreased 1.8 percent from FY 2014 to FY 2015. This percentage is greater than the 1.1 to 1.2 percent of the estimated

[1] OMB (2003) Circular A–4 Retrieved from: *https://www.whitehouse.gov/omb/circulars_a004_a-4/.*

WIOA implementation costs presented in the NPRM.

Department Response: In this Final Rule, the Department presents the incremental burden of WIOA both as a proportion of the average annual budget for WIA implementation of $3.5 billion and as a proportion of the administration and transition funds that might be used for WIOA implementation.[2] The source of the average annual budget for WIA implementation is the Employment and Training Administration (ETA) budget Web sites.[3] The Department summed the WIA funding for the adult, dislocated worker, youth, and ES programs for each fiscal year from 2012 to 2014 and then averaged the sum over the 3-year period. For the adult and dislocated worker programs, each fiscal year's funding is calculated as the sum of the program year's July funding and the previous program year's October funding. The youth program's and ES program's funding are obligated to States in April and July, respectively, and therefore corresponds to the fiscal year in which it is obligated.

c. Workforce Investment Act Costs

Comments: One commenter suggested that the Department should have conducted a cost-benefit analysis for both WIA and WIOA. The commenter also indicated that any estimates from the original WIA regulations are outdated.

Department Response: The Department estimated incremental costs of WIOA from WIA as the baseline. Although we did not quantify the WIA baseline, to the extent possible, we considered the WIA baseline when estimating the incremental burden. In addition, this analysis includes no cost-benefit estimates associated with the WIA regulations.

d. Wage Rate Assumptions

To estimate the cost of the requirements in the NPRM, the Department multiplied the amount of time required to perform an activity by workers' hourly mean wage rates for their occupational categories and the loaded wage factors to reflect total compensation, which includes non-wage factors such as health care and retirement benefits.

Comments: One commenter asked the Department to provide the sources of the estimated wage rates and the loaded wage factors.

Department Response: In the NPRM, the Department used the 2013 Bureau of Labor Statistics (BLS) wage rates for State government employees, including hospitals and schools, for State and local employees based on the general occupational category of the workers who would perform the proposed activities. The loaded wage factor is based on the employer cost for employee compensation data contained in the BLS Employment Cost Index.

For the Final Rule, please refer to section V.A.4 (Analysis Considerations) for a description of the sources of the occupational categories and the loaded wage factor.

e. Burden Estimation Process

Comments: One commenter asked the Department to clarify the process and assumptions used to develop the labor burden estimates for the rule requirements.

Department Response: To develop the labor burden estimates of the rule, the Department considered how much effort would be required for each activity needed to meet the requirements relative to the baseline (*i.e.*, the current practice under WIA). We consulted with ETA program experts to obtain estimates. Please refer to section V.A.4 (Analysis Considerations) for a description of how the Department estimated the burden for this Final Rule.

f. Underestimated Costs

In the NPRM, the Department estimated that the rule would result in an undiscounted total 10-year cost of $384.4 million.

Comments: A few commenters stated that costs for many requirements were significantly underestimated in the NPRM by the Department. They also pointed out that the only costs quantified in the NPRM were new implementation costs and ongoing costs of required activities carried over from WIA were not considered in the NPRM.

Department Response: The commenters did not provide any cost data to substantiate their assertion that the Department significantly underestimated the costs of the requirements in the NPRM. The Department accurately estimated the compliance costs to affected entities to the extent possible based on best available information and program experience. We acknowledge, however, that our cost estimates are subject to potential uncertainty in, and variability of, the data and assumptions used in the analysis. Nevertheless, these cost estimates represent the Department's expert judgment regarding the additional labor and capital costs associated with the new requirements. Although we did not quantify the WIA baseline, we considered the WIA baseline to the extent possible when estimating the incremental burden associated with implementing this WIOA-required Final Rule by the requirements of Executive Order 13563, Executive Order 12866, and OMB Circular A–4. This analysis includes no cost-benefit estimates associated with the WIA regulations.

g. Data Reporting Requirements

In the NPRM, the Department requested public comments on the challenges and benefits of requiring additional data elements in quarterly wage reports, including: (1) Program participants' social security numbers; (2) the wages program participants earn after exiting the program; and (3) the names, addresses, States, and (when known) the Employer Identification Numbers of the employers paying those wages.

Comments: One commenter estimated that the initial and ongoing costs of modifying its reporting system to accommodate a new data element on employer wage reports would be approximately $2 million and that this estimate does not account for other costs associated with reporting additional information. The commenter stated that costs associated with audits and delinquent reporting reviews would increase if additional elements were added to wage reporting.

[2] This value increased from $2.8 billion in the NPRM to $3.5 billion in the Final Rule because the Department added WIA funding for the Wagner-Peyser Act ES program from FY 2012 to FY 2014 and the funding was inflated to 2015 dollars. The Department calculated the inflation factor using data from Table 24. "Historical Consumer Price Index for All Urban Consumers (CPI–U): U.S. City Average, All Items."

[3] U.S. Department of Labor, Employment and Training Administration. (2015). Archive of State Statutory Formula Funding. Retrieved from: *https://www.doleta.gov/budget/py01_py09_arra_archive.cfm*. The Department used data from the following files to estimate the average annual WIA budget: WIA Adult Activities Program (Program Years [PYs] 2011, 2012, 2013, and 2014); WIA Dislocated Worker Activities Program (PYs 2011, 2012, 2013, and 2014); and WIA Youth Activities (PYs 2012, 2013, and 2014). The youth activities funding is obligated to States in April and therefore corresponds to the fiscal year in which it is obligated. The Department inflated the funding for each fiscal year, so that the average annual WIA budget is in 2015 dollars.

U.S. Department of Labor, Employment and Training Administration. (2015) State Statutory Formula Funding. Retrieved from: *https://www.doleta.gov/budget/statfund.cfm*. The Department also used data from the following files to estimate the average annual WIA budget: Employment Services Program Dollar Tables (PYs 2012, 2013, and 2014). The youth activities funding is obligated to States in April and therefore corresponds to the fiscal year in which it is obligated. The Department inflated the funding for each fiscal year, so that the average annual WIA budget is in 2015 dollars.

Several commenters stated that WIOA's data collection requirements would require a large effort to track, record, validate, and report; the commenters also found some of the data to be questionable. The commenters stated that these proposed requirements would cause hardship for small States with limited funding.

Department Response: The Department's program experts estimated the costs of data reporting requirements under WIOA based on their program experience and consultations with State and local programs. The costs of modifying the reporting system will vary by size of the program; therefore, the Department used average cost estimates in the analysis. The Department did not quantify benefits of the data reporting requirements related to improved performance reporting and program evaluation.

h. Mandatory Employment and Services

Comments: One commenter questioned whether any analysis was available that estimated the projected cost of mandated employment and services to youth and students with disabilities.

Department Response: The Department is unaware of any cost analysis of mandated employment and services to youth and students with disabilities in the United States. The Department does not mandate supported employment in this DOL WIOA Final Rule.

i. Migrant and Seasonal Farmworker Housing—Estimated Impact on Employers

In the NPRM, the Department estimated that most of the approximately 6,400 U.S. employers who hire foreign workers under the H–2A program and who already provide housing would not be affected by the NPRM because Occupational Safety and Health Administration (OSHA) housing standards apply more frequently than the ETA standards for housing investigations. Specifically, the Department estimated that every region, except the Northeast and Pacific Northwest, has agricultural housing that predominantly falls under the OSHA standards. Compliance, however, varies by State. For example, housing inspections in Colorado and Wyoming largely fall under ETA standards.

Comments: Four commenters rejected the argument that most employers who hire foreign workers under the H–2A program would not be affected. For example, commenters cited that 65 to 75 percent of housing units in Virginia follow ETA standards with southern States having similar rates. These commenters objected to the Department's method for estimating the total number of employers affected by the housing provision. They suggested that, instead of basing its analysis on approximations and assumptions due to a lack of housing data, the Department should ask State Workforce Agencies, which inspect housing H–2A workers use and operate on behalf of DOL to report data on the number of housing units inspected. Alternatively, the Department should contact agricultural employers for cost estimates. Several commenters provided estimates.

Department Response: The Department agrees that some State Workforce Agencies may be able to provide the number of housing units subject to OSHA or ETA standards. In the Final Rule, however, the Department is rescinding the proposal to establish an expiration date for the ETA standards in order to transition housing currently governed by the ETA standards to the OSHA standards. Therefore, estimating the number of affected employers is no longer necessary for this rule.

j. Migrant and Seasonal Farmworker Housing—Cost Estimates

In the NPRM, the Department did not quantify the costs associated with the provision related to Migrant and Seasonal Farmworker (MSFW) housing. The Department asked the public to provide comments on: (1) The number of housing units farmworkers use, (2) the percentage of housing units that currently fall under the ETA standards, and (3) the cost to change from ETA to OSHA standards.

Comments: Several commenters objected that the cost of provision (w) "Migrant and Seasonal Farmworker (MSFW) Housing" was not quantified.

Department Response: In the Final Rule, the Department is rescinding its proposal to establish an expiration date for the ETA standards in order to transition housing currently governed by the ETA standards to the OSHA standards. Therefore, farmers will experience no additional costs because of this rule.

k. Migrant and Seasonal Farmworker Housing—Benefits

Department Response: In the Final Rule, the Department is rescinding its proposal to establish an expiration date for the ETA standards in order to transition housing currently governed by the ETA standards to the OSHA standards. Therefore, neither farmers nor farmworkers will experience benefits related to this provision because of this rule.

l. Initial Regulatory Flexibility Analysis

Comments: Numerous commenters suggested that the Department failed to comply with the requirements of the Regulatory Flexibility Act by not preparing an Initial Regulatory Flexibility Analysis (IRFA) and making the IRFA available for public comment. The commenters stated that the IRFA must describe the impact of the proposed rule on small entities and present alternatives to the proposed rule that would minimize the impact while accomplishing the stated objectives of the applicable statutes. In doing so, the IRFA must meet certain guidelines regarding why the action is being taken, the estimate of small entities to which the proposed rule would apply, and the discussion of alternatives.

Department Response: The Department certifies that this rule will not have a significant economic impact on a substantial number of small entities because they already receive financial assistance under the WIA program and likely will continue to do so under the WIOA program. The Department expects that WIOA will have no cost impact on small entities and, therefore, preparing an IRFA was unnecessary. See section V.B (Regulatory Flexibility Act) below for more details.

m. Impact on Small Businesses

Comments: One commenter found that concluding the NPRM would have no cost impact on small entities was unreasonable. The commenter stated that the analysis did not show how transfer payments would fully finance the incremental costs of WIOA. In addition, the analysis did not quantify the existing costs or identify sources or mechanisms to pay for the new costs. The commenter also stated that in addition to affecting one-stop center operators, the regulation would affect small entities such as small training providers and service providers.

Department Response: The Department considered small training providers and service providers as small entities in the Regulatory Flexibility Analysis. We indicated that transfer payments are a significant aspect of this analysis in that most WIOA cost burdens on State and Local WDBs will be fully financed through Federal transfer payments to States. The Department expects that this Final Rule will have no net cost for small entities.

4. Analysis Considerations

The Department estimated the additional costs and transfers associated with implementing this WIOA-required Final Rule from the existing program

baseline, that is the current practices complying with, at a minimum, the 2000 WIA Final Rule (65 FR 49294, Aug. 11, 2000).

The Department explains how the required actions of States, Local WDBs, employers and training entities, government agencies, and other related entities were linked to the expected costs, benefits, and transfers. We also consider, where appropriate, the unintended consequences introduced by this Final Rule. The Department has made every effort, where feasible, to quantify and monetize the costs, benefits, and transfers of this Final Rule. We are unable to quantify benefits associated with the Final Rule because of data limitations and a lack of operational data or evaluation findings on the provisions of the Final Rule or WIOA in general. Therefore, we describe some benefits qualitatively.

The Department has made every effort to quantify all incremental costs associated with the implementation of WIOA as distinct from those that already exist under WIA, WIOA's predecessor statute. Despite our best efforts, however, we might be double counting some activities that occur under WIA. Thus, the costs itemized below represent an upper bound for the potential burden of implementing WIOA.

In addition to this Final Rule, DOL and ED are publishing a Joint Final Rule to implement specific requirements of WIOA that fall under both Departments' purviews (Joint WIOA Final Rule). The Department acknowledges that these final rules and their associated impacts might not be fully independent from one another, but we are unaware of a reliable method to quantify this interdependence. Therefore, this analysis does not capture the correlated impacts of the costs, benefits, and transfers of this Final Rule and those associated with the Joint WIOA Final Rule.

In accordance with the regulatory analysis guidance articulated in Circular A–4 and consistent with the Department's practices in previous rulemakings, this regulatory analysis focuses on the likely consequences (*i.e.*, costs, benefits, and transfers that accrue to citizens and residents of the United States) of this WIOA-required Final Rule. The analysis covers 10 years (2016 through 2025) to ensure it captures major additional costs and transfers that accrue over time. The Department expresses all quantifiable impacts in 2015 dollars and uses 3-percent and 7-percent discounting following Circular A–4.

Exhibit 2 presents the number of entities expected to experience a change in level of effort (workload) due to the requirements included in this Final Rule. The Department provides these estimates and uses them extensively throughout this analysis to estimate the cost of each provision.

EXHIBIT 2—NUMBER OF AFFECTED ENTITIES BY TYPE

Entity type	Number of entities
States impacted by DOL program requirements [4]	[5] 57
States without colocated Wagner-Peyer offices and one-stop delivery systems (one-stops)	[6] 10
States without sector strategies	[7] 21
States without policies for career pathways	[8] 27
States that must pay their share for proportionate use of one-stops	[9] 54
States that receive sanctions	[10] 5
Local areas without co-located ES offices and one-stops	[11] 100
Local WDBs	[12] 580
Local WDBs newly selecting one-stop operators	[13] 250
Local WDBs performing regional plan modifications	[14] 300
Eligible Training Providers (ETPs)	[15] 11,400

Estimated Number of Workers and Level of Effort

The Department presents the estimated average number of workers and the estimated average level of effort required per worker for each activity in the subject-by-subject analysis. To derive these estimates, ETA program experts consulted with State programs to estimate the average levels of effort and the average number of workers needed for each activity to meet the requirements relative to the baseline (*i.e.*, the current practice under WIA). These estimates are the national averages for all States; thus, some States could experience higher actual costs, while actual costs could be lower for other States.

Compensation Rates

In the subject-by-subject analysis, the Department presents the additional labor and other costs associated with the implementation of each provision in this Final Rule. Exhibit 3 presents the compensation rates for the occupational categories expected to experience an increase in level of effort (workload) due to the Final Rule. We use the BLS mean hourly wage rate for State and local employees.[16] [17] We adjust the wage rates using a loaded wage factor to reflect total compensation, which includes non-wage factors such as health and retirement benefits.[18] For the State and local sectors, we use a loaded wage factor of 1.57, which represents the ratio

[4] For simplicity, the Department's use of the term "States" in this RIA refers to the 50 States; the District of Columbia; the U.S. territories of American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the Virgin Islands; and the Republic of Palau, a country in free association with the United States.

[5] Based on internal Department of Labor data.

[6] Department of Labor estimate.

[7] Ibid.

[8] U.S. Department of Education, U.S. Department of Labor, and U.S. Department of Health and Human Services. (2014). *Viewing Party Guide.* National Dialogue on Career Pathways Retrieved from: *https://learnwork.workforce3one.org/view/2001425433998607383/info.*

[9] Department of Labor estimate.

[10] Ibid.

[11] Ibid.

[12] Ibid.

[13] Ibid.

[14] Ibid.

[15] Ibid.

[16] Bureau of Labor Statistics. (2016). *May 2015 national industry-specific occupational employment and wage estimates: NAICS 999200—State government, excluding schools and hospitals (OES designation).* Retrieved from: *http://www.bls.gov/oes/current/naics4_999200.htm.*

[17] Bureau of Labor Statistics. (2016). *May 2015 national industry-specific occupational employment and wage estimates: NAICS 999300—Local government, excluding schools and hospitals (OES designation).* Retrieved from: *http://www.bls.gov/oes/current/naics4_999300.htm.*

[18] The Department believes that the overhead costs associated with this Final Rule are small because the additional activities required by the Final Rule will be performed by existing employees whose overhead costs are already covered. However, acknowledging that there might be additional overhead costs, as a sensitivity analysis of results, we calculated the impact of more significant overhead costs by including an overhead rate of 17 percent. This rate has been used by the Environmental Protection Agency (EPA) in its final rules (see, for example, EPA Electronic Reporting under the Toxic Substances Control Act Final Rule, Supporting & Related Material), and is based upon a Chemical Manufacturers Association study. An overhead rate from chemical manufacturing may not be appropriate for all industries, so there may be substantial uncertainty concerning the estimates based on this illustrative example. (In contrast, DOL's Employee Benefits Security Administration (EBSA) includes overhead costs that are substantially higher and more variable across employee types than EPA's—between 39 and 138 percent of base wages for compensation and benefits managers, lawyers, paralegals and other legal assistants, and computer systems analysts—as presented in detail at *www.dol.gov/ebsa/pdf/labor-cost-inputs-used-in-ebsa-opr-ria-and-pra-burden-calculations-march-2016.pdf.*) Using an overhead rate of 17 percent would increase the total cost of the Final Rule by 17 percent, from $89.9 million in Year 1 to $105.1 million. Over the 10-year period, using an overhead rate of 17 percent would increase the total undiscounted cost of the Final Rule from $350.4 million to $409.9 million, or 17 percent.

of average total compensation [19] to average wages in 2015.[20] [21] We then multiply the loaded wage factor by each occupational category's wage rate to calculate an hourly compensation rate.

The Department uses the hourly compensation rates presented in Exhibit 3 throughout this analysis to estimate the labor costs for each provision.

EXHIBIT 3—COMPENSATION RATES

[2015 dollars]

Position	Average hourly wage rate a	Loaded wage factor b	Hourly compensation rate c = a × b
Local Employees			
Computer systems analysts	$38.70	1.57	$60.76
Database administrators	37.96		59.60
Lawyers	47.63		74.78
Management analysts	38.60		60.60
Management occupations staff	40.53		63.63
Secretaries and administrative assistants	18.66		29.30
Social workers	25.77		40.46
State Employees			
Chief executive	54.26	1.57	85.19
Computer systems analysts	35.78		56.17
Database administrators	36.32		57.02
Lawyers	41.71		64.48
Management analysts	29.22		45.88
Management occupations staff	41.65		65.39
Secretaries and administrative assistants	17.30		27.16
Social and community service managers	34.53		54.21
Social workers	22.43		35.22

At a minimum, all affected entities are currently required to comply with the 2000 WIA Final Rule (65 FR 49294, Aug. 11, 2000); however, some affected entities might already comply with some provisions of the Final Rule. This analysis estimates the incremental costs and transfers that affected entities that are not yet compliant with the Final Rule will incur. The equation below shows the method the Department uses to calculate the incremental total cost for each provision over the 10-year analysis period. The methodology used in estimating the quantifiable transfers is provided in the subject-by-subject analysis.

$$\text{Total Cost} = \sum_{T=1}^{10}\left(A_l \sum_{i=1}^{n}(\mathrm{N_i} \times \mathrm{H_i} \times \mathrm{W}_i \times \mathrm{L}_i) + \sum_{j=1}^{m}\mathrm{A_j} \times \mathrm{C_j}\right)$$

Where,

A_l Number of affected entities that will incur labor costs,

N_i Number of staff of occupational category i,

H_i Hours required per staff of occupational category i,

W_i Mean hourly wage rate of staff of occupational category i,

L_i Loaded wage factor of staff of occupational category i,

A_j Number of affected entities incurring non-labor costs of type j,

C_j Non-labor cost of type j,

i Occupational category,

n Number of occupational categories,

j Non-labor cost type,

m Number of non-labor cost types, and

T Year.

The total cost of each provision is calculated as the sum of the total labor cost and total non-labor cost incurred each year over the 10-year period (see Exhibit 28 for the average annual cost of the Final Rule by provision). The total labor cost is the sum of the labor costs

[19] Bureau of Labor Statistics. (2016). *2015 Employer Costs for Employee Compensation.* Retrieved from: *http://www.bls.gov/schedule/archives/ecec_nr.htm.* The Department calculated this value using data from Table 3. "Employer Costs per Hour Worked for Employee Compensation and Costs as a Percent of Total Compensation: State and Local Government Workers, by Major Occupational and Industry Group." Total compensation for all workers. To calculate the average total compensation in 2015 of $44.53, the Department averaged the total compensation for all workers provided in March, June, September, and December releases.

[20] Bureau of Labor Statistics. (2016). *2015 Employer Costs for Employee Compensation.* Retrieved from: *http://www.bls.gov/schedule/archives/ecec_nr.htm.*

The Department calculated this value using data from Table 3. "Employer Costs per Hour Worked for Employee Compensation and Costs as a Percent of Total Compensation: State and Local Government Workers, by Major Occupational and Industry Group." Wages and salaries for all workers. To calculate the average wage and salary in 2015 of $28.41, the Department averaged the wage and salaries for all workers provided in March, June, September, and December releases.

[21] The State and local loaded wage factor was applied to all non-Federal employees. Discerning the number of State and local-sector employees and private-sector employees at the local level is difficult; therefore, the Department used the State and local-sector loaded wage factor (1.57) instead of the private-sector wage factor (1.44) for all non-Federal employees to avoid underestimating the costs.

for each occupational category *i* (*e.g.*, computer systems analyst, database administrators, and lawyers) multiplied by the number of affected entities that will incur labor costs, A_I. The labor cost for each occupational category *i* is calculated by multiplying the number of staff required to perform the required activity, N_i; the hours required per staff member to perform the required activity, H_i; the mean hourly wage rate of staff of occupational category *i*, W_i; and the loaded wage factor of staff of occupational category *i*, L_i. The total non-labor cost is the sum of the non-labor costs for each non-labor cost type *j* (*e.g.*, consulting costs) multiplied by the number of affected entities that will incur non-labor costs, A_j.

Transfer Payments

In addition, the Department provides an assessment of transfer payments associated with transitioning the Nation's public workforce system from the requirements of WIA to the new requirements of WIOA. In accordance with Circular A–4, we consider transfer payments as payments from one group to another that do not affect total resources available to society.

One example of transfer payments results from the expectation that available U.S. workers trained and hired who were previously unemployed will no longer seek new or continued unemployment insurance benefits. Assuming other factors remain constant, the Department expects State unemployment insurance expenditures to decline because of the hiring of U.S. workers following WIOA implementation. We, however, cannot quantify all transfer payments due to a lack of adequate data.

5. Updates to the Cost-Benefit Analysis for the Final Rule

In total, the Department estimates that this Final Rule will generate costs over a 10-year period. The Final Rule is estimated to result in 10-year undiscounted costs of $350.4 million (in 2015 dollars). In the NPRM, the Department estimated that the proposed rule would result in $384.4 million in undiscounted costs (in 2013 dollars). The Final Rule also quantifies transfer payments of $128.9 million (in 2015 dollars). As discussed below, after reviewing public comments and with further consultation with program experts in the DOL program areas, we updated the cost and transfer analyses and made changes to specific provisions in the NPRM that affected costs and transfers. While the updates made to each provision (*i.e.*, changes from the NPRM estimates) are discussed under the relevant headings below, a detailed description of each cost provision remains in section V.A.6 (Subject-by-Subject Analysis).

General Updates

In the Final Rule economic analysis, the Department updates all costs and transfers to 2015 dollars from 2013 dollars in the NPRM. This update increases the estimated costs and transfers of the Final Rule relative to the costs presented in the NPRM.

In addition, the Department has made several updates to labor costs. First, we use more specific occupational categories than those used in the NPRM (*i.e.*, administrative staff, WDB members, counsel staff, local stakeholders, managers, and technical staff). In the Final Rule, the occupational categories include chief executives, computer systems analysts, database administrators, lawyers, management analysts, management occupations staff, secretaries and administrative assistants, social and community service managers, and social workers. Due to the numerous changes made in the analysis, which are described in detail below, these occupational categories add more specificity to the labor costs, but determining whether they had a positive or negative effect on costs or transfers was not possible.

Second, the Department has updated labor costs, including wage rates and loaded wage factors, to reflect 2015 BLS data. Furthermore, instead of using State government employee wage rates for workers at both the State level and local level as in the NPRM, we applied wage rates for State government employees and local government employees to workers at the State and local levels, respectively. Depending on the occupational category, the State-level wage rate could be higher or lower than the corresponding local-level wage rate; thus, determining whether this had a positive or negative effect on costs was not possible.

Third, based on further discussions with program experts, the Department has increased the overall number of States from 56 to 57 in the Final Rule because we concluded that the WIOA requirements also will affect the Republic of Palau.

New State WDB Membership Requirements

This section describes the updates to the NPRM's provision (a) "New State Workforce Development Board Membership Requirements." In this Final Rule's subject-by-subject analysis, costs related to this provision are found in provision (a) "New State WDB Membership Requirements." The cost of this provision reflects the cost for States to establish State WDBs in accordance with the membership requirements. The total undiscounted 10-year cost of this provision decreased from $313,000 in the NPRM to $272,000 in the Final Rule.[22]

At the State level for the DOL programs, the Department made the changes presented in Exhibit 4. We replaced the manager with the more precise occupational categories of chief executives and management occupations staff. We assumed that 25 percent of the effort would be the responsibility of a chief executive and 75 percent of a management occupations staff member. We also replaced the technical staff with the more precise occupational category of management analyst.

EXHIBIT 4—UPDATES TO COSTS OF STATE-LEVEL DOL PROGRAMS—NEW STATE WDB MEMBERSHIP REQUIREMENTS

NPRM					Final rule				
(a) New state workforce development board membership requirements					(a) New state WDB membership requirements				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Manager	1	20	One time	56 States	Chief executive	1	5	One time	57 States.

[22] This variance in cost is a result of the Department's updates of the wage rates used throughout this analysis.

EXHIBIT 4—UPDATES TO COSTS OF STATE-LEVEL DOL PROGRAMS—NEW STATE WDB MEMBERSHIP REQUIREMENTS—Continued

NPRM					Final rule				
(a) New state workforce development board membership requirements					(a) New state WDB membership requirements				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Counsel staff.	1	15			Management occupations staff.	1	15		
Technical staff.	2	20			Lawyer	1	15		
Admin. staff	1	20			Management analyst	2	20		
					Secretary or admin. assistant.	1	20		

Development and Continuous Improvement of the Workforce Development System

This section describes the updates to the NPRM's provision (b) "Development and Continuous Improvement of the Workforce Development System." In the Final Rule's subject-by-subject analysis, this cost provision and provision (f) "Identification of Regions," have been combined in the Final Rule to form provision (b) "Development and Continuous Improvement of the Workforce Development System." This provision of the Final Rule estimates the cost for State WDBs to assist State Governors in: (1) The development and continuous improvement of the State's workforce development systems, and (2) the identification of regions, including planning regions, and the designation of local areas, after consultation with Local WDBs and chief elected officials (CEOs). The cost estimate for the first item was initially included in provision (b) of the NPRM along with a portion of the second item.[23] For these items, the total undiscounted 10-year cost decreased from $92.1 million in the NPRM to $65.5 million in the Final Rule.[24]

Exhibit 5 presents the updates to the State-level DOL program. The Department replaced the technical staff with the more precise occupational category of management analyst.

EXHIBIT 5—UPDATES TO COSTS OF STATE-LEVEL DOL PROGRAMS—DEVELOPMENT AND CONTINUOUS IMPROVEMENT OF THE WORKFORCE DEVELOPMENT SYSTEM

NPRM					Final rule				
(b) Development and continuous improvement of the workforce development system					(b) Development and continuous improvement of the workforce development system				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Sector Strategies					*Sector Strategies*				
Manager	1	300	Annual	21 States	Management occupations staff.	1	300	Annual	21 States w/o extensive and systematic sector strategies.
Technical staff.	2	1,260			Management analyst	2	1,260		
Career Pathways					*Career Pathways*				
Manager	1	300	Annual	27 States	Management occupations staff.	1	300	Annual	27 States w/o policies for career pathways.
Technical staff.	2	1,260			Management analyst	2	1,260		

[23] See provision (f) "Identification of Regions" below for revised cost estimates related to the second item, identifying regions and designating local areas.

[24] This variance in cost is a result of the Department's updates of the wage rates used throughout this analysis.

EXHIBIT 5—UPDATES TO COSTS OF STATE-LEVEL DOL PROGRAMS—DEVELOPMENT AND CONTINUOUS IMPROVEMENT OF THE WORKFORCE DEVELOPMENT SYSTEM—Continued

NPRM					Final rule				
(b) Development and continuous improvement of the workforce development system					(b) Development and continuous improvement of the workforce development system				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Identify Regions					*Identify Regions*				
Manager	1	40	One time	56 States	Management occupations staff.	1	40	One time	57 States.
Counsel staff.	1	40			Lawyer	1	40		
Technical staff.	1	80			Management analyst	1	80		
Admin. staff	1	20			Secretary or admin. assistant.	1	20		

Development of Statewide Policies Affecting the State's One-Stop Delivery System

This section describes the updates to the NPRM's provision (c) "Development of Statewide Policies Affecting the State's One-Stop System." In the Final Rule, costs related to this provision, found in (d) "Development of Statewide Policies Affecting the State's One-Stop System," reflect the efforts of State WDBs to help Governors develop and review statewide policies affecting the coordinated provision of services through the States' one-stop delivery systems. The total undiscounted 10-year cost of this provision increased from $1.2 million in the NPRM to $1.4 million in the Final Rule.

Exhibit 6 presents the updates to the State-level DOL program. The Department replaced the managers in our previous estimate with the more precise occupational categories of management occupations staff and social and community service managers. After consulting with program experts, we increased the level of effort for managerial staff from 40 hours to 60 hours to account for the effort related to developing policies governing service delivery to job seekers under WIOA. We estimated that 30 percent of the effort (18 hours) would be for a management occupations staff member and 75 percent (42 hours) for a social and community service manager. We also increased the level of effort for lawyers from 40 hours to 60 hours. In addition, we increased the number of technical staff from two to three and replaced them with the more precise occupational category of management analyst.

EXHIBIT 6—UPDATES TO COSTS OF STATE-LEVEL DOL PROGRAMS—DEVELOPMENT OF STATEWIDE POLICIES AFFECTING THE STATE'S ONE-STOP DELIVERY SYSTEM

NPRM					Final rule				
(c) Development of statewide policies affecting the state's one-stop system					(d) Development of statewide policies affecting the state's one-stop delivery system				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Manager	1	40	One time	56 States	Management occupations staff.	1	18	One time	57 States.
Counsel staff.	1	40			Social & community service manager.	1	42		
Technical staff.	2	120			Lawyer	1	60		
					Management analyst	3	120		

Development of Strategies for Technological Improvements

This section describes the updates to the NPRM's provision (d) "Development of Strategies for Technological Improvements." In the Final Rule, costs related to this provision can be found in provision (e) "Development of Strategies for Technological Improvements." The cost of this provision reflects the efforts of State WDBs to help Governors develop strategies for technological improvements to facilitate access to and improve the quality of services and activities provided through the one-stop delivery system. The total undiscounted 10-year cost of this provision decreased from $2.3 million in the NPRM to $2.0 million in the Final Rule.[25]

Exhibit 7 presents the updates to the State-level DOL program. The Department replaced the technical staff with the more precise occupational category of computer systems analyst.

[25] This variance in cost is a result of the Department's updates of the wage rates used throughout this analysis.

EXHIBIT 7—UPDATES TO COSTS OF STATE-LEVEL DOL PROGRAMS—DEVELOPMENT OF STRATEGIES FOR TECHNOLOGICAL IMPROVEMENTS

NPRM					Final rule				
(d) Development of strategies for technological improvements					(e) Development of strategies for technological improvements				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Manager	1	20	Annual	56 States	Management occupations staff.	1	20	Annual	57 States.
Technical staff.	1	40			Computer systems analysts.	1	40		

State Plan Modification

This section describes the updates to the NPRM's provision (e) "State Plan Modification." After careful consideration, the Department has decided that incremental costs related to State Plan modifications are captured in the costs for Unified and Combined State Plan biennial modifications in the Joint WIOA Final Rule. See provision (b) "Unified or Combined State Plans: Expanded Content, Biennial Modification, and Submission Coordination Requirements" of the Joint WIOA Final Rule economic analysis. Therefore, the total undiscounted 10-year cost of this provision of $135,000 in the NPRM was removed in the Final Rule. Exhibit 8 presents the updates to the State-level DOL program.

EXHIBIT 8—UPDATES TO COSTS OF STATE-LEVEL DOL PROGRAMS—STATE PLAN MODIFICATION

NPRM					Final rule				
(e) State plan modification					Moved to joint DOL–ED final rule				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Manager	1	10	4th year	56 States	N/A. See Joint WIOA Final Rule				
Counsel staff.	1	4							
Technical staff.	2	10							
Admin. staff	1	4							

Identification of Regions

This section describes the updates to the NPRM's provision (f) "Identification of Regions." This provision and provision (b) "Development and Continuous Improvement of the Workforce Development System," have been combined in the Final Rule to form provision (b) "Development and Continuous Improvement of the Workforce Development System." It reflects the efforts of State WDBs to assist the Governor in: (1) Developing and continuously improving the State's workforce development system, and (2) identifying regions, including planning regions, and designating local areas, after consultation with Local WDBs and CEOs. A cost estimate for the second item only was initially included in provision (f) of the NPRM. The total undiscounted 10-year cost of this provision decreased from $1.1 million in the NPRM to $968,000 in the Final Rule.[26]

Exhibit 9 presents the updates to the State-level DOL program. The Department replaced the technical staff with the more precise occupational category of management analyst.

EXHIBIT 9—UPDATES TO COSTS OF STATE-LEVEL DOL PROGRAMS—IDENTIFICATION OF REGIONS

NPRM					Final rule				
(f) Identification of regions					(b) Development and continuous improvement of the workforce development system				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
					Identification of Regions				
Manager	2	40	2nd & 6th years.	56 States	Management occupations staff.	2	40	2nd & 6th years.	57 States.

[26] This variance in cost is a result of the Department's updates of the wage rates used throughout this analysis.

EXHIBIT 9—UPDATES TO COSTS OF STATE-LEVEL DOL PROGRAMS—IDENTIFICATION OF REGIONS—Continued

NPRM					Final rule				
(f) Identification of regions					(b) Development and continuous improvement of the workforce development system				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Counsel staff.	1	10			Lawyer	1	10		
Technical staff.	3	15			Management analyst	3	15		
Admin. staff	2	10			Secretary or admin. assistant.	2	10		

Appoint New Local WDB and Appropriate Firewalls

This section describes the updates to the NPRM's provision (g) "Appoint New Local Workforce Development Board and Appropriate Firewalls." In the Final Rule, costs related to this provision can be found in provision (f) "Appoint New Local WDB and Appropriate Firewalls." It reflects the requirement to appoint new Local WDBs and establish sufficient firewalls and conflict-of-interest policies and procedures approved by the Governor when a Local WDB is selected as a one-stop operator through a sole-source procurement. The total undiscounted 10-year cost of this provision decreased from $4.6 million in the NPRM to $4.5 million in the Final Rule.[27]

Exhibit 10 presents the updates to Local WDBs. In our estimates for appointing new Local WDBs, the Department replaced the technical staff with the more precise occupational category of management analyst. In our estimates for appropriate firewalls, the Department replaced the technical staff with the more precise occupational category of computer systems analyst.

EXHIBIT 10—UPDATES TO COSTS OF LOCAL WDBS—APPOINT NEW LOCAL WDB AND APPROPRIATE FIREWALLS

NPRM					Final rule				
(g) Appoint new local workforce development board and appropriate firewalls					(f) Appoint new local WDB and appropriate firewalls				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Appoint New Local WDB					*Appoint New Local WDB*				
Manager	1	20	One time	580 Local WDBs.	Management occupations staff.	1	20	One time	580 Local WDBs.
Counsel staff.	1	15			Lawyer	1	15		
Technical staff.	2	20			Management analyst	2	20		
Admin. staff	1	20			Secretary or admin. assistant.	1	20		
Appropriate Firewalls					*Appropriate Firewalls*				
Manager	1	8	One time	580 Local WDBs.	Management occupations staff.	1	8	One time	580 Local WDBs.
Counsel staff.	1	8			Lawyer	1	8		
Technical staff.	1	20			Computer systems analyst.	1	20		

Career Pathways Development

This section describes the updates to the NPRM's provision (h) "Career Pathways Development." In the Final Rule's subject-by-subject analysis, costs related to this provision can be found in provision (g) "Local WDB Career Pathways Development." The cost of this provision reflects the cost for Local WDBs, with representatives of secondary and postsecondary education programs, to lead efforts in developing and implementing career pathways in the local area by aligning the employment, training, education, and supportive services needed by adults and youth, particularly individuals with barriers to employment. The total undiscounted 10-year cost of this provision decreased from $70.7 million

[27] This variance in cost is a result of the Department's updates of the wage rates used throughout this analysis.

in the NPRM to $65.4 million in the Final Rule.[28]

Exhibit 11 presents the updates related to Local WDBs. The Department replaced the technical staff in our previous estimate with the more precise occupational category of management analyst. All other aspects of the analysis, including the number of hours by occupational category, remain unchanged.

EXHIBIT 11—UPDATES TO COSTS OF LOCAL WDBS—CAREER PATHWAYS DEVELOPMENT

NPRM					Final rule				
(h) Career pathways development					(g) Local WDB career pathways development				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Manager	1	80	Annual	580 Local WDBs.	Management occupations staff.	1	80	Annual	580 Local WDBs.
Counsel staff.	1	10			Lawyer	1	10		
Technical staff.	1	80			Management analyst	1	80		
Admin. staff	1	20			Secretary or admin. assistant.	1	20		

Development of Proven and Promising Practices

This section describes the updates to the NPRM's provision (i) "Development of Proven and Promising Practices." In the Final Rule, costs related to this provision can be found in provision (h) "Local WDB Development of Proven and Promising Practices." It reflects the cost for Local WDBs to lead local efforts in identifying and promoting proven and promising strategies and initiatives for meeting the needs of employers, workers, and job seekers (including individuals with barriers to employment). Examples include providing physical and programmatic accessibility to the one-stop delivery system and identifying and disseminating information on proven and promising practices conducted in other local areas for meeting such needs. The total undiscounted 10-year cost of this provision increased from $2.9 million in the NPRM to $21.4 million in the Final Rule.[29]

Exhibit 12 presents the updates to the local-level DOL program. The Department replaced the technical staff with the more precise occupational category of management analyst and removed the counsel and administrative staff because they would not be involved in local efforts in identifying and promoting proven and promising strategies at the Local WDB level.

EXHIBIT 12—UPDATES TO COSTS OF LOCAL-LEVEL DOL PROGRAMS—DEVELOPMENT OF PROVEN AND PROMISING PRACTICES

NPRM					Final rule				
(i) Development of proven and promising practices					(h) Local WDB development of proven and promising practices				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Manager	1	20	Annual	56 States	Management occupations staff.	1	20	Annual	580 Local WDBs
Counsel staff.	1	10			Management analyst	1	40		
Technical staff.	1	40							
Admin. staff	1	15							

Technology

This section describes the updates to the NPRM's provision (j) "Technology." In the Final Rule, costs related to this provision can be found in provision (i) "Local WDB Development of Technology Strategies for Public Workforce System Accessibility and Effectiveness." It reflects the efforts of Local WDBs to develop strategies for using technology to maximize the accessibility and effectiveness of the local workforce development system for employers, workers, and job seekers. The total undiscounted 10-year cost of this provision decreased from $23.7 million in the NPRM to $21.5 million in the Final Rule.[30]

[28] This variance in cost is a result of the Department's updates of the wage rates used throughout this analysis.

[29] This variance in cost is a result of increasing the number of affected entities from 56 States to 580 Local WDBs. Because the activities performed will be similar for workers at the State and local level, the level of effort was not reduced.

[30] This variance in cost is a result of the Department's updates of the wage rates used throughout this analysis.

Exhibit 13 presents the updates to the Local WDBs. The Department replaced the technical staff with the more precise occupational category of computer systems analyst.

EXHIBIT 13—UPDATES TO COSTS OF LOCAL WDBS—TECHNOLOGY

NPRM					Final rule				
(j) Technology					(i) Local WDBs development of technology strategies for public workforce system				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Manager	1	20	Annual	580 Local WDBs.	Management occupations staff.	1	20	Annual	580 Local WDBs.
Technical staff.	1	40			Computer systems analyst.	1	40		

Selection of the One-Stop Operator

This section describes the updates made to the NPRM's provision (k) "Selection of the One-Stop Operator." In the Final Rule, costs related to this provision can be found in provision (j) "Competitive Process for Selection of the One-Stop Operator." The cost of this provision reflects Local WDBs' selection of a one-stop operator through a competitive process. The total undiscounted 10-year cost of this provision decreased from $19.0 million in the NPRM to $14.2 million in the Final Rule.[31]

Exhibit 14 presents the updates to Local WDBs. The Department replaced the technical staff with the more precise occupational category of social worker.

EXHIBIT 14—UPDATES TO COSTS OF LOCAL WDBS—SELECTION OF THE ONE-STOP OPERATOR

NPRM					Final rule				
(k) Selection of the one-stop operator					(j) Competitive process for selection of the one-stop operator				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Manager	1	80	2nd, 6th, & 10th years.	250 Local WDBs newly selecting one-stop operators.	Management occupations staff.	1	80	2nd, 6th, & 10th years.	250 Local WDBs newly selecting one-stop operators.
Counsel staff.	1	40			Lawyer	1	40		
Technical staff.	2	120			Social worker	2	120		
Admin. staff	1	40			Secretary or admin. assistant.	1	40		

Coordination With Education Providers

This section describes the updates to the NPRM's provision (l) "Coordination with Education Providers." In the Final Rule, costs related to this provision can be found in provision (k) "Local WDB Coordination with Education Providers." The cost of this provision reflects Local WDBs coordinating activities with education and training providers in the local area. The total undiscounted 10-year cost of this provision increased from $3.2 million in the NPRM to $21.4 million in the Final Rule.[32]

Exhibit 15 presents the updates to the local-level DOL program. The Department replaced the technical staff with the more precise occupational category of management analyst. We removed the counsel and administrative staff because they would not be involved in this effort at the Local WDB level.

[31] This variance in cost is a result of the Department's updates of the wage rates used throughout this analysis.

[32] This variance in cost is a result of increasing the number of affected entities from 56 States to 580 Local WDBs. Because the activities performed will be similar for workers at the State and local level, the level of effort was not reduced.

EXHIBIT 15—UPDATES TO COSTS OF LOCAL-LEVEL DOL PROGRAMS—COORDINATION WITH EDUCATION PROVIDERS

NPRM					Final rule				
(l) Coordination with education providers					(k) Local WDB coordination with education providers				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Manager	1	30	Annual	56 States	Management occupations staff.	1	20	Annual	580 Local WDBs.
Counsel staff.	1	10			Management analyst	1	40		
Technical staff.	1	40							
Admin. staff	1	10							

Regional Plans

This section describes the updates to the NPRM's provision (m) "Regional Plans." In the Final Rule, costs related to this provision can be found in provision (l) "Regional Plans." The cost of this provision reflects the efforts of Local WDBs and CEOs within a planning region to prepare, submit to the State, and obtain approval of a single regional plan that includes a description of the regional planning activities described in WIOA and incorporates local plans for each local area in the planning region. The total undiscounted 10-year cost of this provision decreased from $10.3 million in the NPRM to $9.5 million in the Final Rule.[33]

Exhibit 16 presents the updates to Local WDBs. The Department replaced the technical staff with the more precise occupational category of management analyst.

EXHIBIT 16—UPDATES TO COSTS OF LOCAL WDBS—REGIONAL PLANS

NPRM					Final rule				
(m) Regional plans					(l) Regional plans				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Manager	2	20	2nd & 6th years.	580 Local WDBs.	Management occupations staff.	2	20	2nd & 6th years.	580 Local WDBs.
Counsel staff.	1	8			Lawyer	1	8		
Technical staff.	2	40			Management analyst	2	40		
Admin. staff	1	8			Secretary or admin. assistant.	1	8		

Local and Regional Plan Modification

This section describes the updates to the NPRM's provision (n) "Local and Regional Plan Modification." In the Final Rule, costs related to this provision can be found in provision (m) "Local and Regional Plan Modification." The cost of this provision reflects the efforts of each Local WDB, in partnership with the CEO, to review the local plan every 2 years and submit a modification as needed, based on significant changes in labor market and economic conditions and other factors. The total undiscounted 10-year cost of this provision decreased from $4.1 million in the NPRM to $3.8 million in the Final Rule.[34]

Exhibit 17 presents the updates to the Local WDBs for regional plans. For local and regional plan modification, the Department replaced the technical staff with the more precise occupational category of management analyst.

[33] This variance in cost is a result of the Department's updates of the wage rates used throughout this analysis.

[34] This variance in cost is a result of the Department's updates of the wage rates used throughout this analysis.

EXHIBIT 17—UPDATES TO COSTS OF LOCAL-LEVEL BOARDS—LOCAL AND REGIONAL PLAN MODIFICATION

NPRM					Final rule				
(n) Local and regional plan modification					(m) Local and regional plan modification				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Local Plan Modification					*Local Plan Modification*				
Manager	1	10	4th year	580 Local WDBs.	Management occupations staff.	1	10	4th year	580 Local WDBs.
Counsel staff.	1	4			Lawyer	1	4		
Technical staff.	2	10			Management analyst	2	10		
Admin. staff	1	4			Secretary or admin. assistant.	1	4		
Regional Plan Modification					*Regional Plan Modification*				
Manager	2	10	4th & 8th years	300 Local WDBs that will modify regional plans.	Management occupations staff.	2	10	4th & 8th years	300 Local WDBs that will modify regional plans.
Counsel staff.	1	4			Lawyer	1	4		
Technical staff.	2	20			Management analyst	2	20		
Admin. staff	1	5			Secretary or admin. assistant.	1	5		

Improved Information About Potential Training Program Providers

This section describes the updates to the NPRM's provision (o) "Improved Information about Potential Training Program Providers." In the Final Rule, costs related to this provision can be found in provision (n) "Improved Information about Eligible Training Program Providers." The cost of this provision reflects the efforts of State-maintained Eligible Training Provider Lists (ETPLs) to provide information to the public on the effectiveness of Eligible Training Providers (ETPs) in achieving positive outcomes for WIOA training participants. The total undiscounted 10-year cost of this provision increased from $5.5 million in the NPRM to $4.5 million in the Final Rule.[35]

Exhibit 18 presents the updates to the State-level DOL program. The Department replaced the technical staff in our previous estimate with the more precise occupational category of management analyst.

EXHIBIT 18—UPDATES TO COSTS OF STATE-LEVEL DOL PROGRAMS—IMPROVED INFORMATION ABOUT POTENTIAL TRAINING PROGRAM PROVIDERS

NPRM					Final rule				
(o) Improved information about potential training program providers					(n) Improved information about eligible training program providers				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Manager	1	32	Annual	56 States	Management occupations staff.	1	32	Annual	57 States.
Technical staff.	2	40			Management analyst	2	40		
Admin. staff	1	80			Secretary or admin. assistant.	1	80		

[35] This variance in cost is a result of the Department's updates of the wage rates used throughout this analysis.

Sanctions on Under-Performing States

This section describes the updates to the NPRM's provision (p) "Sanctions on Under-Performing States." In the Final Rule, costs related to this provision can be found in provision (o) "Sanctions on Under-Performing States." It reflects the costs related to States that are sanctioned when they fail to meet the State-adjusted levels of performance for a program for a second consecutive program year or if they fail to submit a report for any program year. The total undiscounted 10-year cost related to this provision decreased from $5.2 million in the NPRM to $408,000 in the Final Rule.[36]

Exhibit 19 presents the updates to the State-level DOL program. In the NPRM, the Department accounted for the cost of each State to calculate the annual performance levels of its core programs to determine whether it is subject to sanctions. After consulting with our program experts, the Department acknowledges that the determination on whether States receive sanctions will be made at the Federal level using an objective statistical model. This cost is now accounted for in provision (c) of the Joint WIOA Final Rule economic analysis. In this DOL WIOA Final Rule, the Department is now accounting only for costs associated with receiving a sanction. We reduced the number of States from 56 to 5 because only five States, at most, are expected to receive a sanction each year. We replaced the technical staff in our previous estimate with the more precise occupational category of management analyst.

EXHIBIT 19—UPDATES TO COSTS FOR STATE-LEVEL DOL PROGRAMS—SANCTIONS ON UNDER-PERFORMING STATES

NPRM					Final rule				
(p) Sanctions on under-performing states					(o) Sanctions on under-performing states				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Manager	1	40	Annual	56 States	Chief executive	1	40	Annual	5 States.
Technical staff.	1	80			Management analyst	1	80		
Admin. staff	1	40			Secretary or admin. assistant.	1	40		

Colocation of ES Services

This section describes the updates to the NPRM's provision (q) "Colocation of Wagner-Peyser Services." In the Final Rule, costs related to this provision can be found in provision (p) "Colocation of ES Services." The cost of this provision reflects the requirement for ES offices and one-stop centers to colocate. The total undiscounted 10-year cost for this provision decreased from $63.9 million in the NPRM to $57.9 million in the Final Rule.[37]

Exhibit 20 presents the updates to the State-level DOL program. The Department replaced the technical staff with the more precise occupational category of management analyst. In addition, we inflated the consultant cost from $10,000 in 2013 dollars to $10,200 in 2015 dollars.[38] The consultants will assist with planning, property issues (*e.g.*, selling buildings currently owned by ES and finding buildings that meet certain safety requirements), and integrating information technology (IT) and case management systems.

EXHIBIT 20—UPDATES TO COSTS OF STATE-LEVEL DOL PROGRAMS—COLOCATION OF ES SERVICES

NPRM					Final rule				
(q) Colocation of ES services					(p) Colocation of ES services				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Manager	10	40	One time	10 States	Management occupations staff.	10	40	One time	10 States.
Counsel staff.	10	10			Lawyer	10	10		
Technical staff.	20	25			Management analyst	20	25		
Admin. staff	10	5			Secretary or admin. assistant.	10	5		
Consultant cost.	$10,000				Consultant cost	$10,200			

[36] This variance in cost is a result of the reduction in the number of affected States.

[37] This variance in cost is a result of the Department's updates of the wage rates used throughout this analysis.

[38] Bureau of Labor Statistics. (2016). *CPI Detailed Report Data for February 2016*. Retrieved from: *http://www.bls.gov/cpi/cpid1602.pdf*.

The Department calculated the inflation factor of 1.02 using data from Table 24. "Historical Consumer Price Index for All Urban Consumers (CPI–U): U.S. City Average, All Items." To calculate the inflation factor, the Department divided the average annual CPI–U for 2015 by the average annual CPI–U for 2013 (=237.017/232.957).

Exhibit 21 presents the updates to the local-level DOL program. The Department replaced the technical staff with the more precise occupational category of management analyst.

EXHIBIT 21—UPDATES TO COSTS OF LOCAL-LEVEL DOL PROGRAMS—COLOCATION OF ES SERVICES

NPRM					Final rule				
(q) Colocation of ES services					(p) Colocation of ES services				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Manager	100	40	One time	100 Local areas.	Management occupations staff.	100	40	One time	100 Local areas.
Technical staff.	200	25			Management analyst	200	25		
Admin. staff	100	5			Secretary or admin. assistant.	100	5		

Partners Required To Pay Their Share for Proportionate Use of One-Stop Delivery System

This section describes the updates to the NPRM's provision (r) "Partners Required to Pay their Share for Proportionate Use of One-Stop Delivery System." In the Final Rule, costs related to this provision can be found in provision (q) "Partners Required to Pay their Share for Proportionate Use of One-Stop Delivery System." It reflects the cost related to each one-stop partner contributing its proportional share to the funding of one-stop infrastructure costs. The total undiscounted 10-year cost decreased from $68.0 million in the NPRM to $45.6 million in the Final Rule.

Exhibit 22 presents the updates to the State-level DOL program. The Department replaced the technical staff with the more precise occupational category of social worker. All other aspects of the analysis, including the number of hours by occupational category, remain unchanged.

EXHIBIT 22—UPDATES TO COSTS FOR STATE-LEVEL DOL PROGRAMS—PARTNERS REQUIRED TO PAY THEIR SHARE FOR PROPORTIONATE USE OF ONE-STOP DELIVERY SYSTEM

NPRM					Final rule				
(r) Partners required to pay their share for proportionate use of one-stop delivery system					(q) Partners required to pay their share for proportionate use of one-stop delivery system				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Manager	50	40	3rd, 6th, & 9th years.	54 States that need to pay their proportional share.	Management occupations staff.	50	40	3rd, 6th, & 9th years.	54 States that need to pay their proportional share.
Counsel staff.	50	1			Lawyer	50	1		
Technical staff.	100	40			Social worker	100	40		
Admin. staff	50	5			Secretary or admin. assistant.	50	5		

Establishing Training Provider Eligibility Procedures, Including Adding Registered Apprenticeship

This section describes the updates to the NPRM's provision (s) "Establishing Training Provider Eligibility Procedures, Including Adding Registered Apprenticeship." In the Final Rule, costs related to this provision can be found in provision (r) "Establishing Training Provider Eligibility Procedures, Including Procedures for Adding Registered Apprenticeship Programs to the State Eligible Training Provider List." The cost of this provision reflects the efforts of the Governor, after consultation with the State WDB, to establish criteria, information requirements, and procedures for the eligibility of providers of training services to receive funds under WIOA for the provision of training services in local areas in the State (*i.e.,* procedures for initial determination and renewals of eligibility). The total undiscounted 10-year cost related to this provision increased from $529,000 in the NPRM to $2.5 million in the Final Rule.

Exhibit 23 presents the updates to the State-level DOL program. For establishing eligibility procedures for training providers, the Department replaced the technical staff with the more precise occupational category of management analyst. We also added a

burden for reporting: One database administrator per ETP that will incur a 3-hour, one-time cost.

EXHIBIT 23—UPDATES TO COSTS TO STATE-LEVEL DOL PROGRAMS—ESTABLISHING TRAINING PROVIDER ELIGIBILITY PROCEDURES, INCLUDING ADDING REGISTERED APPRENTICESHIP

NPRM					Final rule				
(s) Establishing training provider eligibility procedures, including adding registered apprenticeship					(r) Establishing training provider eligibility procedures, including procedures for adding registered apprenticeship programs to the state eligible training provider list				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
					Establishing Training Provider Eligibility Procedures				
Manager	1	40	One time	56 States	Management occupations staff.	1	40	One time	57 States.
Counsel staff.	1	20			Lawyer	1	20		
Technical staff.	1	80			Management analyst	1	80		
					Reporting				
					Database administrator	1	3	One time	11,400 ETPs.

Determining Eligibility of New and Previously Eligible Providers

This section describes the updates to the NPRM's provision (t) "Determining Eligibility of New and Previously Eligible Providers." In the Final Rule, costs related to this provision can be found in provision (s) "Determining Initial Eligibility of New and Previously Eligible Providers." The costs reflect the efforts of the Governor, after consultation with the State WDB, to establish procedures for determining eligibility of providers and include application and renewal procedures, eligibility criteria, and information requirements. The total undiscounted 10-year cost of this provision decreased from $1.1 million in the NPRM to $879,000 in the Final Rule.

Exhibit 24 presents the updates to the State-level DOL program. The Department replaced the technical staff with the more precise occupational category of management analyst.

EXHIBIT 24—UPDATES TO COSTS OF STATE-LEVEL DOL PROGRAMS—DETERMINING ELIGIBILITY OF NEW AND PREVIOUSLY ELIGIBLE PROVIDERS

NPRM					Final rule				
(t) Determining eligibility of new and previously eligible providers					(s) Determining initial eligibility of new and previously eligible providers				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Manager	1	40	One time	56 States	Management occupations staff.	1	40	One time	57 States.
Technical staff.	2	110			Management analyst	2	110		
Admin. staff	2	50			Secretary or admin. assistant.	2	50		

Biennial Review of Eligibility

This section describes the updates to the NPRM's provision (u) "Biennial Review of Eligibility." In the Final Rule, costs related to this provision can be found in provision (t) "Biennial Review of Training Provider Eligibility." The cost of this provision reflects the costs of training providers to submit information for evaluation as specified in the Governor's eligibility criteria, information requirements, and procedures. The total undiscounted 10-year cost of this provision decreased from $2.7 million in the NPRM to $2.1 million in the Final Rule.[39]

Exhibit 25 presents the updates to the State-level DOL program. The Department replaced the technical staff with the more precise occupational category of management analyst.

[39] This variance in cost is a result of the Department's updates of the wage rates used throughout this analysis.

EXHIBIT 25—UPDATES TO COSTS OF STATE-LEVEL DOL PROGRAMS—BIENNIAL REVIEW OF ELIGIBILITY

NPRM					Final rule				
(u) Biennial review of eligibility					(t) Biennial review of eligibility				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Manager	1	30	4th, 6th, 8th, & 10th years.	56 States	Management occupations staff.	1	30	4th, 6th, 8th, & 10th years.	57 States.
Technical staff.	2	60			Management analyst	2	60		
Admin. staff	2	30			Secretary or admin. assistant.	2	30		

Disseminating the Training Provider List With Accompanying Information

This section describes the updates to the NPRM's provision (v) "Disseminating the Training Provider List with Accompanying Information." In the Final Rule, costs related to this provision can be found in provision (u) "Disseminating the Training Provider List with Accompanying Information." The cost of this provision reflects the efforts of the Governor or State agency to disseminate the State ETPL and accompanying performance and cost information to Local WDBs in the State and to members of the public. The total undiscounted 10-year cost of this provision decreased from $1.7 million in the NPRM to $1.5 million in the Final Rule.[40]

Exhibit 26 presents the updates to the State-level DOL program. The Department replaced the technical staff with the more precise occupational category of management analyst.

EXHIBIT 26—UPDATES TO COSTS OF STATE-LEVEL DOL PROGRAMS—DISSEMINATING THE TRAINING PROVIDER LIST WITH ACCOMPANYING INFORMATION

NPRM					Final rule				
(v) Disseminating the training provider list with accompanying information					(u) Disseminating the training provider list with accompanying information				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
Manager	1	30	One time	56 States	Management occupations staff.	1	30	One time	57 States.
Technical staff.	2	80			Management analyst	2	80		
Admin. staff	2	45			Secretary or admin. assistant.	2	45		
IT reprogramming or database staff.	2	125			Database administrator	2	125		

Migrant and Seasonal Farmworker Housing

This section describes the updates to the NPRM's provision (w) "Migrant and Seasonal Farmworker Housing." The cost of this provision was not quantified in the NPRM because this this provision has been rescinded in the Final Rule.

In addition, the Department moved one provision that appeared in the Joint WIOA NPRM to this DOL WIOA Final Rule. The Department describes this provision below.

Identification and Dissemination of Best Practices

After careful consideration, the Department has concluded that the costs associated with provision (d) "Identification and Dissemination of Best Practices" in the Joint WIOA NPRM economic analysis are more appropriate for this Final Rule because the requirement affects State WDBs only. The costs of this provision reflect efforts by State WDBs to assist Governors in identifying and disseminating best practices. This provision results in a total undiscounted 10-year cost of $3.1 million.

[40] This variance in cost is a result of the Department's updates of the wage rates used throughout this analysis.

EXHIBIT 27—UPDATES TO COSTS OF STATE-LEVEL DOL PROGRAMS—IDENTIFICATION AND DISSEMINATION OF BEST PRACTICES

NPRM					Final rule				
Moved from joint WIOA NPRM					(c) Identification and dissemination of best practices				
Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities	Labor category	Average number of workers	Average level of effort (hrs.)	Frequency	Number of affected entities
N/A. See Joint WIOA NPRM					Management occupations staff.	1	20	Annual	57 States.
					Management analyst	2	40		
					Secretary or admin. assistant.	1	20		

Youth Funds Targeting Out-of-School Youth

This section describes the updates to the transfer payments analysis. In the NPRM, the Department described the transfer payments qualitatively due to data limitations and a lack of operational data or evaluation findings on the provisions of the NPRM or WIOA in general. In this DOL WIOA Final Rule, the Department was able to quantify the transfer payments related to youth funds targeting OSY. This accounts for transfers expected to result from decreases in burdens on taxpayers as more youth leave the youth programs and obtain employment. For transfers associated with youth funds targeting OSY, the quantified transfer payments increased from $0 in the NPRM to $128.9 million in the Final Rule.

6. Subject-by-Subject Analysis

The Department's analysis below covers the expected costs of the following 21 provisions of the WIOA Final Rule against the baseline of the current practice under WIA: (a) "New State WDB Membership Requirements;" (b) "Development and Continuous Improvement of the Workforce Development System;" (c) "Identification and Dissemination of Best Practices;" (d) "Development of Statewide Policies Affecting the State's One-Stop System;" (e) "Development of Strategies for Technological Improvements;" (f) "Appoint New Local WDB and Appropriate Firewalls;" (g) "Local WDB Career Pathways Development;" (h) "Local WDB Development of Proven and Promising Practices;" (i) "Local WDB Development of Technology Strategies for Public Workforce System Accessibility and Effectiveness;" (j) "Competitive Process for Selection of the One-Stop Operators;" (k) "Local WDB Coordination with Education Providers;" (l) "Regional Plans;" (m) "Local and Regional Plan Modification;" (n) "Improved Information about Eligible Training Program Providers;" (o) "Sanctions on Under-Performing States;" (p) "Colocation of ES Services;" (q) "Partners Required to Pay their Share for Proportionate Use of the One-Stop Delivery System;" (r) "Establishing Training Provider Eligibility Procedures, Including Procedures for Adding Registered Apprenticeship Programs to the State Eligible Training Provider List;" (s) "Determining Initial Eligibility of New and Previously Eligible Providers;" (t) "Biennial Review of Training Provider Eligibility;" and (u) "Disseminating the Training Provider List with Accompanying Information."

In addition, the Department analyzed the expected transfers related to "Youth Funds Targeting Out-of-School Youth."

The Department emphasizes that many of the provisions in this WIOA-required Final Rule also are existing requirements under WIA. For example, the requirement that States "prepare annual reports" is a current requirement under WIA that States routinely undertake. Accordingly, our regulatory analysis focuses on new costs and transfers that can be attributed exclusively to the enactment of WIOA, as addressed in this Final Rule. Much of WIA's infrastructure and operations are carried forward under WIOA and, therefore, are not considered "new" burdens resulting from this Final Rule.

Quantifiable Costs of the Final Rule

The following sections describe the provisions that are expected to result in costs.

a. New State WDB Membership Requirements

States must establish State WDBs in accordance with the membership requirements of WIOA sec. 101(b). Under WIOA sec. 101(b)(1)(C)(i), the majority of the State WDB representatives must be from businesses or organizations in the State. These representatives must be owners, chief executive officers, or chief operating officers of the businesses or executives with optimum policy-making or hiring authority. WIA did not include specific requirements for percentage of State WDB business members.

WIOA sec. 101(b)(1)(C)(ii) requires at least 20 percent of State WDB members to be representatives of labor organizations who have been nominated by State labor federations and at least one member to be a member of a labor organization or a training director from a joint labor-management apprenticeship program (if such program exists in the State). Members may include representatives of community-based organizations (CBOs) that have demonstrated expertise in addressing the employment, training, or education needs of individuals with barriers to employment or eligible youth.

WIA sec. 111(b)(1)(C) required that State WDB members include representatives of labor organizations, representatives of organizations that have experience with respect to youth activities and expertise in the delivery of workforce investment activities, including chief executive officers of community colleges and CBOs. No minimum percentage requirement for this type of membership, however, was required. In accordance with WIOA sec. 101(b)(2), State WDB membership must represent the diverse geographic areas of the State. WIA did not include a requirement that State WDB representation cover the diverse geographic areas of the State.

Costs

To estimate State WDB costs (see Exhibit 4), the Department multiplied the estimated average number of chief executives per State (1) by the time required to adjust the State WDB membership (5 hours) and by the hourly

compensation rate ($85.19/hour). We repeated the calculation for the following occupational categories: lawyers (1 lawyer at $65.48/hour for 15 hours), management occupations staff (1 manager at $65.39/hour for 15 hours), management analysts (2 analysts at $45.88/hour for 20 hours each), and secretaries or administrative assistants (1 assistant at $27.16/hour for 20 hours). We summed the labor cost for all five occupational categories ($4,767) and multiplied the result by the number of States (57). This calculation results in a one-time cost of $271,742 in the first year of the Final Rule, which is an average annual cost of $27,174.

b. Development and Continuous Improvement of the Workforce Development System

WIOA sec. 101(d)(3)(A) through (G) require the State WDB assist the Governor in developing and continuously improving the State's workforce development system, including identifying barriers and means for their removal to coordinate and align programs and activities better; developing career pathway strategies to support individuals in entering or retaining employment; developing customer outreach strategies; developing and expanding strategies to meet the need of employers, workers, and job seekers through industry or sector partnerships related to in-demand industry sectors and occupations; identifying regions, including planning regions, and designating local areas (after consultation with Local WDBs and CEOs);[41] developing and continuously improving the one-stop delivery system; and developing strategies to train and inform staff.

WIA sec. 111(d)(2) also required the State WDB to assist the Governor in developing and continuously improving the statewide workforce development system; however, the list of included activities was limited to review of local plans and development of linkages to ensure coordination and non-duplication among the programs and activities of one-stop partners. Like WIOA, WIA required State WDBs to assist the Governor in designating local areas (WIA sec. 111(d)(4)). State WDBs, however, have significantly more explicit responsibilities in terms of developing strategies for workforce development systems in the State.

Costs

The Department estimated the State WDBs' annual labor costs for developing or expanding sector strategies (see Exhibit 5) by multiplying the estimated average number of management occupations staff members per State (1) by the time required to review the workforce development system (300 hours) and by the hourly compensation rate ($65.39/hour). We performed the same calculation for the management analysts (2 analysts at $45.88/hour for 1,260 hours each). We summed the labor cost for both categories ($135,235) and multiplied the result by the number of States that do not have extensive and systematic sector strategies (21). Over the 10-year period, this calculation yields an estimated recurring annual cost of $2.8 million ($2,839,927), which is equal to a 10-year total cost of $28.4 million ($28,399,266).

Similarly, the Department estimated the State WDBs' annual labor cost for expanding career pathways strategies by multiplying the estimated average number of management occupations staff members per State (1) by the time required to review the workforce development system (300 hours) and by the hourly compensation rate ($65.39/hour). We repeated the calculation for the management analysts (2 analysts at $45.88/hour for 1,260 hours each). We summed the labor cost for the two occupational categories ($135,235) and multiplied the result by the number of States that do not have policies for career pathways (27).[42] Over the 10-year period, this calculation yields an estimated recurring annual cost of $3.7 million ($3,651,334), which is equal to a total 10-year cost of $36.5 million ($36,513,342).

The Department estimated the labor cost that State WDBs will incur to identify regions by multiplying the estimated average number of lawyers per State (1) by the time required to review the workforce development system (40 hours) and by the hourly compensation rate ($65.48/hour). We performed the same calculation for the following occupational categories: Management occupations staff (1 manager at $65.39/hour for 40 hours), management analysts (1 analyst at $45.88/hour for 80 hours), and secretaries or administrative assistants (1 assistant at $27.16/hour for 20 hours). We summed the labor cost for all four occupational categories ($9,448) and multiplied the result by the number of States (57) to estimate this one-time labor cost of $538,559. Over the 10-year period, this calculation yields an average annual cost of $53,856.

The Department estimated the labor cost for State WDBs (See Exhibit 9) by first multiplying the estimated average number of lawyers per State (1) by the time required to identify regions in the State (10 hours each) and by the hourly compensation rate ($65.48/hour). We performed the same calculation for the following occupational categories: Management occupations staff (2 managers at $65.39/hour for 40 hours each), management analysts (3 analysts at $45.88/hour for 15 hours each), and secretaries or administrative assistants (2 assistants at $27.16/hour for 10 hours each). We summed the labor costs for all four occupational categories ($8,494) and multiplied the result by the number of States (57) to estimate this cost as $484,147, occurring in 2017 and 2021 and resulting in an average annual cost of $96,829. This is equal to a total 10-year cost of $968,293.

The sum of these costs yields a total average annual cost of $6.6 million ($6,641,946) for individuals from the State level to review the workforce development system. This is equal to total 10-year cost of $66.4 million ($66,419,460).

c. Identification and Dissemination of Best Practices

Under WIOA sec. 101(d)(6), State WDBs must assist Governors in identifying and disseminating best practices, including practices for:

1. The effective operation of one-stop centers, relating to the use of business outreach, partnerships, and service delivery strategies, including strategies for serving individuals with barriers to employment.
2. The development of effective Local WDBs, which could include information on contributing factors to enable Local WDBs to exceed negotiated levels of performance, sustain fiscal integrity, and achieve other measures of effectiveness.
3. The development of effective training programs that support efficient placement of individuals into employment or career pathways and that respond to real-time labor market analysis; that effectively use direct assessment and prior learning assessment to measure an individual's prior knowledge, skills, competencies, and experiences; and that evaluate such skills and competencies for adaptability.

WIA did not include requirements relating to State WDBs supporting the

[41] According to WIOA sec. 106(a)(1), identification of regions is part of the process for developing the State Plan and is necessary to receive an allotment under other provisions of WIOA.

[42] U.S. Department of Education, U.S. Department of Labor, and U.S. Department of Health and Human Services (2014, September). *Viewing party guide*. National Dialogue on Career Pathways. Retrieved from: *https://learnwork.workforce3one.org/view/2001425433998607383/info*.

development of best practices. Therefore, costs will be incurred by State WDBs to assist Governors in identifying and disseminating the best practices. State WDBs will incur annual labor costs to become compliant with this provision.

Costs

The Department estimated the labor cost that States would incur (see Exhibit 27) by multiplying the estimated average number of management occupations staff members per State (1) by the time required to assist in the development of best practices (20 hours) and by the hourly compensation rate ($65.39/hour). We performed the same calculation for the management analysts (2 analysts at $45.88/hour for 40 hours each) and secretaries or administrative assistants (1 assistant at $27.16/hour for 20 hours). We summed the labor cost for all three occupational categories ($5,521) and multiplied the result by the number of States (57) to estimate this annual labor cost at $314,720, which results in a 10-year cost of $3.1 million ($3,147,198).

d. Development of Statewide Policies Affecting the State's One-Stop Delivery System

Under WIOA sec. 101(d)(6), State WDBs must assist Governors in developing and reviewing statewide policies that affect the coordinated provision of services through the State's one-stop delivery system. These policies include those concerning objective criteria and procedures for Local WDBs to assess one-stop centers and guidance for the allocation of one-stop center infrastructure funds, and policies relating to the appropriate roles and contributions of one-stop partners within the one-stop delivery system, including approaches to facilitating equitable and efficient cost allocation.

WIA did not include requirements relating to State WDBs' support of the development of policies affecting the coordinated provision of services through the State's one-stop delivery system.

Costs

The Department estimated the labor cost that State WDBs will incur (see Exhibit 6) by multiplying the estimated average number of lawyers per State (1) by the time required to provide objective criteria and procedures (60 hours) and by the hourly compensation rate ($65.48/hour). We performed the same calculation for the management occupations staff (1 manager at $65.39/hour for 18 hours), social and community service managers (1 manager at $54.21/hour for 42 hours), and management analysts (3 analysts at $45.88/hour for 120 hours each). We summed the labor cost for all four occupational categories ($23,899) and multiplied the result by the number of States (57) to estimate this one-time labor cost at $1.4 million ($1,362,268), which results in an average annual cost of $136,227.

e. Development of Strategies for Technological Improvements

Under WIOA sec. 101(d)(7), State WDBs must assist Governors in developing strategies for technological improvements to facilitate access to and improve the quality of services and activities provided through the one-stop delivery system. These strategies include improvements to enhance digital literacy skills, accelerate acquisition of skills and recognized postsecondary credentials by participants, strengthen professional development of providers and workforce professionals, and ensure technology is accessible to individuals with disabilities and individuals residing in remote areas.

WIA did not include requirements relating to State WDBs' support of the development of strategies for technological improvements to facilitate access to, and improve the quality of, one-stop delivery system services and activities.

Costs

The Department estimated the labor cost that State WDBs will incur (see Exhibit 7) by multiplying the estimated average number of management occupations staff members per State (1) by the time required to develop strategies (20 hours) and by the hourly compensation rate ($65.39/hour). We repeated the calculation for the computer systems analysts (1 analyst at $56.17/hour for 40 hours). We summed the labor cost for both categories ($3,555) and multiplied the result by the number of States (57) to estimate a recurring annual cost of $202,612, which is equal to a total 10-year cost of $2.0 million ($2,026,122).

f. Appoint New Local WDB and Appropriate Firewalls

The Local WDB is appointed by the CEOs in each local area in accordance with State criteria established under WIOA sec. 107(b) and is certified by the Governor every 2 years, in accordance with WIOA sec. 107(c)(2). The WIOA sec. 107(b)(2) membership criteria differ from the WIA sec. 117(b)(2) Local WDB membership criteria, and will result in a new one-time cost incurred by local CEOs in each local area because they will have to appoint a new Local WDB whose membership satisfies the requirements of WIOA sec. 107(b)(2). In particular, WIOA requires that a majority of Local WDB members be representatives of local area business (sec. 107(b)(2)(A)), whereas WIA required membership from local area business but did not include the requirement that such membership be a majority.

Additionally, WIOA sec. 107(b)(2)(B) requires that at least 20 percent of Local WDB membership be representatives of labor organizations (including at least one member from a joint labor-management apprenticeship program, if one exists in the local area); CBOs (optional); and organizations with youth employment, training, or educational expertise (optional). WIA required Local WDB membership from representatives of labor organizations and CBOs, but did not include reference to apprenticeship programs or organizations with youth expertise, nor did WIA include the minimum 20-percent requirement.

Further, WIOA requires Local WDB membership to include a representative from an adult education provider and a representative of higher education providing workforce investment activities (including community colleges), while the WIA Local WDB membership requirements did not reference such membership representation.

Under § 679.410(a), a Local WDB may be selected as a one-stop operator through sole-source procurement or through successful competition, in accordance with part 678, subpart D (see Joint WIOA Final Rule). The procedures for sole-source selection of one-stop operators include requirements about maintaining written documentation and developing appropriate firewalls and conflict-of-interest policies. Therefore, when a Local WDB is selected as a one-stop operator through a sole-source procurement, it must establish sufficient firewalls and conflict-of-interest policies and procedures that the Governor approves. These requirements will result in one-time costs for the Local WDBs that will elect sole-source one-stop operator competition.

Costs

The Department estimated the labor costs incurred by Local WDBs (see Exhibit 10) by multiplying the estimated average number of lawyers per Board (1) by the time required to appoint a new Local WDB (15 hours) and by the hourly compensation rate ($74.78/hour). We performed the same calculation for the following occupational categories:

Management occupations staff members (1 manager at $63.63/hour for 20 hours), management analysts (2 analysts at $60.60/hour for 20 hours each), and secretaries or administrative assistant (1 assistant at $29.30/hour for 20 hours). We summed the labor cost for the four occupational categories ($5,404) and multiplied the result by the number of Local Boards (580) to estimate this one-time cost as $3.1 million ($3,134,494), which results in an average annual cost of $313,449.

In addition, the Department estimated the labor cost for Local WDBs to develop written agreements by multiplying the estimated average number of lawyers per Local WDB (1) by the time required to develop written agreements (8 hours) and by the hourly compensation rate ($74.78/hour). We repeated the calculation for the management occupations staff members (1 manager at $63.63/hour for 8 hours) and computer systems analysts (1 analyst at $60.76 for 20 hours). We summed the labor cost for the three occupational categories ($2,322) and multiplied the result by the number of Local WDBs (580) to estimate this one-time cost as $1.3 million ($1,347,038), which results in an average annual cost of $134,704.

In total, these calculations yield a one-time cost of $4.5 million ($4,481,532), which results in an average annual cost of $448,153 for individuals from the local level to appoint new Local WDBs and set administrative firewalls that avoid conflicts of interest.

g. Local WDB Career Pathways Development

Under WIOA sec. 107(d)(5), Local WDBs, with representatives of secondary and postsecondary education programs, must lead efforts to develop and implement career pathways within the local area by aligning the employment, training, education, and supportive services needed by adults and youth, particularly individuals with barriers to employment. WIA did not include requirements relating to Local WDBs developing or implementing career pathways.

Costs

The Department estimated the labor cost for Local WDBs (see Exhibit 11) by first multiplying the estimated average number of lawyers per Local WDB (1) by the time required to develop and implement career pathways (10 hours) and by the hourly compensation rate ($74.78/hour). We performed the same calculation for the following occupational categories: Management occupations staff members (1 manager at $63.63/hour for 80 hours), management analysts (1 analyst at $60.60/hour for 80 hours), and secretaries or administrative assistants (1 assistant at $29.30/hour for 20 hours). We summed the labor cost for all four occupational categories ($11,272) and multiplied the result by the number of Local WDBs (580) to estimate a recurring annual cost of $6.5 million ($6,537,876), which is equal to a total 10-year cost of $65.4 million ($65,378,760).

h. Local WDB Development of Proven and Promising Practices

Under WIOA sec. 107(d)(6), Local WDBs must lead efforts in the local area to identify and promote proven and promising strategies and initiatives for meeting the needs of employers, workers, and job seekers (including individuals with barriers to employment), including providing physical and programmatic accessibility to the one-stop delivery system, in accordance with WIOA sec. 188 and the Americans with Disabilities Act, if applicable. This provision further requires Local WDBs to identify and disseminate information on proven and promising practices carried out in other local areas for meeting such needs. WIA did not include requirements for Local WDBs to identify or promote proven strategies for meeting the needs of employers, workers, and job seekers in the local workforce development system.

Costs

For Local WDBs (see Exhibit 12), the Department estimated this labor cost by first multiplying the estimated average number of management occupations staff members per State (1) by the time required to identify and promote proven strategies (20 hours) and by the hourly compensation rate ($63.63/hour). We performed the same calculation for the management analyst occupational category (1 analyst at $60.60/hour for 40 hours). We summed the labor cost for these two occupational categories ($3,697) and multiplied the result by the number of Local WDBs (580) to estimate a recurring annual cost of $2.1 million ($2,144,028), which is equal to a total 10-year cost of $21.4 million ($21,440,280).

i. Local WDB Development of Technology Strategies for Public Workforce System Accessibility and Effectiveness

Under WIOA sec. 107(d)(7), Local WDBs must develop strategies for using technology to maximize the accessibility and effectiveness of the local workforce development system for employers, workers, and job seekers by facilitating connections among the case management information systems for the one-stop partner programs, facilitating access to services provided through the one-stop delivery system (including facilitating access in remote areas), identifying strategies for better meeting the needs of individuals with barriers to employment (such as improving digital literacy skills), and leveraging resources and capacity within the local workforce development system. WIA did not include requirements for Local WDBs to develop technology strategies for improving accessibility and effectiveness of the local workforce development system.

Costs

The Department estimated the cost for Local WDBs (see Exhibit 13) by first multiplying the estimated average number of management occupations staff members per Local WDB (1) by the time required to develop technology strategies (20 hours) and by the hourly compensation rate ($63.63/hour). We performed the same calculation for the computer systems analysts (1 analyst at $60.76/hour for 40 hours). We summed the labor cost for these two occupational categories ($3,703) and multiplied the result by the number of Local WDBs (580) to estimate a recurring annual cost of $2.1 million ($2,147,740), which is equal to a total 10-year cost of $21.5 million ($21,477,400).

j. Competitive Process for Selection of the One-Stop Operator

Under WIOA sec. 107(d)(10)(A), Local WDBs must, consistent with WIOA sec. 121(d) and with the agreement of the CEO for the local area, designate or certify one-stop operators and may terminate for cause the eligibility of such operators. WIOA sec. 121(d)(2)(A) specifies that selection of a one-stop operator must be through a competitive process. WIA sec. 117(d)(2) also required Local WDBs to designate one-stop operators; however, WIA sec. 121(d)(2) allowed for designation of a one-stop operator through either a competitive process or in accordance with an agreement reached between the Local WDB and a consortium of entities that includes at least three one-stop partners. Therefore, WIOA requires a newly competitive procurement process for all Local WDB designations of one-stop operators. The one-stop competition regulations at part 678, subpart D (see Joint WIOA Final Rule), however, provide for sole-source procurement for one-stop operators under limited conditions. Nevertheless,

because of the new WIOA requirement mandating competitive one-stop operative procurement, this analysis assumes that all 580 Local WDBs would have to implement a competitive procurement process. Of these Local WDBs, only 250 Local WDBs would have to newly implement a competitive procurement process.

Costs

The Department estimated the cost for Local WDBs (see Exhibit 14) by first multiplying the estimated average number of lawyers per Local WDB (1) by the time required to designate one-stop operators (40 hours) and by the hourly compensation rate ($74.78/hour). We performed the same calculation for the following occupational categories: Management occupations staff members (1 manager at $63.63/hour for 80 hours), social workers (2 workers at $40.46/hour for 120 hours each), and secretaries or administrative assistants (1 assistant at $29.30/hour for 40 hours). We summed the labor costs for these four occupational categories ($18,964) and multiplied the result by the number of Local WDBs that will be newly selecting one-stop operators competitively (250) to estimate a cost of $4.7 million ($4,741,000) occurring in 2017, 2021, and 2025. Over the 10-year period, this calculation yields an average annual cost of $1.4 million ($1,422,300), which is equal to a total cost of $14.2 million ($14,223,000).

k. Local WDB Coordination With Education Providers

Under WIOA sec. 107(d)(11), Local WDBs must coordinate activities with education and training providers in the local area, including providers of workforce investment activities, providers of adult education and literacy activities under title II of WIOA, certain providers of career and technical education, and local agencies administering certain plans under the Rehabilitation Act of 1973. WIA did not include requirements relating to Local WDB coordination with education providers.

Costs

For Local WDBs, the Department estimated this labor cost (see Exhibit 15) by first multiplying the estimated average number of management occupations staff members per State (1) by the time required to coordinate activities with local education and training providers (20 hours) and by the hourly compensation rate ($63.63/hour). We performed the same calculation for the management analyst occupational category (1 analyst at $60.60/hour for 40 hours). We summed the labor cost for both occupational categories ($3,697) and multiplied the result by the number of Local WDBs (580) to estimate a recurring annual cost of $2.1 million ($2,144,028), which is equal to a 10-year total cost of $21.4 million ($21,440,280).

l. Regional Plans

WIOA sec. 106(c)(2) requires Local WDBs and CEOs within a planning region to prepare, submit to the State, and obtain approval of a single regional plan that includes a description of the regional planning activities described in WIOA and incorporates local plans for each local area in the planning region. Specifically, WIOA sec. 106(c)(1) specifies that regional planning must include the following seven activities: (1) Establishment of regional service strategies, including use of cooperative service delivery alignment; (2) development and implementation of sector initiatives for in-demand industry sectors or occupations for the region; (3) collection and analysis of regional labor market data (in conjunction with the State); (4) establishment of administrative cost arrangements, including the pooling of funds for regional administrative costs, as appropriate; (5) coordination of transportation and other supportive services, as appropriate, for the region; (6) coordination of services with regional economic development services and providers; and (7) establishment of an agreement concerning how the planning region will negotiate collectively and reach agreement with the Governor on local levels of performance for, and report on, the performance accountability measures for local areas or the planning region. WIA did not include provisions relating to State WDB identification of regions or regional coordination.

Costs

For Local WDBs (see Exhibit 16), the Department estimated this cost by first multiplying the estimated average number of lawyers per Local WDB (1) by the time required to prepare, submit, and obtain approval of a single regional plan (8 hours) and by the hourly compensation rate ($74.78/hour). We performed the same calculation for the following occupational categories: Management occupations staff members (2 managers at $63.63/hour for 20 hours each), management analysts (2 analysts at $60.60/hour for 40 hours each), and secretaries or administrative staff (1 staff member at $29.30/hour for 8 hours). We summed the labor cost for the four occupational categories ($8,226) and multiplied the result by the number of Local WDBs (580) to estimate this cost as $4.8 million ($4,770,987), which occurs in 2017 and 2021. This calculation results in an average annual cost of $954,197, which is equal to a total 10-year cost of $9.5 million ($9,541,974).

m. Local and Regional Plan Modification

Under WIOA sec. 108(a), each Local WDB, in partnership with the CEO, must review the local plan every 2 years and submit a modification as needed, based on significant changes in labor market and economic conditions and other factors. These factors include changes to local economic conditions, changes in the financing available to support WIOA title I and partner-provided WIOA services, changes to the Local WDB structure, and a need to revise strategies to meet performance goals. If the local area is part of a planning region, the Local WDB must comply with WIOA sec. 106(c) in the preparation and submission of a regional plan. WIA sec. 118 did not require local plan review and modification more frequently than the 5-year duration of a WIA local plan.

Costs

For Local WDBs (see Exhibit 17), the Department estimated the local plan modification cost by first multiplying the estimated average number of lawyers per Local WDB (1) by the time required to review and modify the 4-year plan (4 hours) and by the hourly compensation rate ($74.78/hour). We performed the same calculation for the following occupational categories: management occupations staff members (1 manager at $63.63/hour for 10 hours), management analysts (2 analysts at $60.60/hour for 10 hours each), and secretaries or administrative assistants (1 assistant at $29.30/hour for 4 hours). We summed the labor cost for all four occupational categories ($2,265) and multiplied the result by the number of Local WDBs (580) to estimate this one-time cost of $1.3 million ($1,313,480), occurring in 2019. Over the 10-year period, this calculation yields an average annual cost of $131,348.

Similarly, the Department estimated the regional plan modification cost for Local WDBs by first multiplying the estimated average number of lawyers per regional board (1) by the time required to review and modify the 4-year plan (4 hours) and by the hourly compensation rate ($74.78/hour). We performed the same calculation for the following occupational categories: management occupations staff members (2 managers at $63.63/hour for 10 hours

each), management analysts (2 analysts $60.60/hour for 20 hours each), and secretaries or administrative assistants (1 assistant at $29.30/hour for 5 hours). We summed the labor cost for all four occupational categories ($4,142) and multiplied the result by the number of regional boards (300) to estimate a cost of $1.2 million ($1,242,666), occurring in 2020 and 2023. Over the 10-year period, this calculation yields an average annual cost of $248,533, which is equal to a total cost of $2.5 million ($2,485,332).

The sum of these costs yields a 10-year cost of $3.8 million ($3,798,812), which results in an average annual cost of $379,881 for individuals from the Local WDBs to review and modify the 4-year plan.

n. Improved Information About Eligible Training Program Providers

WIOA sec. 122 establishes requirements for State ETPLs to provide information to the public on the effectiveness of ETPs in achieving positive outcomes for WIOA training participants. The State-maintained ETPLs provide adults, dislocated workers, and other workers with better information about potential training program providers and enable them to make better-informed choices about programs to pursue. As explained in WIOA sec. 122, the required information for the State ETPL includes performance information on WIOA participants including percentage employed 2 and 4 quarters after program exit, median earnings 2 quarters after exit, and percentage obtaining a credential. Other reporting requirements for the State ETPLs include the cost of attendance for WIOA participants, credentialing program information, program completion rate, and additional information the State may require.[43]

To be included on an ETPL, training providers must establish eligibility through an application procedure and then must maintain eligibility, including a biennial review by a State-appointed agency, according to a State Governor's procedure. Once it determines eligibility for ETPs, the State must make easily understood ETPLs publicly available, through electronic means and the one-stop delivery system. Finally, information analyzed and published by the Local WDBs about local labor markets also will help trainees and providers target their efforts and develop reasonable expectations about outcomes.

Costs

At the State level for DOL programs (see Exhibit 18), the Department estimated this labor cost by first multiplying the estimated average number of management occupations staff members per State (1) by the time required to provide additional information about eligible training program providers (32 hours) and by the hourly compensation rate ($65.39/hour). We performed the same calculation for the following occupational categories: Management analysts (2 analysts at $45.88/hour for 40 hours each), and secretaries or administrative assistants (1 assistant at $27.16/hour for 80 hours). We summed the labor cost for all three occupational categories ($7,936) and multiplied the result by the number of States (57) to estimate a recurring annual cost of $452,334. This is equal to a 10-year total cost of $4.5 million ($4,523,338).

o. Sanctions on Under-Performing States

Section 116(f)(1)(B) of WIOA requires the Department to assess a sanction if a State fails to meet the State-adjusted levels for program performance for a second consecutive program year or if "a State fails to submit a report under subsection (d) for any program year." Three reports are required under WIOA sec. 116(d): State annual performance reports, local area performance reports, and ETP performance reports. Of these, only the State annual performance report must be submitted by the State to the Secretary of Labor. Section 116(f)(1) of WIOA requires that sanctions for performance failure continue until such date the Secretary of Labor or the Secretary of Education (as appropriate) determines that the State meets such State-adjusted levels of performance and has submitted such reports for the appropriate program years. Under WIA, the Department had discretion over whether to issue sanctions for underperformance or failure to submit a performance report.

Costs

At the State level (see Exhibit 19), the Department estimated the costs by first multiplying the estimated average number of chief executives per State (1), the time required to evaluate State performance (40 hours), and the hourly compensation rate ($85.19/hour). We performed the same calculation for management analysts (1 analyst at $45.88/hour for 80 hours) and secretaries or administrative assistants (1 assistant at $27.16/hour for 40 hours). We summed the labor cost for all three occupational categories ($8,164) and multiplied the result by the number of States receiving sanctions (5) to estimate a recurring annual cost of $40,822, which is equal to a 10-year total cost of $408,220.

p. Colocation of ES Services

WIOA sec. 121(e)(3) requires colocation of ES offices and one-stop centers established under title I of WIOA. Fulfilling this requirement could involve resolving real property issues, decisions on site locations, discussions with municipal or county governments, and development of agreements with partners to participate at both comprehensive and affiliated sites. Colocation is intended to improve service delivery, avoid duplication of services, and enhance coordination of services, including location of staff to ensure expanded access to services in underserved areas. WIA did not include requirements for collocation.

Costs

At the State level for DOL programs (see Exhibit 20), the Department estimated this labor cost by first multiplying the estimated average number of lawyers per State (10), the time required to colocate ES services (10 hours each), and the hourly compensation rate ($65.48/hour). We performed the same calculation for the following occupational categories: Management occupations staff members (10 managers at $65.39/hour for 40 hours each), management analysts (20 staff at $45.88/hour for 25 hours each), and secretaries or administrative assistants (10 assistants at $27.16/hour for 5 hours each). We summed the labor cost for all four occupational categories ($57,002) and multiplied the result by the number of States without colocated ES services (10) to estimate a one-time cost of $570,020, which results in an annual cost of $57,002.

At the State level, the Department estimated consultant costs for assisting with planning, property issues (*e.g.*, selling buildings currently owned by ES and finding buildings that meet certain safety requirements), and integrating IT and case management systems by multiplying the estimated consultant costs ($10,200) by the number of States without colocated ES services (10). This calculation yields an estimated one-time cost of $102,000, resulting in an average annual cost of $10,200.

At the local level (see Exhibit 21), the Department estimated labor costs by first multiplying the estimated average number of management occupations

[43] The costs associated with performance reporting for ETPs is explained in the WIOA sec. 116 analysis in the "Workforce Innovation and Opportunity Act; Joint Rule for Unified and Combined State Plans, Performance Accountability, and the One-Stop System Joint Provisions"; Notice of Proposed Rulemaking at 80 FR 20573.

staff members for all local entities within a State (100), the time required to colocate ES services (40 hours each), and the hourly compensation rate ($63.63/hour). We performed the same calculation for the management analysts (200 analysts at $60.60/hour for 25 hours each) and secretaries or administrative assistants (100 assistants at $29.30/hour for 5 hours each). We summed the labor cost for all three occupational categories ($572,170) and multiplied the result by the number of local areas without colocated ES offices and one-stop centers (100) to estimate a one-time cost of $57.2 million ($57,217,000), resulting in an annual cost of $5.7 million ($5,721,700).

The sum of these costs yields a one-time cost of $57.9 million ($57,889,020), which results in an average annual cost of $5.8 million ($5,788,902) for individuals from the State and local levels to colocate ES services.

q. Partners Required To Pay Their Share for Proportionate Use of One-Stop Delivery System

An important goal under both the local and State funding mechanisms is to ensure that each one-stop partner contributes its proportional share to the funding of one-stop infrastructure costs, consistent with Federal cost principles. Under WIOA sec. 121(h), in general, Governors must ensure that one-stop partners appropriately share costs. Contributions must be based on a proportional share of use and all funds must be spent solely for allowable purposes in a manner consistent with the applicable authorizing statute and all other applicable legal requirements, including Federal cost principles. WIOA sec. 121(h)(1) established two methods for funding the infrastructure costs of one-stop centers: A local funding mechanism and a State funding mechanism. Both methods use the funds provided to one-stop partners by their authorizing legislations; there is no separate funding source for one-stop infrastructure costs. WIA did not include directives relating to the funding of the one-stop infrastructure.

Costs

At the State level (see Exhibit 22), the Department estimated the costs related to this provision (*e.g.*, the cost of developing memoranda of understanding) by first multiplying the estimated average number of lawyers per State (50), the time required for States to comply with payment requirements proportional to use of one-stop delivery systems (1 hour each), and the hourly compensation rate ($65.48/hour). We performed the same calculation for the following occupational categories: Management occupations staff members (50 managers at $65.39/hour for 40 hours each), social workers (100 workers at $35.22/hour for 40 hours each), and secretaries or administrative assistants (50 assistants at $27.16/hour for 5 hours each). We summed these products for all four occupational categories ($281,724) and multiplied the result by the number of States that need to pay their proportional share (54) to estimate a cost of $15.2 million ($15,213,096) occurring in 2018, 2021, and 2024, resulting in an average annual cost of $4.6 million ($4,563,929). This is equal to a total 10-year cost of $45.6 million ($45,639,288).

r. Establishing Training Provider Eligibility Procedures, Including Procedures for Adding Registered Apprenticeship Programs to the State Eligible Training Provider List

Under WIOA sec. 122(a)(1), the Governor, after consultation with the State WDB, must establish criteria, information requirements, and procedures regarding the eligibility of providers of training services to receive funds under WIOA for the provision of training services in local areas in the State (*i.e.*, procedures for initial determination and renewals of eligibility). In establishing the ETP eligibility criteria, the Governor must take into account: (1) The performance of training providers; (2) the need to ensure access to training services throughout the State, including in rural areas and through the use of technology; (3) information reporting to State agencies with respect to other Federal and State programs involving training services, including one-stop partner programs; (4) the degree to which the training programs relate to in-demand industry sectors and occupations in the States; (5) any relevant State licensing requirements for the program; (6) ways in which the criteria can encourage providers to use industry-recognized certifications; (7) the ability of the providers to offer programs that lead to recognized postsecondary credentials; (8) the quality of a training program; (9) the ability of the providers to provide training services to individuals who are employed and individuals with barriers to employment; and (10) other factors the Governor determines appropriate to ensure accountability of the providers, informed choice of participants, one-stop centers ensure providers meet the needs of local employers and participants, and collection of information is not unduly burdensome or costly to providers (WIOA sec. 122(b)(1)).

In establishing the information requirements, the Governor must require that a training provider submit appropriate, accurate, and timely information to the State, which must include information on performance, recognized postsecondary credentials received by participants, cost of attendance, the program completion rate, and eligibility criteria established by the Governor (WIOA sec. 122(b)(2)).

As explained in § 680.410, training providers, including those operating under the individual training account exceptions, must qualify as ETPs, except for those engaged in on-the-job and customized training (for which the Governor should establish qualifying procedures as discussed in § 680.530). Registered apprenticeship programs are automatically eligible to be included in the ETPL, provided the program remains a registered apprenticeship program. All registered apprenticeship programs must be informed of their automatic eligibility to be included on the list, and must be provided an opportunity to consent to their inclusion, before being placed on the State list of eligible training providers and programs. The Governor must establish a mechanism for registered apprenticeship program sponsors in the State to be informed of their automatic eligibility and to indicate that the program sponsor wishes to be included on the State list of eligible training providers and programs. The regulation specifies that this mechanism must place minimal burden on registered apprenticeship program sponsors and must be developed in accordance with guidance from the U.S. Department of Labor Office of Apprenticeship representative in the State or with the assistance of the recognized State apprenticeship agency, as applicable.

Under WIA sec. 122(b)(2), the Governor had to establish a procedure for Local WDBs to use to determine initial eligibility. Other than requiring performance information, however, WIA did not prescribe requirements for what must be included in the Governor-established eligibility criteria, information requirements, and ETP procedures. Regarding apprenticeships, WIA sec. 122(b)(1) required such training programs to submit an ETP application to the relevant Local WDB to include such information as the Local WDB may require.

Costs

At the State level (see Exhibit 23), the Department estimated this cost by first multiplying the estimated average

number of lawyers per State (1); the time needed to establish criteria, information requirements, and procedures for training provider eligibility (20 hours); and the hourly compensation rate ($65.48/hour). We performed the same calculation for the management occupations staff members (1 manager at $65.39/hour for 40 hours) and management analysts (1 analyst at $45.88/hour for 80 hours). We summed the labor cost for all three occupational categories ($7,596) and multiplied the result by the number of States (57) to estimate a one-time cost of $432,949, resulting in an annual cost of $43,295.

At the local level, the Department estimated this cost by first multiplying the estimated average number of database administrators per ETP (1); the time needed to establish criteria, information requirements, and procedures for training provider eligibility (3 hours); and the hourly compensation rate ($59.60/hour). We summed the labor cost ($179) and multiplied the result by the number of ETPs (11,400) to estimate a one-time cost of $2.0 million ($2,038,320), resulting in an annual cost of $203,832.

The sum of these amounts yields a one-time cost of $2.5 million ($2,471,269), which results in an average annual cost of $247,127 for individuals from the State and local levels to establish criteria, information requirements, and procedures for training provider eligibility.

s. Determining Initial Eligibility of New and Previously Eligible Training Providers

Under the requirements of WIOA sec. 122, the Governor, after consultation with the State WDB, establishes the procedures for determining eligibility of training providers, which include application and renewal procedures, eligibility criteria, and information requirements. The Governor was permitted to establish a transition procedure under which WIA–ETPs could continue to be eligible through June 30, 2016 (or such earlier date determined appropriate by the Governor).[44] Under § 680.450, all providers that previously have not been eligible under either WIA sec. 122 or WIOA sec. 122, except for registered apprenticeship programs, must submit required information to be considered for initial eligibility in accordance with the Governor's procedures. Under WIOA sec. 122(b)(4)(B), providers receive initial eligibility for only 1 fiscal year and after the initial eligibility expires, providers are subject to the Governor's application procedures for continued eligibility, described in § 680.460, to remain eligible (see provision (t) Biennial Review of Training Provider Eligibility below).

Costs

At the State level for DOL programs (see Exhibit 24), the Department estimated this labor cost by first multiplying the estimated average number of management occupations staff members per State (1), the time needed to determine provider eligibility (40 hours), and the hourly compensation rate ($65.39/hour). We performed the same calculation for the management analysts (2 analysts at $45.88/hour for 110 hours each) and secretaries or administrative assistants (2 assistants at $27.16/hour for 50 hours each). We summed the labor cost for all three occupational categories ($15,425) and multiplied the result by the number of States (57) to estimate a one-time cost of $879,236, resulting in an annual cost of $87,924.

t. Biennial Review of Training Provider Eligibility

Under WIOA sec. 122(c)(2), the procedures established by the Governor must provide for biennial review and renewal of eligibility for providers of training services. Paragraph (h) of § 680.460 provides discretion for a State to establish eligibility criteria that require more frequent review but specifies that the review must be at least every 2 years. This biennial review process will require the submission of information from training providers and the evaluation of such information as specified in the Governor's eligibility criteria, information requirements, and procedures. Paragraph (j) of § 680.460 requires that the procedure for biennial review of training provider eligibility include verification of the registration status of registered apprenticeship programs.

WIA required training providers to submit performance information and meet performance levels annually to remain eligible (WIA sec. 122(c)(5) and § 663.530). The WIA regulations at § 663.540 required the annual submission of the following information to allow the Local WDB to determine subsequent eligibility of training providers: Program-specific performance information, information on program costs, and any additional verifiable performance information that the Governor determines to be appropriate for obtaining subsequent eligibility.

Costs

At the State level (see Exhibit 25), the Department estimated this labor cost by first multiplying the estimated average number of management occupations staff members per State (1), the time needed to perform the eligibility review (30 hours), and the hourly compensation rate ($65.39/hour). We performed the same calculation for the management analysts (2 analysts at $45.88/hour for 60 hours each) and secretaries or administrative assistants (2 assistants at $27.16/hour for 30 hours each). We summed the labor cost for all three occupational categories ($9,097) and multiplied the result by the number of States (57) to estimate a cost of $518,523 that occurs four times over the 10-year analysis period (*i.e.*, 2019, 2021, 2023, and 2025), that is, an average annual cost of $207,409. This is equal to a 10-year total cost of $2.1 million ($2,074,093).

u. Disseminating the Training Provider List With Accompanying Information

To assist participants in choosing employment and training activities, the Governor or State agency must disseminate the State ETPL and accompanying performance and cost information to Local WDBs in the State and to members of the public online through Web sites and searchable databases and through whatever means the State uses to disseminate information to consumers, including the one-stop delivery system and its program partners throughout the State (WIOA sec. 122(d), § 680.500). WIA also required the designated State agency to disseminate the State ETPL and accompanying performance and cost information to the one-stop delivery systems within the State but did not include specific requirements that the State ETPL be made electronically available online (*see* § 663.555).

Costs

At the State level (see Exhibit 26), the Department estimated this labor cost by first multiplying the estimated average number of management occupations staff members per State (1), the time needed to disseminate the ETPL with accompanying information (30 hours), and the hourly compensation rate

[44] In the NPRM, the Department stated that the Governor may establish a transition procedure under which WIA–ETPs may continue to be eligible through December 31, 2015. The Department extended the time for the implementation of continued eligibility requirements for training providers eligible under WIA by 6 months, unless the Governor determined that an earlier date was possible.

($65.39/hour). We performed the same calculation for the following occupational categories: Database administrators (2 administrators at $57.02/hour for 125 hours each), management analysts (2 analysts at $45.88/hour for 80 hours each), and secretaries or administrative assistants (2 assistants at $27.16/hour for 45 hours each). We summed the labor cost for all four occupational categories ($26,002) and multiplied the result by the number of States (57) to estimate a one-time cost of $1.5 million ($1,482,108), resulting in an annual cost of $148,211.

Relative to the baseline of current practice under WIA, the 21 provisions of the WIOA Final Rule described above are expected to result in costs of $350.4 million ($350,375,401) over the total 10-year period. This is equivalent to an average annual cost of $35.0 million ($35,037,540). See section V.A.7 (Summary of the Analysis) for a summary of these costs.

Quantifiable Transfer Payments

This section describes the quantifiable transfer payments expected to result from the Final Rule. Transfer payments, as defined by Circular A–4, are payments from one group to another that do not affect total resources available to society. Because of data limitations, the Department relied on expert judgement for some of the transfer estimates.

a. Youth Funds Targeting Out-of-School Youth

Under WIA, local areas were required to spend at least 30 percent of youth funds to assist eligible OSY. Under WIOA, States and local areas will be required to spend at least 75 percent of youth funds on OSY.

In addition to several benefits, discussed below in section V.A.7 (Summary of the Analysis), the Department's focus on OSY will result in transfers related to a larger tax base and reduced burdens on taxpayers. These programs are expected to help youth that are particularly vulnerable, such as those who are low-income, minorities, or high school dropouts. Unassisted OSY have a higher likelihood of imposing large costs on society. Based on the Current Population Survey (CPS) by the U.S. Census Bureau, there were 6 million "disconnected youth" between the ages of 16 and 24 (*i.e.*, youth who are not enrolled in school and not employed) in 2015.

Child Trends also found that due to their lack of education, youth without high school degrees are more likely to live in poverty and receive government assistance.[45]

Wald and Martinez (2002) found that dropouts were in prison at rates 10 to 20 times higher than youth who graduated from high school.[46] Incarcerating these individuals represents an additional cost to taxpayers. Belfield and Levin (2012) found that each disconnected youth costs taxpayers approximately $236,000 over the youth's lifetime and imposes $704,000 in societal costs. The estimated fiscal burden accounts for lost tax payments, public crime expenditures (*e.g.*, incarceration and legal system costs), higher public health and welfare expenditures, and reduced public education costs. The estimate of the societal cost includes lost earnings, crime costs (*e.g.*, incarceration and reduced quality of life), increased health, welfare, and social services expenditures, lower workforce productivity, and lower education spending.[47] In their report, Measure of America found that the cost of youth disconnection—including health care, public assistance, and incarceration—was $26.8 billion in 2013.[48]

Transfers

Under WIOA, individuals exiting the youth program will have an increased likelihood of gaining employment. According to ETA program data from FY 2015, 102,723 youth exit the youth program each year. The Department assumes that the increase in funding will result in a 15-percent increase in youth exiting the program each year, resulting in 118,132 youth exiting per year. Of the 15,409 additional youth exiting the youth program under WIOA due to the increased funding targeting youth, the Department assumed that 20 percent will gain employment due to the expertise they gained from the youth program. According to the Young Invincibles' report,[49] on average, an unemployed 18- to 24-year-old will cost Federal and State governments more than $4,100 each year[50] in forgone tax revenue and safety-net benefits paid out, which is equal to $4,182 in 2015 dollars.[51] The Department assumed that all youth obtaining full-time year-round jobs after exiting the youth program will be 24 years old, and will reduce the taxpayer burden by $4,182. The full benefits to youth unemployment will account for individuals who exited the program before they became 24 years old, and remained employed until becoming at least 25 years old.

The Department multiplied the number of youth that will gain employment due to WIOA (3,082) by the annual cost to taxpayers ($4,182) to estimate an annual benefit of $12.9 million ($12,887,628). Over the 10-year analysis period, this calculation results in a total benefit of $128.9 million ($128,876,276) to Federal and State governments.

7. Summary of the Analysis

Exhibit 28 summarizes the estimated average annual costs for each provision of the Final Rule. The exhibit also presents a high-level qualitative description of the benefits resulting from full WIOA implementation of each regulatory provision in this DOL WIOA Final Rule. These qualitative forecasts are predicated on program experience and are outcomes for which data will become available only after implementation. The Department estimates the average annual cost of the Final Rule over the 10-year analysis period at $35.0 million. The largest contributor to this cost is the provision related to the development and continuous improvement of the workforce development system, which is $6.6 million per year. The next largest cost results from the Local WDB career pathways development, which is an estimated $6.5 million per year, followed by the colocation of ES

[45] Child Trends Databank. (2015). *High school dropout rates*. Retrieved from: *http://www.childtrends.org/?indicators=high-school-dropout-rates*.

[46] Wald, M., and Martinez, T. (2003). *Connected by 25: Improving the life chances of the country's most vulnerable 14–24 year olds* (Working Paper). William and Flora Hewlett Foundation. Retrieved from: *http://law.stanford.edu/wp-content/uploads/2015/07/Wald-and-Martinez-Connected-by-251.pdf*.

[47] Belfield, C. R., Levin, H. M., and Rosen, R. (2012). *The economic value of opportunity youth*. Retrieved from: *http://www.serve.gov/sites/default/files/ctools/econ_value_opportunity_youth.pdf?utm_source=5+Things+to+Know+about+Youth+not+Employed+or+in+School&utm_campaign=5+things+to+know+about+youth+not+employed+or+in+school&utm_medium=email*.

[48] Lewis, K., and Burd-Sharps, S. (2015). *Zeroing in on place and race: Youth disconnection in America's cities*. Measure of America of the Social Science Research Council. Retrieved from: *http://ssrc-static.s3.amazonaws.com/wp-content/uploads/2015/06/MOA-Zeroing-In-Final.pdf*.

[49] O'Sullivan, R., Mugglestone, K., and Allison, T. (2014). *In this together: The hidden cost of young adult unemployment*. Young Invincibles. Retrieved from: *http://younginvincibles.org/wp-content/uploads/2014/01/In-This-Together-The-Hidden-Cost-of-Young-Adult-Unemployment.pdf*.

[50] This is compared to a full-time year-round worker.

[51] Bureau of Labor Statistics. (2016). *CPI Detailed Report Data for February 2016*. Retrieved from: *http://www.bls.gov/cpi/cpid1602.pdf*. The Department calculated the inflation factor of 1.02 using data from Table 24. "Historical Consumer Price Index for All Urban Consumers (CPI–U): U.S. City Average, All Items." To calculate the inflation factor, the Department divided the average annual CPI–U for 2015 by the average annual CPI–U for 2013 (=237.017/232.957).

services at an estimated $5.8 million per year.

EXHIBIT 28—ESTIMATED COSTS OF THE FINAL RULE BY PROVISION

[2015 dollars]

Provision	Average annual costs (undiscounted)	Percent of total costs	Qualitative benefit highlights
(a) New State WDB Membership Requirements	$27,174	0.08%	Policy implementation efficiencies from reduced size and maneuverability.
(b) Development and Continuous Improvement of the Workforce Development System.	6,641,946	18.96	Mission clarification and ongoing commitment should foster future envisioned benefits continuing to accrue; Enhanced employer and employee services as a result of recognition of real labor markets (without artificial jurisdictional boundaries).
(c) Identification and Dissemination of Best Practices	314,720	0.90	Mission clarification and system building.
(d) Development of Statewide Policies Affecting the State's One-Stop Delivery System.	136,227	0.39	Mission clarification for State WDBs and overall system building capacity.
(e) Development of Strategies for Technological Improvements.	202,612	0.58	Recognition of the efficiencies generated by technology and enhanced management capabilities especially using outcome data.
(f) Appoint New Local WDB and Appropriate Firewalls	448,153	1.28	Efficient use of Local WDB time; avoids conflicts of interest and negative publicity; administrative savings.
(g) Local WDB Career Pathways Development	6,537,876	18.66	Improved educational and employment outcomes; potential employees are better prepared for jobs.
(h) Local WDB Development of Proven and Promising Practices.	2,144,028	6.12	Improved job placements and customer service.
(i) Local WDB Development of Technology Strategies for Public Workforce System Accessibility and Effectiveness.	2,147,740	6.13	Improved customer service; better decision-making from improved service level data; reduced paper costs, improved collaboration across service partners; improved customer service planning.
(j) Competitive Process for Selection of the One-Stop Operator.	1,422,300	4.06	Improved public confidence in the process; avoided conflicts of interest.
(k) Local WDB Coordination with Education Providers	2,144,028	6.12	Improved preparation of workers and youth for future jobs; enhanced placements and outcomes.
(l) Regional Plans	954,197	2.72	Savings from expanded collaboration; increased services to customers; reduced administrative overhead.
(m) Local and Regional Plan Modification	379,881	1.08	Increased coordination of services leading to resource efficiencies; transparency.
(n) Improved Information about Potential Eligible Training Program Providers.	452,334	1.29	Improved customer decision-making; linkage of resources to outcomes and accountability for training and improved placement outcomes.
(o) Sanctions on Under-Performing States	40,822	0.12	Improved services; better use of WIOA funds; enhanced recognition of performance imperatives by States and local areas; more accountability.
(p) Colocation of ES Services	5,788,902	16.52	Reduced administrative overhead; improved service delivery and customer service; more efficient and effective public administration.
(q) Partners Required to Pay their Share for Proportionate Use of One-Stop Delivery System.	4,563,929	13.03	Expanded system cohesion; improved service delivery; avoidance of fragmented or duplication of services.
(r) Establishing Training Provider Eligibility Procedures, Including Procedures for Adding Registered Apprenticeship Programs to the State Eligible Training Provider List.	247,127	0.71	Increased training opportunities, especially for youth; effective administration linking to accountability and outcomes.
(s) Determining Initial Eligibility of New and Previously Eligible Providers.	87,924	0.25	Increased transparency; uniform treatment of ETPs; reduced incidents of non-meritorious performance.
(t) Biennial Review of Training Provider Eligibility	207,409	0.59	Increased competition leading to more and better placements.
(u) Disseminating the Training Provider List with Accompanying Information.	148,211	0.42	More informed customer choice; clearer link of training resources to desired outcomes; more transparency.
Total Costs	35,037,540	100.00	

Note: Totals might not sum due to rounding.

Exhibit 29 summarizes the estimated transfers related to the Final Rule. The Department estimates the total average annual transfer of the Final Rule to be $12.9 million.

EXHIBIT 29—ESTIMATED TRANSFERS OF THE FINAL RULE BY PROVISION

[2015 dollar]

Provision	Average annual transfer (undiscounted)
(a) Youth Funds Targeting Out-of-School Youth	$12,887,628
Total Transfers	12,887,628

Exhibit 30 summarizes the estimated first-year costs for each provision of this Final Rule. The Department estimates the total first-year cost of this Final Rule to be $89.9 million. The largest contributor to the first-year cost is the provision related to the colocation of ES services at an estimated $57.9 million. The next largest first-year cost results from the development and continuous improvement of the workforce development system at an estimated $7.0 million, followed by the Local WDB career pathways development at an estimated $6.5 million.

EXHIBIT 30—ESTIMATED FIRST-YEAR COSTS OF THE FINAL RULE BY PROVISION

[2015 dollars]

Provision	Total first-year costs	Percent of total first-year costs
(a) New State WDB Membership Requirements	$271,742	0.30
(b) Development and Continuous Improvement of the Workforce Development System	7,029,820	7.82
(c) Identification and Dissemination of Best Practices	314,720	0.35
(d) Development of Statewide Policies Affecting the State's One-Stop Delivery System	1,362,268	1.52
(e) Development of Strategies for Technological Improvements	202,612	0.23
(f) Appoint New Local WDB and Appropriate Firewalls	4,481,532	4.99
(g) Local WDB Career Pathways Development	6,537,876	7.28
(h) Local WDB Development of Proven and Promising Practices	2,144,028	2.39
(i) Local WDB Development of Technology Strategies for Public Workforce System Accessibility and Effectiveness	2,147,740	2.39
(j) Competitive Process for Selection of the One-Stop Operator	0	0.00
(k) Local WDB Coordination with Education Providers	2,144,028	2.39
(l) Regional Plans	0	0.00
(m) Local and Regional Plan Modification	0	0.00
(n) Improved Information about Eligible Training Program Providers	452,334	0.50
(o) Sanctions on Under-Performing States	40,822	0.05
(p) Colocation of ES Services	57,889,020	64.43
(q) Partners Required to Pay their Share for Proportionate Use of One-Stop Delivery System	0	0.00
(r) Establishing Training Provider Eligibility Procedures, Including Procedures for Adding Registered Apprenticeship Programs to the State Eligible Training Provider List	2,471,269	2.75
(s) Determining Initial Eligibility of New and Previously Eligible Providers	879,236	0.98
(t) Biennial Review of Training Provider Eligibility	0	0.00
(u) Disseminating the Training Provider List with Accompanying Information	1,482,108	1.65
Total cost	89,851,156	100.00

Note: Totals might not sum due to rounding.

Exhibit 31 summarizes the estimated first-year transfers of this Final Rule. The Department estimates the total first-year transfer of this Final Rule to be $12.9 million.

EXHIBIT 31—ESTIMATED FIRST-YEAR TRANSFERS OF THE FINAL RULE BY PROVISION

[2015 dollars]

Provision	Total first-year transfers
(a) Youth Funds Targeting Out-of-School Youth	$12,887,628
Total transfer	12,887,628

Exhibit 32 summarizes the estimated annual and total costs and transfers of this DOL WIOA Final Rule. The estimated total (undiscounted) cost of the rule sums to $350.4 million over the 10-year analysis period, which is equal to an average annual cost of $35.0 million per year. In total, the estimated 10-year discounted costs of the Final Rule range from $278.8 million to $314.9 million (with 7- and 3-percent discounting, respectively).

The estimated total (undiscounted) transfers of the rule sum to $128.9 million over the 10-year analysis period, for an average annual transfer of $12.9 million per year. In total, the estimated 10-year discounted transfers of the Final Rule range from $96.9 million to $113.2 million (with 7- and 3-percent discounting, respectively).

To contextualize the cost of the Final Rule, the Department's average annual budget for WIA over the FY 2012–2014 was $3.5 billion.[52] Thus, the annual

[52] U.S. Department of Labor, Employment and Training Administration. (2015). Archive of State Statutory Formula Funding. Retrieved from: *https://www.doleta.gov/budget/py01_py09_arra_archive.cfm*. The Department used data from the following files to estimate the average annual WIA budget: WIA Adult Activities Program (PYs 2011, 2012, 2013, and 2014); WIA Dislocated Worker Activities Program (PYs 2011, 2012, 2013, and 2014); and WIA Youth Activities (PYs 2012, 2013, and 2014). Note that for the adult and dislocated worker activities programs, each fiscal year's funding is calculated as the sum of the program year's July funding and the previous program year's October funding. The youth activities funding is obligated to States in April and therefore corresponds to the fiscal year in which it is obligated. The Department inflated the funding for each fiscal year, so that the average annual WIA budget is in 2015 dollars.

U.S. Department of Labor, Employment and Training Administration. (2015) State Statutory Formula Funding. Retrieved from: *https://www.doleta.gov/budget/statfund.cfm*. The Department also used data from the following files to estimate the average annual WIA budget: Employment Services Program Dollar Tables (PYs 2012, 2013, and 2014). Note that Wagner-Peyser Act funds for a program year are obligated to States in July; therefore, these funds correspond to the fiscal year in which they are obligated. The Department

additional cost of implementing the Final Rule is 1.1 percent of the average annual cost of implementing WIA over the FY 2012–2014 (with either 3-percent or 7-percent discounting). In response to public comments, we also contextualize the cost of the Final Rule relative to the amount of administrative and transition funds available to States, which averaged $200.1 million between PY 2014 and PY 2015.[53] The annual additional cost of implementing the Final Rule is between 18.5 percent and 19.8 percent of the average annual administrative and transition funds budget (with 3-percent and 7-percent discounting, respectively).

EXHIBIT 32—ESTIMATED MONETIZED COSTS AND TRANSFERS OF THE FINAL RULE

[2015 dollars]

Year	Total costs	Transfers
2016	$89,851,156	$12,887,628
2017	30,471,554	12,887,628
2018	35,688,517	12,887,628
2019	23,550,089	12,887,628
2020	20,475,421	12,887,628
2021	46,203,174	12,887,628
2022	20,475,421	12,887,628
2023	22,236,610	12,887,628
2024	35,688,517	12,887,628
2025	25,734,944	12,887,628
Undiscounted 10-Year Total	350,375,401	128,876,276
10-Year Total with 3% Discounting	314,911,219	113,232,100
10-Year Total with 7% Discounting	278,750,652	96,853,514
10-Year Average	35,037,540	12,887,628
Annualized with 3% Discounting	36,917,202	13,274,256
Annualized with 7% Discounting	39,687,822	13,789,762

Qualitative Benefits

The Department was unable to quantify the important benefits to society due to data limitations and a lack of existing data or evaluation findings on the particular items. These include benefits from increased competition for all one-stop operators, the increased employment opportunities for unemployed or underemployed U.S. workers, benefits of colocation of ES services, enhanced ETP process, regional planning, and evaluation of State programs. Below, the Department describes qualitatively these benefits in qualitative terms. These qualitative forecasts are predicated on program experience and are outcomes for which data will become available only after implementation. Although these studies are largely based on programs and their existing requirements under WIA, they capture the essence of the societal benefits that can be expected from this Final Rule.

EXHIBIT 33—COST SAVINGS BY STUDY

Study	Cost savings (percent)	
	Low estimate	High estimate
Segal (2005)[54]	5	50
Hodge (2000)[55]	6	12
Hilke (1993)[56]	5	20
Cohen (1997)[57]	31	
Burt and Boyett (1979)[58]	11	18

State evaluation research. In support of a State's strategic plan and goals, State-conducted evaluations and other forms of research will enable each State to test various interventions geared toward State conditions and opportunities. Results from such evaluation and research, if used by States, could improve service quality and effectiveness, potentially leading to higher employment rates and earnings among participants. Implementing various innovations that have been tested and found effective also could lead to lower unit costs and increased numbers of individuals served within a State. Sharing the findings nationally could lead to new service or management practices that other States could adopt to improve participant

inflated the funding for each fiscal year, so that the average annual WIA budget is in 2015 dollars.

[53] TEGL No. 34–14, TEGL No. 12–14, and TEGL No. 24–14. Funds from PY 2014 were inflated to 2015 dollars.

[54] Segal, G. (2005). Making Florida's government competitive. *Backgrounder.* (44). The James Madison Institute. Retrieved from: *http://reason.org/files/fb2c24752ac451b648c88d99b262dcfe.pdf.*

[55] Hodge, G. A. (2000). *Privatization: An International Review of Performance.* Boulder, CO: Westview Press.

[56] Hilke, J. (1993). *Cost Savings from Privatization: A Compilation of Study Findings* (How to Guide No. 6). Reason Foundation. Retrieved from: *http://reason.org/files/b987e7bd89f4c4e21c8a73857b7001e8.pdf.*

[57] Cohen, W. S. (1997). *Defense Reform Initiative Report.* Washington, DC: Department of Defense.

[58] Burt, N. D., and Boyett, J. E. (1979). Reduction in selling price after the introduction of competition. *Journal of Marketing Research, 16*(2), 275–279.

results, lower unit costs, or increase the number served.

Training's impact on placement. A recent study found that flexible and innovative training that is closely related to a real and in-demand occupation is associated with better labor market outcomes for training participants. Youth disconnected from work and school can benefit from comprehensive and integrated models of training that combine education, occupational skills, and support services.[59] The study noted, however, that evidence for effective employment and training-related programs for youth is less extensive than for adults, and that there are fewer positive findings from evaluations.[60] The WIA youth program remains largely untested.[61] One study found that WIA training services increase placement rates by 4.4 percent among adults and by 5.9 percent among dislocated workers,[62] while another study concluded that placement rates are 3 to 5 percent higher among all training recipients.[63]

Participants in occupational training had a 5 percentage points higher reemployment rate than those who received no training, and reemployment rates were highest among recipients of on-the-job training, a difference of 10 to 11 percentage points.[64] The study found that training, however, did not correspond to higher employment retention or earnings.[65] A Youth Opportunity Grant Initiative study found that Youth Opportunity was successful at improving outcomes for high-poverty youth. Youth Opportunity also increased the labor-force participation rate overall and for subgroups, including 16- to 19-year-old adolescents, women, African Americans, and in-school youth.[66] Department-sponsored research found that participants who received core services (often funded by ES) and other services in one-stop centers were more likely to enter and retain employment.[67]

Training's impact on wages. Before enactment of WIA, Job Training Partnership Act services had a modest but statistically significant impact on the earnings of adult participants.[68] WIA training increased participants' quarterly earnings by $660; these impacts persisted beyond 2 years and were largest among women.[69] WIA adult program participants who received core services (*e.g.*, skill assessment, labor market information) or intensive services (*e.g.*, specialized assessments, counseling) earned up to $200 more per quarter than non-WIA participants did. Earnings of participants who received training services in addition to core and intensive services initially were less but caught up within 10 quarters with the earnings of participants who received only core or intensive services; marginal benefits of training could exceed $400 per quarter. Earnings progressions were similar for WIA adult program participants and users of the labor exchange only.[70] WIA training services also improved participants' long-term wage rates, doubling earnings after 10 quarters over those not receiving training services.[71] WIA participants who did not receive training, however, earned $550 to $700 more in the first quarter after placement. The study also noted that individuals who did not receive training received effective short-term counseling that enabled them to gain an immediate advantage in the labor market.[72]

Another Department program, the Job Corps program for disadvantaged youth and young adults, produced sustained increases in earnings for participants in their early twenties. Students who completed Job Corps vocational training experienced average earnings increases by the fourth follow-up year over the comparison group, whereas those who did not complete training experienced no increase.[73] Another publication also noted that, on average, adults experienced a $743 quarterly post-exit earnings boost.[74]

Those who completed training experienced a 15-percent increase in employment rates and an increase in hourly wages of $1.21 relative to participants without training.[75]

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[59] U.S. Department of Labor, U.S. Department of Commerce, U.S. Department of Education, and U.S. Department of Health and Human Services. (2014). *What Works In Job Training: A Synthesis of the Evidence.* Retrieved from: *http://www.dol.gov/asp/evaluation/jdt/jdt.pdf.*

[60] *Ibid.*

[61] Decker, P. T., and Berk, J. A. (2011.) Ten years of the Workforce Investment Act (WIA): Interpreting the research on WIA and related programs. *Journal of Policy Analysis and Management, 30*(4), 906–926.

[62] Hollenbeck, K., Schroeder, D., King, C. T., and Huang, W.-J. (2005). *Net impact estimates for services provided through the Workforce Investment Act* (Occasional Paper 2005–06). Washington, DC: U.S. Department of Labor, Employment and Training Administration, Office of Policy and Research, Division of Research and Demonstration. Retrieved from: *http://wdr.doleta.gov/research/FullText_Documents/Net%20Impact%20Estimates%20for%20Services%20Provided%20through%20the%20Workforce%20Investment%20Act-%20Final%20Report.pdf.*

[63] Heinrich, C. J., Mueser, P. R., and Troske, K. R. (2009). *Workforce Investment Act non-experimental net impact evaluation.* Columbia, MD: IMPAQ International, LLC. Retrieved from: *http://wdr.doleta.gov/research/FullText_Documents/Workforce%20Investment%20Act%20Non-Experimental%20Net%20Impact%20Evaluation%20-%20Final%20Report.pdf.*

[64] Park, J. (2011). *Does occupational training by the Trade Adjustment Assistance Program really help reemployment?: Success measured as matching.* Washington, DC: U.S. Department of Labor, Employment and Training Administration. Retrieved from: *https://wdr.doleta.gov/research/FullText_Documents/ETAOP_2011–09.pdf.*

[65] *Ibid.*

[66] Jackson, R. H., Malené Dixon, R., McCoy, A., Pistorino, C., Zador, P., Lopdell, J, Bruno, L. (2007). *Youth Opportunity Grant Initiative: Impact and synthesis report.* Prepared by Decision Information Resources, Inc. for U.S. Department of Labor, Employment and Training Administration. Retrieved from: *http://wdr.doleta.gov/research/FullText_Documents/YO%20Impact%20and%20Synthesis%20Report.pdf.*

[67] U.S. Department of Labor, Employment and Training Administration, Office of Policy Development and Research. (2013). *Five-Year research and evaluation strategic plan program years 2012–2017.* Retrieved from: *http://wdr.doleta.gov/research/FullText_Documents/ETAOP_2013_21.pdf.*

[68] Barnow, B., and Gubits, D. (2003). *Review of recent pilot, demonstration, research, and evaluation initiatives to assist in the implementation of programs under the Workforce Investment Act* (Occasional Paper 2003–10). U.S. Department of Labor, Employment and Training Administration. Retrieved from: *http://wdr.doleta.gov/research/FullText_Documents/ETAOP%202003–10%20Review%20of%20Recent%20Pilot%2C%20Demonostration%2C%20Research%2C%20and%20Evaluation%20Initiatives.pdf.*

[69] *Ibid.*

[70] Chrisinger, C. K. (2011). *Earnings progression among workforce development participants: Evidence from Washington State.* U.S. Department of Labor, Employment and Training Administration. Retrieved from: *http://wdr.doleta.gov/research/FullText_Documents/ETAOP_2011-11.pdf.*

[71] Heinrich, C. J., Mueser, P. R., and Troske, K. R. (2009). *Workforce Investment Act non-experimental net impact evaluation.* Columbia, MD: IMPAQ International, LLC. Retrieved from: *http://wdr.doleta.gov/research/FullText_Documents/Workforce%20Investment%20Act%20Non-Experimental%20Net%20Impact%20Evaluation%20-%20Final%20Report.pdf.*

[72] *Ibid.*

[73] Gritz, M., and Johnson, T. (2001). *National Job Corps Study: Assessing program effects on earnings for students achieving key program milestones.* Prepared by Battelle Memorial Institute for U.S. Department of Labor, Employment and Training Administration, Office of Policy and Research. Retrieved from: *http://wdr.doleta.gov/research/FullText_Documents/MilestoneImpactReport-Final.pdf.*

[74] Hollenbeck, K., Schroeder, D., C.T. King, C. T., and Huang, W.-J. (2005). *Net impact estimates for services provided through the Workforce Investment Act* (Occasional Paper 2005–06). Washington, DC: U.S. Department of Labor, Employment and Training Administration, Office of Policy and Research, Division of Research and Demonstration. Retrieved from: *http://wdr.doleta.gov/research/FullText_Documents/Net%20Impact%20Estimates%20for%20Services%20Provided%20through%20the%20Workforce%20Investment%20Act-%20Final%20Report.pdf.*

[75] Needels, K., Bellotti, J., Dadgar, M., and Nicholson, W. (2006). *Evaluation of the Military Base National Emergency Grants: Final report* (Occasional Paper 2007–02). Prepared by Mathematica Policy Research for U.S. Department of Labor, Employment and Training Administration, Office of Policy Development and Research. Retrieved from: *https://wdr.doleta.gov/research/FullText_Documents/Evaluation%20of%20the%20Military%20Base%20National*

Participation in WIA training also had a distinct positive, but smaller, effect on employment and earnings, with employment 4.4 percentage points higher and quarterly earnings $660 higher than for comparison group members.

The following are channels through which these benefits might be achieved:

Better information for workers. The accountability measures will provide workers with higher-quality information about potential training program providers and enable them to make better-informed choices about which programs to pursue. The information analyzed and published by the State and Local WDBs about local labor markets also will help trainees and providers target their efforts and develop reasonable expectations about outcomes.

Consumers of educational services, including disadvantaged and displaced workers, require reliable information on the value of different training options to make informed choices. Displaced workers tend to be farther removed from schooling and lack information about available courses and the fields with the highest economic return.[76] Given these information gaps and financial pressures, that displaced workers learn of the economic returns to various training plans is important.[77] Nevertheless, one study determined that the cost-effectiveness of WIA job training for disadvantaged workers is "modestly positive" due to the limited sample of States on which the research was based.[78]

Sanctions to under-performing States. WIOA requires the Department to place sanctions on States that underperform for 2 consecutive years. The sanction will be 5 percent of set-aside funding. Having a clear and credible sanction will serve as an incentive for States and local entities to monitor performance more effectively and to intervene early to avoid the loss of funding.

Evaluations of WIA indicate that sanctions have a larger influence on programs than incentives do. Two-thirds of local areas have indicated that the possibility of sanctions influenced their programs, whereas only slightly more than half indicated that incentives had an influence.[79] Further, several Job Centers consider student placement outcomes in staff performance evaluations and pay for vocational instructors.[80] This practice has significantly increased staff interest in successful student placement following program completion.[81]

State performance accountability measures. This requirement will include significant data collection for Local WDBs to address performance indicators for the core programs in their jurisdictions. This data collection will enable the State WDBs to assess performance across each State. Training providers will be required to provide data to Local WDBs, which will represent a cost in the form of increased data collection and processing. Employers and employees also will have to provide information to the training providers, which will take time. This provision, in combination with the State and Local WDB membership provisions requiring employer/business representation, is expected to improve the quality of local training and, ultimately, the number and caliber of job placements.

Implementation of follow-up measures, rather than termination-based measures, might improve long-term labor market outcomes, although some could divert resources from training activities.[82]

Before-after earning metrics capture the contribution of training to earnings potential and minimize incentives to select only training participants with high initial earnings.[83] With the exception of programs in a few States, current incentives do not reward enrollment of the least advantaged.[84] In addition, the study noted evidence that the performance standards can be "gamed" in an attempt to maximize their centers' measured performance.[85]

Pressure to meet performance levels could lead providers to focus on offering services to participants most likely to succeed. For example, current accountability measures might create incentives for training providers to screen participants for motivation, delay participation for those needing significant improvement, or discourage participation by those with high existing wages.[86]

The following subsections present additional channels by which economic benefits might be associated with various aspects of the Final Rule:

Dislocated workers. A study found that, for dislocated workers, receiving WIA services significantly increased employment rates by 13.5 percent and boosted post-exit quarterly earnings by $951.[87] Another study found, however, that training in the WIA dislocated worker program had a net benefit close to zero or even below zero.[88]

Self-employed individuals. Job seekers who received self-employment

%20Emergency%20Grants%20Final %20Report.pdf.

[76] Greenstone, M., and Looney, A. (2011). *Building America's job skills with effective workforce programs: A training strategy to raise wages and increase work opportunities.* Washington, DC: The Hamilton Project. Retrieved from: *http://www.brookings.edu/~/media/research/files/papers/2011/11/training-greenstone-looney/11_training_greenstone_looney.pdf.*

[77] Jacobson, L. S., LaLonde, R. J., and Sullivan, D. G. (2011). *Policies to reduce high-tenured displaced workers' earnings losses through retraining* (Discussion Paper 2011–11). Washington, DC: The Hamilton Project. Retrieved from: *http://www.brookings.edu/~/media/research/files/papers/2011/11/displaced-jacobson-lalaonde-sullivan/11_displaced_jls_paper.pdf.*

[78] Heinrich, C. J., Mueser, P. R., Troske, K. R., Jeon, K.-S., and Kahvecioglu, D. C. (2009). *New estimates of public employment and training program net impacts: A nonexperimental evaluation of the Workforce Investment Act program* (Discussion Paper 4569). Bonn, Germany: Institute for the Study of Labor (IZA). Retrieved from: *http://ftp.iza.org/dp4569.pdf.*

[79] Dunham, K., Mack, M., Salzman, J., and Wiegand, A. (2005). *Evaluation of the WIA performance measurement system: Survey report.* Prepared by Social Policy Research Associates for U.S. Department of Labor, Employment and Training Administration. Retrieved from: *http://wdr.doleta.gov/research/FullText_Documents/Evaluation%20of%20the%20WIA%20Performance%20Measurement%20System%20-%20Survey%20Report.pdf.*

[80] Johnson, T., Gritz, M., Jackson, R., Burghardt, J., Boussy, C., Leonard, J., and Orians, C. (1999). *National Job Corps study: Report on the process analysis.* Prepared by Mathematica Policy Research, Inc. for U.S. Department of Labor, Employment and Training Administration. Retrieved from: *http://wdr.doleta.gov/research/FullText_Documents/99-jc_analysis.pdf.*

[81] *Ibid.*

[82] Courty, P., and Marschke, G. (2007). Making government accountable: Lessons from a federal job training program. *Public Administration Review, 67*(5), 904–916.

[83] Heckman, J. J., Heinrich, C., and Smith, J. A. (1997). Assessing the performance of performance standards in public bureaucracies. *The American Economic Review, 87*(2), 389–395.

[84] *Ibid.*

[85] *Ibid.*

[86] Dunham, K., Mack, M., Salzman, J., and Wiegand, A. (2005). *Evaluation of the WIA performance measurement system: Survey report.* Prepared by Social Policy Research Associates for U.S. Department of Labor, Employment and Training Administration. Retrieved from: *http://wdr.doleta.gov/research/FullText_Documents/Evaluation%20of%20the%20WIA%20Performance%20Measurement%20System%20-%20Survey%20Report.pdf.*

[87] Hollenbeck, K., Schroeder, D., King, C.T., and Huang., W.-J. (2005). *Net Impact Estimates for Services Provided through the Workforce Investment Act* (Occasional Paper 2005–06). Washington, DC: U.S. Department of Labor, Employment and Training Administration, Office of Policy and Research, Division of Research and Demonstration. Retrieved from: *http://wdr.doleta.gov/research/FullText_Documents/Net%20Impact%20Estimates%20for%20Services%20Provided%20through%20the%20Workforce%20Investment%20Act-%20Final%20Report.pdf.*

[88] Heinrich, C.J., Mueser, P.R., and Troske, K.R. (2009). *Workforce Investment Act non-experimental net impact evaluation.* Columbia, MD: IMPAQ International, LLC. Retrieved from: *http://wdr.doleta.gov/research/FullText_Documents/Workforce%20Investment%20Act%20Non-Experimental%20Net%20Impact%20Evaluation%20-%20Final%20Report.pdf.*

services started businesses sooner and had longer-lasting businesses than nonparticipants. Self-employment assistance participants were 19 times more likely to be self-employed than nonparticipants and expressed high levels of satisfaction with self-employment. A study of Maine, New Jersey, and New York programs found that participants were four times more likely to obtain employment of any kind than nonparticipants were.[89]

Workers with disabilities. A study of individuals with disabilities enrolled in training for a broad array of occupations found that the mean hourly wage and hours worked per quarter for program graduates were higher than for individuals who did not complete the program.

Out-of-school youth. Several benefits are expected to result from the Department's increased funding for OSY—especially those from vulnerable groups such as low-income youth, minorities, and high school dropouts. According to Lerman (2005), that youth who have left school recently develop skills directing them toward having productive careers is critical.[90] As discussed above in the transfer subsection of the section V.A.6 (Subject-by-Subject Analysis), increased investment in programs that target OSY is expected to result in higher youth employment, higher incomes, reduced crime, and a reduction in the waste of human potential. As a note of caution, however, Lerman (2005) found that only a few of the programs sponsored by the Department, other Federal and State government agencies, and private foundations aimed at helping at-risk, OSY have resulted in concrete benefits that have exceeded each program's costs.[91]

In conclusion, after a review of the quantitative and qualitative analysis of the impacts of this Final Rule, the Department has determined that the societal benefits justify the anticipated costs.

Qualitative Transfers

In addition, there is an important transfer payment that the Department was unable to quantify. Below, the Department describes qualitatively the transfer payment that is expected to result from layoff aversion due to rapid response activities.

Layoff Aversion Due to Rapid Response Activities. Under the WIA Regulations, rapid response operators could use the funds to assess the potential for averting layoffs. Under WIOA, the regulations at § 682.330 require rapid response to include layoff aversion strategies and activities, but only as applicable. The Final Rule includes several broad strategies and specific activities that are critical to gathering information, maintaining readiness, and ensuring the ability to capitalize on opportunities that will prevent, or minimize the duration of, unemployment.

Although adding layoff aversion to a State's portfolio of rapid response services will not necessarily change the rapid response costs for States because States take resources from other rapid response activities to do so, layoff aversion is economically valuable in many ways. Saving jobs keeps people working and earning income to be spent in the economy and prevents the costs associated with unemployment, including unemployment insurance and retraining. Businesses sell goods and services, make profits, and pay taxes, while maintaining a skilled workforce. Communities thrive when residents are working and actively participating in the economy. Preventing job loss, and minimizing the duration of unemployment, ensures that the public workforce system is a critically important player in creating and maintaining a successful economy, and layoff aversion can deliver meaningful, positive benefits such as retaining wages, maintaining economic activity, expanding tax bases, minimizing the costs of retraining, and increasing employee morale.

This benefit is difficult to quantify because it is not possible to measure the number of individuals who would have been unemployed or the duration of their unemployment if layoff aversion services were not available.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 603, requires agencies to prepare a regulatory flexibility analysis to determine whether a regulation will have a significant economic impact on a substantial number of small entities. Section 605 of the RFA allows an agency to certify a rule in lieu of preparing an analysis if the regulation is not expected to have a significant economic impact on a substantial number of small entities. Further, under the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801 (SBREFA), an agency is required to produce compliance guidance for small entities if the rule has a significant economic impact.

The Small Business Administration (SBA) defines a small business as one that is "independently owned and operated and which is not dominant in its field of operation." The definition of small business varies from industry to industry to the extent necessary to reflect industry size differences properly. An agency must either use the SBA definition for a small entity or establish an alternative definition, in this instance, for the workforce industry. The Department has adopted the SBA definition for the purposes of this certification.

The Department has notified the Chief Counsel for Advocacy, SBA, under the RFA at 5 U.S.C. 605(b), and certifies that this rule will not have a significant economic impact on a substantial number of small entities. This finding is supported, in large measure, by the fact that small entities are already receiving financial assistance under the WIA program and will likely continue to do so under the WIOA program as articulated in this Final Rule.

Affected Small Entities

This Final Rule can be expected to impact small one-stop center operators. One-stop operators can be a single entity (public, private, or nonprofit) or a consortium of entities. The types of entities that might be a one-stop operator include: (1) An institution of higher education; (2) an ES SWA established under the Wagner-Peyser Act; (3) a community-based organization, nonprofit organization, or workforce intermediary; (4) a private for-profit entity; (5) a government agency; (6) a Local WDB, with the approval of the local CEO and the Governor; or (7) another interested organization or entity that can carry out the duties of the one-stop operator. Examples include a local chamber of commerce or other business organization, or a labor organization.

Impact on Small Entities

The Department indicates that transfer payments are a significant aspect of this analysis in that the majority of WIOA program cost burdens on State and Local WDBs will be fully financed through Federal transfer

[89] Kosanovich, W.T., Fleck, H., Yost, B., Armon, W. and Siliezar, S. (2001). *Comprehensive assessment of self-employment assistance programs.* Prepared by DTI Associates for U.S. Department of Labor, Office of Workforce Security. Retrieved from: *http://wdr.doleta.gov/research/FullText_Documents/Comprehensive%20Assessment%20of%20Self-Employment%20Assistance%20Programs.pdf.*

[90] Lerman, R.I. (2005). *Programs to support out-of-school youth* (Occasional Paper 2005–14). Washington, DC: U.S. Department of Labor, Employment and Training Administration. Retrieved from: *http://wdr.doleta.gov/research/FullText_Documents/Programs%20to%20Support%20Out-of-School%20Youth%20Report.pdf.*

[91] *Ibid.*

payments to States. The Department has highlighted costs that are new to WIOA implementation and this Final Rule. Therefore, the Department expects that the DOL WIOA Final Rule will have no cost impact on small entities.

C. Small Business Regulatory Enforcement Fairness Act of 1996

The Department has determined that this Final Rule does not impose a significant impact on a substantial number of small entities under the RFA; therefore, the Department is not required to produce any Compliance Guides for Small Entities as mandated by the SBREFA.

D. Paperwork Reduction Act

The purposes of the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*, include minimizing the paperwork burden on affected entities. The PRA requires certain actions before an agency can adopt or revise a collection of information, including publishing for public comment a summary of the collection of information and a brief description of the need for and proposed use of the information.

As part of its continuing effort to reduce paperwork and respondent burden, the Department conducts a preclearance consultation program to provide the public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the PRA. *See* 44 U.S.C. 3506(c)(2)(A). This activity helps to ensure that the public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

A Federal agency may not conduct or sponsor a collection of information unless it is approved by OMB under the PRA and displays a currently valid OMB control number. The public is also not required to respond to a collection of information unless it displays a currently valid OMB control number. In addition, notwithstanding any other provisions of law, no person will be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number (44 U.S.C. 3512).

In accordance with the PRA, the Department submitted a series of ICRs to OMB when the NPRM was published. The NPRM provided an opportunity for the public to comment on the information collections directly to the Department; commenters also were advised that comments under the PRA could be submitted directly to OMB. OMB issued a notice of action for each request asking the Department to resubmit the ICRs at the final rule stage and after considering public comments. Where information collection instruments were not ready at the time the NPRM published, the Department provided additional opportunities for the public to comment on the information collections through notices in the **Federal Register** that provided additional comment periods on the associated forms and instructions. These comment periods provided at least 60 days for comments to be submitted to the agency. Each of these ICRs was then submitted for OMB approval, and the Department published notices in the **Federal Register** that invited comments to be sent to OMB for a period lasting at least 30 days. The Department also submitted each ICR for further approval to incorporate the provisions of this Final Rule; these Final Rule ICRs were not subject to further public comment. The Department provides a status of the each ICR in the summary section that immediately follows in this portion of the preamble. Where a review remained pending, when this preamble was drafted, the Department will publish an additional notice to announce OMB's final action on the ICR.

It should be noted that the ICR review status reported in this section only relates to requests related directly to this Final Rule. Certain ICR packages that were previously approved are being updated to change references to those in the Final Rule. As has been the practice throughout WIOA implementation, the Department will continue to update stakeholders on the status of the ICRs through other means.

For some packages, substantive requirements were approved via a notice of action and as of the date of the drafting of this preamble, the information collection is being updated to reflect references in the WIOA Final Regulations. We note that the ETA Workforce Innovation and Opportunity Act Performance Accountability, Information, and Reporting System review is pending as of the date this preamble was drafted. The substantive requirements will be approved through a notice of action by OMB, and will take effect as of that date. The Department will announce this approval.

The information collections in this Final Rule are summarized as follows.

State Training Provider Eligibility Collection

Agency: DOL–ETA.
Title of Collection: State Training Provider Eligibility Collection.
Type of Review: New collection.
OMB Control Number: 1205–0523.
Affected Public: State, Local, and Tribal Governments, and Private Sector.
Obligation to Respond: Required to obtain or retain a benefit (WIOA sec. 122).
Total Estimated Number of Respondents Annually: 11,457.
Total Estimated Number of Annual Responses: 11,457.
Frequency of Responses: On Occasion.
Total Estimated Annual Time Burden: 8,835 hours.
Total Estimated Annual Other Costs Burden: $0.
Regulations Sections: § 680.450, § 680.460, § 680.490, § 680.500.
ICR Approval Status: Not yet approved.

Overview and Response to Comments Received

Overview: Under WIOA sec. 122, the Governor, after consultation with the State WDB, must establish criteria, information requirements, and procedures regarding the eligibility of providers of training services to receive funds under WIOA for the provision of training services in local areas in the State. The Final Rule describes the process for adding "new"' providers to the ETPL, explains the detailed application process for previously WIA-eligible providers to remain eligible under WIOA, describes the performance information that providers are required to submit to the State in order to establish or renew eligibility, and explains the requirements for distributing the ETPL and accompanying information about the programs and providers on the list.

The Department received no comments concerning this information collection.

ETA Workforce Innovation and Opportunity Act Performance Accountability, Information, and Reporting System

Agency: DOL–ETA.
Title of Collection: ETA Workforce Innovation and Opportunity Act Performance Accountability, Information, and Reporting System.
Type of Review: New collection.
OMB Control Number: 1205–0521.
Affected Public: State, Local, and Tribal Governments; Individuals or Households.

Obligation to Respond: Required to Obtain or Retain Benefits.

Total Estimated Number of Respondents Annually: 17,262,375.

Total Estimated Number of Annual Responses: 34,526,494.

Total Estimated Annual Time Burden: 8,881,228 hours.

Total Estimated Annual Other Costs Burden: $6,791,395.

Regulations Sections: § 684.420, § 684.610, § 684.700, § 684.800, § 685.210, § 685.400, § 688.420, § 688.610.

ICR Approval Status: Not yet approved.

Overview and Response to Comments Received

Overview: This new information collection will consolidate the existing information collections for YouthBuild, National Farmworkers Jobs Program, Indian, and Native Americans Program participants. These information collections are currently approved under OMB Control Numbers 1205–0422, 1205–0425, and 1205–0464. The WIOA Performance Management and Information and Reporting System would standardize the initial application, quarterly, and annual reporting processes for program participants.

Comments: The Department received comments in specific areas (*e.g.,* performance indicators, ICR documents) and general topics (*e.g.,* burden estimates).

The Department received comments expressing concern that the proposed Participant Individual Record Layout (PIRL) did not identify which data elements are optional, required, or only required for a specific program or for specific participant characteristics. Similarly, four commenters requested that the final version of the PIRL contain information indicating which programs are required to report each data element and under which conditions each data element must be reported to help States determine how to modify their systems to capture the data properly. Two commenters assumed that, except where clearly indicated otherwise, all data elements are required for all participants, even those receiving minimal staff involvement, and commented that this would be a significant change from existing reporting requirements. One commenter requested that, if the intent is that all data elements before section E be gathered for all programs, the Department consider limiting the required data elements to those really needed for each program. Particularly for title III, this commenter expressed concern that participants would drop out if asked to provide large amounts of information not directly related to matching them with a job.

Department Response: The PIRL consists of required and optional data elements for multiple programs and partners. Therefore, it is not expected that every data element will apply to every individual in every program. As noted above, the Department has extended the PIRL by identifying the reporting requirements for each program. For instance, as indicated by one of the commenters, it would not be realistic to collect the same depth and breadth of information from individual accessing ES services relative to individual receiving training services under a different program. Additional guidance and technical assistance will be provided on data collection and reporting requirements specific for each program.

Comments: Several commenters stated that the proposed information collection is not clear regarding the Indian and Native American (INA) program's reporting obligations and suggested that WIOA sec. 166 grantees have their own reporting systems, performance indicators, and a separate DOL-only PIRL. Two commenters also asked if all of the proposed reporting forms are required in order to begin programming a management information system.

Department Response: The Department notes that the performance indicators for the INA program are statutorily required by WIOA; the Department does not have the discretion to deviate from the indicators required in sec. 166(h)(1)(A) of WIOA. The Department has included INA programs in these comprehensive performance reporting requirements for the workforce programs. Section 166(h)(1)(A) requires the Secretary of Labor, in consultation with the Native American Employment and Training Council (NAETC), to develop additional performance indicators and standards. Different programs will be subject to different data element reporting requirements; in other words, INA program grantees only will be reporting on data elements in the DOL-only PIRL that are specifically related to the INA program. Additionally, the reporting template/form included in this ICR will be the required form for each program mentioned in the PIRL. In other words, while there is only one common form to be used, there will be one report form required for each grantee within the various programs included in this ICR.

Comments: A commenter expressed concerns regarding the burden of increased reporting requirements on the INA program, including the need for technical experts to design reporting systems to capture all new requirements and the re-training of employees on reporting procedures. Two different commenters recommended that the Department fund the development of a robust, flexible, and secure Web-based system that will meet the needs of both the grantees and the Federal system. One of the commenters stated that a Web-based reporting system would address many of the problems associated with the current Bear Tracks management information system, which lacks support for grantees' internal management and reporting requirements and is difficult to support and upgrade, particularly for non-Windows users.

Department Response: The Department urges the commenters to review the program additional matrix added to the PIRL, which designates which data elements need to be collected by each program. All data elements listed in the PIRL are not required to be collected by the INA program; therefore, the burden is not as heavy as anticipated.

The Department has worked on an appropriate balance between stewardship of Federal funds through tracking and reporting outcomes and not over-burdening recipients of those Federal funds with excessive reporting and other administrative requirements. However, reporting is essential for tracking participant outcomes and the overall effectiveness of all programs, including the INA program. Although the performance indicators require additional follow-up and longer tracking periods for participants, the Department does not consider this to be a significant increase in reporting burden.

The Department concurs with the commenter on the need for training on the new performance indicators and reporting requirements and will provide on-going technical assistance to grantees as the system transitions to the new performance indicators and reporting requirements under WIOA. The Department also agrees with the commenter that it will require technical experts to develop a reporting system for INA program grantees and will be working in collaboration with the NAETC and with INA program grantees to develop a management information system that will allow grantees to track and report on INA participants. The Department will provide guidance and technical assistance at subsequent NAETC meetings to include the reporting process and system.

The Department will consider a transition period for grantees so that

consultation and training is provided on the final reporting requirements for WIOA and to allow the development of a new reporting system. The Department commits to working with the NAETC on developing the revised reporting system and will consider web-based reporting as a means to reduce the maintenance of the system.

Comments: Referencing PIRL section E.04 (Indian and Native American Program), a commenter requested clarification on whether the Bear Tracks management information system is mandated for the INA program and, if so, who would fund the costly system enhancements to meet WIOA reporting requirements. The commenter asserted that disaggregation is a concern for tribal affiliation in California because many California tribes are small and data elements such as date of birth, zip code, barriers to employment, and tribal affiliation may reveal personally identifiable information (PII). The commenter asked if the Department has completed and evaluated a privacy impact study for California Indian Manpower Consortium and requested confidentiality assurances for California tribes.

Department Response: The Bear Tracks management information system is not a DOL-mandated system for INA program grantees. It was developed in collaboration with the NAETC and INA grantee community to increase reporting efficiency and accuracy and to allow for the transmission of individual participant records to the Department. Although the Bear Tracks management information system is not mandatory, INA program grantees will be required to use a system that transmits participant data in a manner that meets the Department's reporting requirements. The Department has taken several steps to manage the secure transfer of individual participant records. These steps include: A page for the file upload (for grantees) that is Secure Socket Layer (SSL) enabled; a Secure File Transfer protocol (S–FTP) used to transfer files from the Employment and Training Administration (ETA) to the State of Kansas for UI wage matching (Kansas has an S–FTP server and DOL has the S–FTP client) and lastly, only aggregate data are returned to the Department with data suppressed on grantees with fewer than 4 records. The Department has completed a Privacy Impact Assessment (PIA) for the Enterprise Business Support System (EBSS), which is the system that collects and stores data for the INA program (See the PIA located at: *http://www.dol.gov/oasam/ocio/programs/PIA/ETA/ETA-EBSS.htm*) DOL has determined that the safeguards and controls for this system adequately protect the information as indicated in EBSS System Security Plan, dated March 5, 2013.

Comments: Other commenters asserted that the gathering of information required for the PIRL would have significant costs, a few commenters urged the Department to evaluate each data element and require only those that are either mandated by statute or that truly have meaning and add value. One of these commenters stated that, while there are costs to modify information technology (IT) systems, including increased time spent gathering the data, it is ultimately the customers who pay these costs because more resources spent gathering data means less resources spent assisting customers and longer waits to see staff.

Department Response: Although the PIRL consists of several data elements not previously collected by the Department's workforce programs, most of the data elements were previously required under the WIA "WIASRD," which is the precursor to the PIRL. In general, data elements were added only if required by WIOA either directly or indirectly (*i.e.,* if required for one or more performance calculations, or required for eligibility determinations). As noted previously, the Department has taken every effort to strike a balance between its fiduciary responsibilities pertaining to stewardship of Federal funds and the desire to not impose undue administrative burden.

The intent of this ICR is to streamline reporting across the Department's workforce programs, and this is reflected in the PIRL through the inclusion all data elements necessary for each of the programs included in the collection to meet their individual program reporting requirements. Programs are required only to collect and report on those elements that are statutorily required and/or necessary to determine performance outcomes for those individuals to whom they provide services. The Department has minimized, to the extent possible, the burden placed on customers and service providers through the implementation of this new reporting system and will provide further support to ease this transition through future guidance and technical assistance.

Comments: Two commenters expressed concern that there are common data elements in both the Joint WIOA PIRL and the DOL-only PIRL that have different definitions and recommended that the Department ensure the definitions of common data elements remain consistent. One commenter recommended that the Department align the numbering between the Joint WIOA PIRL and the DOL-only PIRL data elements and correct situations in which some numbers are used more than once. Another commenter expressed concern that some data elements in the proposed DOL-only PIRL relating to participant characteristics are defined differently than in the VR Report 911.

Department Response: The Departments have worked to eliminate inconsistencies and align reporting requirements and the specific data elements, including using the exact same definitions for both versions of the PIRL, and aligning all element numbers. In addition, the Rehabilitation Services Administration (RSA) has added additional 911 elements to be consistent with the PIRL. Both DOL and RSA are revising existing data collection instruments. The increase in burden required to reorganize and renumber all of the data elements would exceed any burden removed by having consistent fields numbered across programs. RSA is also revising instructions to eliminate any duplicate numbers. Where appropriate, for reporting purposes, RSA also plans to aggregate some of the more detailed 911 data elements to be consistent with the PIRL.

Comments: A commenter asked how data conflicts would be addressed if multiple PIRLs are submitted for the same individual by different agencies that have the individual on a different participation timeline. This commenter also expressed concern about integrating data from programs that are not part of the State system but are administered through grants to local areas and organizations throughout the State (*e.g.,* YouthBuild and INA programs). If the information reported by these programs is to end up in an integrated PIRL, this commenter asserted that it will take time and effort for the State to establish a way to obtain and report the data from these additional programs to incorporate with ES, WIOA, and TAA.

Department Response: The Department notes that States have the flexibility to submit a separate PIRL for each program, or a PIRL for each participant, including services received from all programs. The Department will perform any integration that takes place using multiple PIRL data elements to link individual records in the case where a unique identifier across programs is not available. There will also be an upload option for the entire PIRL layout, for those States who wish to integrate their programs into one data file submission. Regarding grantee programs outside of the State, the

Department agrees that this level of data integration may be difficult or in some cases not appropriate. The Department will continue to evaluate which programs should be integrated, and the most efficient methods to do so.

Comments: A commenter inquired if one PIRL file will be integrated for all programs (title I subtitle B, title I subtitle D, title II, ES program, trade, and other non-WIOA programs noted) or whether each program will have its own file. If each program provides its own file, the commenter requested clarification regarding whether Trade would need to collect data elements that are not Trade-specific (*e.g.*, low-income, low levels of literacy, and other data elements not currently reported in TAPR). A commenter expressed support for requiring Trade programs to use the PIRL as its program reporting layout, but requested clarification on the specific reporting requirements for TAA. For example, the commenter asked if quarterly Unemployment Insurance (UI) benefit information, as currently required on the TAPR, is still required and, if so, where these data will be collected on the PIRL. A commenter also expressed the understanding that each State can select if TAA will be included in the PIRL or reported in a separate program report.

Department Response: Although the PIRL will be used for multiple DOL programs (both formula and discretionary), not all data elements will apply to every program, for example, data on cultural barriers is required by the WIOA statute for title I programs but there is no similar requirement for TAA programs. Therefore, data elements pertaining to cultural barriers would not be collected for individuals participating in the TAA program only. All data elements of the TAPR are included in the PIRL. UI benefit information is to be reported collected in PIRL 401. Each program will be made aware of which elements are required data elements; the additional data elements in the PIRL will be considered optional for States and grantees to report on.

Comments: Regarding section B (One-Stop Center Program Participation Information), a commenter said that because National Farmworker Jobs Program (NFJP) grantees operate their own case management and data management programs, they only can be expected to report participation in other WIOA programs for individuals for whom they arrange co-enrollment. The commenter expressed concern that there is not consistency among one-stop operators from service area to service area or State-to-State relating to the amount of cooperation and data sharing that States are willing or legally able to do with non-State agencies.

Department Response: NFJP grantees are a required one-stop partner and must enter into a memorandum of understanding (MOU) with Local WDBs as described in WIOA sec. 121(c). As part of this MOU, Local WDBs and the required partners must describe the manner in which the services will be coordinated and delivered through the one-stop delivery system, including the methods of individual referrals between the one-stop operator and the one-stop partners for appropriate services and activities. WIOA sec. 121(c)(2)(B) also provides that other provisions consistent with WIOA may be included in the MOU, and the Department encourages required one-stop partners, such as NFJP grantees, to include language that can facilitate sharing of co-enrollment data for reporting purposes. The Department will issue additional guidance regarding the development of MOUs between Local WDBs and required one-stop partners. No revision to the data element text has been made.

Comments: Regarding section D (Program Outcomes Information), a commenter expressed support for maintaining the ability of grantees to use supplemental data sources to track performance outcomes for all participants who are not found in wage records, reasoning that it provides certain program operators with the necessary flexibility to obtain performance outcome data without having access to wage records (*e.g.*, community-based organizations). If such grantees use supplemental data sources but are unable to calculate performance outcomes for participants who choose not to provide their social security number, the commenter urged the Department to provide flexibility so there is no disincentive for serving these individuals (*e.g.*, allow grantees to exclude these participants from performance outcome calculations but still include them in service counts, *i.e.*, the participant served and exited column).

Department Response: For individuals that do not have or choose not to provide a Social Security Number (SSN), the Department will allow for supplemental data to be used to track employment rates and wages of the participants. The Department notes that employment and wages must be collected and verified for a participant through either wage record matching or through supplemental wage information, in order for the participant to be included as being in unsubsidized employment during the second quarter and in the fourth quarters after exit; this requirement allows such participants without disclosed SSNs to be included in performance outcomes. States should report SSN matched data without reporting the SSN as the unique identifier, except to the extent permitted under the H–1B grant program. The data provided by UI is the most reliable and least burdensome data available for reporting employment rates and wages; however, the Department will allow data from the other sources listed in the PIRL to be used when UI data are unavailable. In other words, participants who identify as having a SSN and those who do not will all be accountable for performance outcomes as well as overall participant and exiter counts. Both the Departments of Education and Labor continue to work to find solutions that will allow States to access the data needed to comply with these requirements under WIOA.

Comments: A commenter asked, concerning section E.02 (H–1B), whether only agencies that operate the H–1B program are responsible for completing this section, or whether programs under WIOA are required to confirm whether a person is an H–1B participant and, if so, whether WIOA is required to report these data elements. Similarly, noting that the PIRL has additional program data elements, *e.g.*, H–1B (section E.02), Reintegration of Ex-Offenders (sections E.05 and E.06), and Office of Disability Employment Policy (ODEP) (section E.08), another commenter asked if States are now required to gather the data from the organizations that have been awarded these grants or whether grantees are expected to submit their own files. If the State is required to report on these programs, the commenter asked for additional guidance relating to how States will learn the identity of these grantees and expressed concern about sufficient lead time for State IT departments to make system modifications.

Department Response: The Department is implementing the PIRL format across multiple programs, but not all programs will require the same data elements. For instance, H–1B grantees will be responsible for the collection and reporting of the required data elements under the H–1B section of the PIRL. Similarly, other discretionary grant programs will report only on those sections of the PIRL (*i.e.*, those data elements that pertain to their respective program). In other words, the PIRL file for a participant in one program may look quite different from the PIRL file for a participant in a different program.

States will not be responsible for the submission of discretionary grant programs—the grantees themselves will have the responsibility of submitting data on their participants.

Comments: Three commenters expressed confusion concerning PIRL 408—Highest School Grad Completed (WIOA), on what to report for this data element. If an individual completes a full-time technical or vocational school, noting that although this data element no longer includes an option for vocational school, the Program Performance Scorecard lists vocational school under Educational Level. The commenters also asked whether it was a mistake that "Other Postsecondary Degree or Certification" is no longer included as an option under this data element. A commenter suggested that either the Department should further define this data element for consistent use and to avoid user error, or this data element should be removed. An advocacy organization recommended that the Department revise this data element to include educational attainment completed in foreign countries in the data element specification, reasoning that it would aid service providers in determining the appropriate services a participant requires.

Department Response: The Department has revised this data element for better clarity. If an individual has attained a postsecondary technical or vocational degree, the participant would be coded as a '5' as per the element instructions. The option of "other postsecondary degree or certification" is not included here as the Department urges States and grantees to best choose one of the eight options for this element. Additionally, to reduce reporting burden, the Department did not add a separate option for completing an education program or attaining a degree or certificate. If this is the scenario, this participant's degree would be treated as one earned domestically and also be coded as such.

Comments: In discussing the measurable skill gains, a commenter expressed concern that the specifications include individuals who have an Exclusionary Reasons (PIRL 923) code of "01." Although acknowledging that this is to allow title II adult education providers to report on their corrections education/education of other institutionalized individuals, this commenter asserted that not excluding these individuals from title I performance is of concern because most participants who have been excluded from performance due to being institutionalized or incarcerated are waiting adjudication in a jail and are unable to secure bond; they are not in a prison where adult education providers are providing services. The commenter stated that there should be a better way to calculate and report this measure specific to each program. Another commenter expressed concerns regarding the burden of reporting on measurable skill gains as well as the accuracy of the measure. The commenter asserted that gathering and documenting information such as transcripts, report cards, progress reports, and exams would pose a hardship to States because schools will not provide student information, citing FERPA laws. Further, the commenter said that testing individuals for educational functional levels is costly, time consuming, and unrealistic.

A commenter suggested there should be a minimum threshold of participation for a customer to reach (to be defined by Local WDBs) before that customer is counted towards this performance indicator (*e.g.,* number of hours completed). This commenter also recommended that customers who start an education or training program in the last quarter of the program year should be subject to measure in the following program year given that they may not be able to demonstrate measurable gains so quickly. Moreover, given the diversity of possible education and training programs, this commenter recommended that requirements for documentation should be clear and simple, offer maximum flexibility as to what can demonstrate a skill gains, and stipulate that documentation is necessary only as back-up in the event of an audit, but not necessary to report on an outcome.

Department Response: In the final ICR, the Department excludes those who become institutionalized, as defined in PIRL 923, option "01." Although the Department understands the concerns around data gathering, the measure is required by statute; therefore, programs should form the necessary partnerships to obtain the information. Further, the Department has determined that, given the diversity of participant needs and program services, imposing a time threshold by which progress may be documented would be somewhat arbitrary and make the measure more complex. Such practice could result in excluding a number of participants from performance accountability reporting requirements, even if those participants would achieve a gain under one of the measures of progress. The Department recognizes that participants enrolling late in the program year may not have enough time to achieve a measurable skill gains prior to the end of the first program year, and the Department recognized this could be perceived to negatively impact performance. However, the negotiation process and the statistical adjustment model may take into account enrollment patterns and lower baseline data when setting targets for the measurable skill gains indicator. The Department is concerned about incentivizing behavior that discourages service providers from enrolling individuals, such as disconnected youth, when they first approach programs. The Department emphasizes that programs must not delay enrollment in a program or prohibit participants from entering a program late in the program year. All participant outcomes, regardless if achieved at the end of the reporting period in which they enrolled or in the next reporting period count as positive outcomes for the program as they are not exit-based measures.

Comments: A commenter sought clarification on what data elements by program need to be recorded and when, asserting that there is no clear definition of what is required to be reported and at what stage of participation. Commenting that many data elements in the PIRL are unlikely to apply to all program and participant circumstances, an advocacy organization recommended that the Department develop an intelligent reporting system that uses logic models to streamline questions so they are only relevant to each program's and participant's circumstances. A commenter asked how the NFJP grantees will report on the elements that are not currently required for NFJP grants and only required for the main WIOA programs and asked whether such data elements would be "blocked" for the NJFP grantees.

Department Response: The Department notes that the PIRL is expected to be utilized by multiple programs. Not all data elements will be required for all programs. Some data elements are program-specific and, as noted by commenters, will not apply to their programs. In addition, data elements pertaining to characteristics are expected to be captured at the point of participation. The data reporting solution will be flexible enough to accommodate only NFJP variables, or additional variables if the grantee choses to report on those.

Comments: Regarding burden estimates, a commenter recommended that workforce agencies that will be submitting data to the Department should determine a governance structure before moving forward with data projects. The commenter explained

that data governance refers to the operating discipline for managing data and information as a key enterprise asset, asserting that a data governance plan should consider: Decision-making authority, compliance monitoring, policies and standards, data inventories, full lifecycle management, preservation, data quality, data classification, data security and access, data risk management, and data validation. As an initial step in developing a data governance plan, this commenter recommended that workforce agencies determine the value and sensitivity of the information they seek to collect. Also, the commenter asserted that training on data quality, roles and responsibilities, prevention of mistakes, and correction of data quality should be offered and required for those with data input responsibilities. Finally, to enable government information sharing and to enhance the utility of collected data, this commenter recommended that workforce agencies begin exploring the National Information Exchange Model (NIEM).

Department Response: The Department agrees on the importance of the items mentioned in the comment. For purposes of the Paperwork Reduction Act, associated burden is limited to the data collection and data submission components. Additionally, it would be very difficult to assign specific burden estimates on each element listed above.

Work Application and Job Order Recordkeeping

Agency: DOL–ETA.
Title of Collection: Work Application and Job Order Recordkeeping.
Type of Review: Revision.
OMB Control Number: 1205–0001.
Affected Public: State Governments.
Obligation to Respond: Required to obtain or retain a benefit (WIOA sec. 121).
Total Estimated Number of Respondents Annually: 52.
Total Estimated Number of Annual Responses: 52.
Frequency of Responses: Quarterly.
Total Estimated Annual Time Burden: 417 hours.
Total Estimated Annual Other Costs Burden: $0.
Regulations Sections: § 652.8.
ICR Approval Status: Not yet approved.

Overview and Response to Comments Received

Overview: The Final Rule would not affect the burden hours associated with creating work application and job order records. However, the rule would change the record retention requirements for work applications and job orders from 1 year to 3 years in order to align with other Wagner-Peyser Act record retention requirements.

The Department received no comments concerning this information collection.

Migrant and Seasonal Farmworker Monitoring Report and Complaint/Apparent Violation Form

Agency: DOL–ETA.
Title of Collection: Migrant and Seasonal Farmworker Monitoring Report and Complaint/Apparent Violation Form.
Type of Review: Revision.
OMB Control Number: 1205–0039.
Affected Public: State and Local Governments; Individuals or Households.
Obligation to Respond: Required to obtain or retain a benefit (WIOA sec. 167).
Total Estimated Number of Respondents Annually: 3,552.
Total Estimated Number of Annual Responses: 7,416.
Frequency of Responses: On Occasion.
Total Estimated Annual Time Burden: 9,706 hours.
Total Estimated Annual Other Costs Burden: $0.
Regulations Sections: §§ 653.107, 653.108(g)(6), (s), (i), and (m), 653.109, 658.601.
ICR Approval Status: Not yet approved.

Overview and Response to Comments Received

Overview: This information collection package includes the ETA Form 5148 (Services to Migrant and Seasonal Farmworkers Report) and the ETA Form 8429 (Complaint/Apparent Violation Form). SWAs must submit (pursuant to § 653.109) ETA Form 5148 quarterly to report the level of services provided to MSFWs through the one-stop centers and through outreach staff to demonstrate the degree to which MSFWs are serviced and to ensure that such services are provided on a basis that is "qualitatively equivalent and quantitatively proportionate" to the services provided to non-MSFWs, as required in the Judge Richey Court Order. The Department requires SWAs to use ETA Form 8429 when logging and referring complaints and/or apparent violations pursuant to part 658, subpart E.

ETA Forms 5148 and 8429 were updated to reflect the new requirements in the Wagner-Peyser Act regulations. Additionally, the Department modified Form 5148 by eliminating parts 3 and 4 and replacing part 3 with the Annual Summary that the SWAs will now need to submit at the end of the fourth quarter. Form 8429 was modified to include the submission of apparent violations.

The Department anticipates there will be no changes in the estimated total number of burden hours with the changes to these forms.

Comments: During the NPRM, the Department received comments on the data collection section (§ 653.109, Data Collection and Performance Accountability Measures). A few commenters recommended the Department revise the references to the pre-WIOA performance indicators. Another commenter noted that some of the proposed performance indicators in § 653.109 are not in line with the WIOA measures to track participants in unsubsidized employment in the second quarter after exit, participants in unsubsidized employment in the fourth quarter after exit, and median earnings. Therefore, this commenter recommended the Department bring those measures in line with WIOA to ensure consistency across all programs.

Department Response: The Department agrees and has changed § 653.109(b)(5), (6) & (7) to be consistent with the WIOA performance indicators listed in WIOA sec. 116.

Standard Job Corps Contractor Gathering Information

Agency: DOL–ETA.
Title of Collection: Standard Job Corps Contractor Gathering Information.
Type of Review: Revision.
OMB Control Number: 1205–0219.
Affected Public: Private Sector.
Obligation to Respond: Required to obtain or retain a benefit (WIOA sec. 147).
Total Estimated Number of Respondents Annually: 2,543.
Total Estimated Number of Annual Responses: 197,459.
Frequency of Responses: Weekly.
Total Estimated Annual Time Burden: 54,442 hours.
Total Estimated Annual Other Costs Burden: $0.
Regulations Sections: § 686.945.
ICR Approval Status: Not yet approved.

Overview and Response to Comments Received

Overview: The Final Rule retains the same information collection requirements as those previously found at 20 CFR 670.960, but relocated the requirements to 20 CFR 686.945. Consistent with the WIA regulations,

the DOL WIOA Final Rule requires the Department to provide guidelines for maintaining records for each student during enrollment and for disposition of records after separation. As a result, the Department does not anticipate any changes in the information collection.

Comments: The Department received no comments concerning this information collection.

Placement Verification and Follow-up of Job Corps Participants

Agency: DOL–ETA.

Title of Collection: Placement Verification and Follow-up of Job Corps Participants.

Type of Review: Revision.

OMB Control Number: 1205–0426.

Affected Public: Individuals or Households; Private Sector.

Obligation to Respond: Voluntary.

Total Estimated Number of Respondents Annually: 49,200.

Total Estimated Number of Annual Responses: 93,400.

Frequency of Responses: On occasion.

Total Estimated Annual Time Burden: 21,700.

Total Estimated Annual Other Costs Burden: $0.

Regulations Sections: §§ 686.945, 686.955, 686.1000, 686.1010, 686.1020, 686.1030, 686.1040.

ICR Approval Status: Not yet approved.

Overview and Response to Comments Received

Overview: Job Corps' performance management system, which includes the OMS, is a well-established measurement system the Job Corps community has been using to track performance of centers and service providers for many years. It will be updated to reflect the new requirements of WIOA, including the new primary indicators of performance, but may also include breakouts of data that will help program managers target interventions in order to achieve the primary indicators. As a result, additional information would be collected from respondents.

Comments: The Department received two comments in response to the ICR. Both comments concerned the use of administrative data, such as UI wage data, and surveys to collect performance information under the WIOA.

Commenters stated that, as WIOA requires wage records be used as a primary source of information for performance reporting, the proposal to continue relying on surveys through the Post Enrollment Data Collection System (PEDCS) is unnecessary and inefficient. The commenters recommended that the Department utilize UI wage data through the WRIS, and consider the use of State longitudinal data systems to augment credential attainment. One commenter, however, clearly pointed out the various limitations of the currently available administrative data.

Department Response: The Department notes that, currently, no source of administrative data exists that can meet the specific data reporting requirements of WIOA. Such records, in their current form, do not include information sufficient to support reporting at this time on all the different indicators required. For example, the data available from records collected by UI do not include individual information about wage rates, hours worked, or earnings at the individual student level. In addition, UI wage records do not provide any information about enrollment in school or training programs or attainment of secondary or postsecondary credentials, which are key program outcomes, and needed for accurately calculating several of the six primary WIOA measures. Finally, UI wage record information available to Job Corps through national data bases such as the Common Reporting Information System (CRIS) on employer identification number are not consistently available across States, which would lead Job Corps to underreport on the proposed effectiveness in serving employers measure.

Job Corps has revised the PEDCS to collect data and information about post-enrollment placements to align with specific WIOA reporting requirements. The revised PEDC will collect information to report on five of the six WIOA required primary performance indicators,

Ultimately, Job Corps intends to incorporate the use of administrative data (State wage records) to track student outcomes under WIOA. Adding administrative data to its current methods will allow Job Corps to correlate information in a more efficient, accurate, and repeatable manner. Enhanced data collection and reporting process will be highly useful for program operators and program leadership in understanding the outcomes of all youth who interact with the Job Corps program.

National Dislocated Workers Emergency Grant Application and Reporting Procedures

Agency: DOL–ETA.

Title of Collection: National Dislocated Workers Emergency Grant Application and Reporting Procedures.

Type of Review: Revision.

OMB Control Number: 1205–0439.

Affected Public: State, Local, and Tribal Governments.

Obligation to Respond: Required to obtain or retain a benefit (WIOA sec. 170).

Total Estimated Number of Respondents Annually: 159.

Total Estimated Number of Annual Responses: 1,587.

Frequency of Responses: On Occasion.

Total Estimated Annual Time Burden: 1,086 hours.

Total Estimated Annual Other Costs Burden: $0.

Regulations Sections: § 687.150.

ICR Approval Status: Not yet approved.

Overview and Response to Comments Received

Overview: Specified activities must be conducted before an application for a NDWG is submitted. The NPRM required that a project implementation plan, which is already required for all NEGs under WIA, be submitted post-NDWG award. However, the Final Rule requires that a project implementation plan be submitted after receiving a DWG *unless otherwise specified*. The Department has retained the essence of proposed § 687.150, but made changes to the Final Rule that better allow the Department to appraise the variety of needs and services under the new statute and tailor application requirements accordingly. The Department has added a sentence to this section reflecting that the application requirements may vary based on the category of DWG. The project implementation plan requirement may not apply to all DWGs at all times. Requirements will be noted in grant terms and conditions.

Comments: The Department received no comments concerning this information collection.

Employment and Training Administration Financial Reporting Form ETA–9130

Agency: DOL–ETA.

Title of Collection: Employment and Training Administration Financial Reporting Form ETA–9130.

Type of Review: Revision.

OMB Control Number: 1205–0461.

Affected Public: State, Local, and Tribal Governments.

Obligation to Respond: Required to obtain or retain a benefit (2 CFR 200.327).

Total Estimated Number of Respondents Annually: 1,000.

Total Estimated Number of Annual Responses: 20,000.

Frequency of Responses: Quarterly.

Total Estimated Annual Time Burden: 15,001 hours.

Total Estimated Annual Other Costs Burden: $0.

Regulations Sections: secs. 184(c), 184(d), and 185 of WIOA, 2 CFR parts 200 and 2900 and §§ 681.430, 683.150, 683.200, 683.300, 683.730, 683.740, 683.750.

ICR Approval Status: Not yet approved.

Overview and Response to Comments Received

Overview: DOL–ETA awards approximately $8 billion in formula and discretionary grants each year to an average of 1,000 recipients. Financial reports for each of these grants must be submitted quarterly on the financial report form ETA–9130. Recipients include but are not limited to: State Employment Security Agencies which are comprised of three components: Wagner-Peyser Act ES, Unemployment Insurance program, and Trade Program Grant Agreements; as well as WIOA Youth, Adult, and Dislocated Worker programs; National Dislocated Worker Grants; National Farmworker Jobs Program (NFJP); Indian and Native American programs; the Senior Community Service Employment Program; WIOA discretionary grants; and H–1B Job Training Grants. The Final Rule reflects OMB's Uniform Guidance, which standardizes the administrative, cost, and audit provisions for all grants and cooperative agreements provided under part 683. The Final Rule establishes consistent and uniform guidance that increases accountability and transparency, promotes fiscal integrity, and reduces duplication in the quarterly financial reports. This information collection supports secs. 184(c), 184(d), and 185 of WIOA and 2 CFR parts 200 and 2900.

Changes in the time and burden were made from the NPRM to the Final Rule. There was a significant increase since this information collection package covers all of the grant programs that ETA administers and not simply WIOA ETA–9130 forms.

Comments: On August 4, 2015, a request for comment for the Employment and Training Administration Financial Report Form #9130 (OMB Control No. 1205–0461) published in the **Federal Register** (Vol. 80, p. 46337). This provided a 60-day period, ending on October 5, 2015, for the public to submit comments to DOL on the proposed change to the collection of information. A total of eight comments were received from four commenters.

One commenter suggested breaking out the activities that make up statewide administrative funds and having a separate report for each. The same commenter requested viewing access to the e-Grants Federal Reporting System for entities to review the reports. The commenter described only having access to scans of the proposed submissions to review for approval.

Department Response: The Department made no changes to the report in response to the comment. The Statewide Youth, Statewide Adult, and Statewide Dislocated Worker ETA–9130 reports break out administrative expenditures in line 10f (Total Administrative Expenditures). To minimize the burden on grantees, a separate report solely for administrative expenditures (as one expenditure line item) is not required.

Regarding the second comment, for internal control reasons, only one password and one PIN are assigned to each grantee. The password is needed to enter data into the e-Grants Federal Reporting System. The PIN takes the place of the authorized signature and is needed to certify data. Only one person can sign and submit financial reports. It is at the grantees' discretion which staff members are tasked with these responsibilities. Once the reporting quarter is locked from further modification, WIA/WIOA summary obligation and expenditure reports are published at *http://www.doleta.gov/budget/*. These sites are available to the public.

Comments: A commenter further commented that, for WIOA alone, there are over 15 reports. The commenter asked why the Adult and Dislocated Worker first and second increments cannot be merged into one report.

Department Response: The yearly base and advance funds in each individual funding stream are considered separate appropriations. To be in compliance with generally accepted accounting principles, the Department must assign a separate accounting code to each appropriation. Therefore, the Department must require a separate financial report for each accounting line on a grant. Additionally, auditors must be able to determine whether an entity has over or underspent funds available, which is not possible if awards made under different appropriations are merged.

Comments: A commenter noted that the instructions for reporting/line item 10j (Total Recipient Share Required) for Statewide Rapid Response and other WIOA reports indicate that this line item must include the amount of non-Federal share that employers are required to provide, based on incumbent worker training contracts. The commenter stated that, although grantees implemented reporting and programming changes to accommodate the implementation of WIOA, not all grantees are obtaining this information, as it was not required in the past and that obtaining this information would require programming and accounting changes at both the State and local area levels. The commenter indicated that there is no match requirement listed in the 2015 WIOA grant agreements and thinks this requirement should be eliminated or made voluntary until the start of the next program year.

Department Response: The Department explains that the 2015 grant agreement outlines that funds must be expended in accordance with all applicable Federal statutes, regulations, and policies. Per WIOA sec. 134(d)(4)(C), employers participating in a local area incumbent worker training (IWT) program shall be required to pay for the non-Federal share of the cost of providing the training to incumbent workers of the employers. WIOA sec. 134(d)(4)(D)(ii) specifies that such contributions shall not be less than 10 percent of the cost, for employers with not more than 50 employees; 25 percent of the cost, for employers with more than 50 employees but not more than 100 employees; and 50 percent of the cost, for employers with more than 100 employees. The Department noted that in the 60-day public comment notice (80 FR 46337), this requirement was mistakenly included in the National Dislocated Worker Grants ETA–9130 (G) and the Statewide Rapid Response ETA–9130 (H). Consequentially, the condition to report employers' non-Federal share of the cost of providing IWT was eliminated in these two reports.

Comments: The same commenter noted that throughout the reporting instructions for WIOA grants and also in the supporting statement made available with the notice published at 80 FR 46337, there were numerous references to WIOA cost limitations or baselines that apply on a fiscal year basis. The regulations stated that they apply on a program year basis. The commenter requested that this be corrected or clarified.

Department Response: The numbers cited in the supporting statement, including the corresponding time frames, are solely to demonstrate grantee reporting cost and time burden calculations. They are not related to the statutory cost limitations and baselines. The fiscal year references within the

instructions are changed to program year, where applicable.

Comments: Some commenters noted that the proposed Indirect Expenditures reporting/line item instructions only refer to an indirect cost rate and asked for further instructions for States using a cost allocation plan.

Department Response: It is allowable for States to continue to use Statewide Cost Allocation Plans (SWCAP). For States using SWCAPs, it will not be required to report indirect expenditures. The instructions are modified and also, will be included in ETA's financial reporting training.

Comments: A commenter questioned whether the reporting/line item 11b (Transitional Jobs Expenditures) was intentionally included on the National Dislocated Worker Grants (ETA–9130 (G)) or not. It was further suggested that ETA–9130 (G) capture the temporary employment wages to align with the ETA–9104 Quarterly Progress Report.

Department Response: Transitional jobs are intentionally included because an NDWG grantee may choose to use this strategy to serve a dislocated worker who has been separated for a long period of time or has inconsistent work history. The Department concludes that including this resource ensures that NDWG grantees have the flexibility and available tools necessary to provide people with the services they need to return to work. It is not related to wages for temporary jobs in disaster grants.

Comments: Another commenter requested additional guidance for single-area States where WIOA is administered by a single agency and functions as both the State and local levels with no subrecipients. The commenter specifically requested guidance about the Indirect Expenditures reporting/line items required for the State level WIOA reporting, but not for local level reporting.

Department Response: Single-area States report indirect expenditures for the statewide reports only, and only if they have an indirect cost rate. If using a SWCAP, no indirect cost reporting is required. This information also will be included in ETA's financial reporting training.

E. Executive Order 13132 (Federalism)

E.O. 13132 requires Federal agencies to ensure that the principles of Federalism established by the Framers of our Constitution guide the executive departments and agencies in the formulation and implementation of policies and to further the policies of the Unfunded Mandates Reform Act. Further, agencies must strictly adhere to constitutional principles. Agencies must closely examine the constitutional and statutory authority supporting any action that would limit the policy-making discretion of the States and they must carefully assess the necessity for any such action. To the extent practicable, State and local officials must be consulted before any such action is implemented. Section 3(b) of the E.O. further provides that Federal agencies must implement regulations that have a substantial direct effect only if statutory authority permits the regulation and it is of national significance. The Department has reviewed this Final Rule in light of these requirements and has determined that, with the enactment of WIOA and its clear requirement to publish national implementing regulations, E.O. sec. 3(b) has been reviewed fully and its requirement satisfied.

Accordingly, the Department has reviewed this WIOA-required Final Rule and has determined that the rulemaking has no Federalism implications. The DOL WIOA Final Rule, as noted above, has no substantial direct effects on States, on the relationships between the States, or on the distribution of power and responsibilities among the various levels of government as described by E.O. 13132. The Department has determined that this Final Rule does not have a sufficient Federalism implication to warrant the preparation of a summary impact statement.

F. Unfunded Mandates Reform Act of 1995

This Act directs agencies to assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector. A Federal mandate is any provision in a regulation that imposes an enforceable duty upon State, local, or tribal governments, or imposes a duty on the private sector that is not voluntary.

Comments: In response to the NPRM, the Department received some comments that addressed unfunded mandates. One commenter said that the Department usually establishes a set funding level regardless of the level of services performed and that providing insufficient funding for a required program without an option for increasing the funding essentially creates an unfunded mandate. Another commenter asserted that because WIOA did not mandate a shared performance tracking system, the required collaboration across agencies represents an unfunded mandate. This commenter said that most of the reason that systems are not already in place is due to financial constraints. Another commenter asserted that WIOA implementation costs are an unfunded mandate for many States due to an actual decrease in funding for some States, and because the costs used in the NPRM's cost-benefit analysis looked only at incremental implementation costs, and were significantly below actual costs. This commenter urged the Department to grant waivers from required tasks to match the States' allotments, and to provide additional funding and technical assistance for States to develop sustainable systems for meeting the requirements. One commenter similarly asserted that the new requirements are a de facto unfunded mandate, and provided a policy paper that concluded that Federal funds are insufficient to cover required activities. The commenter suggested that unless additional funds are provided, waivers would be needed to give States flexibility to prioritize activities. Another commenter also expressed concern that new WIOA requirements are not accompanied by implementation funding.

Department Response: The Department acknowledges the commenters' concerns and has detailed the cost burden associated with this Final Rule in section VI.A (Executive Orders 12866 and 13563: Regulatory Planning and Review). Grant funding is provided annually to all programs authorized under WIOA and that funding will be used to cover the costs of implementing this rule.

As noted above, under the Unfunded Mandates Reform Act of 1995, a Federal mandate is any provision in a regulation that imposes an enforceable duty upon State, local, or tribal governments, or imposes a duty upon the private sector that is not voluntary. WIOA contains specific language supporting employment and training activities for Indian, Alaska Natives, and Native Hawaiian individuals. These program requirements are supported, as is the WIOA workforce development system generally, by Federal formula grant funds, and, accordingly, are not considered unfunded mandates. Similarly, Migrant and Seasonal Farmworker activities are authorized and funded under the WIOA program as is currently done under the WIA program. The States are mandated to perform certain activities for the Federal government under WIOA and will be reimbursed (grant funding) for the resources required to perform those activities. The same process and grant relationship exists between States and Local WDBs under the WIA program and must continue under the WIOA program as identified in this NPRM.

WIOA contains language establishing procedures regarding the eligibility of training providers to receive funds under the WIOA program and contains clear State information collection requirements for eligible training providers (*e.g.*, submission of appropriate, accurate, and timely information). A decision by a private training entity to participate as a provider under the WIOA program is purely voluntary and, therefore, information collection burdens do not impose a duty on the private sector that is not voluntarily assumed.

Following consideration of these factors, the Department has determined that the DOL WIOA Final Rule contains no unfunded Federal mandates, which are defined in 2 U.S.C. 658(6) to include either a "Federal intergovernmental mandate" or a "Federal private sector mandate."

G. Plain Language

E.O. 12866 and E.O. 13563 require regulations to be written in a manner that is easy to understand.

Comments: One commenter stated that the NPRM's commitment that the Department has included the relevant WIOA provisions in the proposed regulations for completeness was not fulfilled and cited examples of missing statutory language. While acknowledging that adding the statutory text would extend the length of the rules, this commenter said that it would help the reader in not having to flip back and forth between two documents to understand what is required.

Department Response: To the extent practicable, the Department has attempted to address this commenter's concern in the Final Rule. In particular, many of the regulations in this Final Rule are verbatim implementations of WIOA's directives. However, because in some places it would be confusing, distracting, and excessive to add all of the relevant WIOA statutory language, some references to WIOA remain. The overall format of these WIOA regulations reflects the Department's commitment to writing regulations that are reader-friendly. The Department has attempted to make this Final Rule easy to understand. For example, the regulatory text is presented in a "question and answer" format and organized consistent with WIOA. In consideration of the foregoing, the Department has concluded that it has drafted this Final Rule in plain language.

H. Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681) requires the assessment of the impact of this rule on family well-being. A rule that is determined to have a negative effect on families must be supported with an adequate rationale. The Department has assessed this Final Rule in light of this requirement and determined that the DOL WIOA Final Rule will not have a negative effect on families.

I. Executive Order 13175 (Indian Tribal Governments)

The Department reviewed this Final Rule under the terms of E.O. 13175 and the Department's Tribal Consultation Policy and has determined that the rule will have tribal implications as the final regulations have substantial direct effects on one or more Indian tribes, the relationship between the Federal government and Indian tribes, or the distribution of power and responsibilities between the Federal government and Indian tribes. As described in the preamble to the NPRM, the Department carried out several consultations with tribal institutions, including tribal officials, that allowed the tribal officials to provide meaningful and timely input into the Department's proposal. Additionally, through the notice and comment rulemaking process, the Department received comments on the programs and provisions in WIOA that have tribal implications and we have responded to these comments in the section-by-section discussions in this Final Rule and in the Joint WIOA Final Rule.

In addition to the comments received through its notice and comment rulemaking process, the Department received feedback from the Indian and Native American (INA) community and the public prior to the publication of the NPRM. This feedback was summarized in the NPRM at 80 FR 20832–20833.

J. Executive Order 12630 (Government Actions and Interference With Constitutionally Protected Property Rights)

The Department has determined that this Final Rule is not subject to E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, because it does not involve implementation of a policy with takings implications.

K. Executive Order 12988 (Civil Justice Reform)

This DOL WIOA Final Rule was drafted and reviewed in accordance with E.O. 12988, Civil Justice Reform, and the Department has determined that the Final Rule will not unduly burden the Federal court system. The WIOA regulations were written to minimize litigation and, to the extent feasible, provide a clear legal standard for affected conduct. In addition, the WIOA regulations have been reviewed carefully to eliminate drafting errors and ambiguities.

L. Executive Order 13211 (Energy Supply)

This DOL WIOA Final Rule was drafted and reviewed in accordance with E.O. 13211, Energy Supply. The Department has determined that this Final Rule will not have a significant adverse effect on the supply, distribution, or use of energy and is not subject to E.O. 13211.

List of Subjects

20 CFR Part 603

Grant programs—labor, Privacy, Reporting and recordkeeping requirements, Unemployment compensation, Wages.

20 CFR Part 651

Employment, Grant programs—labor.

20 CFR Part 652

Employment, Grant programs—labor, Reporting and recordkeeping requirements.

20 CFR Part 653

Agriculture, Employment, Equal employment opportunity, Grant programs—labor, Migrant labor, Reporting and recordkeeping requirements.

20 CFR Part 654

Employment, Government procurement, Housing standards, Manpower, Migrant labor, Reporting and recordkeeping requirements.

20 CFR Part 658

Administrative practice and procedure, Employment, Grant programs—labor, Reporting and recordkeeping requirements.

20 CFR Part 675

Employment, Grant programs—labor.

20 CFR Parts 679 and 680

Employment, Grant programs—labor.

20 CFR Part 681

Employment, Grant programs—labor, Youth.

20 CFR Part 682

Employment, Grant programs—labor.

20 CFR Part 683

Employment, Grant programs—labor, Reporting and recordkeeping requirements.

20 CFR Part 684

Employment, Grant programs—labor, Indians, Reporting and recordkeeping requirements.

20 CFR Part 685

Employment, Grant programs—labor, Migrant labor, Reporting and recordkeeping requirements.

20 CFR Part 686

Employment, Grant programs—labor, Job Corps.

20 CFR Part 687

Employment, Grant programs—labor.

20 CFR Part 688

Employment, Grant programs—labor, Youth, YouthBuild.

For the reasons stated in the preamble, ETA amends title 20 CFR, chapter V, as follows:

PART 603—FEDERAL–STATE UNEMPLOYMENT COMPENSATION (UC) PROGRAM; CONFIDENTIALITY AND DISCLOSURE OF STATE UC INFORMATION

■ 1. Revise the authority citation for part 603 to read as follows:

Authority: Secs. 116, 189, 503, Pub. L. 113–128, 128 Stat. 1425 (Jul. 22, 2014); 20 U.S.C 1232g.

■ 2. Amend § 603.2 by revising paragraph (d) to read as follows:

§ 603.2 What definitions apply to this part?

* * * * *

(d) *Public official* means:

(1) An official, agency, or public entity within the executive branch of Federal, State, or local government who (or which) has responsibility for administering or enforcing a law, or an elected official in the Federal, State, or local government.

(2) Public postsecondary educational institutions established and governed under the laws of the State. These include the following:

(i) Institutions that are part of the State's executive branch. This means the head of the institution must derive his or her authority from the Governor, either directly or through a State WDB, commission, or similar entity established in the executive branch under the laws of the State.

(ii) Institutions which are independent of the executive branch. This means the head of the institution derives his or her authority from the State's chief executive officer for the State education authority or agency when such officer is elected or appointed independently of the Governor.

(iii) Publicly governed, publicly funded community and technical colleges.

(3) Performance accountability and customer information agencies designated by the Governor of a State to be responsible for coordinating the assessment of State and local education or workforce training program performance and/or evaluating education or workforce training provider performance.

(4) The chief elected official of a local area as defined in WIOA sec. 3(9).

(5) A State educational authority, agency, or institution as those terms are used in the Family Educational Rights and Privacy Act, to the extent they are public entities.

* * * * *

■ 3. Amend § 603.5 by revising paragraph (e) to read as follows:

§ 603.5 What are the exceptions to the confidentiality requirement?

* * * * *

(e) *Public official.* Disclosure of confidential UC information to a public official for use in the performance of his or her official duties is permissible.

(1) "Performance of official duties" means administration or enforcement of law or the execution of the official responsibilities of a Federal, State, or local elected official. Administration of law includes research related to the law administered by the public official. Execution of official responsibilities does not include solicitation of contributions or expenditures to or on behalf of a candidate for public or political office or a political party.

(2) For purposes of § 603.2(d)(2) through (5), "performance of official duties" includes, in addition to the activities set out in paragraph (e)(1) of this section, use of the confidential UC information for the following limited purposes:

(i) State and local performance accountability under WIOA sec. 116, including eligible training provider performance accountability under WIOA secs. 116(d) and 122;

(ii) The requirements of discretionary Federal grants awarded under WIOA; or

(iii) As otherwise required for education or workforce training program performance accountability and reporting under Federal or State law.

* * * * *

■ 4. Amend § 603.6 by adding paragraph (b)(8) to read as follows:

§ 603.6 What disclosures are required by this subpart?

* * * * *

(b) * * *

(8) To comply with WIOA sec. 116(e)(4), States must, to the extent practicable, cooperate in the conduct of evaluations (including related research projects) provided for by the Secretary of Labor or the Secretary of Education under the provisions of Federal law identified in WIOA sec. 116(e)(1); WIOA secs. 169 and 242(c)(2)(D); sec. 12(a)(5), 14, and 107 of the Rehabilitation Act of 1973 (29 U.S.C. 709(a)(5), 711, 727) (applied with respect to programs carried out under title I of that Act (29 U.S.C. 720 *et seq.*)); and the investigations provided for by the Secretary of Labor under sec. 10(b) of the Wagner-Peyser Act (29 U.S.C. 49i(b)). For purposes of this part, States must disclose confidential UC information to a Federal official (or an agent or contractor of a Federal official) requesting such information in the course of such evaluations. This disclosure must be done in accordance with appropriate privacy and confidentiality protections established in this part. This disclosure must be made to the "extent practicable", which means that the disclosure would not interfere with the efficient administration of the State UC law, as required by § 603.5.

* * * * *

■ 5. Revise part 651 to read as follows:

PART 651—GENERAL PROVISIONS GOVERNING THE WAGNER-PEYSER ACT EMPLOYMENT SERVICE

Sec.
651.10 Definitions of terms used in this part and parts 652, 653, 654, and 658 of this chapter.

Authority: 29 U.S.C. 49a; 38 U.S.C. part III, 4101, 4211; Secs. 503, 3, 189, Pub. L. 113–128, 128 Stat. 1425 (Jul. 22, 2014).

§ 651.10 Definitions of terms used in this part and parts 652, 653, 654, and 658 of this chapter.

In addition to the definitions set forth in sec. 3 of WIOA, the following definitions apply to the regulations in parts 652, 653, 654, and 658 of this chapter:

Act means the Wagner-Peyser Act (codified at 29 U.S.C. 49 *et seq.*).

Administrator, Office of Workforce Investment (OWI Administrator) means the chief official of the Office of Workforce Investment (OWI) or the Administrator's designee.

Affirmative action means positive, result-oriented action imposed on or assumed by an employer pursuant to legislation, court order, consent decree, directive of a fair employment practice authority, government contract, grant or loan, or voluntary affirmative action plan adopted pursuant to the affirmative action guidelines of the Equal Employment Opportunity Commission (see 29 CFR part 1608) to provide equal employment opportunities for members of a specified group which for reasons of past custom, historical practice, or other non-occupationally valid purposes has been discouraged from entering certain occupational fields.

Agricultural employer means any employer as defined in this part who owns or operates a farm, ranch, processing establishment, cannery, gin, packing shed or nursery, or who produces or conditions seed, and who either recruits, solicits, hires, employs, furnishes, or transports any migrant or seasonal farmworker or any agricultural employer as described in 29 U.S.C. 1802(2).

Agricultural worker see *Farmworker.*

Applicant holding office means a Wagner-Peyser Act Employment Service (ES) office that is in receipt of a clearance order and has access to U.S. workers who may be willing and available to perform farmwork on a less than year-round basis.

Applicant Holding State means a State Workforce Agency that is in receipt of a clearance order from another State and potentially has U.S. workers who may be willing and available to perform farmwork on a less than year-round basis.

Bona fide occupational qualification (BFOQ) means that an employment decision or request based on age, sex, national origin or religion is based on a finding that such characteristic is necessary to the individual's ability to perform the job in question. Since a BFOQ is an exception to the general prohibition against discrimination on the basis of age, sex, national origin, or religion, it must be interpreted narrowly in accordance with the Equal Employment Opportunity Commission regulations set forth at 29 CFR parts 1604, 1605, and 1627.

Career services means the services described in sec. 134(c)(2) of the Workforce Innovation and Opportunity Act (WIOA) and § 678.430 of this chapter.

Clearance order means a job order that is processed through the clearance system under the Agricultural Recruitment System (ARS).

Clearance system means the orderly movement of U.S. job seekers as they are referred through the employment placement process by an ES office. This includes joint action of local ES offices in different labor market areas and/or States.

Complainant means the individual, employer, organization, association, or other entity filing a complaint.

Complaint means a representation made or referred to a State or ES office of an alleged violation of the ES regulations and/or other Federal laws enforced by the Department's Wage and Hour Division (WHD) or Occupational Safety and Health Administration (OSHA), as well as other Federal, State, or local agencies enforcing employment-related law.

Decertification means the rescission by the Secretary of the year-end certification made under sec. 7 of the Wagner-Peyser Act to the Secretary of the Treasury that the State agency may receive funds authorized by the Wagner-Peyser Act.

Department means the United States Department of Labor, including its agencies and organizational units.

Employer means a person, firm, corporation, or other association or organization which currently has a location within the United States to which U.S. workers may be referred for employment, and which proposes to employ a worker at a place within the United States and which has an employer relationship with respect to employees under this subpart as indicated by the fact that it hires, pays, fires, supervises, and otherwise controls the work of such employees. An association of employers is considered an employer if it has all of the indicia of an employer set forth in this definition. Such an association, however, is considered as a joint employer with the employer member if either shares in exercising one or more of the definitional indicia.

Employment and Training Administration (ETA) means the component of the Department of Labor that administers Federal government job training and worker dislocation programs, Federal grants to States for public ES programs, and unemployment insurance benefits. These services are provided primarily through State and local workforce development systems.

Employment-related laws means those laws that relate to the employment relationship, such as those enforced by the Department's WHD, OSHA, or by other Federal, State, or local agencies.

Employment Service (ES) office means a site in a local WDB where staff of the State Workforce Agency, consistent with the requirements of § 652.215 of this chapter, provide Wagner-Peyser Act services as a one-stop partner program. A site must be colocated with a one-stop center consistent with the requirements of §§ 678.305 through 678.315 of this chapter.

Employment Service (ES) regulations means the Federal regulations at this part and parts 652, 653, 654, 658 of this chapter, and 29 CFR part 75.

Establishment means a public or private economic employing unit generally at a single physical location which produces and/or sells goods or services, for example, a mine, factory, store, farm, orchard or ranch. It is usually engaged in one, or predominantly one, type of commercial or governmental activity. Each branch or subsidiary unit of a large employer in a geographical area or community must be considered an individual establishment, except that all such units in the same physical location is considered a single establishment. A component of an establishment which may not be located in the same physical structure (such as the warehouse of a department store) also must be considered as part of the parent establishment. For the purpose of the "seasonal farmworker" definition, farm labor contractors and crew leaders are not considered establishments; it is the organizations to which they supply the workers that are the establishments.

Farmwork means the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities. This includes the raising of livestock, bees, fur-bearing animals, or poultry, the farming of fish, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market. It also includes the handling, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state. For the purposes of this definition, agricultural commodities means all commodities produced on a farm including crude gum (oleoresin) from a living tree products processed by the original producer of the crude gum (oleoresin) from which they are derived, including

gum spirits of turpentine and gum rosin. *Farmwork* also means any service or activity covered under § 655.103(c) of this chapter and/or 29 CFR 500.20(e) and any service or activity so identified through official Department guidance such as a Training and Employment Guidance Letter.

Farmworker means an individual employed in farmwork, as defined in this section.

Field checks means random, unannounced appearances by State Workforce Agency personnel at agricultural worksites to which ES placements have been made through the intrastate or interstate clearance system to ensure that conditions are as stated on the job order and that the employer is not violating an employment-related law.

Field visits means appearances by Monitor Advocates or State Workforce Agency outreach personnel to the working and living areas of migrant and seasonal farmworkers (MSFWs), to discuss employment services and other employment-related programs with MSFWs, crew leaders, and employers. Monitor Advocates or outreach personnel must keep records of each such visit.

Governor means the chief executive of a State or an outlying area.

Hearing Officer means a Department of Labor Administrative Law Judge, designated to preside at Department administrative hearings.

Individual with a disability means an individual with a disability as defined in sec. 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102).

Interstate clearance order means an agricultural job order for temporary employment (employment on a less than year-round basis) describing one or more hard-to-fill job openings, which an ES office uses to request recruitment assistance from other ES offices in a different State.

Intrastate clearance order means an agricultural job order for temporary employment (employment on a less than year-round basis) describing one or more hard-to-fill job openings, which an ES office uses to request recruitment assistance from other ES offices within the State.

Job development means the process of securing a job interview with a public or private employer for a specific participant for whom the ES office has no suitable opening on file.

Job information means information derived from data compiled in the normal course of ES activities from reports, job orders, applications, and the like.

Job opening means a single job opportunity for which the ES office has on file a request to select and refer participants.

Job order means the document containing the material terms and conditions of employment relating to wages, hours, working conditions, worksite and other benefits, submitted by an employer.

Job referral means:

(1) The act of bringing to the attention of an employer a participant or group of participants who are available for specific job openings or for a potential job; and

(2) The record of such referral. "Job referral" means the same as "referral to a job."

Labor market area means an economically integrated geographic area within which individuals can reside and find employment within a reasonable distance or can readily change employment without changing their place of residence. Such an area must be identified in accordance with criteria used by the Department's Bureau of Labor Statistics in defining such areas or similar criteria established by a Governor.

Local Office Manager means the official in charge of all ES activities in a one-stop center.

Local Workforce Development Board or *Local WDB* means a Local Workforce Development Board established under sec. 107 of WIOA.

Migrant farmworker means a seasonal farmworker (as defined in this section) who travels to the job site so that the farmworker is not reasonably able to return to his/her permanent residence within the same day. Full-time students traveling in organized groups rather than with their families are excluded.

Migrant food processing worker see *Migrant Farmworker.*

MSFW means a migrant farmworker or a seasonal farmworker.

*Occupational Information Network (O*NET)* system means the online reference database which contains detailed descriptions of U.S. occupations, distinguishing characteristics, classification codes, and information on tasks, knowledge, skills, abilities, and work activities as well as information on interests, work styles, and work values.

One-stop center means a physical center within the one-stop delivery system, as described in sec. 121(e)(2)(A) of WIOA.

One-stop delivery system means a one-stop delivery system described in sec. 121(e) of WIOA.

One-stop partner means an entity described in sec. 121(b) of WIOA and § 678.400 of this chapter that is participating in the operation of a one-stop delivery system.

*O*NET–SOC* means the occupational codes and titles used in the O*NET system, based on and grounded in the Standard Occupational Classification (SOC), which are the titles and codes utilized by Federal statistical agencies to classify workers into occupational categories for the purpose of collecting, calculating, and disseminating data. The SOC system is issued by the Office of Management and Budget and the Department of Labor is authorized to develop additional detailed O*NET occupations within existing SOC categories. The Department uses O*NET–SOC titles and codes for the purposes of collecting descriptive occupational information and for State reporting of data on training, credential attainment, and placement in employment by occupation.

Onsite review means an appearance by the State Monitor Advocate and/or Federal staff at an ES office to monitor the delivery of services and protections afforded by ES regulations to MSFWs by the State Workforce Agency and local ES offices.

Order holding office means an ES office that has accepted a clearance order from an employer seeking U.S. workers to perform farmwork on a less than year-round basis through the Agricultural Recruitment System.

Outreach contact means each MSFW that receives the presentation of information, offering of assistance, or follow-up activity from an outreach worker.

Participant means a reportable individual who has received services other than the services described in § 677.150(a)(3) of this chapter, after satisfying all applicable programmatic requirements for the provision of services, such as eligibility determination. (*See* § 677.150(a) of this chapter.)

(1) The following individuals are not Participants, subject to § 677.150(a)(3)(ii) and(iii) of this chapter:

(i) Individuals who only use the self-service system; and

(ii) Individuals who receive information-only services or activities.

(2) Wagner-Peyser Act participants must be included in the program's performance calculations

Placement means the hiring by a public or private employer of an individual referred by the ES office for a job or an interview, provided that the employment office completed all of the following steps:

(1) Prepared a job order form prior to referral, except in the case of a job development contact on behalf of a specific participant;

(2) Made prior arrangements with the employer for the referral of an individual or individuals;

(3) Referred an individual who had not been specifically designated by the employer, except for referrals on agricultural job orders for a specific crew leader or worker;

(4) Verified from a reliable source, preferably the employer, that the individual had entered on a job; and

(5) Appropriately recorded the placement.

Public housing means housing operated by or on behalf of any public agency.

Regional Administrator (RA) means the chief Department of Labor Employment and Training Administration (ETA) official in each Department regional office.

Reportable individual means an individual who has taken action that demonstrates an intent to use Wagner-Peyser Act services and who meets specific reporting criteria of the Wagner-Peyser Act (*see* § 677.150(b) of this chapter), including:

(1) Individuals who provide identifying information;

(2) Individuals who only use the self-service system; or

(3) Individuals who only receive information-only services or activities.

Respondent means the employer, individual, or State agency (including a State agency official) who is alleged to have committed the violation described in a complaint.

Seasonal farmworker means an individual who is employed, or was employed in the past 12 months, in farmwork (as defined in this section) of a seasonal or other temporary nature and is not required to be absent overnight from his/her permanent place of residence. Non-migrant individuals who are full-time students are excluded. Labor is performed on a seasonal basis where, ordinarily, the employment pertains to or is of the kind exclusively performed at certain seasons or periods of the year and which, from its nature, may not be continuous or carried on throughout the year. A worker who moves from one seasonal activity to another, while employed in farmwork, is employed on a seasonal basis even though he/she may continue to be employed during a major portion of the year. A worker is employed on other temporary basis where he/she is employed for a limited time only or his/her performance is contemplated for a particular piece of work, usually of short duration. Generally, employment which is contemplated to continue indefinitely is not temporary.

Secretary means the Secretary of the U.S. Department of Labor or the Secretary's designee.

Significant MSFW one-stop centers are those designated annually by the Department and include those ES offices where MSFWs account for 10 percent or more of annual participants in employment services and those local ES offices which the administrator determines must be included due to special circumstances such as an estimated large number of MSFWs in the service area. In no event may the number of significant MSFW one-stop centers be less than 100 centers on a nationwide basis.

Significant MSFW States are those States designated annually by the Department and must include the 20 States with the highest number of MSFW participants.

Significant multilingual MSFW one-stop centers are those designated annually by the Department and include those significant MSFW ES offices where 10 percent or more of MSFW participants are estimated to require service provisions in a language(s) other than English unless the administrator determines other one-stop centers also must be included due to special circumstances.

Solicitor means the chief legal officer of the U.S. Department of Labor or the Solicitor's designee.

Standard Metropolitan Statistical Area (SMSA) means a metropolitan area designated by the Bureau of Census which contains:

(1) At least 1city of 50,000 inhabitants or more; or

(2) Twin cities with a combined population of at least 50,000.

State means any of the 50 States, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

State Administrator means the chief official of the SWA.

State agency or *State Workforce Agency (SWA)* means the State ES agency designated under sec. 4 of the Wagner-Peyser Act.

State hearing official means a State official designated to preside at State administrative hearings convened to resolve complaints involving ES regulations pursuant to subpart E of part 658 of this chapter.

State Workforce Development Board or *State WDB* means the entity within a State appointed by the Governor under sec. 101 of WIOA.

Supply State(s) means a State that potentially has U.S. workers who may be recruited for referral through the Agricultural Recruitment System to the area of intended employment in a different State.

Supportive services means services that are necessary to enable an individual to participate in activities authorized under WIOA or the Wagner-Peyser Act. These services may include, but are not limited to, the following:

(1) Linkages to community services;

(2) Assistance with transportation;

(3) Assistance with child care and dependent care;

(4) Assistance with housing;

(5) Needs-related payments;

(6) Assistance with educational testing;

(7) Reasonable accommodations for individuals with disabilities;

(8) Referrals to health care;

(9) Assistance with uniforms or other appropriate work attire and work-related tools, including such items as eyeglasses and protective eye gear;

(10) Assistance with books, fees, school supplies, and other necessary items for students enrolled in postsecondary education classes; and

(11) Payments and fees for employment and training-related applications, tests, and certifications.

Tests means a standardized method of measuring an individual's possession of, interest in, or ability to acquire, job skills and knowledge. Use of tests by one-stop staff must be in accordance with the provisions of:

(1) Title 41 CFR part 60–3, Uniform Guidelines on Employee Selection Procedures;

(2) Title 29 CFR part 1627, Records To Be Made or Kept Relating to Age; Notices To Be Posted; Administrative Exemptions; and

(3) The Department of Labor's regulations on Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance, which have been published as 29 CFR part 32.

Training services means services described in sec. 134(c)(3) of WIOA.

Unemployment insurance claimant means a person who files a claim for benefits under any State or Federal unemployment compensation law.

Veteran means a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable, as defined under 38 U.S.C. 101 and sec. 3(63)(A) of WIOA.

Wagner-Peyser Act Employment Service (ES) also known as Employment Service (ES) means the national system of public ES offices described under the Wagner-Peyser Act. Employment services are delivered through a

nationwide system of one-stop centers, and are managed by State Workforce Agencies and the various local offices of the State Workforce Agencies, and funded by the United States Department of Labor.

WIOA means the Workforce Innovation and Opportunity Act (codified at 29 U.S.C. 3101 *et seq.*).

Workforce and Labor Market Information (WLMI) means the body of knowledge that describes the relationship between labor demand and supply. This includes identification and analysis of the socio-economic factors that influence employment, training, and business decisions, such as worker preparation, educational program offerings and related policy decisions within national, State, Substate, and local labor market areas. WLMI includes, but is not limited to:

(1) Employment numbers by occupation and industry;

(2) Unemployment numbers and rates;

(3) Short- and long-term industry and occupational employment projections;

(4) Information on business employment dynamics, including the number and nature of business establishments, and share and location of industrial production;

(5) Local employment dynamics, including business turnover rates; new hires, job separations, net job losses;

(6) Job vacancy counts;

(7) Job seeker and job posting data from the public labor exchange system;

(8) Identification of high growth and high demand industries, occupations, and jobs;

(9) Information on employment and earnings for wage and salary workers and for the self-employed;

(10) Information on work hours, benefits, unionization, trade disputes, conditions of employment, and retirement;

(11) Information on occupation-specific requirements regarding education, training, skills, knowledge, and experience;

WLMI also may include, as either source data or as outputs of analysis of source data:

(12) Population and workforce growth and decline, classified by age, sex, race, and other demographic characteristics;

(13) Identification of emerging occupations and evolving skill demands;

(14) Business skill and hiring requirements;

(15) Workforce characteristics, which may include skills, experience, education, credential attainment, competencies, etc.;

(16) Workforce available in geographic areas;

(17) Information on regional and local economic development activity, including job creation through business start-ups and expansions;

(18) Enrollments in and completers from educational programs, training and registered apprenticeship;

(19) Trends in industrial and occupational restructuring;

(20) Shifts in consumer demands;

(21) Data contained in governmental or administrative reporting including wage records as identified in § 652.301 of this chapter;

(22) Labor market intelligence gained from interaction with businesses, industry or trade associations, education agencies, government entities, and the public; and

(23) Other economic factors.

Workforce and Labor Market Information System (WLMIS) means the system that collects, analyzes, interprets, and disseminates workforce characteristics and employment-related data, statistics, and information at national, State, and local labor market areas and makes that information available to the public, workforce development system, one-stop partner programs, and the education and economic development communities.

Workforce development activity means an activity carried out through a workforce development program as defined in sec. 3 of WIOA.

Working days or *business days* means those days that the order-holding ES office is open for public business, for purposes of the Agricultural Recruitment System.

Work test means activities designed to ensure that an individual whom a State determines to be eligible for unemployment insurance benefits is able to work, available for work, and actively seeking work in accordance with the State's unemployment compensation law.

■ 6. Revise part 652 to read as follows:

PART 652—ESTABLISHMENT AND FUNCTIONING OF STATE EMPLOYMENT SERVICE

Subpart A—Employment Service Operations

Sec.
652.1 Introduction.
652.2 Scope and purpose of the Wagner-Peyser Act Employment Service.
652.3 Public labor exchange services system.
652.4 Allotment of funds and grant agreement.
652.5 Services authorized.
652.6–652.7 [Reserved]
652.8 Administrative provisions.
652.9 Labor disputes.

Subpart B—Services for Veterans

Sec.
652.100 Services for veterans.

Subpart C—Wagner-Peyser Act Services in a One-Stop Delivery System Environment

Sec.
652.200 What is the purpose of this subpart?
652.201 What is the role of the State Workforce Agency in the one-stop delivery system?
652.202 May local Employment Service offices exist outside of the one-stop delivery system?
652.203 Who is responsible for funds authorized under the Wagner-Peyser Act in the workforce development system?
652.204 Must funds authorized under section 7(b) of the Wagner-Peyser Act (the Governor's Reserve) flow through the one-stop delivery system?
652.205 May funds authorized under the Wagner-Peyser Act be used to supplement funding for labor exchange programs authorized under separate legislation?
652.206 May a State use funds authorized under the Wagner-Peyser Act to provide applicable "career services," as defined in the Workforce Innovation and Opportunity Act?
652.207 How does a State meet the requirement for universal access to services provided under the Wagner-Peyser Act?
652.208 How are applicable career services related to the methods of service delivery described in this part?
652.209 What are the requirements under the Wagner-Peyser Act for providing reemployment services and other activities to referred unemployment insurance claimants?
652.210 What are the Wagner-Peyser Act's requirements for administration of the work test, including eligibility assessments, as appropriate, and assistance to unemployment insurance claimants?
652.211 What are State planning requirements under the Wagner-Peyser Act?
652.215 Do any provisions in the Workforce Innovation and Opportunity Act change the requirement that State merit staff employees must deliver services provided under the Wagner-Peyser Act?
652.216 May the one-stop operator provide guidance to State merit staff employees in accordance with the Wagner-Peyser Act?

Subpart D—Workforce and Labor Market Information

Sec.
652.300 What role does the Secretary of Labor have concerning the Workforce and Labor Market Information System?
652.301 What are wage records for purposes of the Wagner-Peyser Act?
652.302 How do the Secretary of Labor's responsibilities described in this part apply to State wage records?
652.303 How do the requirements of part 603 of this chapter apply to wage records?

Authority: 29 U.S.C. 49l–2; Secs. 189 and 503, Public Law 113–128, 128 Stat. 1425 (Jul. 22, 2014).

Subpart A—Employment Service Operations

§ 652.1 Introduction.

These regulations implement the provisions of the Wagner-Peyser Act, known hereafter as the Wagner-Peyser Act, as amended by title III of the Workforce Innovation and Opportunity Act (WIOA), Public Law 113–128. The Wagner-Peyser Act Employment Service (ES) is a core program under the WIOA, and an integral component of the one-stop delivery system. Congress intended that the States exercise broad authority in implementing provisions of the Wagner-Peyser Act.

§ 652.2 Scope and purpose of the Wagner-Peyser Act Employment Service.

The basic purpose of the ES is to improve the functioning of the nation's labor markets by bringing together individuals who are seeking employment and employers who are seeking workers.

§ 652.3 Public labor exchange services system.

At a minimum, each State must administer a labor exchange system which has the capacity, to:

(a) Assist job seekers in finding employment, including promoting their familiarity with the Department's electronic tools;

(b) Assist employers in filling jobs;

(c) Facilitate the match between job seekers and employers;

(d) Participate in a system for clearing labor among the States, including the use of standardized classification systems issued by the Secretary, under sec. 15 of the Wagner-Peyser Act;

(e) Meet the work test requirements of the State unemployment compensation system; and

(f) Provide labor exchange services as identified in § 678.430(a) of this chapter, sec. 7(a) of the Wagner-Peyser Act, and sec. 134(c)(2)(A)(iv) of WIOA.

§ 652.4 Allotment of funds and grant agreement.

(a) *Allotments.* The Secretary must provide planning estimates in accordance with sec. 6(b)(5) of the Wagner-Peyser Act. Within 30 days of receipt of planning estimates from the Secretary, the State must make public the sub-State resource distributions, and describe the process and schedule under which these resources will be issued, planned, and committed. This notification must include a description of the procedures by which the public may review and comment on the sub-State distributions, including a process by which the State will resolve any complaints.

(b) *Grant agreement.* To establish a continuing relationship under the Wagner-Peyser Act, the Governor and the Secretary must sign a grant agreement, including a statement assuring that the State must comply with the Wagner-Peyser Act and all applicable rules and regulations. Consistent with this agreement and sec. 6 of the Wagner-Peyser Act, State allotments will be obligated through a notification of obligation.

§ 652.5 Services authorized.

The funds allotted to each State under sec. 6 of the Wagner-Peyser Act must be expended consistent with an approved plan under §§ 676.100 through 676.145 of this chapter and § 652.211. At a minimum, each State must provide the minimum labor exchange elements listed at § 652.3.

§§ 652.6–652.7 [Reserved]

§ 652.8 Administrative provisions.

(a) *Administrative requirements.* The Employment Security Manual is not applicable to funds appropriated under the Wagner-Peyser Act. Except as provided for in paragraph (f) of this section, administrative requirements and cost principles applicable to grants under this part are as specified in 2 CFR parts 200 and 2900 which govern the Uniform Guidelines, cost principles, and audit requirements for Federal awards.

(b) *Management systems, reporting, and recordkeeping.* (1) The State must ensure that a financial system provides fiscal control and accounting procedures sufficient to permit preparation of required reports, and the tracing of funds to a level of expenditure adequate to establish that funds have not been expended in violation of the restrictions on the use of such funds. (sec. 10(a) of the Wagner-Peyser Act)

(2) The financial management system and the program information system must provide Federally-required records and reports that are uniform in definition, accessible to authorized Federal and State staff, and verifiable for monitoring, reporting, audit and evaluation purposes. (sec. 10(c) of the Wagner-Peyser Act)

(c) *Reports required.* (1) Each State must make reports pursuant to instructions issued by the Secretary and in such format as the Secretary prescribes.

(2) The Secretary is authorized to monitor and investigate pursuant to sec. 10 of the Wagner-Peyser Act.

(d) *Special administrative and cost provisions.* (1) Neither the Department nor the State is a guarantor of the accuracy or truthfulness of information obtained from employers or applicants in the process of operating a labor exchange activity.

(2) Prior approval authority—as described in various sections of 29 CFR part 97, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, and Office of Management and Budget Circular A–87 (Revised)—is delegated to the State except that the Secretary reserves the right to require transfer of title on nonexpendable Automated Data Processing Equipment (ADPE), in accordance with provisions contained in 2 CFR parts 200 and 2900. The Secretary reserves the right to exercise prior approval authority in other areas, after providing advance notice to the State.

(3) Application for financial assistance and modification requirements must be as specified under this part.

(4) Cost of promotional and informational activities consistent with the provisions of the Wagner-Peyser Act, describing services offered by employment security agencies, job openings, labor market information, and similar items are allowable.

(5) Each State must retain basic documents for the minimum period specified below, consistent with 2 CFR parts 200 and 2900:

(i) Work application: 3 years.

(ii) Job order: 3 years.

(6) Payments from the State's Wagner-Peyser Act allotment made into a State's account in the Unemployment Trust Fund for the purpose of reducing charges against Reed Act funds (sec. 903(c) of the Social Security Act, as amended (42 U.S.C. 1103(c)) are allowable costs, provided that:

(i) The charges against Reed Act funds were for amounts appropriated, obligated, and expended for the acquisition of automatic data processing installations or for the acquisition or major renovation of State-owned office building; and

(ii) With respect to each acquisition of improvement of property pursuant to paragraph (d)(6)(i) of this section, the payments are accounted for in the State's records as credits against equivalent amounts of Reed Act funds used for administrative expenditures.

(e) *Disclosure of information.* (1) The State must assure the proper disclosure of information pursuant to sec. 3(b) of the Wagner-Peyser Act.

(2) The information specified in sec. 3(b) and other sections of the Wagner-Peyser Act, also must be provided to officers or any employee of the Federal government or of a State government lawfully charged with administration of unemployment compensation laws, ES activities under the Wagner-Peyser Act or other related legislation, but only for purposes reasonably necessary for the proper administration of such laws.

(f) *Audits.* (1) The State must follow the audit requirements found at § 683.210 of this chapter, except that funds expended pursuant to sec. 7(b) of the Wagner-Peyser Act must be audited annually.

(2) The Comptroller General and the Inspector General of the Department have the authority to conduct audits, evaluations or investigations necessary to meet their responsibilities under sec. 9(b)(1) and 9(b)(2), respectively, of the Wagner-Peyser Act.

(3) The audit, conducted pursuant to paragraph (f)(1) or (2) of this section, must be submitted to the Secretary who will follow the resolution process specified in §§ 683.420 through 683.440 of this chapter.

(g) *Sanctions for violation of the Wagner-Peyser Act.* (1) The Secretary may impose appropriate sanctions and corrective actions for violation of the Wagner-Peyser Act, regulations, or State Plan, including the following:

(i) Requiring repayment, for debts owed the government under the grant, from non-Federal funds;

(ii) Offsetting debts arising from the misexpenditure of grant funds, against amounts to which the State is or may be entitled under the Wagner-Peyser Act, provided that debts arising from gross negligence or willful misuse of funds may not be offset against future grants. When the Secretary reduces amounts allotted to the State by the amount of the misexpenditure, the debt must be fully satisfied;

(iii) Determining the amount of Federal cash maintained by the State or a subrecipient in excess of reasonable grant needs, establishing a debt for the amount of such excessive cash, and charging interest on that debt; and

(iv) Imposing other appropriate sanctions or corrective actions, except where specifically prohibited by the Wagner-Peyser Act or regulations.

(2) To impose a sanction or corrective action, the Secretary must utilize the initial and final determination procedures outlined in paragraph (f)(3) of this section and specified in the administrative provisions at §§ 683.420 through 683.440 of this chapter.

(h) *Other violations.* Violations or alleged violations of the Wagner-Peyser Act, regulations, or grant terms and conditions except those pertaining to audits or discrimination must be determined and handled in accordance with part 658, subpart H, of this chapter.

(i) *Fraud and abuse.* Any persons having knowledge of fraud, criminal activity or other abuse must report such information directly and immediately to the Secretary, including all complaints involving such matters.

(j) *Nondiscrimination and affirmative action requirements.* States must:

(1) Assure that no individual be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration or in connection with any services or activities authorized under the Wagner-Peyser Act in violation of any applicable nondiscrimination law. All complaints alleging discrimination must be filed and processed according to the procedures in the applicable Department of Labor nondiscrimination regulations.

(2) Assure that discriminatory job orders will not be accepted, except where the stated requirement is a bona fide occupational qualification (BFOQ). See, generally, 42 U.S.C. 2000(e)–2(e), 29 CFR parts 1604, 1606, and 1625.

(3) Assure that employers' valid affirmative action requests will be accepted and a significant number of qualified applicants from the target group(s) will be included to enable the employer to meet its affirmative action obligations.

(4) Assure that employment testing programs will comply with 41 CFR part 60–3 and 29 CFR part 32 and 29 CFR 1627.3(b)(1)(iv).

(5) Nondiscrimination and equal opportunity requirements and procedures, including complaint processing and compliance reviews, will be governed by the applicable Department of Labor nondiscrimination regulations.

§ 652.9 Labor disputes.

(a) State agencies may not make a job referral on job orders which will aid directly or indirectly in the filling of a job opening which is vacant because the former occupant is on strike, or is being locked out in the course of a labor dispute, or the filling of which is otherwise an issue in a labor dispute involving a work stoppage.

(b) Written notification must be provided to all applicants referred to jobs not at issue in the labor dispute that a labor dispute exists in the employing establishment and that the job to which the applicant is being referred is not at issue in the dispute.

(c) When a job order is received from an employer reportedly involved in a labor dispute involving a work stoppage, State agencies must:

(1) Verify the existence of the labor dispute and determine its significance with respect to each vacancy involved in the job order; and

(2) Notify all potentially affected staff concerning the labor dispute.

(d) State agencies must resume full referral services when they have been notified of, and verified with the employer and workers' representative(s), that the labor dispute has been terminated.

(e) State agencies must notify the regional office in writing of the existence of labor disputes which:

(1) Result in a work stoppage at an establishment involving a significant number of workers; or

(2) Involve multi-establishment employers with other establishments outside the reporting State.

Subpart B—Services for Veterans

§ 652.100 Services for veterans.

Veterans receive priority of service for all Department-funded employment and training programs as described in 20 CFR part 1010. The Department's Veterans' Employment and Training Service (VETS) administers the Jobs for Veterans State Grants (JVSG) program under chapter 41 of title 38 of the U.S. Code and other activities and training programs which provide services to specific populations of eligible veterans. VETS' general regulations are located in parts 1001, 1002, and 1010 of this title.

Subpart C—Wagner-Peyser Act Services in a One-Stop Delivery System Environment

§ 652.200 What is the purpose of this subpart?

(a) This subpart provides guidance to States to implement the services provided under the Wagner-Peyser Act, as amended by WIOA, in a one-stop delivery system environment.

(b) Except as otherwise provided, the definitions contained in part 651 of this chapter and sec. 2 of the Wagner-Peyser Act apply to this subpart.

§ 652.201 What is the role of the State Workforce Agency in the one-stop delivery system?

(a) The role of the State Workforce Agency (SWA) in the one-stop delivery system is to ensure the delivery of services authorized under sec. 7(a) of the Wagner-Peyser Act. The SWA is a required one-stop partner in each local one-stop delivery system and is subject to the provisions relating to such

partners that are described at part 678 of this chapter.

(b) Consistent with those provisions, the State agency must:

(1) Participate in the one-stop delivery system in accordance with sec. 7(e) of the Wagner-Peyser Act;

(2) Be represented on the Workforce Development Boards (WDBs) that oversee the local and State one-stop delivery system and be a party to the Memorandum of Understanding, described at § 678.500 of this chapter, addressing the operation of the one-stop delivery system; and

(3) Provide these services as part of the one-stop delivery system.

§ 652.202 May local Employment Service offices exist outside of the one-stop delivery system?

No. Local ES offices may not exist outside of the one-stop service delivery system. A State must colocate ES, as provided in §§ 678.310 through 678.315 of this chapter.

§ 652.203 Who is responsible for funds authorized under the Wagner-Peyser Act in the workforce development system?

The SWA retains responsibility for all funds authorized under the Wagner-Peyser Act, including those funds authorized under sec. 7(a) required for providing the services and activities delivered as part of the one-stop delivery system.

§ 652.204 Must funds authorized under the Wagner-Peyser Act (the Governor's Reserve) flow through the one-stop delivery system?

No, sec. 7(b) of the Wagner-Peyser Act provides that 10 percent of the State's allotment under the Wagner-Peyser Act is reserved for use by the Governor for performance incentives, supporting exemplary models of service delivery, professional development and career advancement of SWA staff, and services for groups with special needs. However, these funds may flow through the one-stop delivery system.

§ 652.205 May funds authorized under the Wagner-Peyser Act be used to supplement funding for labor exchange programs authorized under separate legislation?

(a) Section 7(c) of the Wagner-Peyser Act enables States to use funds authorized under sec. 7(a) or 7(b) of the Wagner-Peyser Act to supplement funding of any workforce activity carried out under WIOA.

(b) Funds authorized under the Wagner-Peyser Act may be used under sec. 7(c) to provide additional funding to other activities authorized under WIOA if:

(1) The activity meets the requirements of the Wagner-Peyser Act, and its own requirements;

(2) The activity serves the same individuals as are served under the Wagner-Peyser Act;

(3) The activity provides services that are coordinated with services under the Wagner-Peyser Act; and

(4) The funds supplement, rather than supplant, funds provided from non-Federal sources.

§ 652.206 May a State use funds authorized under the Wagner-Peyser Act to provide applicable "career services," as defined in the Workforce Innovation and Opportunity Act?

Yes, funds authorized under sec. 7(a) of the Wagner-Peyser Act must be used to provide basic career services as identified in § 678.430(a) of this chapter and secs. 134(c)(2)(A)(i)–(xi) of WIOA, and may be used to provide individualized career services as identified in § 678.430(b) of this chapter and sec. 134(c)(2)(A)(xii) of WIOA. Funds authorized under sec. 7(b) of the Wagner-Peyser Act may be used to provide career services. Career services must be provided consistent with the requirements of the Wagner-Peyser Act.

§ 652.207 How does a State meet the requirement for universal access to services provided under the Wagner-Peyser Act?

(a) A State has discretion in how it meets the requirement for universal access to services provided under the Wagner-Peyser Act. In exercising this discretion, a State must meet the Wagner-Peyser Act's requirements.

(b) These requirements are:

(1) Labor exchange services must be available to all employers and job seekers, including unemployment insurance (UI) claimants, veterans, migrant and seasonal farmworkers, and individuals with disabilities;

(2) The State must have the capacity to deliver labor exchange services to employers and job seekers, as described in the Wagner-Peyser Act, on a statewide basis through:

(i) Self-service, including virtual services;

(ii) Facilitated self-help service; and

(iii) Staff-assisted service;

(3) In each local area, in at least one comprehensive physical center, staff funded under the Wagner-Peyser Act must provide labor exchange services (including staff-assisted labor exchange services) and career services as described in § 652.206; and

(4) Those labor exchange services provided under the Wagner-Peyser Act in a local area must be described in the Memorandum of Understanding (MOU) described in § 678.500 of this chapter.

§ 652.208 How are applicable career services related to the methods of service delivery described in in this part?

Career services may be delivered through any of the applicable three methods of service delivery described in § 652.207(b)(2). These methods are:

(a) Self-service, including virtual services;

(b) Facilitated self-help service; and

(c) Staff-assisted service.

§ 652.209 What are the requirements under the Wagner-Peyser Act for providing reemployment services and other activities to referred unemployment insurance claimants?

(a) In accordance with sec. 3(c)(3) of the Wagner-Peyser Act, the SWA, as part of the one-stop delivery system, must provide reemployment services to UI claimants for whom such services are required as a condition for receipt of UI benefits. Services must be appropriate to the needs of UI claimants who are referred to reemployment services under any Federal or State UI law.

(b) The SWA also must provide other activities, including:

(1) Coordination of labor exchange services with the provision of UI eligibility services as required by sec. 5(b)(2) of the Wagner-Peyser Act;

(2) Administration of the work test, conducting eligibility assessments, and registering UI claimants for employment services in accordance with a State's unemployment compensation law, and provision of job finding and placement services as required by sec. 3(c)(3) and described in sec. 7(a)(3)(F) of the Wagner-Peyser Act; and

(3) Referring UI claimants to, and providing application assistance for, training and education resources and programs, including Federal Pell grants and other student assistance under title IV of the Higher Education Act, the Montgomery GI Bill, Post–9/11 GI Bill, and other Veterans Educational Assistance, training provided for youth, and adult and dislocated workers, as well as other employment training programs under WIOA, and for Vocational Rehabilitation Services under title I of the Rehabilitation Act of 1973.

§ 652.210 What are the Wagner-Peyser Act's requirements for administration of the work test, including eligibility assessments, as appropriate, and assistance to unemployment insurance claimants?

(a) State UI law or rules establish the requirements under which UI claimants must register and search for work in order to fulfill the UI work test requirements.

(b) Staff funded under the Wagner-Peyser Act must assure that:

(1) UI claimants receive the full range of labor exchange services available under the Wagner-Peyser Act that are necessary and appropriate to facilitate their earliest return to work, including career services specified in § 652.206 and listed in sec. 134(c)(2)A) of WIOA;

(2) UI claimants requiring assistance in seeking work receive the necessary guidance and counseling to ensure they make a meaningful and realistic work search; and

(3) ES staff will provide UI program staff with information about UI claimants' ability or availability for work, or the suitability of work offered to them.

§ 652.211 What are State planning requirements under the Wagner-Peyser Act?

The ES is a core program identified in WIOA and must be included as part of each State's Unified or Combined State Plans. See §§ 676.105 through 676.125 of this chapter for planning requirements for the core programs.

§ 652.215 Do any provisions in the Workforce Innovation and Opportunity Act change the requirement that State merit staff employees must deliver services provided under the Wagner-Peyser Act?

No, the Secretary requires that labor exchange services provided under the authority of the Wagner-Peyser Act, including services to veterans, be provided by State merit-staff employees. This interpretation is authorized by and consistent with the provisions in secs. 3(a) and 5(b) of the Wagner-Peyser Act and the Intergovernmental Personnel Act (42 U.S.C 4701 *et seq.*). The Secretary has and has exercised the legal authority under sec. 3(a) of the Wagner-Peyser Act to set additional staffing standards and requirements and to conduct demonstrations to ensure the effective delivery of services provided under the Wagner-Peyser Act. No additional exemptions, other than the ones previously authorized under the Wagner-Peyser Act as amended by WIA, will be authorized.

§ 652.216 May the one-stop operator provide guidance to State merit staff employees in accordance with the Wagner-Peyser Act?

Yes, the one-stop delivery system envisions a partnership in which Wagner-Peyser Act labor exchange services are coordinated with other activities provided by other partners in a one-stop setting. As part of the local Memorandum of Understanding described in § 678.500 of this chapter, the SWA, as a one-stop partner, may agree to have staff receive guidance from the one-stop operator regarding the provision of labor exchange services. Personnel matters, including compensation, personnel actions, terms and conditions of employment, performance appraisals, and accountability of State merit staff employees funded under the Wagner-Peyser Act, remain under the authority of the SWA. The guidance given to employees must be consistent with the provisions of the Wagner-Peyser Act, the local Memorandum of Understanding, and applicable collective bargaining agreements.

Subpart D—Workforce and Labor Market Information

§ 652.300 What role does the Secretary of Labor have concerning the Workforce and Labor Market Information System?

(a) The Secretary of Labor must oversee the development, maintenance, and continuous improvement of the workforce and labor market information system defined in Wagner-Peyser Act sec. 15 and § 651.10 of this chapter. The Department also will identify parameters of continuous improvement. The Secretary will consult with the Workforce Information Advisory Council on these matters and consider the council's recommendations.

(b) With respect to data collection, analysis, and dissemination of workforce and labor market information as defined in Wagner-Peyser Act sec. 15 and § 651.10 of this chapter, the Secretary must:

(1) Assign responsibilities within the Department of Labor for elements of the workforce and labor market information system described in sec. 15(a) of the Wagner-Peyser Act to ensure that the statistical and administrative data collected are consistent with appropriate Bureau of Labor Statistics standards and definitions, and that the information is accessible and understandable to users of such data;

(2) Actively seek the cooperation of heads of other Federal agencies to establish and maintain mechanisms for ensuring complementarity and non-duplication in the development and operation of statistical and administrative data collection activities;

(3) Solicit, receive, and evaluate the recommendations of the Workforce Information Advisory Council established by Wagner-Peyser Act sec. 15(d);

(4) Eliminate gaps and duplication in statistical undertakings;

(5) Through the Bureau of Labor Statistics and the Employment and Training Administration, and in collaboration with States, develop and maintain the elements of the workforce and labor market information system, including the development of consistent procedures and definitions for use by States in collecting and reporting the workforce and labor market information data described in Wagner-Peyser Act sec. 15 and defined in § 651.10 of this chapter;

(6) Establish procedures for the system to ensure that the data and information are timely, and paperwork and reporting for the system are reduced to a minimum; and

(7) Prepare a 2-year plan for the workforce and labor market information system, as described in the Wagner-Peyser Act sec. 15(c), as amended by WIOA sec. 308(d).

§ 652.301 What are wage records for purposes of the Wagner-Peyser Act?

Wage records, for purposes of the Wagner-Peyser Act, are records that contain "wage information" as defined in § 603.2(k) of this chapter. In this part, "State wage records" refers to wage records produced or maintained by a State.

§ 652.302 How do the Secretary of Labor's responsibilities described in this part apply to State wage records?

(a) A significant portion of the workforce and labor market information—defined in § 651.10 of this chapter—are developed using State wage records.

(b) Based on the Secretary of Labor's responsibilities described in Wagner-Peyser Act sec. 15 and § 652.300, the Secretary of Labor will, in consultation with Federal agencies, and States, and considering recommendations from the Workforce Information Advisory Council described in Wagner-Peyser Act sec. 15(d), develop:

(1) Standardized definitions for the data elements comprising "wage records" as defined in § 652.301; and

(2) Improved processes and systems for the collection and reporting of wage records.

(c) In carrying out these activities, the Secretary also may consult with other stakeholders, such as employers.

§ 652.303 How do the requirements of part 603 of this chapter apply to wage records?

All information collected by the State in wage records referred to in § 652.302 is subject to the confidentiality regulations at part 603 of this chapter.

■ 7. Revise part 653 to read as follows:

PART 653—SERVICES OF THE WAGNER-PEYSER ACT EMPLOYMENT SERVICE SYSTEM

Subpart A—[Reserved]

Subpart B—Services for Migrant and Seasonal Farmworkers (MSFWs)

Sec.
653.100 Purpose and scope of subpart.
653.101 Provision of services to migrant and seasonal farmworkers.
653.102 Job information.
653.103 Process for migrant and seasonal farmworkers to participate in workforce development activities.
653.104–653.106 [Reserved]
653.107 Outreach and Agricultural Outreach Plan.
653.108 State Workforce Agency and State Monitor Advocate responsibilities.
653.109 Data collection and performance accountability measures.
653.110 Disclosure of data.
653.111 State Workforce Agency staffing requirements.

Subparts C–E—[Reserved]

Subpart F—Agricultural Recruitment System for U.S. Workers (ARS)

Sec.
653.500 Purpose and scope of subpart.
653.501 Requirements for processing clearance orders.
653.502 Conditional access to the Agricultural Recruitment System.
653.503 Field checks.

Authority: Secs. 167, 189, 503, Public Law 113–128, 128 Stat. 1425 (Jul. 22, 2014); 29 U.S.C. chapter 4B; 38 U.S.C. part III, chapters 41 and 42.

Subpart A—[Reserved]

Subpart B—Services for Migrant and Seasonal Farmworkers (MSFWs)

§ 653.100 Purpose and scope of subpart.

(a) This subpart sets forth the principal regulations of the Wagner-Peyser Act Employment Service (ES) concerning the provision of services for MSFWs consistent with the requirement that all services of the workforce development system be available to all job seekers in an equitable fashion. This includes ensuring MSFWs have access to these services in a way that meets their unique needs. MSFWs must receive services on a basis which is qualitatively equivalent and quantitatively proportionate to services provided to non-MSFWs.

(b) This subpart contains requirements that State Workforce Agencies (SWAs) establish a system to monitor their own compliance with ES regulations governing services to MSFWs.

(c) Established under this subpart are special services to ensure MSFWs receive the full range of career services as defined in WIOA sec. 134(c)(2).

§ 653.101 Provision of services to migrant and seasonal farmworkers.

Each one-stop center must offer MSFWs the full range of career and supportive services, benefits and protections, and job and training referral services as are provided to non-MSFWs. In providing such services, the one-stop centers must consider and be sensitive to the preferences, needs, and skills of individual MSFWs and the availability of job and training opportunities.

§ 653.102 Job information.

All SWAs must make job order information conspicuous and available to MSFWs by all reasonable means. Such information must, at minimum, be available through internet labor exchange systems and through the one-stop centers. One-stop centers must provide adequate staff assistance to MSFWs to access job order information easily and efficiently. In designated significant MSFW multilingual offices, such assistance must be provided to MSFWs in their native language, whenever requested or necessary.

§ 653.103 Process for migrant and seasonal farmworkers to participate in workforce development activities.

(a) Each one-stop center must determine whether participants are MSFWs as defined at § 651.10 of this chapter.

(b) All SWAs will ensure that MSFWs who are English Language Learners (ELLs) receive, free of charge, the language assistance necessary to afford them meaningful access to the programs, services, and information offered by the one-stop centers.

(c) One-stop center staff must provide MSFWs a list of available career and supportive services in their native language.

(d) One-stop center staff must refer and/or register MSFWs for services, as appropriate, if the MSFW is interested in obtaining such services.

§§ 653.104–653.106 [Reserved]

§ 653.107 Outreach and Agricultural Outreach Plan.

(a) *State Workforce Agency (SWA) outreach responsibilities.* (1) Each SWA must employ an adequate number of outreach workers to conduct MSFW outreach in their service areas. SWA Administrators must ensure State Monitor Advocates and outreach workers coordinate their outreach efforts with WIOA title I sec. 167 grantees as well as with public and private community service agencies and MSFW groups.

(2) As part of their outreach, SWAs must:

(i) Communicate the full range of workforce development services to MSFWs.

(ii) Conduct thorough outreach efforts with extensive follow-up activities in supply States.

(3) For purposes of hiring and assigning staff to conduct outreach duties, and to maintain compliance with SWAs' Affirmative Action programs, SWAs must seek, through merit system procedures, qualified candidates who:

(i) Are from MSFW backgrounds;

(ii) Speak a language common among MSFWs in the State; or

(iii) Are racially or ethnically representative of the MSFWs in the service area.

(4) The 20 States with the highest estimated year-round MSFW activity, as identified in guidance issued by the Secretary, must assign, in accordance with State merit staff requirements, full-time, year-round staff to conduct outreach duties. The remainder of the States must hire year-round part-time outreach staff and, during periods of the highest MSFW activity must hire full-time outreach staff. All outreach staff must be multilingual if warranted by the characteristics of the MSFW population in the State, and must spend a majority of their time in the field.

(5) The SWA must publicize the availability of employment services through such means as newspaper and electronic media publicity. Contacts with public and private community agencies, employers and/or employer organizations, and MSFW groups also must be utilized to facilitate the widest possible distribution of information concerning employment services.

(b) *Outreach worker's responsibilities.* Outreach workers must locate and contact MSFWs who are not being reached by the normal intake activities conducted by the ES offices. Outreach workers' responsibilities include:

(1) Explaining to MSFWs at their working, living, or gathering areas (including day-haul sites), by means of written and oral presentations either spontaneous or recorded, in a language readily understood by them, the following:

(i) The services available at the local one-stop center (which includes the availability of referrals to training, supportive services, and career services, as well as specific employment opportunities), and other related services;

(ii) Information on the Employment Service and Employment-related Law Complaint System;

(iii) Information on the other organizations serving MSFWs in the area; and

(iv) A basic summary of farmworker rights, including farmworker rights with respect to the terms and conditions of employment.

(2) Outreach workers must not enter work areas to perform outreach duties described in this section on an employer's property without permission of the employer unless otherwise authorized to enter by law; must not enter workers' living areas without the permission of the workers; and must comply with appropriate State laws regarding access.

(3) After making the presentation, outreach workers must urge the MSFWs to go to the local one-stop center to obtain the full range of employment and training services.

(4) If an MSFW cannot or does not wish to visit the local one-stop center, the outreach worker must offer to provide on-site the following:

(i) Assistance in the preparation of applications for employment services;

(ii) Assistance in obtaining referral(s) to current and future employment opportunities;

(iii) Assistance in the preparation of either ES or employment-related law complaints;

(iv) Referral of complaints to the ES office Complaint Specialist or ES office manager;

(v) Referral to supportive services and/or career services in which the individual or a family member may be interested; and

(vi) As needed, assistance in making appointments and arranging transportation for individual MSFW(s) or members of his/her family to and from local one-stop centers or other appropriate agencies.

(5) Outreach workers must make follow-up contacts as necessary and appropriate to provide the assistance specified in paragraphs (b)(1) through (4) of this section.

(6) Outreach workers must be alert to observe the working and living conditions of MSFWs and, upon observation or upon receipt of information regarding a suspected violation of Federal or State employment-related law, document and refer information to the ES office manager for processing in accordance with § 658.411 of this chapter. Additionally, if an outreach worker observes or receives information about apparent violations (as described in § 658.419 of this chapter), the outreach worker must document and refer the information to the appropriate ES office manager.

(7) Outreach workers must be trained in local office procedures and in the services, benefits, and protections afforded MSFWs by the ES, including training on protecting farmworkers against sexual harassment. While sexual harassment is the primary requirement, training also may include similar issues such as sexual coercion, assault, and human trafficking. Such trainings are intended to help outreach workers identify when such issues may be occurring in the fields and how to document and refer the cases to the appropriate enforcement agencies. They also must be trained in the procedure for informal resolution of complaints. The program for such training must be formulated by the State Administrator, pursuant to uniform guidelines developed by the Employment and Training Administration (ETA). The SMA must be given an opportunity to review and comment on the State's program.

(8) Outreach workers must maintain complete records of their contacts with MSFWs and the services they perform. These records must include a daily log, a copy of which must be sent monthly to the ES office manager and maintained on file for at least 2 years. These records must include the number of contacts, the names of contacts (if available), and the services provided (*e.g.*, whether a complaint was received, whether a request for career services was received, and whether a referral was made). Outreach workers also must maintain records of each possible violation or complaint of which they have knowledge, and their actions in ascertaining the facts and referring the matters as provided herein. These records must include a description of the circumstances and names of any employers who have refused outreach workers access to MSFWs pursuant to paragraph (b)(2) of this section.

(9) Outreach workers must not engage in political, unionization, or anti-unionization activities during the performance of their duties.

(10) Outreach workers must be provided with, carry and display, upon request, identification cards or other material identifying them as employees of the SWA.

(11) Outreach workers in significant MSFW local offices must conduct especially vigorous outreach in their service areas.

(c) *ES office outreach responsibilities.* Each ES office manager must file with the SMA a monthly summary report of outreach efforts. These reports must summarize information collected, pursuant to paragraph (b)(8) of this section. The ES office manager and/or other appropriate State office staff must assess the performance of outreach workers by examining the overall quality and productivity of their work, including the services provided and the methods and tools used to offer services. Performance must not be judged solely by the number of contacts made by the outreach worker. The monthly reports and daily outreach logs must be made available to the SMA and Federal on-site review teams.

(d) *State Agricultural Outreach Plan (AOP).* (1) Each SWA must develop an AOP every 4 years as part of the Unified or Combined State Plans required under sec. 102 or 103 of WIOA.

(2) The AOP must:

(i) Provide an assessment of the unique needs of MSFWs in the area based on past and projected agricultural and MSFW activity in the State;

(ii) Provide an assessment of available resources for outreach;

(iii) Describe the SWA's proposed outreach activities including strategies on how to contact MSFWs who are not being reached by the normal intake activities conducted by the one-stop center;

(iv) Describe the activities planned for providing the full range of employment and training services to the agricultural community, including both MSFWs and agricultural employers, through the one-stop centers; and

(v) Provide an assurance that the SWA is complying with the requirements under § 653.111 if the State has significant MSFW one-stop centers.

(3) In developing the AOP, the SWA must solicit information and suggestions from WIOA sec. 167 National Farmworker Jobs Program (NFJP) grantees, other appropriate MSFW groups, public agencies, agricultural employer organizations, and other interested organizations. In addition, at least 45 calendar days before submitting its final AOP to the Department, the SWA must provide the proposed AOP to NFJP grantees, public agencies, agricultural employer organizations, and other organizations expressing an interest and allow at least 30 calendar days for review and comment. The SWA must:

(i) Consider any comments received in formulating its final proposed AOP.

(ii) Inform all commenting parties in writing whether their comments have been incorporated and, if not, the reasons therefore.

(iii) Transmit the comments and recommendations received and its responses to the Department with the submission of the AOP. (If the comments are received after the submission of the AOP, they may be sent separately to the Department.)

(4) The AOP must be submitted in accordance with paragraph (d) of this

section and planning guidance issued by the Department.

(5) The Annual Summaries required at § 653.108(s) must update the Department on the SWA's progress toward meetings its goals set forth in the AOP.

§ 653.108 State Workforce Agency and State Monitor Advocate responsibilities.

(a) State Administrators must ensure their SWAs monitor their own compliance with ES regulations in serving MSFWs on an ongoing basis. The State Administrator has overall responsibility for SWA self-monitoring.

(b) The State Administrator must appoint a State Monitor Advocate. The State Administrator must inform farmworker organizations and other organizations with expertise concerning MSFWs of the opening and encourage them to refer qualified applicants to apply through the State merit system prior to appointing a State Monitor Advocate. Among qualified candidates determined through State merit system procedures, the SWAs must seek persons:

(1) Who are from MSFW backgrounds; or

(2) Who speak Spanish or other languages of a significant proportion of the State MSFW population; or

(3) Who have substantial work experience in farmworker activities.

(c) The SMA must have direct, personal access, when necessary, to the State Administrator. The SMA must have status and compensation as approved by the civil service classification system and be comparable to other State positions assigned similar levels of tasks, complexity, and responsibility.

(d) The SMA must be assigned staff necessary to fulfill effectively all of the duties set forth in this subpart. The number of staff positions must be determined by reference to the number of MSFWs in the State, as measured at the time of the peak MSFW population, and the need for monitoring activity in the State. The SMA must devote full-time to Monitor Advocate functions. Any State that proposes less than full-time dedication must demonstrate to its Regional Administrator that the SMA function can be effectively performed with part-time staffing.

(e) All SMAs and their staff must attend, within the first 3 months of their tenure, a training session conducted by the Regional Monitor Advocate. They also must attend whatever additional training sessions are required by the Regional or National Monitor Advocate.

(f) The SMA must provide any relevant documentation requested from the SWA by the Regional Monitor Advocate or the National Monitor Advocate.

(g) The SMA must:

(1) Conduct an ongoing review of the delivery of services and protections afforded by the ES regulations to MSFWs by the SWA and ES offices (including progress made in achieving affirmative action staffing goals). The SMA, without delay, must advise the SWA and local offices of problems, deficiencies, or improper practices in the delivery of services and protections afforded by these regulations and may request a corrective action plan to address these deficiencies. The SMA must advise the SWA on means to improve the delivery of services.

(2) Participate in on-site reviews on a regular basis, using the following procedures:

(i) Before beginning an onsite review, the SMA or review staff must study:

(A) Program performance data;

(B) Reports of previous reviews;

(C) Corrective action plans developed as a result of previous reviews;

(D) Complaint logs; and

(E) Complaints elevated from the office or concerning the office.

(ii) Ensure that the onsite review format, developed by ETA, is used as a guideline for onsite reviews.

(iii) Upon completion of an onsite monitoring review, the SMA must hold one or more wrap-up sessions with the ES office manager and staff to discuss any findings and offer initial recommendations and appropriate technical assistance.

(iv) After each review the SMA must conduct an in-depth analysis of the review data. The conclusions and recommendations of the SMA must be put in writing and must be sent to the State Administrator, to the official of the SWA with authority over the ES office, and other appropriate SWA officials.

(v) If the review results in any findings of noncompliance with the regulations under this chapter, the ES office manager must develop and propose a written corrective action plan. The plan must be approved or revised by appropriate superior officials and the SMA. The plan must include actions required to correct or to take major steps to correct any compliance issues within 30 business days, and if the plan allows for more than 30 business days for full compliance, the length of, and the reasons for, the extended period must be specifically stated. SWAs are responsible for assuring and documenting that the ES office is in compliance within the time period designated in the plan.

(vi) SWAs must submit to the appropriate ETA regional office copies of the onsite review reports and corrective action plans for ES offices.

(vii) The SMA may recommend that the review described in paragraph (g)(2) of this section be delegated to a responsible, professional member of the administrative staff of the SWA, if and when the State Administrator finds such delegation necessary. In such event, the SMA is responsible for and must approve the written report of the review.

(3) Ensure all significant MSFW one-stop centers not reviewed onsite by Federal staff, are reviewed at least once per year by State staff, and that, if necessary, those ES offices in which significant problems are revealed by required reports, management information, the Complaint System, or other means are reviewed as soon as possible.

(4) Review and approve the SWA's Agricultural Outreach Plan (AOP).

(5) On a random basis, review outreach workers' daily logs and other reports including those showing or reflecting the workers' activities.

(6) Write and submit annual summaries to the State Administrator with a copy to the Regional Administrator as described in paragraph (s) of this section.

(h) The SMA must participate in Federal reviews conducted pursuant to part 658, subpart G, of this chapter.

(i) At the discretion of the State Administrator, the SMA may be assigned the responsibility as the Complaint Specialist. The SMA must participate in and monitor the performance of the Complaint System, as set forth at §§ 658.400 and 658.401 of this chapter. The SMA must review the ES office's informal resolution of complaints relating to MSFWs and must ensure that the ES office manager transmits copies of the Complaint System logs pursuant to part 658, subpart E, of this chapter to the SWA.

(j) The SMA must serve as an advocate to improve services for MSFWs.

(k) The SMA must establish an ongoing liaison with WIOA sec. 167 National Farmworker Jobs Program (NFJP) grantees and other organizations serving farmworkers, employers, and employer organizations in the State.

(l) The SMA must meet (either in person or by alternative means), at minimum, quarterly, with representatives of the organizations pursuant to paragraph (k) of this section, to receive complaints, assist in referrals of alleged violations to enforcement agencies, receive input on improving coordination with ES offices or

improving the coordination of services to MSFWs. To foster such collaboration, the SMAs must establish Memorandums of Understanding (MOUs) with the NFJP grantees and may establish MOUs with other organizations serving farm workers as appropriate.

(m) The SMA must conduct frequent field visits to the working, living, and gathering areas of MSFWs, and must discuss employment services and other employment-related programs with MSFWs, crew leaders, and employers. Records must be kept of each such field visit.

(n) The SMA must participate in the appropriate regional public meeting(s) held by the Department of Labor Regional Farm Labor Coordinated Enforcement Committee, other Occupational Safety and Health Administration and Wage and Hour Division task forces, and other committees as appropriate.

(o) The SMA must ensure that outreach efforts in all significant MSFW ES offices are reviewed at least yearly. This review will include accompanying at least one outreach worker from each significant MSFW ES office on field visits to MSFWs' working, living, and/or gathering areas. The SMA must review findings from these reviews with the ES office managers.

(p) The SMA must review on at least a quarterly basis all statistical and other MSFW-related data reported by ES offices in order:

(1) To determine the extent to which the SWA has complied with the ES regulations; and

(2) To identify the areas of non-compliance.

(q) The SMA must have full access to all statistical and other MSFW-related information gathered by SWAs and ES offices, and may interview SWA and ES office staff with respect to reporting methods. Subsequent to each review, the SMA must consult, as necessary, with the SWA and ES offices and provide technical assistance to ensure accurate reporting.

(r) The SMA must review and comment on proposed State ES directives, manuals, and operating instructions relating to MSFWs and must ensure:

(1) That they accurately reflect the requirements of the regulations; and

(2) That they are clear and workable. The SMA also must explain and make available at the requestor's cost, pertinent directives and procedures to employers, employer organizations, farmworkers, farmworker organizations, and other parties expressing an interest in a readily identifiable directive or procedure issued and receive suggestions on how these documents can be improved.

(s) The SMA must prepare for the State Administrator, the Regional Monitor Advocate, and the National Monitor Advocate an Annual Summary describing how the State provided employment services to MSFWs within the State based on statistical data, reviews, and other activities as required in this chapter. The summary must include:

(1) A description of the activities undertaken during the program year by the SMA pertaining to his/her responsibilities set forth in this section and other applicable regulations in this chapter.

(2) An assurance that the SMA has direct, personal access, whenever he/she finds it necessary, to the State Administrator and that the SMA has status and compensation approved by the civil service classification system, and is comparable to other State positions assigned similar levels of tasks, complexity, and responsibility.

(3) An assurance the SMA devotes all of his/her time to monitor advocate functions. Or, if the SWA proposed the SMA conducts his/her functions on a part-time basis, an explanation of how the SMA functions are effectively performed with part-time staffing.

(4) A summary of the monitoring reviews conducted by the SMA, including:

(i) A description of any problems, deficiencies, or improper practices the SMA identified in the delivery of services;

(ii) A summary of the actions taken by the SWA to resolve the problems, deficiencies, or improper practices described in its service delivery; and

(iii) A summary of any technical assistance the SMA provided for the SWA and the ES offices.

(5) A summary of the outreach efforts undertaken by all significant and non-significant MSFW ES offices.

(6) A summary of the State's actions taken under the Complaint System described in part 658, subpart E, of this chapter, identifying any challenges, complaint trends, findings from reviews of the Complaint System, trainings offered throughout the year, and steps taken to inform MSFWs and employers, and farmworker advocacy groups about the Complaint System.

(7) A summary of how the SMA is working with WIOA sec. 167 NFJP grantees and other organizations serving farmworkers, employers and employer organizations, in the State, and an assurance that the SMA is meeting at least quarterly with representatives of these organizations.

(8) A summary of the statistical and other MSFW-related data and reports gathered by SWAs and ES offices for the year, including an overview of the SMA's involvement in the SWA's reporting systems.

(9) A summary of the training conducted for SWA personnel, including ES office personnel, on techniques for accurately reporting data.

(10) A summary of activities related to the AOP and an explanation of how those activities helped the State reach the goals and objectives described in the AOP. At the end of the 4-year AOP cycle, the summary must include a synopsis of the SWA's achievements over the previous 4 years to accomplish the goals set forth in the AOP, and a description of the goals which were not achieved and the steps the SWA will take to address those deficiencies.

(11) For significant MSFW ES offices, a summary of the functioning of the State's affirmative action staffing program under § 653.111.

§ 653.109 Data collection and performance accountability measures.

SWAs must:

(a) Collect career service indicator data for the career services specified in WIOA sec. 134(c)(2)(A)(xii).

(b) Collect data, in accordance with applicable ETA Reports and Guidance, on:

(1) The number of MSFWs contacted through outreach activities;

(2) The number of MSFWs and non-MSFWs registered for career services;

(3) The number of MSFWs referred to and placed in agricultural jobs;

(4) The number of MSFWs referred to and placed in non-agricultural jobs;

(5) The percentage of MSFW program participants who are in unsubsidized employment during the second quarter after exit from the program;

(6) The median earnings of MSFW program participants who are in unsubsidized employment during the second quarter after exit from the program;

(7) The percentage of MSFW program participants who are in unsubsidized employment during the fourth quarter after exit from the program;

(8) The number of MSFWs served who identified themselves as male, female, Hispanic or Latino, Black or African-American, American Indian or Alaska Native, Asian, Native Hawaiian or Pacific Islander, or White;

(9) Agricultural clearance orders (including field checks), MSFW complaints and apparent violations, and monitoring activities; and

(10) Any other data required by the Department.

(c) Provide necessary training to SWA personnel, including ES office personnel, on techniques for accurately reporting data.

(d) Collect and submit data on MSFWs required by the Unified or Combined State Plan, as directed by the Department.

(e) Periodically verify data required to be collected under this section, take necessary steps to ensure its validity, and submit the data for verification to the Department, as directed by the Department.

(f) Submit additional reports to the Department as directed.

(g) Meet equity indicators that address ES controllable services and include, at a minimum, individuals referred to a job, receiving job development, and referred to supportive or career services.

(h) Meet minimum levels of service in significant MSFW States. That is, only significant MSFW SWAs will be required to meet minimum levels of service to MSFWs. Minimum level of service indicators must include, at a minimum, individuals placed in a job, individuals placed long-term (150 days or more) in a non-agricultural job, a review of significant MSFW ES offices, field checks conducted, outreach contacts per week, and processing of complaints. The determination of the minimum service levels required of significant MSFW States for each year must be based on the following:

(1) Past SWA performance in serving MSFWs, as reflected in on-site reviews and data collected under paragraph (b) of this section.

(2) The need for services to MSFWs in the upcoming year, comparing prior and projected levels of MSFW activity.

§ 653.110 Disclosure of data.

(a) SWAs must disclose to the public, on written request, in conformance with applicable State and Federal law, the data collected by SWAs and ES offices pursuant to § 653.109, if possible within 10 business days after receipt of the request.

(b) If a request for data held by a SWA is made to the ETA national or regional office, the ETA must forward the request to the SWA for response.

(c) If the SWA cannot supply the requested data within 10 business days after receipt of the request, the SWA must respond to the requestor in writing, giving the reason for the delay and specifying the date by which it expects to be able to comply.

(d) SWA intra-agency memoranda and reports (or parts thereof) and memoranda and reports (or parts thereof) between the SWA and the ETA, to the extent that they contain statements of opinion rather than facts, may be withheld from public disclosure provided the reason for withholding is given to the requestor in writing. Similarly, documents or parts thereof, which, if disclosed, would constitute an unwarranted invasion of personal or employer privacy, also may be withheld provided the reason is given to the requestor in writing.

§ 653.111 State Workforce Agency staffing requirements.

(a) The SWA must implement and maintain an affirmative action program for staffing in significant MSFW one-stop centers, and must employ ES staff in a manner facilitating the delivery of employment services tailored to the special needs of MSFWs, including:

(1) The positioning of multilingual staff in offices serving a significant number of Spanish-speaking or ELL participants; and

(2) The hiring of staff members from the MSFW community or members of community-based migrant programs.

(b) The SWA must hire sufficient numbers of qualified, permanent minority staff in significant MSFW ES offices. SWAs will determine whether a "sufficient number" of staff have been hired by conducting a comparison between the characteristics of the staff and the workforce and determining if the composition of the local office staff(s) is representative of the racial and ethnic characteristics of the workforce in the ES office service area(s). SWAs with significant MSFW ES offices, must undertake special efforts to recruit MSFWs and persons from MSFW backgrounds for its staff.

(1) Where qualified minority applicants are not available to be hired as permanent staff, qualified minority part-time, provisional, or temporary staff must be hired in accordance with State merit system procedures, where applicable.

(2) If an ES office does not have a sufficient number of qualified minority staff, the SWA must establish a goal to achieve sufficient staffing at the ES office. The SWA also must establish a reasonable timetable for achieving the staffing goal by hiring or promoting available, qualified staff in the under-represented categories. In establishing timetables, the SWA must consider the vacancies anticipated through expansion, contraction, and turnover in the office(s) and available funds. All affirmative action programs must establish timetables that are designed to achieve the staffing goal no later than 1year after the submission of the Unified or Combined State Plan or Annual Summary, whichever is sooner. Once such goals have been achieved, the SWA must submit a State Plan modification request to the Department with the assurance that the requirements of paragraph (b) of this section have been achieved.

(3) The SMA, Regional Monitor Advocate, or the National Monitor Advocate, as part of his/her regular reviews of SWA compliance with these regulations, must monitor the extent to which the SWA has complied with its affirmative action program.

Subparts C–E—[Reserved]

Subpart F—Agricultural Recruitment System for U.S. Workers (ARS)

§ 653.500 Purpose and scope of subpart.

This subpart includes the requirements for the acceptance of intrastate and interstate job clearance orders which seek U.S. workers to perform farmwork on a temporary, less than year-round basis. Orders seeking workers to perform farmwork on a year-round basis are not subject to the requirements of this subpart. This subpart affects all job orders for workers who are recruited through the ES intrastate and interstate clearance systems for less than year-round farmwork, including both MSFWs and non-MSFW job seekers.

§ 653.501 Requirements for processing clearance orders.

(a) *Assessment of need.* No ES office or SWA may place a job order seeking workers to perform farmwork into intrastate or interstate clearance unless:

(1) The ES office and employer have attempted and have not been able to obtain sufficient workers within the local labor market area; or

(2) The ES office anticipates a shortage of local workers.

(b) *ES office responsibilities.* (1) Each ES office must ensure the agricultural clearance form prescribed by the Department (ETA Form 790 or its subsequently issued form), and its attachments are complete when placing intrastate or interstate clearance orders seeking workers.

(2) All clearance orders must be posted in accordance with applicable ETA guidance. If the job order for the ES office incorporates offices beyond the local office commuting area, the ES office must suppress the employer information in order to facilitate the orderly movement of workers within the ES.

(3) ES staff must determine, through a preoccupancy housing inspection performed by ES staff or an appropriate public agency, that the housing assured